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Title 3—

The President

Proclamation 8801 of April 20, 2012

National Park Week, 2012

By the President of the United States of America

A Proclamation

When President Theodore Roosevelt first took office over a century ago, he embarked on a tour of the American West that would change his life and the life of our Nation forever. He traveled from Yellowstone's geysers, to Yosemite's granite cliffs, to Dakota's Badlands, ever moved by the natural wonders of which he and all Americans were proud inheritors. As he explored wild country, he heard a call to preserve our country's heritage that echoed throughout our forests and river valleys. He remarked of the Grand Canyon, ''the ages have been at work on it, and man can only mar it.''

From that sense of commitment sprang five National Parks, 18 National Monuments, 51 Federal bird reservations, and 150 National Forests. From that commitment sprang an effort to save the great Redwoods of California and the Petrified Forest of Arizona, the great bird rocks of the Aleutian Islands and the Tongass of Alaska. President Roosevelt inspired a breath-taking legacy of conservation that has forever enriched our lives, and in the decades since his historic journey, millions have worked to build on his enduring mission. When the fate of our lands and waters has been cast into doubt, they have taken the long view—that as Americans and as inhabitants of this one small planet, it is up to us to preserve our national heritage for our children, grandchildren, and for the generations to come.

That spirit drives my Administration today. Since I took office, we have set aside more than 2 million acres of Federal wilderness and thousands of miles of trails and rivers under the Omnibus Public Land Management Act. Last November, I was proud to establish the Fort Monroe National Monument, forever enshrining a site of profound historical and cultural significance. Today, I designated Fort Ord as a National Monument that will not only protect one of the crown jewels of California's coast—a world-class destination for hikers, mountain bikers, and outdoor enthusiasts—but also honor the heroism and dedication of men and women who served our Nation during the major conflicts of the 20th century. And with the America's Great Outdoors Initiative, we continue to advance a smarter, more community-driven conservation and recreation strategy. We are partnering with cities and States to make it easier for families to spend time outside no matter where they live, and we are working to create jobs, boost rural economies, and increase tourism by enhancing public lands that draw travelers from across the globe. To celebrate National Park Week, all 397 National Parks will offer free admission from April 21 through April 29, 2012. I encourage every American to visit www.NPS.gov to find a nearby park and discover the land passed down to us by our forebears.

President Franklin Delano Roosevelt told us ''There is nothing so American as our National Parks.'' This week, we honor the uniquely American idea behind them: that each of us has an equal share in the land around us, and an equal responsibility to protect it. That call to conserve has echoed for generations—from Jefferson, to Lincoln, to Roosevelt, to all who have done their part to protect the land that they love. It is the call we hear

today, and as we come together to celebrate our national heritage, let us reaffirm our promise to preserve America's treasures for the generations yet to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 21 through April 29, 2012, as National Park Week. I encourage all Americans to visit their national parks and be reminded of these unique blessings we share as a Nation.

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

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Presidential Documents

Proclamation 8802 of April 20, 2012

Earth Day, 2012

By the President of the United States of America

A Proclamation

On April 22, 1970, millions of Americans came together to celebrate the first Earth Day. Students, teachers, activists, elected officials, and countless others challenged our Nation to confront our most urgent environmental issues and rallied around a single message: the success of future generations depends upon how we act today. As we commemorate Earth Day this year, we reflect on the challenges that remain before us and recommit to the spirit of togetherness and shared responsibility that galvanized a movement 42 years ago.

America rose to meet the call to action in the months and years that followed the first Earth Day. We passed the Clean Air, Clean Water, Endangered Species, and Marine Mammal Protection Acts; founded the Environmental Protection Agency; and ignited a spirit of stewardship that has driven progress for over four decades. Today, our air and water are cleaner, pollution has been greatly reduced, and Americans everywhere are living in a healthier environment.

While we have made remarkable progress in protecting our health and our natural heritage, we know our work is not yet finished. Last July, my Administration proposed the toughest fuel economy standards in our Nation's history—standards that will save families money at the pump, cut greenhouse gas emissions, and significantly reduce our dependence on oil. In December, we finalized the first-ever national standards to limit mercury and other toxic emissions from power plants, helping safeguard the health of millions. We have taken action to protect and restore our Nation's precious ecosystems, from the Gulf Coast to the Great Lakes. And we continue to make landmark investments in batteries, biofuels, and renewable energy that are unlocking American innovation and ensuring our Nation stays on the cutting edge. Our country is on the path to economic recovery and renewal, and moving forward, my Administration will continue to fight for a healthy environment every step of the way.

As we work to leave our children a safe, sustainable future, we must also equip them with the tools they need to take on tomorrow's environmental challenges. Supporting environmental literacy and a strong foundation in science, technology, engineering, and math for every student will help ensure our youth have the skills and knowledge to advance our clean energy economy. Last year, we launched the Department of Education Green Ribbon Schools recognition award to encourage more schools to pursue sustainability, foster health and wellness, and integrate environmental literacy into the curriculum. In the days ahead, we look forward to awarding the first Green Ribbons and recognizing the accomplishments of green schools across our country.

Forty-two years ago, a generation rallied together to protect the earth we would inherit. As we reflect on that historic day of activism and stewardship, let us embrace our commitment to the generations yet to come by leaving them a safe, clean world on which to make their mark.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 22, 2012, as Earth Day. I encourage all Americans to participate in programs and activities that will protect our environment and contribute to a healthy, sustainable future.

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

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Presidential Documents

Proclamation 8803 of April 20, 2012

Establishment of the Fort Ord National Monument

By the President of the United States of America

A Proclamation

In the heart of California's Central Coast, the former Fort Ord encompasses a sweeping landscape of vivid beauty and rich natural diversity. One of the few remaining expanses of large, contiguous open space in the increasingly developed Monterey Bay area, this area is a rolling landscape long treasured for recreation, scientific research, outdoor education, and historical significance. Originating in the Pleistocene Epoch, ancient dunes provide the foundation for this landscape's unique array of plant and wildlife communities. The area is also notable for its historical significance, including its role in the Spanish settlement of California and in the military training of generations of American soldiers.

Nearly two and a half centuries ago, as Americans fought for independence far to the east, these lands were traversed by a group of settlers led by Spanish Lieutenant Colonel Juan Bautista de Anza. In 1775–1776, Anza established the first overland route from ''New Spain,'' as Mexico was then known, to San Francisco, opening the way for expanded Spanish settlement of California. The diaries kept on this nearly 2,000-mile journey were used to identify the Juan Bautista de Anza National Historic Trail, approximately 6 miles of which pass through the Fort Ord area. Although much of the historic route currently passes through urban areas, the undeveloped expanse of the Fort Ord area is likely quite similar to the open landscape experienced by Anza and by the Costanoan (now commonly referred to as Ohlone) peoples who lived in what is now the Central Coast region of California.

The area's open, contiguous landscape owes its undeveloped state in large part to its role as a U.S. Army facility. From World War I through the early 1990s, the area's rugged terrain served as a military training ground and introduced as many as a million and a half American soldiers to the rigors of military service. From its origins in 1917 as a training ground for troops stationed at the nearby Presidio of Monterey, Fort Ord had grown into a major Army installation by the beginning of World War II. During the Vietnam War, it served as a leading training center and deployment staging ground. While the former Fort Ord has few remaining historic structures, today thousands of veterans carry the memory of its dramatic landscape as their first taste of Army life, as a final stop before deploying to war, or as a home base during their military career. These lands are an historical link to the heroism and dedication of the men and women who served our Nation and fought in the major conflicts of the 20th century.

Today, this expansive, historic landscape provides opportunities for solitude and adventure to nearly 100,000 visitors each year. By bicycle, horse, and foot visitors can explore the Fort Ord area's scenic and natural resources along trails that wind over lush grasslands, between gnarled oaks, and through scrub-lined canyons. Within the boundaries of the Fort Ord area, visitors admire the landscape and scenery and are exposed to wildlife and a diverse group of rare and endemic plants and animals. Because visitors travel from areas near and far, these lands support a growing travel and tourism sector that is a source of economic opportunity for the community,

especially businesses in the region. They also help to attract new residents, retirees, and businesses that will further diversify the local economy.

Scientists are also drawn here, seeking out opportunities to better understand once-widespread species and vegetative communities, and their ongoing restoration. The Fort Ord area is significant because of its rich biodiversity and important Central Coast habitats, supporting a diverse group of rare and endemic species of plants and animals that are managed across the base through a multi-agency, community-led management plan. It is one of the few remaining places in the world where large expanses of coastal scrub and live oak woodland and savanna habitat, mixed with rare vernal pools, exist in a contiguous, interconnected landscape.

The protection of the Fort Ord area will maintain its historical and cultural significance, attract tourists and recreationalists from near and far, and enhance its unique natural resources, for the enjoyment of all Americans.

WHEREAS section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431) (the ''Antiquities Act''), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected;

WHEREAS the 1991 Defense Base Closure and Realignment Commission recommended that Fort Ord cease to be used as an Army installation, and pursuant to the Defense Base Closure and Realignment Act of 1990 (Public Law 101–510), Fort Ord closed on September 30, 1994;

WHEREAS it is in the public interest to reserve such lands as a national monument to be known as the Fort Ord National Monument;

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by the authority vested in me by section 2 of the Antiquities Act, hereby proclaim that all lands and interests in lands owned or controlled by the Government of the United States within the boundaries described on the map entitled ''Fort Ord National Monument,'' which is attached to and forms a part of this proclamation, are hereby set apart and reserved as the Fort Ord National Monument (monument) for the purpose of protecting and restoring the objects identified above. The reserved Federal lands and interests in lands consist of approximately 14,651 acres, which is the smallest area compatible with the proper care and management of the objects to be protected and restored.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, leasing, or other disposition under the public lands laws, including withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing other than by exchange that furthers the protective purposes of the monument.

The establishment of this monument is subject to valid existing rights. Lands and interests in lands within the monument boundaries not owned or controlled by the United States shall be reserved as part of the monument upon acquisition of ownership or control by the United States.

Of the approximately 14,651 acres of Federal lands and interests in lands reserved by this proclamation, approximately 7,205 acres are currently managed by the Secretary of the Interior through the Bureau of Land Management (BLM) and approximately 7,446 acres are currently managed by the Secretary of the Army. The Secretary of the Army, in consultation with the Secretary of the Interior, through the BLM, shall continue to manage the lands and interests in lands under the Secretary's jurisdiction within the monument

boundaries until the Army transfers those lands and interests in lands to the BLM in accordance with the 1995 Memorandum of Understanding (MOU) between the Department of the Army and the BLM, as amended, that describes the responsibilities of each agency related to such lands and interests in lands, the implementing actions required of each agency, the process for transferring administrative jurisdiction over such lands and interests in lands to the Secretary of the Interior, and the processes for resolving interagency disputes. The Secretary of the Interior, through the BLM, shall manage that portion of the monument under the Secretary's administrative jurisdiction, pursuant to applicable legal authorities and the MOU, to implement the purposes of this proclamation.

For purposes of protecting and restoring the objects identified above, the Secretary of the Interior, through the BLM, shall prepare and maintain a transportation plan, in coordination with the Secretary of the Army and consistent with the MOU, that provides for visitor enjoyment and understanding of the scientific and historic objects on lands within the monument boundaries that are under the administrative jurisdiction of the Secretary of the Interior. The transportation plan shall include the designation of roads and trails for bicycling and other purposes. Except for emergency or authorized administrative purposes, under the transportation plan motorized vehicle use shall be permitted only on designated roads, and nonmotorized mechanized vehicle use shall be permitted only on designated roads and trails. The plan shall be revised upon the transfer of lands now under the administrative jurisdiction of the Secretary of the Army to the Secretary of the Interior in accordance with the MOU.

Nothing in this proclamation shall be deemed to enlarge or diminish the rights of any Indian tribe.

Nothing in this proclamation shall affect the responsibility of the Department of the Army under applicable environmental laws, including the remediation of hazardous substances or munitions and explosives of concern within the monument boundaries; nor affect the Department of the Army's statutory authority to control public access or statutory responsibility to make other measures for environmental remediation, monitoring, security, safety, or emergency preparedness purposes; nor affect any Department of the Army activities on lands not included within the monument. Nothing in this proclamation shall affect the implementation of the Installation-Wide Multispecies Habitat Management Plan for the former Fort Ord including interagency agreements implementing that plan.

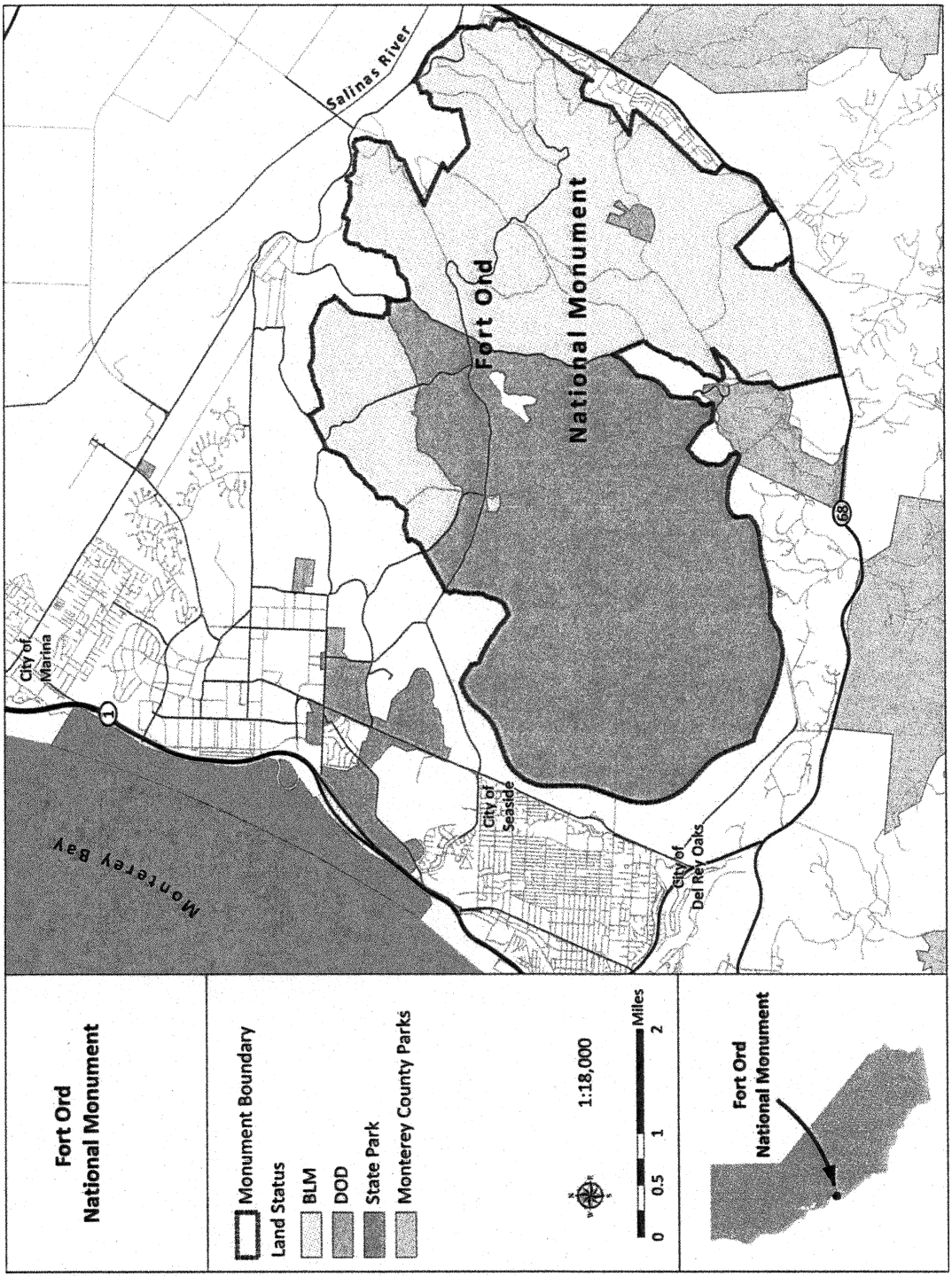
Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of California with respect to fish and wildlife management.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

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

Billing code 3295–F2–P



[FR Doc. 2012–10114
Filed 4–24–12; 8:45 am]
Billing code 4310–10–C

Rules and Regulations

Federal Register
Vol. 77, No. 80
Wednesday, April 25, 2012

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

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2011–0221]

RIN 3150–AJ05

List of Approved Spent Fuel Storage Casks: HI-STORM 100, Revision 8

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is confirming the effective date of May 2, 2012, for the direct final rule that was published in the **Federal Register** on February 17, 2012. This direct final rule amends the NRC's spent fuel storage regulations by revising the Holtec International HI-STORM 100 System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 8 to Certificate of Compliance (CoC) Number 1014.

DATES: The effective date for the direct final rule published February 17, 2012, at 77 FR 9515, is confirmed as May 2, 2012.

ADDRESSES: Please refer to Docket ID NRC–2011–0221 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 the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0221. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*.
- *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: Gregory Trussell, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6445, email: *Gregory.Trussell@nrc.gov*.

SUPPLEMENTARY INFORMATION: On February 17, 2012 (77 FR 9515), the NRC published a direct final rule amending its regulations at Title 10 of the *Code of Federal Regulations* (10 CFR) 72.214, by revising the Holtec International HI-STORM 100 System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 8 to CoC Number 1014. In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on May 2, 2012. The NRC did not receive any comments on the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 19th day of April 2012.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2012–9834 Filed 4–24–12; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0010; Directorate Identifier 2012–NE–03–AD; Amendment 39–17035; AD 2012–08–18]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Turbomeca S.A. Arriel 2B and 2B1 turboshaft engines. This AD was prompted by the discovery of non-conformities of certain power turbine (PT) blade fir-tree roots. This AD requires removing the affected PT blades from service on or before reaching a new reduced life limit for those certain PT blades. We are issuing this AD to prevent PT blade rupture, which could result in an uncommanded in-flight engine shutdown, forced autorotation landing, or accident.

DATES: This AD is effective May 30, 2012.

ADDRESSES: For service information identified in this AD, contact Turbomeca, 40220 Tarnos, France; phone: 33 05 59 74 40 00; fax: 33 05 59 74 45 15. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Rose Len, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *rose.len@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on January 20, 2012 (77 FR 2930). That NPRM proposed to require removing the affected PT blades from service on or before reaching a new reduced life limit for those certain PT blades.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 2930, January 20, 2012).

Clarification of Compliance Time

Since we issued the proposed AD, we determined that we need to clarify the compliance time. The proposed AD stated 5,000 flight cycles. We changed the AD to state 5,000 flight cycles-since-new.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD with the change described previously.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 150 engines installed on helicopters of U.S. registry. We also estimate that it will take about 4 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. A prorated replacement M04 module will cost about $20,000 per engine. Based on these figures, we estimate the cost of the AD on U.S. operators to be $3,051,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–08–18 Turbomeca S.A: Amendment 39–17035; Docket No. FAA–2012–0010; Directorate Identifier 2012–NE–03–AD.

(a) Effective Date

This AD is effective May 30, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Turbomeca S.A. Arriel 2B and 2B1 turboshaft engines with at least one installed power turbine (PT) blade part number (P/N) 2 292 81 A01 0, serial numbers (S/Ns) 102782 through 120230 inclusive, or, S/Ns 120293 through 120390 inclusive.

(d) Reason

This AD was prompted by the detection of geometric non-conformities on PT blade fir-tree roots. We are issuing this AD to prevent PT blade rupture, which could result in an uncommanded in-flight engine shutdown, forced autorotation landing, or accident.

(e) Actions and Compliance

Unless already done, do the following actions within 5,000 flight cycles-since-new (CSN) on the PT blades, or within one month after the effective date of this AD, whichever occurs later.

(1) Replace the PT blades with PT blades eligible for installation; or

(2) Replace the M04 module with an M04 module having PT blades eligible for installation; or

(3) Replace the PT wheel assembly with a PT wheel assembly having PT blades eligible for installation.

(4) Guidance on the replacements specified in paragraphs (e)(1) through (e)(3) can be found in Turbomeca S.A. Alert Mandatory Service Bulletin No. A292 72 2842, Version A, dated September 23, 2011.

(f) Definition

For the purposes of this AD, a PT blade eligible for installation is one not listed in paragraph (c) of this AD or, one listed in paragraph (c) of this AD with fewer than 5,000 flight CSN.

(g) Installation Prohibition

From the effective date of this AD:

(1) Do not install a PT blade as listed in paragraph (c) of this AD, that has 5,000 or more flight CSN, into any engine.

(2) Do not install any engine with a PT blade as listed in paragraph (c) of this AD, that has 5,000 or more flight CSN, onto a helicopter.

(h) 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.

(i) Related Information

(1) For more information about this AD, contact Rose Len, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *rose.len@faa.gov*.

(2) Refer to MCAI EASA Airworthiness Directive 2011–0218, dated November 10, 2011, and Turbomeca S.A. Alert Mandatory Service Bulletin No. A292 72 2842, Version A, dated September 23, 2011, for related information.

(3) For service information identified in this AD, contact Turbomeca, 40220 Tarnos, France; phone: 33 05 59 74 40 00; fax: 33 05

59 74 45 15. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(j) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on April 17, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–9789 Filed 4–24–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 120416415–2415–01]

RIN 0694–AF57

Addition of Certain Persons to the Entity List; and Implementation of Entity List Annual Review Changes

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by adding to the Entity List two persons who have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These persons will be listed on the Entity List under the country of France.

This rule also amends the Entity List on the basis of the annual review of the Entity List conducted by the End-User Review Committee (ERC). The ERC conducts the annual review to determine if any entries on the Entity List should be removed or modified. This rule reflects the results of the ERC's annual review of fifteen countries, *i.e.* Armenia, Belarus, Egypt, Germany, Iran, Ireland, Israel, Kuwait, Lebanon, Norway, Russia, South Korea, Syria, the United Arab Emirates (U.A.E.), and the United Kingdom (U.K.). As a result of these reviews, this rule makes amendments to the Entity List including: The removal of three entries (one each in Germany, South Korea, and the United Arab Emirates (U.A.E.)); the addition of four entities (one each in Canada, Egypt, France and the United Kingdom); and the amendments of seventeen entries to provide alternate addresses, alternate spellings of names, and/or aliases for listed persons. The amended entries are in Armenia, Germany, Iran, Lebanon, Syria, and the U.A.E. sections of the Entity List.

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of license exceptions in such transactions is limited.

DATES: *Effective Date:* This rule is effective April 25, 2012.

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to Part 744) provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from the Bureau of Industry and Security and that the availability of license exceptions in such transactions is limited. Entities are placed on the Entity List on the basis of certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The ERC, composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, when appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Additions to the Entity List

This rule implements the decision of the ERC to add two persons, located in France, to the Entity List on the basis of Section 744.11 (license requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The ERC reviewed Section 744.11(b) (Criteria for revising the Entity List) in making the determination to add the two persons located in France to the Entity List. Under that paragraph, persons for which there is reasonable cause to believe, based on specific and articulable facts, that the persons have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such persons may be added to the Entity List pursuant to Section 744.11. Paragraphs (b)(1)–(b)(5) of Section 744.11 include an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States.

The ERC has reasonable cause to believe that the two persons in France (one company and one individual, an employee of the company) have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that could be contrary to the national security or foreign policy interests of the United States. Specifically, BIS's investigation of the company, Toulouse Air Spares SAS, indicates direct physical and corporate nexus with Aerotechnic France SAS, an Entity List person (76 FR 37632, 6/28/2011). Therefore, pursuant to Section 744.11(b)(5) of the EAR, the ERC determined that the company Toulouse Air Spares SAS and Laurence Mattiucci, the company's president, are engaging in conduct that poses a risk of violating the EAR and that such conduct raises sufficient concern that prior review of exports, reexports or transfers (in-country) of items subject to the EAR involving either of the two persons, and the possible imposition of license conditions or license denials, will enhance BIS's ability to prevent violations of the EAR.

For both of the persons added to the Entity List, the ERC specified a license requirement for all items subject to the EAR and established a license application review policy of a presumption of denial. The license requirement applies to any transaction in which items are to be exported, reexported, or transferred (in-country) to such persons or in which such persons act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to those persons being added to the Entity List.

This final rule adds the following two persons to the Entity List:

France

(1) *Toulouse Air Spares SAS*, 8 Rue de la Bruyere, 31120 Pinsaguel, Toulouse, France; *and*

(2) *Laurence Mattiucci*, 8 Rue de la Bruyere, 31120 Pinsaguel, Toulouse, France.

Annual Review of the Entity List

This rule also amends the Entity List on the basis of the annual review of the

Entity List conducted by the ERC, in accordance with the procedures outlined in Supplement No. 5 to part 744 (Procedures for End-User Review Committee Entity List Decisions). The changes from the annual review of the Entity List that are approved by the ERC are implemented in stages as the ERC completes its review of entities listed under different destinations on the Entity List. This rule implements the results of the annual review for entities listed under Armenia, Germany, Iran, Lebanon, South Korea, Syria, and the U.A.E.

A. Removals From the Entity List Based on the Annual Review

This rule removes two entities from the Entity List, consisting of one entity from Germany and one entity from South Korea, on the basis of the annual review of the Entity List. Specifically, this rule implements the decision of the ERC to remove the following two entities:

Germany

(1) *Akbar Ashraf Vaghefi,* Koburgerstr 10, D–10825, Berlin, Germany.

South Korea

(1) *WASTEC, Inc., a.k.a., With Advanced Systemic Technology,* Room 3303, 3304, Na-Dong Chungang Circulation Complex, #1258, Gurobon-Dong, Guro-gu, Seoul, South Korea.

The removal of the above-referenced two entities from the Entity List eliminates the existing license requirements in Supplement No. 4 to part 744 for exports, reexports, and transfers (in-country) to the two entities. However, the removal of these two entities from the Entity List does not relieve persons of other obligations under part 744 of the EAR or under other parts of the EAR. Neither the removal of an entity from the Entity List nor the removal of Entity List-based license requirements relieves persons of their obligations under General Prohibition 5 in section 736.2(b)(5) of the EAR which provides that, ''you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.'' Additionally these removals do not relieve persons of their obligation to apply for export, reexport or in-country transfer licenses required by other provisions of the EAR. BIS strongly urges the use of Supplement No. 3 to part 732 of the EAR, ''BIS's 'Know Your Customer' Guidance and Red Flags,'' when persons are involved in transactions that are subject to the EAR.

This rule, pursuant to the ERC's annual review, also removes a third entity from the Entity List, consisting of one entry from the U.A.E. However, this person's name will be added as an alias for another person listed on the Entity List, also under the U.A.E. Therefore, this removal does not remove license requirements for this person. Instead, the addition of the entry as an alias to another listed entity will more clearly identify the relationship between these two persons listed on the Entity List. Specifically, this rule consolidates the entry for ''S. Basheer'' (*i.e.,* removes and adds to another entry on the Entity List) as a new alias for the revised ''Shaji Muhammed Basheer'' entry, as follows:

United Arab Emirates

(1) *Shaji Muhammed Basheer,* a.k.a., the following alias:

—S. Basheer.

Shop No. 3 & 4, Sharafia Ahmed Ali Bldg., Al Nakheel St., Deira, P.O. Box 171978, Dubai, U.A.E.

B. Modifications to the Entity List Based on the Annual Review

On the basis of decisions made by the ERC during the annual review, in addition to modifying the U.A.E. entry as described above, this rule amends sixteen entries currently on the Entity List, consisting of one entry under Armenia, three entries under Germany, ten entries under Iran, one entry under Lebanon, and one entry under Syria, to provide alternate addresses, alternate spellings for the names of the listed persons, and/or aliases, as follows:

Armenia

(1) *Bold Bridge International, LLC,* a.k.a., the following alias:

—BB Bold Bridge International.

Room 463, H. Hakobyan 3, Yerevan, Armenia.

Germany

(1) *Djamshid Nezhad,* a.k.a., the following alias:

—Nezhad Djamshid.

Poppentrade 25, D–24148 Kiel, Germany; and Moesemann 2, 24144, Hamburg, Germany.

(2) *IKCO Trading GmbH,*

Schadowplatz 5, 40212 Dusseldorf, Germany; and Kaiserswerther Str. 117, 40474, Düsseldorf, Germany; and

(3) *Nezhad Enterprise Company,* a.k.a., the following three aliases:

—Nezhad Co.;
—Nezhad Enterprise; and
—Nezhad Trading.

Poppentrade 25, D–24148 Kiel, Germany; and Moesemann 2, 24144, Hamburg, Germany.

Iran

(1) *Atomic Energy Organization of Iran (AEOI),* a.k.a., the following two aliases:

—Sazeman-e Energy Atomi; and
—Sazeman-e Enerji-e Atomi.

P.O. Box 14144–1339, End of North Karegar Avenue, Tehran; and P.O. Box 14155–4494, Tehran, Iran; and all locations in Iran.

(2) *Kalaye Electric Company,* a.k.a., the following four aliases:

—Kala Electric Company;
—Kalia;
—Kala Electric; and
—Kola Electric Company.

33 Fifteenth (15th) Street, Seyed-Jamal-Eddin-Assad Abadi Avenue, Tehran, Iran.

(3) *Mahdi Electronics,* a.k.a., the following alias:

—Mahdi Electronic Trading Co. Ltd.

Ground Floor—No. 31 Alborz Alley, Enghelab St, Tehran, Iran.

(4) *NBC Navegan Bar Co. Ltd.,* a.k.a., the following alias:

—NBC Navegan Bar International Transport Co. Ltd.

#135 Khorramshahr Ave., Tehran 1533864163; and 101, Kohrramshahr Ave., Tehran 1533864163.

(5) *Rad Tavan Afza Company,*

3rd Floor, No. 210, W. Fatemi, Tehran, Iran, P.O. Box 14185–387; and 1st Pars Bldg., Beg. Pars Alley, Betw Khosh & Behboudi St., Azadi Ave., Tehran, Iran.

(6) *Raht Aseman Co. Ltd.,*

No. 1.2, Mosque Alley, Mohammadi St., North Bahar Ave., Tehran, Iran.

(7) *Reza Zahedi Pour,*

5 Yaas St., Unit 4, Tehran, Iran.

(8) *Shahid Bakeri Industrial Group,* a.k.a., the following nine aliases:

—SBIG;
—Shahid Baheri Industries Group;
—Shahid Bagheri Industries Group;
—Shahid Bagheri Industrial Group;
—MEHR Trading Company;
—Department 140/14;
—Mahtab Technical Engineering Company;
—Composite Propellant Missile Industry; and
—Sanaye Sokhte Morakab (SSM).

Pasdaran Ave., Tehran, Iran.

(9) *Shahid Hemmat Industrial Group,* a.k.a., the following six aliases:

—SHIG;
—Shahid Hemat Industrial Group;
—Chahid Hemmat Industrial Group;
—Shahid Hemmat Industrial Complex (SHIC);
—Shahid Hemmat Industrial Factories (SHIF); and
—Hemmat Missile Industries Factory.

Damavand Tehran Highway, Tehran, Iran; and Damavand Road 2, Abali Road, Tehran, Iran; and

(10) Simin Neda Industrial and Electrical Parts, a.k.a., the following alias:

—TTSN.

No. 22, Second Floor, Amjad Bldg., Jomhoori Ave., Tehran, Iran.

Lebanon

(1) *EKT Electronics,* a.k.a. the following four aliases:

Katrangi Electronics;
—Katrangi Trading;
—Katranji Labs; and
—Electronics Systems.

1st floor, Hujij Building, Korniche Street, P.O. Box 817 No. 3, Beirut, Lebanon; P.O. Box: 8173, Beirut, Lebanon; and #1 fl., Grand Hills Bldg., Said Khansa St., Jnah (BHV), Beirut, Lebanon. (See alternate addresses under Syria.)

Syria

(1) *EKT Electronics,* a.k.a., the following four aliases:

—Katrangi Electronics;
—Katrangi Trading;
—Katranji Labs; and
—Electronics Systems.

#1 floor, 11/A, Abbasieh Building, Hijaz Street, P.O. Box 10112, Damascus, Syria; and #1 floor, 02/A, Fares Building, Rami Street, Margeh, Damascus, Syria. (See alternate addresses under Lebanon.)

C. Additions to the Entity List on the Basis of the Annual Review and Section 744.11

Finally, on the basis of decisions made by the ERC during the annual review, this rule adds four persons to the Entity List, consisting of one person in Canada, one person in Egypt, one person in France, and one person in the U.K. The decision to add these four persons was made during the annual review and is based on Section 744.11 of the EAR. Similar to the process outlined above for the other Section 744.11 additions described in this rule, the ERC as part of the annual review process reviewed Section 744.11(b) in making the determination to add these four persons.

These four persons are believed to have been involved in activities described under paragraphs (b)(1) and (b)(2) of Section 744.11. Specifically, the two persons located in Canada and Egypt are being added because of their affiliation with EKT Electronics, a person currently listed on the Entity List under Lebanon and Syria. BIS first included EKT Electronics as a listed person under General Order No. 3, which was first published on June 5, 2006, and subsequently amended on September 6, 2006. General Order No. 3 listed persons concerning whom the U.S. Government possessed information regarding the acquisition or attempted acquisition of electronic components and devices capable of being used in improvised explosive devices (IEDs) used against Coalition Forces in Iraq and Afghanistan. These two persons being added are not aliases of EKT Electronics, but are believed to be affiliated and involved in the same types of activities of concern under paragraphs (b)(1) and (b)(2) of Section 744.11 and therefore also warrant being added to the Entity List.

Similarly, the two persons located in France and the U.K. are being added to the Entity List as a result of their affiliation with IKCO Trading GmbH (IKCO), a person currently on the Entity List under Germany. The French and the U.K. persons are involved in the same types of Section 744.11 activities that resulted in IKCO being added to the Entity List on September 22, 2008 (73 FR 54507). BIS first included IKCO as a listed person under General Order No. 3, which was first published on June 5, 2006, and subsequently amended on September 6, 2006. As noted above, General Order No. 3 listed persons concerning whom the U.S. Government possessed information regarding the acquisition or attempted acquisition of electronic components and devices capable of being used in IEDs used against Coalition Forces in Iraq and Afghanistan. These two persons being added are not aliases of IKCO, but are believed to be affiliated and involved in the same types of activities of concern under paragraphs (b)(1) and (b)(2) of Section 744.11 and therefore also warrant being added to the Entity List.

For the four persons added to the Entity List on the basis of the annual review, the ERC specified a license requirement for all items subject to the EAR and established a license application review policy of a presumption of denial. The license requirement applies to any transaction in which items are to be exported, reexported, or transferred (in-country) to such persons or in which such persons act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to those persons being added to the Entity List.

This final rule adds the following four persons to the Entity List:

Canada

(1) *EKT 2, Inc.,*

371 Renforth Drive, Etobicoke M9C 2L8, Toronto, Ontario, Canada.

Egypt

(1) *AL-AMIR ELECTRONICS,*

46 Falaki St. BabLouk Area, Cairo, Egypt.

France

(1) *IKCO France,*

147 Avenue Charles de Gaulle, 92200, Neuilly-Sur-Seine, France.

United Kingdom

(1) *IKCO Finance,*

6 Lothbury, London, England, EC2R 7HH.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on April 25, 2012, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

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

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov*, or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, then entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, because these parties may receive notice of the U.S. Government's intention to place these entities on the Entity List once a final rule was published, it would create an incentive for these persons to either accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States, and/or to take steps to set up additional aliases, change addresses, and other measures to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of September 21, 2011, 76 FR 59001 (September, 22, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011); Notice of January 19, 2012, 77 FR 3067 (January 20, 2012).

■ 2. Supplement No. 4 to part 744 is amended:

■ (a) By revising under Armenia, in alphabetical order, one Armenian entity;

■ (b) By adding under Canada, in alphabetical order, one Canadian entity;

■ (c) By adding under Egypt, in alphabetical order, one Egyptian entity;

■ (d) By adding under France, in alphabetical order, three French entities;

■ (e) By removing under Germany, the German entity: ''Akbar Ashraf Vaghefi, Koburgerstr 10, D–10825, Berlin, Germany;''

■ (f) By revising under Germany, in alphabetical order, three German entities;

■ (g) By revising under Iran, in alphabetical order, ten Iranian entities;

■ (h) By revising under Lebanon, in alphabetical order, one Lebanese entity;

■ (i) By removing the ''Country'' column for South Korea, including the South Korean entity: ''WASTEC, Inc., a.k.a., With Advanced Systemic Technology, Room 3303, 3304, Na-Dong Chungang Circulation Complex, #1258, Gurobon-Dong, Guro-gu, Seoul, South Korea;''

■ (j) By revising under Syria, in alphabetical order, one Syrian entity;

■ (k) By removing under the United Arab Emirates, the Emirati entry for ''S. Basheer, No. 3–4 Sharafia Ahmed Ali Building, Al Nakheel, Deira, Dubai 396, U.A.E.;''

■ (l) By revising under the United Arab Emirates, in alphabetical order, one Emirati entity; and

■ (m) By adding under United Kingdom, in alphabetical order, one British entity.

The additions and revisions read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	*	*	*	*
ARMENIA	Bold Bridge International, LLC, a.k.a. the following alias: —BB Bold Bridge International. Room 463, H. Hakobyan 3, Yerevan, Armenia.	For all items subject to the EAR. (See § 744.11 of the EAR.).	Presumption of denial	75 FR 1701, 1/13/10. 77 FR [INSERT FR PAGE NUMBER] 4/25/2012.
*	*	*	*	*
CANADA				

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
*	* * *	*	*	*
	EKT 2, Inc., 371 Renforth Drive, Etobicoke M9C 2L8, Toronto, Ontario, Canada.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/25/2012.
*	* * *	*	*	*
*	* * *	*	*	*
EGYPT	AL-AMIR ELECTRONICS, 46 Falaki St. BabLouk Area, Cairo, Egypt.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/25/2012.
*	* * *	*	*	*
FRANCE				
*	* * *	*	*	*
	IKCO France, 147 Avenue Charles de Gaulle, 92200, Neuilly-Sur-Seine, France.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/25/2012.
	Laurence Mattiucci, 8 Rue de la Bruyere, 31120 Pinsaguel, Toulouse, France.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/25/2012.
*	* * *	*	*	*
	Toulouse Air Spares SAS, 8 Rue de la Bruyere, 31120 Pinsaguel, Toulouse, France.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/25/2012.
GERMANY				
*	* * *	*	*	*
	Djamshid Nezhad, a.k.a. the following alias: —Nezhad Djamshid. Poppentrade 25, D–24148 Kiel, Germany; and Moesemann 2, 24144, Hamburg, Germany.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	73 FR 54504, 9/22/08. 77 FR [INSERT FR PAGE NUMBER] 4/25/2012.
*	* * *	*	*	*
	IKCO Trading GmbH, Schadowplatz 5, 40212 Dusseldorf, Germany; and Kaiserswerther Str. 117, 40474, Düsseldorf, Germany.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	73 FR 54504, 9/22/08. 77 FR [INSERT FR PAGE NUMBER] 4/25/2012.
	Nezhad Enterprise Company, a.k.a. the following three aliases: —Nezhad Co.; —Nezhad Enterprise; and —Nezhad Trading Poppentrade 25, D–24148 Kiel, Germany; and Moesemann 2, 24144, Hamburg, Germany.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	73 FR 54504, 9/22/08. 77 FR [INSERT FR PAGE NUMBER] 4/25/2012.
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*	* * *	*	*	*
IRAN				

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* *	* *	*	*
	Atomic Energy Organization of Iran (AEOI), a.k.a. the following two aliases: —Sazeman-e Energy Atomi; and —Sazeman-e Enerji-e Atomi. P.O. Box 14144–1339, End of North Karegar Avenue, Tehran; and P.O. Box 14155–4494, Tehran, Iran; and all locations in Iran.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	72 FR 38008, 07/12/07. 77 FR [INSERT FR PAGE NUMBER] 4/25/2012.
*	* *	* *	*	*
	Kalaye Electric Company, a.k.a. the following four aliases: —Kala Electric Company; —Kalia; —Kala Electric; and —Kola Electric Company. 33 Fifteenth (15th) Street, Seyed-Jamal-Eddin-Assad Abadi Avenue, Tehran, Iran.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	72 FR 38008, 07/12/07. 77 FR [INSERT FR PAGE NUMBER] 4/25/2012.
*	* *	* *	*	*
	Mahdi Electronics, a.k.a. the following alias: —Mahdi Electronic Trading Co. Ltd. Ground Floor—No. 31 Alborz Alley, Enghelab St., Tehran, Iran.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	73 FR 74001, 12/5/08. 77 FR [INSERT FR PAGE NUMBER] 4/25/2012.
*	* *	* *	*	*
	NBC Navegan Bar Co. Ltd., a.k.a. the following alias: —NBC Navegan Bar International Transport Co. Ltd. #135 Khorramshahr Ave., Tehran 1533864163; and 101, Kohrramshahr Ave., Tehran 1533864163.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	73 FR 54507, 9/22/08. 76 FR 21628, 4/18/11. 77 FR [INSERT FR PAGE NUMBER] 4/25/2012.
*	* *	* *	*	*
	Rad Tavan Afza Company, 3rd Floor, No. 210, W. Fatemi, Tehran, Iran, P.O. Box 14185–387; and 1st Pars Bldg., Beg. Pars Alley, Betw Khosh & Behboudi St., Azadi Ave., Tehran, Iran.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	73 FR 54507, 9/22/08. 77 FR [INSERT FR PAGE NUMBER] 4/25/2012.
	Raht Aseman Co. Ltd., No. 1.2, Mosque Alley, Mohammadi St., North Bahar Ave., Tehran, Iran.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	73 FR 74001, 12/5/08. 77 FR [INSERT FR PAGE NUMBER] 4/25/2012.
*	* *	* *	*	*
	Reza Zahedi Pour, 5 Yaas St., Unit 4, Tehran, Iran.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	73 FR 74001, 12/5/08. 77 FR [INSERT FR PAGE NUMBER] 4/25/2012.

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
*	* * *	* *	*	*
	Shahid Bakeri Industrial Group, a.k.a. the following nine aliases: —SBIG; —Shahid Baheri Industries Group; —Shahid Bagheri Industries Group; —Shahid Bagheri Industrial Group; —MEHR Trading Company; —Department 140/14; —Mahtab Technical Engineering Company; —Composite Propellant Missile Industry; and —Sanaye Sokhte Morakab (SSM). Pasdaran Ave., Tehran, Iran.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	72 FR 38008, 07/12/07. 77 FR [INSERT FR PAGE NUMBER] 4/25/2012.
	Shahid Hemmat Industrial Group, a.k.a. the following six aliases: —SHIG; —Shahid Hemat Industrial Group; —Chahid Hemmat Industrial Group; —Shahid Hemmat Industrial Complex (SHIC); —Shahid Hemmat Industrial Factories (SHIF); and —Hemmat Missile Industries Factory. Damavand Tehran Highway, Tehran, Iran; Damavand Tehran Highway, Tehran, Iran; and Damavand Road 2, Abali Road, Tehran, Iran.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	72 FR 38008, 07/12/07. 77 FR [INSERT FR PAGE NUMBER] 4/25/2012.
*	* * *	* *	*	*
	Simin Neda Industrial and Electrical Parts, a.k.a. the following alias: —TTSN. No. 22, Second Floor, Amjad Bldg., Jomhoori Ave., Tehran, Iran.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	72 FR 38008, 07/12/07. 77 FR [INSERT FR PAGE NUMBER] 4/25/2012.
*	* * *	* *	*	*
*	* * *	* *	*	*
LEBANON	EKT Electronics, a.k.a. the following four aliases: —Katrangi Electronics; —Katrangi Trading; —Katranji Labs; and —Electronics Systems. 1st floor, Hujij Building, Korniche Street, P.O. Box 817 No. 3, Beirut, Lebanon; P.O. Box: 8173, Beirut, Lebanon; and #1 fl., Grand Hills Bldg., Said Khansa St., Jnah (BHV), Beirut, Lebanon. (See alternate addresses under Syria.).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	73 FR 54507, 9/22/08. 77 FR [INSERT FR PAGE NUMBER] 4/25/2012.
*	* * *	* *	*	*
*	* * *	* *	*	*
SYRIA				
*	* * *	* *	*	*
	EKT Electronics, a.k.a. the following four aliases: —Katrangi Electronics; —Katrangi Trading; —Katranji Labs; and —Electronics Systems.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	73 FR 54509, 9/22/08. 76 FR 50407, 8/15/11. 77 FR [INSERT FR PAGE NUMBER] 4/25/2012.

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	#1 floor, 11/A, Abbasieh Building, Hijaz Street, P.O. Box 10112, Damascus, Syria; and #1 floor, 02/A, Fares Building, Rami Street, Margeh, Damascus, Syria (See alternate addresses under Lebanon).			
*	* * *	* *	*	*
*	* * *	* *	*	*
*	* * *	* *	*	*
UNITED ARAB EMIRATES.	Shaji Muhammed Basheer, a.k.a. the following alias: —S. Basheer. Shop No. 3 & 4, Sharafia Ahmed Ali Bldg., Al Nakheel St., Deira, P.O. Box 171978, Dubai, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR.).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/25/2012.
*	* * *	* *	*	*
UNITED KINGDOM				
*	* * *	* *	*	*
	IKCO Finance 6 Lothbury, London, England, EC2R 7HH.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/25/2012.
*	* * *	* *	*	*
*	* * *	* *	*	*

Dated: April 18, 2012.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2012–9905 Filed 4–24–12; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM11–11–000; Order No. 761]

Version 4 Critical Infrastructure Protection Reliability Standards

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Under section 215 of the Federal Power Act, the Federal Energy Regulatory Commission (Commission) approves eight modified Critical Infrastructure Protection (CIP) Reliability Standards, CIP–002–4 through CIP–009–4, developed and submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC), the Electric Reliability Organization certified by the Commission. The CIP Reliability Standards provide a cybersecurity framework for the identification and protection of ''Critical Cyber Assets'' to support the reliable operation of the Bulk-Power System. Reliability Standard CIP–002–4 requires the identification and documentation of Critical Cyber Assets associated with ''Critical Assets'' that support the reliable operation of the Bulk-Power System and introduces ''bright line'' criteria for the identification of Critical Assets. The Commission approves the related Violation Risk Factors, Violation Severity Levels with modifications, implementation plan, and effective date proposed by NERC.

DATES: This rule will become effective June 25, 2012.

FOR FURTHER INFORMATION CONTACT:

Jan Bargen (Technical Information), Office of Electric Reliability, Division of Logistics and Security, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6333, *Jan.Bargen@ferc.gov.*

Edward Franks (Technical Information), Office of Electric Reliability, Division of Logistics and Security, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6311, *Edward.Franks@ferc.gov.*

Kevin Ryan (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6840, *Kevin.Ryan@ferc.gov.*

Matthew Vlissides (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8408, *Matthew.Vlissides@ferc.gov.*

SUPPLEMENTARY INFORMATION:

139 FERC ¶ 61,058

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

Issued April 19, 2012.

1. Under section 215 of the Federal Power Act (FPA),[1] the Commission approves modified Critical Infrastructure Protection (CIP) Reliability Standards, CIP–002–4 through CIP–009–4. The ''Version 4'' CIP Reliability Standards were developed and submitted for approval to the Commission by the North American Electric Reliability Corporation (NERC), which the Commission certified as the Electric Reliability Organization (ERO) responsible for developing and enforcing mandatory Reliability Standards. The CIP Reliability Standards provide a cybersecurity framework for the identification and protection of ''Critical Cyber Assets'' that are associated with ''Critical Assets'' to support the reliable operation of the Bulk-Power System.

2. The Version 4 CIP Reliability Standards include ''bright line'' criteria for the identification of Critical Assets, which replace the risk-based assessment methodology developed and applied by applicable entities under the Version 3 CIP Reliability Standards. Version 4 includes other conforming modifications to the remaining CIP Reliability Standards, CIP–003–4 through CIP–009–4.

3. The Commission approves NERC's filing, as amended by its errata filing, with regard to the related Violation Risk Factors (VRFs), the Violation Severity Levels (VSLs) with modifications, the implementation plan, and effective date proposed by NERC. The Commission also approves the concurrent retirement of the currently effective Version 3 CIP Reliability Standards, CIP–002–3 to CIP–009–3.

4. In addition, the Commission determines that it is appropriate to impose a deadline by which time the ERO will submit for approval CIP Reliability Standards that are fully compliant with Order No. 706.[2] NERC indicated that it anticipates filing the ''Version 5'' CIP Reliability Standards by the third quarter of 2012.[3] Accordingly, we establish a deadline of 6 months from the end of the third quarter of 2012 (i.e., March 31, 2013). NERC must also submit reports at the beginning of each quarter in which the ERO is to explain whether it is on track to meet the deadline and describe the status of its CIP standard development efforts.

I. Background

A. Mandatory Reliability Standards

5. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[4]

6. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[5] and subsequently certified NERC as the ERO.[6] On January 18, 2008, the Commission issued Order No. 706 approving eight CIP Reliability Standards proposed by NERC. Pursuant to section 215(d)(5) of the FPA,[7] the Commission directed NERC to develop modifications to the CIP Reliability Standards to address concerns discussed in Order No. 706. Subsequently, the Commission approved Version 2 and Version 3 of the CIP Reliability Standards, each version including changes responsive to some but not all of the directives in Order No. 706.[8]

B. NERC Petition

7. On February 10, 2011, NERC filed a petition seeking Commission approval of the Version 4 CIP Reliability Standards, CIP–002–4 to CIP–009–4, and the concurrent retirement of the Version 3 CIP Reliability Standards, CIP–002–3 to CIP–009–3.[9] In the petition, NERC states that the principal differences between Version 3 and Version 4 are found in CIP–002, where NERC replaced the risk-based assessment methodology for identifying Critical Assets with 17 uniform ''bright line'' criteria for identifying Critical Assets. Concerning the process of identifying the associated Critical Cyber Assets that are subject to the cyber security protections required by CIP–003 through CIP–009, NERC only made changes for certain generation Critical Assets. NERC submitted proposed VRFs and VSLs and an implementation plan governing the transition to Version 4. NERC proposed that the Version 4 CIP Reliability Standards become effective the first day of the eighth calendar quarter after applicable regulatory approvals have been received.

8. On April 12, 2011, NERC made an errata filing correcting certain errors in the petition and furnishing corrected exhibits and the standard drafting team minutes. In the errata, NERC also replaced the VRFs and VSLs in the February 10, 2011 petition with new proposed VRFs and VSLs.[10]

9. Reliability Standard CIP–002–4 requires each responsible entity to use the bright line criteria as a ''checklist'' to identify Critical Assets, initially and in an annual review, replacing the risk-based assessment methodology developed and applied by each registered entity required under the currently-effective Version 3 CIP Reliability Standards. As in past versions, each responsible entity will then identify the Critical Cyber Assets associated with its updated list of Critical Assets. If application of the bright line criteria results in the identification of Critical Cyber Assets, such assets become subject to the remaining CIP Reliability Standards.

10. In the petition, NERC states that CIP–002–4 addresses some, but not all, of the directives in Order No. 706. NERC explained that the standard drafting team limited the scope of requirements in the development of Version 4 ''as an interim step'' limited to the concerns raised by the Commission regarding

[1] 16 U.S.C. 824o (2006).

[2] *Mandatory Reliability Standards for Critical Infrastructure Protection,* Order No. 706, 122 FERC ¶ 61,040, *denying reh'g and granting clarification,* Order No. 706–A, 123 FERC ¶ 61,174 (2008), *order on clarification,* Order No. 706–B, 126 FERC ¶ 61,229 (2009), *order denying clarification,* Order No. 706–C, 127 FERC ¶ 61,273 (2009).

[3] NERC Reply Comments at 4.

[4] 16 U.S.C. 824o(e).

[5] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[6] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[7] 16 U.S.C. 824o(d)(5).

[8] *North American Electric Reliability Corp.,* 128 FERC ¶ 61,291 (2009), *order denying reh'g and granting clarification,* 129 FERC ¶ 61,236 (2009) (approving Version 2 of the CIP Reliability Standards); *North American Electric Reliability Corp.,* 130 FERC ¶ 61,271 (2010) (approving Version 3 of the CIP Reliability Standards).

[9] NERC Petition at 1. The proposed Reliability Standards are not attached to the final rule. They are, however, available on the Commission's eLibrary document retrieval system in Docket No. RM11–11–000 and are available on the ERO's Web site, *www.nerc.com.* Reliability Standards approved by the Commission are not codified in the Code of Federal Regulations.

[10] NERC states that the Version 4 VRFs and VSLs are carried over in part from the VRFs and VSLs in the Version 3 CIP Reliability Standards. NERC Petition at 46. The Commission approved the Version 2 and 3 VRFs and VSLs in Docket Nos. RD10–6–001 and RD09–7–003 on January 20, 2011 but required NERC to make modifications in a compliance filing due by March 21, 2011. *North American Electric Reliability Corporation,* 134 FERC ¶ 61,045 (2011). The February 10, 2011 petition did not carry over the modified Version 3 VRFs and VSLs since it was filed before the March 21, 2011 compliance filing. NERC submitted new Version 4 VRFs and VSLs that carried over the modified Version 3 VRFs and VSLs in the April 12, 2012 errata. On June 6, 2011, NERC filed the March 21, 2011 compliance filing in the present docket, Docket No. RM11–11–000.

CIP–002.[11] NERC maintains that it has taken a ''phased'' approach to meeting the Commission's directives from Order No. 706 and, according to NERC, the standard drafting team continues to address the remaining Commission directives. According to NERC, the team will build on the CIP–002–4 standard's establishment of uniform criteria for the identification of Critical Assets.[12]

C. Notice of Proposed Rulemaking

11. On September 15, 2011, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to approve the Version 4 CIP Reliability Standards.[13] The NOPR also proposed to approve the related VRFs, VSLs with modifications, and implementation schedule proposed by NERC. To underscore the need to achieve full compliance with the directives in Order No. 706, the NOPR proposed to set a deadline by which date the ERO would be required to submit to the Commission for approval CIP Reliability Standards that are fully compliant with Order No. 706. The NOPR also addressed certain directives in Order No. 706 that have not yet been met, which would need to be satisfied by the proposed deadline.[14]

12. In response to the NOPR, comments were filed by 28 interested entities. NERC submitted reply comments clarifying its position on one issue. Below, we address the issues raised by these comments. The Appendix to this Final Rule lists the entities that filed comments on the NOPR.

II. Discussion

13. As discussed below, the Commission approves the eight modified Version 4 CIP Reliability Standards, finding that they are just and reasonable, not unduly discriminatory or preferential and in the public interest. In addition, the Commission approves NERC's proposed VRFs, VSLs with modifications, and its proposed implementation plan. The Commission has also determined that it is appropriate to impose a deadline for the ERO to achieve full compliance with Order No. 706. NERC commented that it anticipates filing the Version 5 CIP Reliability Standards by the third quarter of 2012.[15] We therefore establish a deadline of 6 months from the end of the third quarter of 2012 (i.e., March 31, 2013), to provide the ERO with time to address any unforeseen contingencies. In addition, the Commission directs the ERO to submit quarterly reports, at the beginning of each quarter, in which it is to both confirm that it is on track to meet the deadline and describe the status of its CIP Reliability Standards development efforts.

14. Below we discuss the Commission's basis for approving Version 4 of the CIP Reliability Standards. In addition, we discuss comments regarding: (1) The bright line criteria used to identify Critical Assets that are contained in Attachment 1 of Reliability Standard CIP–002–4; (2) the identification of Critical Assets that fall outside the scope of Attachment 1 by registered entities, Regional Entities, or ERO; (3) the implementation plan for the Version 4 CIP Reliability Standards; (4) compliance with Order No. 706; (5) the deadline for submitting CIP Reliability Standards that fully comply with Order No. 706; and (6) the VRFs and VSLs.

A. The Commission Adopts the NOPR Proposal To Approve the Version 4 CIP Reliability Standards

NERC Petition

15. NERC states that CIP–002–4 establishes clear and uniform criteria for identifying Critical Assets on the Bulk-Power System.[16] According to NERC, CIP–002–4 achieves a specified reliability goal by requiring the identification and documentation of Critical Cyber Assets associated with Critical Assets that support the reliable operation of the Bulk-Power System. NERC maintains that the Reliability Standard ''improves reliability by establishing uniform criteria across all Responsible Entities for the identification of Critical Assets.'' [17] Further, NERC states that CIP–002–4 contains a technically sound method to achieve its reliability goal by requiring the identification and documentation of Critical Assets through the application of the criteria set forth in Attachment 1 of CIP–002–4.

NOPR

16. In the NOPR, the Commission proposed to approve the Version 4 CIP Reliability Standards. Giving due weight to the ERO's petition, the NOPR stated that the Version 4 CIP Standards will result in the identification of certain types of Critical Assets that may not be identified under Version 3; uses bright line criteria to identify Critical Assets, eliminating the use of existing entity-defined risk-based assessment methodologies that, as currently applied, generally do not adequately identify Critical Assets; and provides a level of consistency and clarity regarding the identification of Critical Assets lacking under Version 3.[18]

Comments

17. Most commenters and NERC generally support the Commission's proposal to approve the Version 4 CIP Reliability Standards.[19] Hydro-Québec and NV Energy, however, oppose approval of Version 4,[20] while the G&T Cooperatives support Version 4 for ''guidance purposes'' only pending submission of a ''Version 5'' of the CIP Reliability Standards.[21]

18. Hydro-Québec opposes the bright line criteria because they capture assets based on factors such as voltages and amount of megawatts without assessing the asset's criticality to reliability. Hydro-Québec states that the Commission should consider allowing the current risk-based assessment methodology and a bright line approach to coexist.[22]

19. NV Energy believes that Version 4 unnecessarily expands the scope of the CIP Reliability Standards to facilities whose protection may offer only marginal value in preventing widespread cyber attacks on the bulk electric system.[23] NV Energy asserts that no technical justification exists for the bright line criteria and, accordingly, NERC does not provide a sufficient basis to determine if Version 4 is just and reasonable or more effective than Version 3.[24]

Commission Determination

20. The Commission approves the Version 4 CIP Reliability Standards pursuant to section 215(d) of the FPA. The Commission concludes that the Version 4 CIP Reliability Standards are just, reasonable, not unduly discriminatory or preferential, and in the public interest. For the reasons identified in the NOPR, we approve Version 4 because it: Identifies Critical Assets that may not be identified under Version 3; will eliminate the use of

[11] NERC Petition at 6 (*citing* Order No. 706, 122 FERC ¶ 61,040 at P 236).

[12] NERC Petition at 6.

[13] *Version 4 Critical Infrastructure Protection Reliability Standards,* 76 FR 58,730 (Sept. 22, 2011), FERC Stats. & Regs. ¶ 32,679 (2011) (NOPR).

[14] NOPR, FERC Stats. & Regs. ¶ 32,679 at PP 40–61.

[15] NERC Reply Comments at 4.

[16] NERC Petition at 38.

[17] *Id.* at 4.

[18] NOPR, FERC Stats. & Regs. ¶ 32,679 at P 21.

[19] *See, e.g.,* Trade Associates Comments at 2; FirstEnergy Comments at 1; KCP&L Comments at 2; PG&E Comments at 1; Tallahassee Comments at 1; Exelon Comments at 2; Dominion Comments at 3; NERC Comments at 3.

[20] Hydro-Québec Comments at 6; NV Energy Comments at 2.

[21] G&T Cooperatives Comments at 3.

[22] Hydro-Québec Comments at 3–4.

[23] NV Energy Comments at 2.

[24] *Id.* at 3–4.

existing entity-defined risk-based assessment methodologies that, as applied, generally do not adequately identify Critical Assets; and provides a level of consistency and clarity regarding the identification of Critical Assets lacking under Version 3.

21. With respect to the objections raised by Hydro-Québec and NV Energy, we find them unpersuasive. Although NV Energy asserts that Version 4 will identify Critical Assets that do not require protection or whose protection only offers marginal benefits, as we stated in the NOPR, Version 4 will offer an increase in the overall protection for bulk electric system components that clearly require protection, including control centers.[25] Recognizing that Version 4 is an ''interim step,'' our concern is that Version 4 does not provide enough protection to satisfy Order No. 706.[26]

22. We also find unpersuasive Hydro-Québec and NV Energy's claim that the bright line criteria are based on arbitrary values (i.e., amounts of megawatts and voltages) without assessing the impact on reliability, or otherwise lack a technical justification. As discussed later in this final rule, the Commission finds that NERC offered an acceptable technical justification for the bright line criteria used to identify Critical Assets in Version 4. As indicated in the NOPR, we believe that Version 4 is an interim step towards full compliance with Order No. 706 and that implementation of Version 4 and concurrent retirement of Version 3, as proposed in the petition and reaffirmed by the ERO in its comments, is a step towards full compliance with Order No. 706.[27] For the same reason, we reject the G&T Cooperatives' suggestion that Version 4 be approved for ''guidance purposes only.'' Nevertheless, we note that approval of the specific bright line approach to identifying Critical Assets adopted in Version 4 does not prejudge the manner in which cyber assets are identified for protection in Version 5 or subsequent revisions to the CIP Reliability Standards.

B. Bright Line Criteria for Identifying Critical Assets

23. Reliability Standard CIP–002–4 establishes criteria for identifying Critical Assets on the Bulk-Power System. Requirement R1 of Reliability Standard CIP–002–4, which pertains to the identification of Critical Assets, provides:

> The Responsible Entity shall develop a list of its identified Critical Assets determined through an annual application of the criteria contained in *CIP–002–4 Attachment 1—Critical Asset Criteria.* The Responsible Entity shall update this list as necessary, and review it at least annually.

Attachment 1 to Reliability Standard CIP–002–4 provides seventeen criteria to be used by all responsible entities for the identification of Critical Assets pursuant to Requirement R1. The thresholds apply to specific types of facilities such as generating units, transmission lines and control centers. Reliability Standard CIP–002–4, Requirement R2 then requires responsible entities to develop a list of Critical Cyber Assets associated with the Critical Assets identified pursuant to Requirement R1.

1. Generation/Transmission

NERC Petition

24. Several of the proposed criteria pertain to the identification of critical generation assets and critical transmission assets. Reliability Standard CIP–002–4, criterion 1.1 designates as Critical Assets: ''Each group of generating units (including nuclear generation) at a single plant location with an aggregate highest rated net Real Power capability of the preceding 12 months equal to or exceeding 1500 MW in a single Interconnection.'' Reliability Standard CIP–002–4, Requirement R2 qualifies criterion 1.1 by stating that: ''For each group of generating units (including nuclear generation) at a single plant location identified in Attachment 1, criterion 1.1, the only Cyber Assets that must be considered are those shared Cyber Assets that could, within 15 minutes, adversely impact the reliable operation of any combination of units that in aggregate equal or exceed Attachment 1, criterion 1.1.''

25. For transmission assets, criterion 1.6 designates as Critical Assets: ''Transmission Facilities operated at 500 kV or higher.'' Criterion 1.7 also designates as Critical Assets: ''Transmission Facilities operated at 300 kV or higher at stations or substations interconnected at 300 kV or higher with three or more other transmission stations or substations.''

26. Reliability Standard CIP–002–4, criterion 1.2 provides that ''Each reactive resource or group of resources at a single location (excluding generation Facilities) having aggregate net Reactive Power nameplate rating of 1000 MVAR or greater'' shall be designated as a Critical Asset. Criterion 1.3 designates as Critical Assets: ''Each generation Facility that the Planning Coordinator or Transmission Planner designates and informs the Generator Owner or Generator Operator as necessary to avoid BES Adverse Reliability Impacts in the long-term planning horizon.'' Criterion 1.8 designates as Critical Assets: ''Transmission Facilities at a single station or substation location that are identified by the Reliability Coordinator, Planning Authority or Transmission Planner as critical to the derivation of Interconnection Reliability Operating Limits (IROLs) and their associated contingencies.'' Criterion 1.9 designates as Critical Assets: ''Flexible AC Transmission Systems (FACTS), at a single station or substation location, that are identified by the Reliability Coordinator, Planning Authority or Transmission Planner as critical to the derivation of Interconnection Reliability Operating Limits (IROLs) and their associated contingencies.''

Comments

27. Hydro-Québec states that the term ''group of generating units'' used in criterion 1.1 is ambiguous because it could mean a generating station or a group of units sharing the same transformer. Hydro-Québec also believes that the 15-minute period, established by CIP–002–4, Requirement R2, which states that ''the only Cyber Assets that must be considered are those shared Cyber Assets that could, within 15 minutes, adversely impact the reliable operation of any combination of units that in aggregate equal or exceed Attachment 1, criterion 1.1,'' needs further explanation because it is unclear how to determine whether operation is not reliable after 15 minutes. Finally, Hydro-Québec contends that the term ''Flexible AC Transmission System (FACTS)'' in criterion 1.9 must be defined in the NERC Glossary of Terms.[28]

28. NV Energy comments that the bright line criteria lack technical justification because they are primarily based on asset size (*e.g.,* megawatts and voltage levels) to determine criticality. NV Energy maintains that size should not be dispositive to determining whether an asset is critical. NV Energy cites the 500 kV or higher size threshold for transmission facilities in criterion 1.6 as an example of a broad categorization that is likely to capture elements, such as NV Energy's radial facilities, whose function are not essential to the reliable operation of the

[25] NOPR, FERC Stats. & Regs. ¶ 32,679 at P 23 (''[T]he number of control centers identified as Critical Assets increases from 425 under Version 3 to 553 under Version 4, the latter figure representing 74 percent of all control centers.'').

[26] NERC Petition at 6.

[27] NOPR, FERC Stats. & Regs. ¶ 32,679 at P 3.

[28] Hydro-Québec Comments at 4–5.

bulk electric system. NV Energy also identifies the 300 kV or higher threshold for transmission facilities interconnected at 300 kV or higher with three or more other transmission stations or substations in criterion 1.7 as another example. NV Energy asserts that other parameters, beyond the number of interconnections, must be evaluated to determine criticality. Finally, NV Energy states that the 1500 MW threshold in criterion 1.1 lacks technical justification.[29]

29. ISO/RTO Council states that responsibility for identifying critical generation should not be shifted from generation owners under criterion 1.3, which it maintains allows a planning coordinator or transmission planner to designate critical generation facilities.[30] Likewise, MISO maintains that criteria 1.3, 1.8, and 1.9 place undue burden on reliability coordinators, planning authorities/coordinators, and transmission planners by requiring them to designate facilities as Critical Assets.[31] ISO/RTO Council and MISO believe that these authorities have insufficient guidance or data to designate facilities as Critical Assets in a uniform manner. MISO seeks remand of these criteria or, in the alternative, argues that these entities should be indemnified and have limited liability for decisions to designate or not designate facilities as Critical Assets. MISO also encourages the Commission to make clear that requiring these entities to make designations does not shift compliance obligations from the registered entity that owns or operates a facility identified under these criteria.[32]

30. Further, MISO and ISO/RTO Council point to the lack of a mechanism for registered entities to challenge designations made by planning coordinators and transmission planners. MISO requests the establishment of such a mechanism.[33] ISO/RTO Council states that the Commission ''needs to consider how to address the rights of Generator Owners or Generator Operators in the context of designation under the CIP Standards, or otherwise explain why the Generator Owner or Generator Operator has no rights to challenge the Planning Coordinator or Transmission Planner's determination.''[34]

Commission Determination

31. The Commission finds that the bright line criteria for designating generation and transmission assets as Critical Assets are acceptable and supported by the information contained in NERC's petition.

32. In response to Hydro-Québec's comments, the Commission finds the term ''group of generating units,'' as used in criterion 1.1, to mean all generating units at a ''single plant location,'' as that term is defined in the ''Rationale and Implementation Reference Document'' for CIP–002–4 cited in the petition.[35] ''Single plant location'' refers to a ''group of generating units occupying a defined physical footprint, often but not always, these units are surrounded by a common fence, have a common entry point, share common facilities such as warehouses, water plants and cooling sources, follow a similar naming convention (plant name—unit number) and fall under a common management organization.''[36] It is our understanding that the transformer used by a generating unit has no bearing under criterion 1.1 on whether a generating unit belongs to a ''group of generating units.''

33. As for Hydro-Québec's comments on the 15-minute trigger for CIP Reliability Standard coverage, NERC explains in its petition that ''[i]n specifying a 15-minute qualification, Requirement R2 includes only those Cyber Assets that would have a real-time impact on the reliable operation of the Bulk Electric System.''[37] Further, NERC explains that there may be generation facilities that, ''while essential to the reliability and operability of the generation facility, may not have real-time operational impact within the specified real-time operations impact window of 15 minutes,'' such as a cyber asset controlling the supply of coal fuel in a generation facility.[38] We believe that NERC has provided adequate explanation and justification of this provision. To the extent that Hydro-Québec seeks specific advice on how to implement the Requirement, Hydro-Québec should raise the issue with the relevant Regional Entity or NERC.

34. With respect to Hydro-Québec's comment that the term ''Flexible AC Transmission System (FACTS)'' should be defined in the NERC Glossary of Terms, the Commission observes that the term is defined in the North American Energy Standards Board (NAESB) Wholesale Electric Industry Glossary,[39] which is recognized in the NERC Rules of Procedure as a reference.[40] Moreover, Hydro-Québec's comment does not suggest a lack of understanding of what the term means such that Hydro-Québec could not apply criterion 1.9.

35. The Commission disagrees with NV Energy's comments that the bright line criteria lack a technical justification because they are primarily based on asset size. While it is true that the standard establishes thresholds based on asset size, NERC articulated a basis for those values. For example, for the 1500 MW threshold in criterion 1.1, the petition states that the standard drafting team derived that number ''from the most significant Contingency Reserves operated in various Balancing Authorities in all regions * * * [u]sing this number and data reported by the U.S. Energy Information Administration [], the team determined that approximately 146 generators in the United States would be classified as Critical Assets using this criterion * * * [t]his accounts for 29 percent of the installed generator capacity in the United States.''[41] Moreover, as discussed above, the 15-minute trigger in CIP–002–4, Requirement R2, is a qualification to the asset size thresholds in criterion 1.1 and is meant to include only ''Cyber Assets that would have a real-time impact on the reliable operation of the Bulk Electric System.''[42] Considering the ERO's pleadings and affording due weight to the ERO's technical expertise, the

[29] NV Energy Comments at 3–4.

[30] ISO/RTO Council at 6.

[31] MISO Comments at 5.

[32] *Id.* at 7.

[33] *Id.* at 8.

[34] ISO/RTO Council Comments at 13.

[35] NERC Petition at 9 (*citing* Rationale and Implementation Reference Document, *http://www.nerc.com/docs/standards/sar/Project_2008-06_CIP-002-4_Guidance_clean_20101220.pdf*). The Rationale and Implementation Reference Document, dated December 2010, was also submitted as part of the NERC filing. As found on the Commission's eLibrary system in Docket No. RM11–11–00, the Rationale and Implementation Reference Document is found in Exhibit E (Development Record of the proposed CIP Reliability Standard and the associated Implementation Plans) beginning at page 2141 of the PDF electronic file submitted by NERC. This Final Rule refers to the page numbers used within the Rationale and Implementation Reference Document. The Rational and Implementation Reference Document states that it ''provides guidance for Responsible Entities in the application of the criteria in CIP–002–4, Attachment 1. It provides clarifying notes on the intent and rationale of the Standards Drafting Team. It is not meant to augment, modify, or nullify any compliance requirements in the standard.'' Rationale and Implementation Reference Document at 1.

[36] Rationale and Implementation Reference Document at 8.

[37] NERC Petition at 12.

[38] *Id.*

[39] *Available at www.naesb.org/pdf/weq_glossary072804w3.doc.*

[40] NERC Rules of Procedure, Appendix 3A Standards Process Manual, at 22 (effective date January 31, 2012).

[41] NERC Petition at 15.

[42] *Id.* at 12.

Commission accepts the ERO's justification for approval of the bright line criteria in Attachment 1.[43]

36. The Commission disagrees with MISO's and ISO/RTO Council's comment that criteria 1.3, 1.8, and 1.9 require reliability coordinators, planning coordinators/authorities, and transmission planners to review a registered entity's Critical Asset list or designate assets as Critical Assets. Instead, these criteria use the product of planning actions taken by reliability coordinators, planning coordinators/authorities, and transmission planners pursuant to other non-CIP Reliability Standards—these planning actions are, put simply, not made in conjunction with the application of CIP–002–4. The Commission also disagrees with MISO and ISO/RTO Council's comments that reliability coordinators, planning coordinators, and transmission planners should have the same liability protection as an entity externally reviewing Critical Asset lists, as was discussed in Order No. 706–A.[44]

37. Criteria 1.3, 1.8, and 1.9 require a responsible entity to identify generation and transmission facilities as Critical Assets when they have been determined as ''necessary to avoid BES Adverse Reliability Impacts in the long-term planning horizon'' (criterion 1.3) or ''critical to the derivation of Interconnection Reliability Operating Limits (IROLs) and their associated contingencies'' (criteria 1.8 and 1.9).

38. First, this is not a discretionary action based on what a reliability coordinator, planning coordinator/authority, or transmission planner subsequently considers ''necessary'' to avoid adverse impacts. Rather, reliability coordinators, planning coordinators/authorities, and transmission planners make these underlying determinations as part of their compliance obligations associated with other (non-CIP) Reliability Standards. NERC developed a Rationale and Implementation Reference Document that provides guidance on implementation of the Attachment 1 criteria and supports our finding. This reference document associates criterion 1.3 with Reliability Standards TPL–003 and TPL–004: ''If it is determined through system studies that a unit must run in order to preserve the reliability of the BES, such as due to a category C3 contingency as defined in TPL–003 or a category D contingency as defined in TPL–004, then that unit must be classified as a Critical Asset [under criterion 1.3].''[45] Similarly, the Rationale and Implementation Reference Document associates criteria 1.8 and 1.9 with Reliability Standard FAC–014–2: ''Parts 1.8 and 1.9 include those Transmission Facilities that have been identified as critical to the derivation of IROLs and their associated contingencies, as specified by FAC–014–2, Establish and Communicate System Operating Limits, R5.1.1 and R5.1.3.''[46]

39. Second, during development of the Version 4 CIP Reliability Standards, the standard drafting team addressed this issue in responding to a comment concerning criteria 1.3 that ''[n]o entity should be able to simply 'designate' another as having critical assets.''[47] The standard drafting team responded by stating that ''[t]he burden for identifying Critical Assets is with the Responsible Entity that is the asset owner * * * [t]he Planning Authority and/or Transmission Planner are not designating the asset as critical for CIP purposes; they are determining the unit to be necessary to avoid Adverse Reliability Impacts based on other NERC reliability standards.''[48]

40. Third, transmission planners and planning authorities/coordinators cannot have a compliance obligation to designate Critical Assets under Reliability Standard CIP–002–4 because they are not identified as Applicable Entities under the Reliability Standard.[49]

41. In sum, under CIP–002–4, the responsible entity is required, and thus bears the compliance obligation, to apply the bright line criteria in Attachment 1 of CIP–002–4 to designate Critical Assets. We therefore reject the contention that reliability coordinators, planning coordinators/authorities, and transmission planners designate Critical Assets under the bright line criteria. We also disagree that CIP–002–4 imposes an undue burden on reliability coordinators, planning coordinators/authorities, and transmission planners because, as discussed above, determining whether an asset is ''necessary to avoid BES Adverse Reliability Impacts in the long-term planning horizon'' (criterion 1.3) or ''critical to the derivation of Interconnection Reliability Operating Limits (IROLs) and their associated contingencies'' is associated with existing Reliability Standards. However, the Commission does agree with MISO and ISO/RTO Council that additional clarity could be provided to ensure uniformity in implementation of criterion 1.3. To address the concerns of uniform implementation, the Commission believes that responsible entities would benefit from the ERO's guidance.

42. We deny MISO and ISO/RTO Council's request that the Commission require an appeals process to challenge determinations made by planning coordinator and transmission planners pursuant to other Reliability Standards. An appeals process is neither necessary nor appropriate because the determinations by planning coordinator and transmission planners are made for purposes unrelated to cybersecurity. It is true that those determinations will be used by responsible entities when applying the bright line criteria in CIP–002–4. However, as discussed above, the responsible entities, and not planning coordinators and transmission planners, are ultimately responsible for compliance with the CIP Reliability Standards. Accordingly, we reject MISO and ISO/RTO Council's suggestion to direct NERC to develop an appeals process for determinations made by planning coordinators and transmission planners in the context of other Reliability Standards in this final rule approving the Version 4 CIP Reliability Standards.

2. Blackstart/Must Run Units

NERC Petition

43. Reliability Standard CIP–002–4, criterion 1.3 designates as a Critical Asset: ''Each generation Facility that the Planning Coordinator or Transmission Planner designates and informs the Generator Owner or Generator Operator as necessary to avoid BES Adverse Reliability Impacts in the long-term planning horizon.'' Reliability Standard CIP–002–4, criterion 1.4 designates as a Critical Asset: ''Each Blackstart Resource identified in the Transmission Operator's restoration plan.''

Comments

44. ISO/RTO Council comments that criterion 1.4 pertaining to blackstart resources appears to conflict with the NERC Statement of Registry Criteria. ISO/RTO Council observes that while criterion 1.4 identifies as a Critical Asset ''[e]ach Blackstart Resource identified in the Transmission Operator's restoration

[43] 16 U.S.C. 824o(d)(2).

[44] Order No. 706–A, 123 FERC ¶ 61,174 at P 53.

[45] Rationale and Implementation Reference Document at 10.

[46] *Id.* at 13.

[47] NERC Petition, Exhibit E, at 1548 of PDF electronic file.

[48] *Id.*

[49] Section 302 of the NERC Rules of Procedure states that ''Applicability—Each Reliability Standard shall clearly identify the functional classes of entities responsible for complying with the Reliability Standard, with any specific additions or exceptions noted * * *.'' NERC Rules of Procedure at 3 (effective date January 31, 2012).

plan,'' the Registry Criteria provide for registration of ''any generator, regardless of size, that is a blackstart unit *material to and designated as* part of a transmission operator entity's restoration plan * * *''[50] ISO/RTO Council suggests that ''some Regional Entities may have determined that certain blackstart units are not material to the Transmission Operator's restoration plan, and are therefore, presumably not covered'' by the Reliability Standards.[51] Thus, ISO/RTO Council seeks clarification whether criterion 1.4 is meant to apply to blackstart units ''covered'' by the Registry Criteria or all blackstart resources and, if the latter, whether a revision to the Registry Criteria is appropriate.

45. MISO comments that designating must run units as Critical Assets pursuant to criterion 1.3 may create an incentive for generation owners and generation operators to remove such units from service prior to their designation as Critical Assets.[52]

Commission Determination

46. With regard to ISO/RTO Council's comments, we note that NERC developed the Registry Criteria to identify users, owners and operators of the bulk electric system that are candidates for compliance registration. NERC does not apply the Registry Criteria to register particular assets.[53] Moreover, whether NERC should revise the Registry Criteria is beyond the scope of this proceeding.[54] That being said, it is not clear to us whether any substantive distinction is to be made between criterion 1.4, which implicates each blackstart resource identified in a restoration plan, and the Registry Criteria, which identifies as a candidate for registration the owner or operator of ''a blackstart unit *material to and designated as* part of a * * * restoration plan.'' We leave it to NERC to consider whether a blackstart unit identified in a transmission operator's restoration plan could ever be considered immaterial to that plan and, if so, whether a clarification or revision to one or more documents is appropriate.

47. We disagree with MISO that designating a ''must run'' unit as a Critical Asset may create an incentive for generation owners and generation operators to remove units from service prior to their designation as Critical Assets. The Commission is willing to consider rate filings to address this concern. For example, the Commission conditionally accepted a proposal filed by PJM to allow generators to recover costs related to compliance with mandatory NERC CIP Reliability Standards.[55] Specifically, the Commission conditionally approved PJM's proposal in order to provide additional means for blackstart service providers to recover incremental costs associated with providing blackstart service.[56] Finally, MISO can compensate ''must run'' generation units under System Support Agreements to prevent generators deemed as ''must run'' from being removed from service.

3. Control Centers/Control Systems

NERC Petition

48. Reliability Standard CIP–002–4, criteria 1.14–1.17 define the control centers and back up control centers that are treated as Critical Assets. Specifically, criterion 1.14 identifies as a bright line for Critical Assets ''[e]ach control center or backup control center used to perform the functional obligations of the Reliability Coordinator.'' Criterion 1.15 pertains to control centers or backup control centers used to control generation at multiple plant locations, equal to or exceeding 1500 MW. Criteria 1.16 and 1.17 include as Critical Assets control centers or backup control centers used to perform the functional obligations of transmission operators and balancing authorities, respectively.

NOPR

49. In the NOPR, the Commission expressed concern, based on survey data supplied by NERC, that the Reliability Standard CIP–002–4 criteria would still leave a significant number of control centers unprotected.[57]

Comments

50. Commenters hold diverging views on whether the Version 4 CIP Reliability Standards adequately protect control centers and control systems (i.e., control systems not housed in control centers). G&T Cooperatives believe that Version 4 goes too far, while SPP RE and, to a lesser extent, MISO believe that it does not go far enough.[58] NERC, PG&E, and the Trade Associations acknowledge the NOPR's concern that CIP Version 4 does not protect some control centers/common control systems, but they anticipate that a future Version 5 CIP Reliability Standards will protect more Critical Assets.[59]

51. G&T Cooperatives believe that the Version 4 bright line criteria need additional work, which is why they support allowing a future Version 5 to supersede Version 4 before it becomes effective. Specifically, G&T Cooperatives state that criteria 1.14, 1.16, and 1.17 ''sweep in control centers and backup control centers, without regard to their size or potential impact on the [bulk electric system].''[60] G&T Cooperatives maintain that the bright line criteria should be revisited to ensure that they capture only those assets that should be covered in order to protect bulk electric system reliability.[61]

52. SPP RE states that criteria 1.14–1.17 are insufficient because they do not consider interconnectivity of control centers or address the possibility that a small network-connected control center not deemed a Critical Asset could be used to compromise larger control centers. SPP RE believes that, at a minimum, all balancing authority and transmission operator control centers should be declared Critical Assets. SPP RE also encourages the Commission to consider requiring NERC to modify the bright line criteria to classify a control center as a Critical Asset if it is network-connected to other control centers.[62]

53. With respect to common control systems, SPP RE believes that individual resources that do not qualify as Critical Assets under the bright line criteria can still pose a reliability risk if they have a common control system. SPP RE notes that under Version 4, a registered entity must designate its control center or generation facility as a Critical Asset in order to bring an associated common control system into scope. SPP RE believes that the bright line criteria may not ensure that all common control systems are identified, however. Criterion 1.1 designates as Critical Assets groups of generating units at a single plant location with an aggregate highest rated net Real Power capability equal to or exceeding 1500 MW. Criterion 1.15 designates as Critical Assets: ''Each control center or backup control center used to control generation at multiple plant locations, for any generation Facility or group of

[50] NERC Statement of Compliance Registry Criteria (Revision 5.0) at 8 (Oct. 16, 2008) (emphasis added).

[51] ISO/RTO Council Comments at 14.

[52] MISO Comments at 9.

[53] Order No. 706, 122 FERC ¶ 61,040 at P 50 (''the NERC registry process is designed to identify and register entities for compliance with Reliability Standards, and not identify lists of assets'').

[54] Order No. 706, 122 FERC ¶ 61,040 at P 49.

[55] *PJM Interconnection, L.L.C.,* 138 FERC ¶ 61,020 (2012).

[56] *Id.* P 47.

[57] NOPR, FERC Stats. & Regs. ¶ 32,679 at P 56.

[58] G&T Cooperatives Comments at 11–12; SPP RE Comments at 5–6; MISO Comments at 11.

[59] NERC Comments at 14–15; PG&E Comments at 14; Trade Associations Comments at 7–8.

[60] G&T Cooperatives Comments at 11.

[61] G&T Cooperatives Comments at 10–13.

[62] SPP RE Comments at 5–6.

generation Facilities identified in criteria 1.1, 1.3, or 1.4. Each control center or backup control center used to control generation equal to or exceeding 1500 MW in a single Interconnection.'' SPP RE states that criterion 1.1 adequately protects the common control systems of generating units at a single plant location with aggregate real power equal to or exceeding 1500 MW. However, SPP RE believes that criterion 1.15 does not clearly apply to control centers and common control systems that control generation that equals or exceeds 1,500 MW in the aggregate regardless of the individual plant size requirements set forth in criterion 1.1.[63]

54. MISO expresses concern with Version 4's treatment of control centers. MISO asks for clarification whether Version 4 intentionally omitted ''data centers'' associated with control centers from the bright line criteria and whether registered entities have the discretion to designate them as Critical Assets. Because control centers often work in tandem with an associated data center, MISO recommends allowing registered entities to designate data centers as Critical Assets.[64]

55. NERC and PG&E acknowledge the NOPR's concern that Version 4 does not fully address the Order No. 706 directives pertaining to control centers. NERC and PG&E temper this concern, however, by pointing to the lack of an accepted definition of ''control centers'' and the fact that some control centers in the generation context only communicate with generators that fall below the NERC Registration Criteria for generators. NERC and PG&E suggest that cyber assets at these generator locations are unlikely to have a greater impact on reliability than much larger single-unit generators merely because the smaller units have a control center. In any case, NERC and PG&E explain that under a future Version 5 every control center will be protected and will receive a ''medium'' or ''high'' level of security under a new three-tiered structure. Further, NERC and PG&E state that several Version 5 requirements will apply to control centers regardless of whether they are classified as medium or high.[65] NERC also states that ''cyber misuse'' will be a consideration under the classification process in CIP Version 5 and that the CIP Version 5 drafting team has proposed a definition of ''control center.''[66]

56. The Trade Associations likewise recognize the NOPR's concern regarding control centers but state that control centers and control systems are being considered in the Version 5 project. The Trade Associations also state that appropriate prioritization and tailored application of mandatory requirements will be needed in addressing control centers and control systems given the widely varying circumstances and configurations in which these facilities are used.[67]

Commission Determination

57. The Commission recognizes the diverging views among commenters regarding the protection of control centers and control systems afforded under the Version 4 CIP Reliability Standards. In Order No. 706, we stated that ''it is difficult to envision a scenario in which a reliability coordinator, transmission operator or transmission owner control center or backup control center would not properly be identified as a critical asset.''[68] The Commission maintains this view. However, as we observed in the NOPR, the percentage of control centers to be identified as Critical Assets under Version 4 is 74 percent, which is an improvement over the number currently identified under Version 3.[69] Therefore, it is reasonable to approve Version 4 because it will ensure that more control centers are identified as Critical Assets than are identified under Version 3. However, we continue to expect comprehensive protection of all control centers and control systems as NERC works to comply with the requirements of Order No. 706.

58. We agree with SPP RE that the CIP Reliability Standards should consider interconnectivity of control centers and the strategy of classifying a control center as a Critical Asset if it is network-connected to other control centers. The Commission also finds merit in MISO's comment that responsible entities should be allowed to designate data centers as Critical Assets because of their inherent connectivity to the control centers or control systems they support. Therefore, we expect NERC to address these approaches as it works to comply with the requirements of Order No. 706.[70]

C. NOPR Questions on Critical Asset Identification

1. Flexibility To Identify Critical Assets That Fall Outside of the CIP Version 4 Bright Line Criteria

NOPR

59. In the NOPR, the Commission stated that under the currently-effective Reliability Standard CIP–002–3, a responsible entity that applies its risk-based assessment methodology considers specific types of assets identified in Requirement R1, as well as ''any additional assets that support the operation of the Bulk Electric System that the Responsible Entity deems appropriate to include its assessment.''[71] The Commission invited comment on whether a registered entity retains the same flexibility under Version 4 to identify assets that, although outside of the bright line criteria for identifying Critical Assets, are essential to Bulk-Power System reliability.

Comments

60. NERC states that, in developing Version 4, the drafting team considered adding criteria that would allow entities to identify additional facilities falling outside of the bright line criteria, but determined not to include the provision. However, NERC adds that ''registered entities are permitted to apply any or all of the requirements in the CIP standards to assets that do not meet the bright-line thresholds.''[72]

61. The Trade Associations and FirstEnergy believe that registered entities do not have the flexibility to identify Critical Assets that fall outside the bright line criteria such that they would be subject to mandatory and enforceable compliance obligations and should not have such flexibility because it would detract from the consistency afforded by the bright line criteria.[73] The Trade Associations, however, state that registered entities have the discretion to identify facilities as Critical Assets provided those facilities are not subject to compliance obligations.[74]

62. PG&E comments that appropriate flexibility exists under Version 4 to allow the identification of Critical Assets essential to the bulk electric system. In particular, PG&E cites to criterion 1.3, which would require a planning coordinator or transmission planner to identify a generation facility

[63] *Id.* at 6–7.

[64] MISO Comments at 10–11.

[65] NERC Comments at 14–15; PG&E Comments at 13–14.

[66] NERC Comments at 15.

[67] Trade Associations Comments at 7–8.

[68] Order No. 706, 122 FERC ¶ 61,040 at P 280.

[69] NOPR, FERC Stats. & Regs. ¶ 32,679 at P 23.

[70] *See, e.g.,* Order No. 706, 122 FERC ¶ 61,040 at PP 280–281.

[71] NOPR, FERC Stats. & Regs. ¶ 32,679 at P 31.

[72] NERC Comments at 4.

[73] Trade Associations Comments at 4–5; FirstEnergy Comments at 2.

[74] Trade Association Comments at 5.

as ''critical'' if ''necessary to avoid BES Adverse Reliability Impacts in the long-term planning horizon.'' [75] Likewise, PG&E indicates that criterion 1.8 provides that a reliability coordinator, planning authority, and transmission planner has authority to designate certain transmission facilities critical to the derivation of IROLs as critical. PG&E also believes that industry should be encouraged to apply any or all of the CIP Reliability Standards to assets that do not meet the bright line criteria, ''even beyond a compliance and audit program.'' [76]

63. SPP RE encourages the Commission to require NERC to restore the ''other'' criterion to the bright line criteria.[77] MISO likewise believes that registered entities should have the flexibility to identify more Critical Assets because the bright line criteria create a minimum regulatory floor on which to build.[78]

2. NERC or Regional Entities' Ability To Identify Critical Assets That Fall Outside of the CIP Version 4 Bright-Line Criteria

NOPR

64. In the NOPR, the Commission invited comment on whether NERC and/or Regional Entities would have the ability, either in an event-driven investigation or compliance audit, to identify specific assets that fall outside the bright-line criteria yet are still essential to Bulk-Power System reliability and should be subject prospectively to compliance with the CIP Reliability Standards, and if so, on what basis should that decision be made.[79]

Comments

65. NERC states that the Version 4 CIP Reliability Standards are an interim step and that the future Version 5 CIP Reliability Standards will refine the bright line criteria, with the intent of categorizing assets (to be termed ''BES Cyber Systems'') as low, medium or high impact to Bulk-Power System reliability. NERC states that, in the interim, it has the authority under Section 810 of the NERC Rules of Procedure to issue an Alert to recommend specific actions. According to NERC, it can use the Alerts ''as a tool to address assets that NERC and Regional Entities later determine should be treated as critical but to not fall into the CIP Version 4 criteria.'' [80]

66. The Trade Associations, Dominion, FirstEnergy and other commenters oppose identification of Critical Assets outside of the bright line process by NERC or Regional Entities as detracting from the clarity afforded by the bright line criteria. The Trade Associations and Tallahassee opine that the Commission should not undermine the bright line criteria by granting Regional Entities discretion to designate Critical Assets that are otherwise excluded by application of the bright line criteria.[81] SPP RE states that it is not appropriate to apply arbitrarily criteria not found in the CIP Reliability Standards to require additional cyber systems to be subject to the CIP Reliability Standards.[82] Dominion states that if such a mechanism is necessary, it should not be done in the compliance audit context.[83]

67. MISO supports review of Critical Asset designations by NERC and Regional Entities given its belief that criteria 1.3, 1.8, and 1.9 require reliability coordinators, planning authorities/authorities and transmission planners to identify certain Critical Assets. MISO maintains that the lack of guidance for applying these criteria leaves room for substantial discretion, which may undermine the consistent identification of Critical Assets absent Regional Entity or NERC review.[84]

Commission Determination

68. We agree with NERC and others that registered entities can voluntarily apply any or all of the requirements in the CIP Reliability Standards to assets that fall outside the bright line criteria.[85] As MISO described it, Version 4's bright line criteria establish a ''regulatory floor'' for cybersecurity, which must be followed by all registered entities.[86] Nothing in Version 4 prevents registered entities from applying the protections required by the CIP Reliability Standards to additional assets that they deem critical. At the same time, we agree that assets not identified by the bright line criteria are not subject to a compliance obligation or to addition by the Commission, NERC, or a Regional Entity. We are persuaded that the clarity and addition of Critical Assets effected by the bright line criteria render Version 4 an improvement over Version 3.

69. We expect NERC to continue to work towards a version of the CIP Reliability Standards that will largely eliminate the risk of gaps in the identification of Critical Assets.[87] In Section E of this Final Rule, we discuss the directive in Order No. 706 regarding external review in an effort to provide the ERO with guidance in developing future versions of the CIP Reliability Standards.

D. Implementation Plan

NERC Petition

70. NERC proposed an implementation plan for existing Critical Assets and an implementation plan for newly identified Critical Assets and newly registered entities. For existing Critical Assets, NERC proposed an effective date for full compliance with the Version 4 CIP Standards of the first day of the eighth calendar quarter after applicable regulatory approvals have been received. The implementation plan for newly identified Critical Assets and newly registered entities specifies how responsible entities are to handle newly identified Critical Cyber Assets, as well as how newly registered entities are to implement the CIP Reliability Standards after the effective date for Version 4.

NOPR

71. In the NOPR, the Commission proposed to approve both the effective date and the implementation plan for CIP–002–4 based upon a belief that the proposed implementation plan establishes reasonable deadlines for industry compliance.[88]

Comments

72. Comments varied regarding NERC's proposed implementation plan. NERC, PG&E and Exelon support the CIP Version 4 implementation plan. PG&E comments that the two year time frame, commencing from Commission approval, is reasonable. The Trade Associations support the implementation plan. However, they also urge the Commission to avoid a ''one size fits all'' approach, explaining that there are ''complexities'' of implementing ''[CIP Versions] 3 to 4 to 5.'' [89] According to the Trade Associations, some entities may face significant challenges as the result of approval of Version 4 potentially followed so closely in time by the approval of Version 5. The Trade

[75] PG&E Comments at 5.

[76] *Id.*

[77] SPP RE Comments at 5.

[78] MISO Comments at 11.

[79] NOPR, FERC Stats. & Regs. ¶ 32,679 at P 31.

[80] NERC Comments at 4–7.

[81] Trade Association Comments at 5–6; Tallahassee Comments at 4–5.

[82] SPP RE Comments at 4.

[83] Dominion Comments at 4–5.

[84] MISO Comments at 4.

[85] NERC Comments at 4.

[86] MISO Comments at 11.

[87] NERC Petition at 4.

[88] NOPR, FERC Stats. & Regs. ¶ 32,679 at P 39.

[89] Trade Associations Comments at 13.

Associations ask for coordination among NERC, the regions and registered entities to achieve compliance in an efficient and orderly manner. NERC and Exelon acknowledge that there could be concerns with implementing CIP Version 5 soon after Version 4 becomes effective, but note that CIP Version 5-related implementation issues could be revisited after CIP Version 5 is filed.[90]

73. G&T Cooperatives, ISO/RTO Council, SPP RE, ITC, Dominion, and FirstEnergy oppose and/or recommend modifying the CIP Version 4 implementation plan in anticipation of a future CIP Version 5 filing. G&T Cooperatives state that CIP Version 4 should be approved for ''guidance purposes'' only, thus delaying implementation, so that it may be superseded by CIP Version 5.[91] G&T Cooperatives believe that CIP Version 5 should become effective on the date that CIP Version 4 would otherwise become effective. Therefore, G&T Cooperatives believe that NERC no longer intends that CIP Version 4 should go into effect in advance of CIP Version 5.

74. ISO/RTO Council asks that the Commission provide guidance to NERC on how to exercise discretion on enforcement and implementation issues given the potential overlap and possible conflict with CIP Version 5.[92] SPP RE suggests that the Commission allow entities to ''early adopt'' CIP Version 5.[93] ITC recommends keeping CIP Version 4 in effect for at least three years so registered entities can collect a full three-year audit cycle's worth of data, which would avoid ''frequent and abrupt changes'' and could help later when implementing CIP Version 5.[94] Dominion recommends allowing registered entities to discontinue implementation of CIP Version 4, while remaining compliant with CIP Version 3, if CIP Version 5 is approved by the Commission before the CIP Version 4 mandatory compliance date.[95]

75. In its reply comments, NERC reiterates that it supports implementation of CIP Version 4 as filed. NERC rejects the G&T Cooperatives' suggestion that NERC no longer intends that CIP Version 4 should go into effect in advance of CIP Version 5. NERC states that it recognizes the concerns raised by industry regarding the interplay between CIP Version 4 and CIP Version 5. However, NERC states that ''until CIP Version 5 and an appropriate implementation plan is fully vetted and approved by the industry, the NERC Board of Trustees, and FERC, there is no basis to determine at this juncture that the CIP Version 4 standards should not be implemented.''[96]

Commission Determination

76. The Commission adopts the NOPR proposal and approves both the effective date and the implementation plan for CIP–002–4 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. The comments opposing NERC's proposed implementation plan for CIP–002–4 are all based upon concerns that the approval of CIP Version 4 may be followed very closely in time by a future Version 5 of the CIP Reliability Standards. We understand the commenters' interest in careful coordination, so that the industry can achieve compliance in an efficient and orderly manner as the industry moves from Version 3 to Version 5, via the interim Version 4. These concerns, however, do not provide a basis on which to reject the NOPR proposal.

77. While G&T Cooperatives, ISO/RTO Council, SPP RE, ITC, Dominion, and FirstEnergy outline various proposed solutions to a potential overlap between CIP Version 4 and a future Version 5 of the CIP Reliability Standards, the commenters ignore one critical fact—the only version of the CIP Reliability Standards at issue in this proceeding is Version 4. There is no proposed Version 5 of the CIP Reliability Standards before the Commission at this time, so any concerns raised about implementation of Version 5 are beyond the scope of this proceeding. To the extent that the development of Version 5 raises actual implementation concerns, such concerns should be raised when NERC submits Version 5 for approval. This proceeding is not the appropriate forum to determine how to coordinate the implementation of the CIP Version 4 Reliability Standards with possible future versions of the CIP Reliability Standards that have not yet been developed or submitted for approval to the Commission.

E. Compliance With Order No. 706

78. In the petition, NERC stated that the standard drafting team ''limited the scope of requirements in the development of CIP–002–4 through CIP–009–4 as an interim step to address the more immediate concerns raised in FERC Order No. 706, paragraph 236.''[97] NERC further stated that the standard drafting team is continuing its effort to address the remaining outstanding Order No. 706 directives. NERC explained that its phased approach to meeting the Order No. 706 directives has ''consistently built upon prior versions of the CIP–002 through CIP–009 standards to enhance the reliability of the Bulk Electric System.''[98] In that light, the Commission discussed certain outstanding Order No. 706 directives in the NOPR and proposed giving guidance to aid in the development of the next version of the CIP Reliability Standards.

79. In their comments, the Trade Associations seek clarification as to whether the issues discussed in Section B of the NOPR (i.e., connectivity, control centers, and NERC and Regional Entity review of Critical Asset lists) should be viewed merely as encouragement to address those issues in CIP Version 5 or as new directives beyond what was required in Order No. 706.[99] The Trade Associations explain that it is their expectation that the final rule will not include any further directives. Instead, the Trade Associations encourage the Commission to allow development of CIP Version 5 to move forward without introducing any new uncertainties in a final rule on CIP Version 4. Based on the comments in response to the NOPR, we determine not to issue new directives at this time beyond what is required to comply with Order No. 706. Consistent with the NOPR proposal, we provide guidance for future versions of the CIP Reliability Standards regarding the issues of connectivity, application of the National Institute of Standards and Technology (NIST) Framework, and provision of a regional perspective.

1. Connectivity

NOPR

80. In the NOPR, the Commission stated that:

> In light of recent cybersecurity vulnerabilities, threats and attacks that have exploited the interconnectivity of cyber systems, the Commission seeks comments regarding the method of identification of Critical Cyber Assets to ensure sufficiency and accuracy. The Commission recognizes that control systems that support Bulk-Power System reliability are ''only as secure as their weakest links,'' and that a single vulnerability opens the computer network and all other networks with which it is interconnected to potential malicious activity. Accordingly, the Commission believes that any criteria adopted for the

[90] NERC Comments at 10; Exelon Comments at 3.

[91] G&T Cooperatives Comments at 10.

[92] ISO/RTO Council Comments at 15.

[93] SPP RE Comments at 7.

[94] ITC Comments at 4.

[95] Dominion Comments at 3.

[96] NERC Reply Comments at 3.

[97] NERC Petition at 6.

[98] *Id.*

[99] Trade Association Comments at 10.

purposes of identifying a Critical Cyber Asset under CIP–002 should be based upon a Cyber Asset's connectivity and its potential to compromise the reliable operation of the Bulk-Power System, rather than focusing on the operation of any specific Critical Asset(s). [*Footnotes omitted.*] [100]

The Commission invited comment on this approach.

Comments

81. NERC comments that, while it does not believe that the connectivity issue was raised in Order No. 706, the CIP Version 5 standards drafting team recognizes the importance of the matter and is considering it in the development of Version 5.[101] However, NERC does not believe that connectivity can be addressed in CIP Version 5 by the time it is submitted to the NERC Board of Trustees for approval.[102] NERC notes that CIP Version 5 will eliminate the blanket exemption for non-routably connected cyber systems, ''and instead move[s] the connectivity attribute to specific requirements.'' [103] NERC adds that the CIP Version 5 drafting team has proposed to apply electronic security perimeter protections ''of some form'' to include all bulk electric system Cyber Systems.[104]

82. SPP RE states that neither CIP Version 4 nor CIP Version 5 consider all possible communication paths between a given cyber asset and any assets that support a reliability function. According to SPP RE, the Version 4 standards define bright line criteria based on size of the asset, and the draft Version 5 standards would rate cyber systems based on their span of control, but fail to consider interconnectivity and the potential for a small system to be used as a vector of attack against other systems.[105] SPP RE explains that control center cyber systems routinely exchange data with reliability coordinators, over wide area networks.[106]

83. ISO/RTO Council states that the Commission's concerns with connectivity could be addressed by requiring certain asset owners and operators to take a ''mutual distrust'' posture.[107] MISO supports considering the connectivity issue but also encourages the Commission to evaluate the costs and benefits of this approach.

84. PG&E states that issues pertaining to connectivity are being addressed in CIP Version 5.[108] The Trade Associations state that they understand the Commission's concerns regarding connectivity. But taken together with the NOPR's ''weakest link'' statements, the Trade Associations are concerned these views could imply that everything needs to be protected.[109] The Trade Associations believe that the ''weakest link'' concept articulated in the NOPR needs to be fleshed out in more detail and that Commission staff should work with the CIP Version 5 standard drafting team to discuss these issues. The Trade Associations also maintain that the CIP Version 5 standard drafting team is currently working on addressing the Commission's directives in Order No. 706 and that no further directives regarding connectivity, or otherwise, should be made in the final rule approving CIP Version 4. According to the Trade Associations, any directives in the final rule would serve to prejudge CIP Version 5.

Commission Determination

85. The Commission appreciates the comments on whether cyber connectivity should be a basis for the identification of Critical Cyber Assets, or their equivalent, in future versions of the CIP Reliability Standards. We have raised concerns relating to the use of cyber connectivity as a basis for applying the CIP Reliability Standards during and since the approval of Version 1. For example, in Order No. 706, we stated that ''NERC's compliance [with the CIP Reliability Standards] is necessary in light of its interconnectivity with other entities that own and operate critical assets.'' [110] Similarly, in finding that an ''N minus 1'' criterion is not an appropriate risk-based assessment methodology for identifying Critical Assets, we noted that a cyber attack can strike multiple assets simultaneously.[111] The cyber connectivity of Bulk-Power System assets increases the risk of a multiple asset cyber attack. The CIP Reliability Standards should reflect this risk.

86. In that light, we support the elimination of the blanket exemption for non-routable connected cyber systems as highlighted in NERC's comments.[112] A continued blanket exemption in Version 5 would not adequately address risk.

87. In addition, we support the concept of applying electronic security perimeter protections ''of some form'' to all bulk electric system cyber systems.[113] Because electronic communications between functional entities and their associated systems are essential to the operation of the Bulk-Power System, it is important for each distinct system to be protected at its boundary by an electronic security perimeter. The use of electronic security perimeters, as required under the CIP Reliability Standards, is commonly referred to as zoned security in the information security industry.[114] Security zones are established to ensure that a compromise in one security zone does not lead to a compromise in another security zone across a security perimeter.[115] The Commission is encouraged by NERC's comments that its standard drafting team is considering ways to address connectivity issues and electronic perimeter protections surrounding all BES Cyber Systems.

88. We also agree with SPP RE that the CIP Reliability Standards should consider communication paths between a given cyber asset and other assets that support a reliability function.[116] As noted by SPP RE, cyber security standards that categorize cyber systems based upon the size or scope of the assets that they control ''fail to consider the interconnectivity of the BES Cyber Systems and the potential for a small control center system to be used as a vector of attack against a larger control center system.'' [117] As noted by SPP RE, ''[c]ontrol center BES Cyber Systems routinely exchange operational data with each other as required by NERC Reliability Standard TOP–005–2a.'' [118] As further noted by SPP RE, connectivity is important to address because of the required communications from control centers to and between reliability coordinators under the Interconnection Reliability Operations and Coordination Standards.[119] The Commission agrees that cyber connectivity is important to address

[100] NOPR, FERC Stats. & Regs. ¶ 32,679 at P 43.

[101] NERC Comments at 11.

[102] *Id.*

[103] *Id.*

[104] *Id.*

[105] SPP RE Comments at 3–5.

[106] *Id.* at 3–4.

[107] ISO/RTO Council Comments at 17.

[108] PG&E Comments at 9.

[109] Trade Associations Comments at 18.

[110] Order No. 706, 122 FERC ¶ 61,040 at P 47.

[111] *Id.* P 256.

[112] NERC Comments at 11.

[113] *Id.*

[114] A ''security zone'' is defined by the ISA99 Committee on Industrial Automation and Control Systems Security as a ''grouping of logical or physical assets that share common security requirements.'' Security for Industrial Automation and Control Systems Part 1: Terminology, Concepts, and Models, ISA–99.00.01–2007.

[115] A ''security perimeter'' is defined by the ISA99 Committee on Industrial Automation and Control Systems Security as a ''boundary (logical or physical) of the domain in which a security policy or security architecture applies, i.e. the boundary of the space in which security services protect system resources.'' Security for Industrial Automation and Control Systems Part 1: Terminology, Concepts, and Models, ISA–99.00.01–2007.

[116] SPP RE Comments at 3–4.

[117] *Id.*

[118] *Id.*

[119] *Id.*

when developing future versions of the CIP Reliability Standards. That being said, we acknowledge the concern of Trade Associations that the ''connectivity'' and ''weakest link'' concepts could possess different meanings to various stakeholders.[120] Thus, addressing connectivity should include reaching a common understanding of the term. Further, we understand and agree with the Trade Associations' concern that protection should be applied in a reasonable manner.[121]

89. Recognizing the importance of addressing cyber connectivity in future versions of the CIP Reliability Standards, we encourage NERC to consider the benefits of a ''mutual distrust'' posture, or similar strategies, put forth by the ISO/RTO Council [122] and as directed by the Commission in Order No. 706.[123] In Order No. 706, the Commission used the term ''mutual distrust'' to denote how ''outside world'' systems are treated by those inside the control system.[124] Specifically, a mutual distrust posture requires each responsible entity that has identified critical cyber assets to protect itself and not trust any communication crossing an electronic security perimeter, regardless of where that communication originates.[125]

90. Applying electronic security perimeter protections ''of some form'' to bulk electric system cyber systems covered by the CIP Reliability Standards will support the adoption of a ''mutual distrust'' posture. This posture will encourage asset owners and operators to employ sound network architectural design, thus segmenting their systems into distinct security zones protected by managed interfaces that will allow only trusted access. The managed interfaces, or electronic security perimeter access points, are intended to restrict or prohibit network access and information flow to bulk electric system cyber systems covered by the CIP Reliability Standards from unidentified, unauthenticated, and unauthorized connectivity to ensure security. Multiple electronic security perimeters can be established to protect cyber assets and adopted as part of a defense in depth strategy to limit the propagation of a threat.[126]

91. Having considered the feedback to our question on cyber connectivity, we continue to believe that criteria adopted for the purpose of identifying Critical Cyber Assets under CIP–002 should include a cyber asset's ''connectivity'' and its potential to compromise the reliable operation of the Bulk-Power System. Therefore, we expect Version 5 to address these issues.

2. Application of NIST Framework

NOPR

92. In the NOPR, the Commission elaborated on the Order No. 706 guidance regarding the consideration of the NIST Framework when developing CIP Reliability Standards.[127] The NOPR explained that the NIST Framework recognizes that all connected assets require a baseline level of protection to prevent attackers from gaining a foothold to launch further, even more devastating attacks on other critical systems.[128] The Commission invited comment on this approach.

Comments

93. NERC, PG&E, SPP RE, and MISO support applying aspects of the NIST Framework to the CIP Reliability Standards, which could lead to more bulk electric system components being protected, though at different levels depending on their criticality. NERC and PG&E state that the CIP Version 5 standard drafting team has incorporated four key features of the NIST Framework into the draft CIP Version 5.[129] NERC states, however, that the NIST standards/guidelines should not be adopted in total because elements of the NIST standards/guidelines, which are meant to help federal agencies to manage risks to their information systems in support of their unique missions, are inapplicable to the power sector.[130] NERC and MISO point out that the NIST Framework allows for applicable NIST concepts to be tailored and incorporated into the CIP Reliability Standards, which has been the approach of the standard drafting team in developing CIP Version 5.

Commission Determination

94. The Commission finds the feedback provided on the potential application of the NIST Framework to the CIP Reliability Standards to be useful. We agree with the commenters that support applying applicable features of the NIST Framework to Version 5 of the CIP Reliability Standards. As stated in the NOPR, we believe that the NIST Framework could provide beneficial input into the CIP Reliability Standards.[131] In its comments, NERC states that a standards drafting team is incorporating four key features of the NIST Framework into the Version 5 CIP Reliability Standards: (1) Ensuring that all BES Cyber Systems associated with the Bulk-Power System, based on their function and impact, receive some level of protection; (2) customizing protection to the mission of the cyber systems subject to protection; (3) applying a tiered approach to security controls that specifies the level of protection appropriate for systems based upon their importance to the reliable operation of the Bulk-Power System; and (4) using the concept of the BES Cyber System.[132] We view the approach of incorporating these applicable features of the NIST Framework into the CIP Reliability Standards as a positive step in improving cyber security for the Bulk-Power System.

95. NIST standards are used by industry generally as a reference and can be applied by the ERO to the Bulk-Power System.[133] Therefore, we

[120] Trade Associations Comments at 18.

[121] *Id.*

[122] ISO/RTO Council Comments at 17.

[123] Order No. 706, 122 FERC ¶ 61,040 at P 412 (''The Commission therefore directs the ERO to provide guidance, regarding the issues and concerns that a mutual distrust posture must address in order to protect a responsible entity's control system from the outside world.'').

[124] *Id.* P 33.

[125] *Id.* n.24.

[126] ''Defense in depth'' is defined by the ISA99 Committee on Industrial Automation and Control Systems Security as the ''provision of multiple security provisions, especially in layers, with the intent to delay if not prevent an attack. NOTE: Defense in depth implies layers of security and detection, even on single systems, and provides the following features: attackers are faced with breaking through or bypassing each layer without being detected; a flaw in one layer can be mitigated by capabilities in other layers; system security becomes a set of layers within the overall network security.'' Security for Industrial Automation and Control Systems Part 1: Terminology, Concepts, and Models, ISA–99.00.01–2007.

[127] NOPR, FERC Stats. & Regs. ¶ 32,679 at PP 46–52.

[128] *Id.* P 51.

[129] NERC Comments at 13; PG&E Comments at 11–12.

[130] NERC Comments at 12–13.

[131] NOPR, FERC Stats. & Regs. ¶ 32,679 at P 46.

[132] NERC Comments at 13–14. NERC comments that the next version of the CIP Reliability Standards replaces the identification of ''Critical Assets'' with the categorization of ''BES Cyber Systems.'' Specifically, NERC states that ''BES Cyber Systems will be characterized as 'High Impact,' 'Medium Impact,' or 'Low Impact' based on the impact of the cyber system to the reliable operation of the bulk power system * * * [t]his characterization makes use of a bright-line concept similar to Version 4, but requires responsible entities to determine the impact of loss, compromise or misuse of a given BES Cyber System using a bright-line impact filter.'' NERC Comments at 7.

[133] For example, NIST SP800–82 provides a detailed Guide to Industrial Control Systems Security that is relevant to the electric power industry. Specifically, NIST SP800–82 includes recommendations to assist in the protection of Supervisory Control and Data Acquisition systems, Distributed Control Systems, and other control system configurations such as Programmable Logic

Continued

continue to encourage NERC and industry to include aspects of the NIST Framework and standards into subsequent versions of the CIP Reliability Standards to better protect the Bulk-Power System. Similar to our approach in Order No. 706, we continue to urge NERC to look to relevant NIST standards for guidance in developing effective cybersecurity standards for the electric industry.[134]

3. Regional Perspective

NOPR

96. In the NOPR, the Commission highlighted the Order No. 706 directive for NERC to ''develop a process of external review and approval of critical asset lists based on a regional perspective.'' [135] The NOPR explained the Commission's concern that a lack of a regional review of a registered entity's identification of cyber assets might result in a reliability gap. In addition, the Commission discussed concerns regarding cyber systems spanning multiple regions:

> This problem may be exacerbated by any future revisions to the CIP Reliability Standards that opt to reserve a high level of independent authority to the registered entity to categorize and prioritize its cyber assets. Looking forward, it will be essential for NERC and the Regional Entities to actively review the designation of cyber assets that are subject to the CIP Reliability Standards, including those which span regions, in order to determine whether additional cyber assets should be protected.[136]

Comments

97. NERC states that the bright line criteria adopted under Version 4 of the CIP Reliability Standards provide certainty and clarity as to the assets that should be identified as critical. NERC explains that the CIP Reliability Standard drafting team is further refining the bright line criteria and anticipates that the next version of the CIP Reliability Standards will characterize ''BES Cyber Systems'' (in lieu of cyber assets) with ''high,'' ''medium,'' or ''low'' impact on Bulk-Power System reliability. According to NERC, ''[t]his characterization makes use of a bright line concept similar to Version 4, but requires responsible entities to determine the impact of loss, compromise or misuse of a given BES Cyber System using a bright line impact filter.'' [137]

98. The Trade Associations state that they cannot support the NOPR proposal on redesignation of assets based on a ''regional view'' without specific information about the mechanics of the proposal or the nature of the perceived reliability gap. According to the Trade Associations, registered entities are in the best position to determine which of their cyber assets are critical to the operation of Critical Assets and therefore subject to CIP compliance. The Trade Associations contend that NERC and the Regional Entities have the opportunity to review a registered entity's approach to developing its list of Critical Cyber Assets in the context of a compliance audit or other compliance monitoring process.

99. FirstEnergy states that the bright line criteria should be the sole methodology for identifying Critical Assets and that allowing the ERO or Regional Entities the ability to add assets that fall outside the bright line criteria undermines the purpose of the bright line criteria.[138] Tallahassee states that the Commission should not undermine the value of the bright line criteria by granting the Regional Entities the discretion to designate assets as critical if the assets are not otherwise identified by the bright line criteria.

100. SPP RE, for its part, states that it is not appropriate to apply arbitrarily criteria not listed in the CIP Reliability Standards to require additional cyber assets to be subject to the CIP Reliability Standards. SPP RE states that the appropriate way to address any concern that the bright line criteria do not capture all assets that should be protected is to modify the bright line criteria to address any deficiency.

Commission Determination

101. In Order No. 706, the Commission explained the need for external review of the Critical Asset lists in the context of an earlier version of the CIP Reliability Standards that required registered entities to apply individualized risk-based methodologies to identify Critical Assets.[139] Further, as indicated in the NOPR in the immediate proceeding, the Commission's concerns are ''exacerbated by any future revisions to the CIP Reliability Standards that opt to reserve a high level of independent authority to the registered entity to categorize and prioritize its cyber assets.'' [140]

102. We agree with commenters that the adoption of appropriate, bright line criteria for Critical Asset identification may obviate the need for an external review. We believe that there is less need for external review where application of bright line criteria results in an objective, consistently applied approach to the identification of cyber assets. As discussed above, NERC anticipates the development of tiered, bright line criteria in the next version of the CIP Reliability Standards. Whether this development ultimately eliminates the need for an external review process as directed in Order No. 706 will depend on the discretion allowed to individual registered entities in identifying and characterizing assets or systems.

103. However, even with the adoption of clear and objective criteria, we believe that there remains a need for an entity with a regional perspective, presumably the ERO or a Regional Entity, to have the opportunity to identify or adjust the characterization of cyber assets in some circumstances. For example, an event may reveal that a specific cyber asset has a greater impact than previously recognized. In such circumstance, an objective third party should have the opportunity to designate a cyber asset prospectively as critical or recharacterize the impact of a cyber asset for compliance purposes.[141] Likewise, it is possible that a technological development or newly discovered vulnerability could justify a case-specific adjustment.

104. We agree with SPP RE that a modification of one or more of the bright line criteria is an appropriate response to a generic change in risk or impact of a category of cyber assets. Accordingly, as a reasonable application of the Order No. 706 directive that an entity with a regional approach have oversight of Critical Asset identification, NERC and the regions—or another designated third party—should have the authority in some circumstances, such as those discussed above, to designate a cyber asset as critical or adjust the

Controllers. *See* National Institute of Standard and Technology, Guide to Industrial Control Systems (ICS) Security (NIST SP900–82) (2011), *http://csrc.nist.gov/publications/nistpubs/800-82/SP800-82-final.pdf.*

[134] Order No. 706, 122 FERC ¶ 61,040 at P 233 (directing the ERO ''to consult with federal entities that are required to comply with both CIP Reliability Standards and NIST standards on the effectiveness of the NIST standards and on implementation issues and [to] report these findings to the Commission'').

[135] NOPR, FERC Stats. & Regs. ¶ 32,679 at PP 59–61 (*citing* Order No. 706, 122 FERC ¶ 61,040 at P 329).

[136] *Id.* P 61.

[137] NERC Comments at 7. NERC states in its comments that the CIP standard drafting team is considering the adoption of the term ''BES Cyber Systems'' in the next version of the CIP Reliability Standards. Our discussion below uses the term ''cyber assets'' to include any cyber asset or systems that the ERO eventually designates as needing cyber security protections under the CIP Reliability Standards.

[138] FirstEnergy Comments at 2.

[139] Order No. 706, 122 FERC ¶ 61,040 at PP 298, 322.

[140] NOPR, FERC Stats. & Regs. ¶ 32,679 at P 61.

[141] Order No. 706, 122 FERC ¶ 61,040 at P 325.

''impact'' characterization. In addressing the Order No. 706 directives, NERC should develop appropriate provisions to implement this limited opportunity for review.

F. Deadline for Addressing Order No. 706 Directives

NERC Petition

105. In the petition, NERC states that the standard drafting team is continuing to address the outstanding Order No. 706 directives.[142] NERC notes that the next version of the CIP Reliability Standards ''will build on the CIP–002–4 standards' establishment of uniform criteria for the identification of Critical Assets.'' [143]

NOPR

106. In the NOPR, the Commission invited comment on whether a reasonable deadline should be established for NERC to satisfy the outstanding directives in Order No. 706 pertaining to the CIP Reliability Standards based on NERC's current development timeline for CIP Version 5.[144] Based on the then current NERC timeline, the NOPR proposed that the CIP Version 5 filing be made by the end of the third quarter of 2012.

Comments

107. Comments varied as to the imposition of a deadline for NERC to file CIP Version 5. Most comments support at least a soft filing date coupled with periodic informational filings on the status of CIP Version 5. While some comments support a hard deadline, that support is qualified.

108. NERC, ISO/RTO Council, PG&E, and Dominion offer qualified support for a deadline. NERC supports the proposed deadline, provided: the CIP Version 4 Final Rule does not add to or expand on the Order No. 706 directives; NERC is able to use its standard development process; and CIP Version 5 only requires one successive ballot.[145] PG&E likewise believes that the proposed deadline is attainable provided the CIP Version 4 Final Rule does not expand on the Order No. 706 directives.[146] ISO/RTO Council states that a deadline is reasonable as long as there is sufficient time for stakeholder input.[147] However, ISO/RTO Council is skeptical about the current development timeline. Dominion also supports a hard deadline as long as CIP Version 5 is developed through the normal NERC standard development process.[148]

109. The Trade Associations, AMP, Exelon, FirstEnergy, and KCP&L do not support a hard deadline for filing CIP Version 5.[149] The Trade Associations, supported by FirstEnergy and KPC&L, and AMP believe that the development schedule for CIP Version 5 is aggressive and may need to be revised. The Trade Associations caution that an artificial deadline may increase the risk that some complex technical issues may not be fully resolved in Version 5. The Trade Associations and Exelon support a ''realistic goal'' or ''target date'' for filing CIP Version 5 coupled with periodic informational filings marking NERC's progress.[150] AMP supports requiring NERC to make periodic informational filings as well.[151] The Trade Associations state that if the Commission deems a deadline necessary, it should be set for the first quarter of 2013.

Commission Determination

110. We adopt our NOPR proposal to establish a deadline for compliance with the outstanding Order No. 706 CIP directives. Given the elapse of time since the issuance of Order No. 706, we believe that it is appropriate to set a reasonable deadline for completion of the next version of the CIP Reliability Standards, which, according to NERC, is expected to address the outstanding Order No. 706 directives.[152] The setting of a deadline responds to the finding in the January 2011 Audit Report of the Department of Energy's Inspector General that ''the CIP standards implementation approach and schedule approved by the Commission were not adequate to ensure that systems-related risks to the Nation's power grid were mitigated or addressed in a timely manner.'' [153]

111. We recognize, as numerous commenters discuss, that the current schedule for completing CIP Version 5 is aggressive. We also understand that the volume of industry discussion is high and we agree that industry input should not be artificially rushed or curtailed. In its reply comments, NERC indicated that it anticipates filing the Version 5 CIP Reliability Standards by the third quarter of 2012.[154] Accordingly, to allow for sufficient time beyond what NERC estimates, we establish a deadline that is 6 months from the end of the third quarter of 2012 (i.e., March 31, 2013). NERC must also submit reports at the beginning of each quarter in which the ERO is to explain whether it is on track to meet the deadline and describe the status of its standard development efforts.

G. Violation Severity Levels and Violation Risk Factors

NERC Petition

112. As amended on April 12, 2011, the petition includes proposed VRFs and VSLs for each Requirement of the Version 4 CIP Reliability Standards, CIP–002–4 to CIP–009–4.

NOPR

113. In the NOPR, the Commission stated that the VSLs for Requirements R1 and R2 of CIP–002–4 do not adequately address the failure to properly identify either Critical Assets or Critical Cyber Assets.[155] Specifically, NERC proposed to assign a ''Severe VSL'' for a violation of Requirement R1 if a responsible entity does not develop a list of its identified Critical Assets ''even if such list is null.'' NERC did not propose to assign a VSL for a violation of Requirement R1 when a responsible entity fails to identify a Critical Asset that falls within any of the Critical Asset criteria in Attachment 1, or fails to include an identified Critical Asset in its Critical Asset list. NERC further proposed to assign a ''Severe VSL'' to a responsible entity's violation of Requirement R2 only when it fails to include in its list of Critical Cyber Assets a Critical Cyber Asset it has identified. NERC did not propose to assign a VSL for a violation of Requirement R2 resulting from a responsible entity's failure to identify as a Critical Cyber Asset a cyber asset that qualifies as a Critical Cyber Asset. The Commission therefore proposed to direct the ERO to modify the VSLs for CIP–002–4, Requirements R1 and R2, to address a failure to identify either Critical Assets or Critical Cyber Assets.

Comments

114. NERC and PG&E agree with the NOPR proposal to direct modifications to the VSLs for Requirements R1 and R2 of CIP–002–4 to ensure that lists of identified Critical Assets are

[142] NERC Petition at 6.

[143] *Id.*

[144] NOPR, FERC Stats. & Regs. ¶ 32,679 at P 67.

[145] NERC Comments at 8–9.

[146] PG&E Comments at 8.

[147] ISO/RTO Comments at 16.

[148] Dominion Comments at 4.

[149] Trade Associations Comments at 13–14; AMP Comments at 4–5; Exelon Comments at 3–4; FirstEnergy Comments at 3–4; KCP&L Comments at 2.

[150] Trade Associations Comments at 15.

[151] AMP Comments at 5.

[152] NOPR, FERC Stats. & Regs. ¶ 32,679 at P 65 n.65.

[153] NOPR, FERC Stats. & Regs. ¶ 32,679 at P 65 (*citing* Department of Energy Inspector General Audit Report, *Federal Energy Regulatory Commission's Monitoring if Power Grid Cybersecurity* at 2 (January 2011)).

[154] NERC Reply Comments at 4.

[155] NOPR, FERC Stats. & Regs. ¶ 32,679 at pp. 35–36.

complete.[156] Accordingly, NERC states that the VSLs for Requirements R1 and R2 should be modified to include the word ''complete'' in front of the list in the VSL language.[157]

Commission Determination

115. The Commission approves the VRFs and VSLs proposed by NERC subject to the modifications discussed above. As NERC now agrees, the Commission directs modifications to the ''Severe VSL'' for Requirements R1 and R2 to include the word ''complete.'' The modified VSLs will address situations where a responsible entity fails to identify or include one or more Critical Assets that fall within the Critical Asset criteria in Attachment 1 in its Critical Assets list pursuant to Requirement R1, or where a Responsible Entity fails to identify or include one or more Critical Cyber Assets in its Critical Cyber Asset list pursuant to Requirement R2.

III. Information Collection Statement

116. The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[158] Upon approval of a collection(s) of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirement of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Paperwork Reduction Act (PRA)[159] requires each federal agency to seek and obtain OMB approval before undertaking a collection of information directed to ten or more persons, or continuing a collection for which OMB approval and validity of the control number are about to expire.[160]

117. The Commission is submitting these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the PRA. The Commission solicited comments on the need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques. The Commission received two comments regarding burden and cost estimates.

Comments

118. Hydro-Québec and NV Energy claim that the cost estimates included in the NOPR for Version 4 are inaccurate and incomplete.[161] NV Energy states that the estimate does not include the significant burden of the additional security requirements that will be required by the identification of more Critical Assets and related Critical Cyber Assets. NV Energy comments that the cost estimate does not consider such matters as increased background checking, personnel risk assessments, cyber security training programs, and increased complexity of cyber security perimeters.

Commission Determination

119. After a review of the comments on the Commission's cost estimate, we maintain the cost estimate provided in the NOPR. While we recognize that implementing the Reliability Standards is not without cost, the benefits to reliability must be recognized. In response to Hydro-Québec and NV Energy's concerns, we note that the estimate provided in the NOPR addresses the potential for an incremental increase in costs across the industry and does not address the full cost of implementing the CIP Reliability Standards by an entity. We anticipate that the savings associated with the change from the entity-specific risk-based assessment methodology, which had to be reviewed and updated each year, to a bright-line approach will offset some, if not all, of the incremental cost increase for entities that have previously identified a Critical Cyber Asset. With regards to NV Energy's comments, we note that the proposed revisions to the Version 4 CIP Reliability Standards address the manner for the identification of Critical Assets, and do not revise current requirements pertaining to background checking, personnel risk assessments, cyber security training programs, and cyber security perimeters.

120. *Burden Estimate:* The principal differences in the existing information collection requirements and the burden imposed by the Reliability Standards in this Final Rule are triggered by the changes in Reliability Standard CIP–002–4. The previous risk-based assessment methodology for identifying Critical Assets is being replaced by 17 uniform ''bright line'' criteria for identifying Critical Assets (in CIP–002–4, Attachment 1, ''Critical Asset Criteria''). Reliability Standard CIP–002–4 requires each responsible entity to use the bright line criteria as a ''checklist'' to identify Critical Assets, initially and in an annual review, instead of performing the more technical and individualized risk analysis involved in complying with the previously-effective CIP Reliability Standards. As in past versions of these Standards, each Responsible Entity will then identify the Critical Cyber Assets associated with its updated list of Critical Assets. If application of the bright line criteria results in the identification of new Critical Cyber Assets, such assets become subject to the remaining standards (approved CIP–003–4, CIP–004–4, CIP–005–4, CIP–006–4, CIP–007–4, CIP–008–4, and CIP–009–4), and the information collection requirements contained therein.

121. We estimate that the burden associated with the annual review of the assets (by the estimated 1,501 applicable entities) will be simplified by the ''Critical Asset Criteria'' in Reliability Standard CIP–002–4. Rather than each entity annually reviewing and updating a risk-based assessment methodology that frequently required technical analysis and judgment decisions, the bright line criteria will provide a straightforward checklist for all entities to use. Thus, we estimate that the revised Reliability Standard will reduce the burden associated with the annual review, as well as provide a consistent and clear set of criteria for all entities to follow.

122. The estimated changes to burden as contained in the Final Rule in RM11–11 follow.

[156] NERC Comments at 7–8; PG&E Comments at 6–7.

[157] The VSL for Requirement R1, for example, would read: ''The Responsible Entity did not develop a *complete* list of its identified Critical Assets even if such list is null.'' (emphasis added).

[158] 5 CFR 1320.11.

[159] 44 U.S.C. 3501–3520 (2006).

[160] 44 U.S.C. 3502(3)(A)(i), 44 U.S.C. 3507(a)(3).

[161] Hydro-Québec Comments at 6; NV Energy Comments at 6–7.

FERC–725B Data Collection (per Version 4)	Number of Respondents [162] (1)	Average Number of Annual Responses Per Respondent (2)	Average Number of Burden Hours Per Response [163] (3)	Effect of Final Rule in RM11–11, on Total Annual Hours (1) × (2) × (3)	Annual Burden Hrs. upon Implementation of RM11–11
Entities that (previously and now) will identify at least one Critical Cyber Asset [category a].	345 [no change]	1	1,880 [reduction of 40 hours from 1,920 to 1,880 hours] hours.	reduction of 13,800 hours.	648,600
Entities that (previously and now) will not identify any Critical Cyber Assets [category b].	1,144 [reduction of 12 entities from 1,156 to 1,144].	1	120 [no change]	reduction of 1,440 hours [for the 12 entities].	137,280
Entities that will newly identify a Critical Asset/Critical Cyber Asset due to the requirements in RM11–11 [164] [category c].	increase of 12 [formerly 0].	1	3,840 [165]	increase of 46,080	46,080
Net Total	1,501			+30,840	831,960

The revisions to the cost estimates based on requirements of this Final Rule are:

- Each entity that has identified Critical Cyber Assets has a reduction of 40 hours (345 entities × 40 hrs. @$96/hour = $1,324,800 reduction).
- 12 Entities that formerly had not identified Critical Cyber Assets, but now will have them, has
  - A reduction of 120 hours and an increase of 3,840 hours (for a net increase of 3,720 annual hours), giving 12 entities × 3,720 hrs. @ $96/hour = $4,285,440.
  - Storage costs = 12 entities @ $15.25/entity = $183.

Total Net Annual Cost for the FERC–725B requirements contained in the Final Rule in RM11–11= $2,960,823 ($4,285,440 + $183 − $1,324,800).

The estimated hourly rate of $96 is the average cost of legal services ($230 per hour), technical employees ($40 per hour) and administrative support ($18 per hour), based on hourly rates from the Bureau of Labor Statistics (BLS) and the 2009 Billing Rates and Practices Survey Report.[166] The $15.25 per entity for storage costs is an estimate based on the average costs to service and store 1 GB of data to demonstrate compliance with the CIP Standards.[167]

Title: Mandatory Reliability Standards, Version 4 Critical Infrastructure Protection Standards.

Action: Revised Collection FERC–725B.

OMB Control No.: 1902–0248.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On Occasion.

Necessity of the Information: This Final Rule approves the requested modifications to Reliability Standards pertaining to critical infrastructure protection. The Reliability Standards help ensure the reliable operation of the Bulk-Power System by providing a cybersecurity framework for the identification and protection of Critical Assets and associated Critical Cyber Assets. As discussed above, the Commission approves NERC's proposed Version 4 CIP Standards pursuant to section 215(d)(2) of the FPA because they represent an improvement to the previously-effective CIP Reliability Standards.

Internal Review: The Commission has reviewed the proposed Reliability Standards and made a determination that its action is necessary to implement section 215 of the FPA.

123. 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].

124. Comments concerning this information collection can be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4718, fax: (202) 395–7285].

IV. Environmental Analysis

125. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a

[162] The NERC Compliance Registry as of September 28, 2010 indicated that 2,079 entities were registered for NERC's compliance program. Of these, 2,057 were identified as being U.S. entities. Staff concluded that of the 2,057 U.S. entities, approximately 1,501 were registered for at least one CIP related function. According to an April 7, 2009 memo to industry, NERC noted that only 31 percent of entities responding to an earlier survey reported that they had at least one Critical Asset, and only 23 percent reported having a Critical Cyber Asset. Staff applied the 23 percent (an estimate unchanged for Version 4 standards) to the 1,501 figure to estimate the number of entities that identified Critical Cyber Assets under Version 3 CIP Standards.

[163] Calculations for figures prior to applying reductions:

Respondent category b:

3 employees × (working 50 percent) × (40 hrs/week) × (2 weeks) = 120 hours.

Respondent category c:

20 employees × (working 50 percent) × (40 hrs/week) × (8 weeks) = 3200 hours (working 20 percent) × (3200 hrs) = 640 hours.

Total = 3840.

Respondent category a:

50 percent of 3840 hours (category d) = 1920.

[164] We estimate 12 (or 1%) of the existing entities that formerly had no identified Critical Cyber Assets will have them under the Reliability Standards. This Final Rule does not affect the burden for the 6 new U.S. Entities that were estimated to newly register or otherwise become subject to the CIP Standards each year in FERC–725B, and therefore are not included in this chart.

[165] This estimated burden estimate applies only to the first three-year audit cycle. In subsequent audit cycles these entities will move into category a, or be removed from the burden as an entity that no longer is registered for a CIP related function.

[166] Bureau of Labor Statistics figures were obtained from *http://www.bls.gov/oes/current/naics2_22.htm,* and 2009 Billing Rates figure were obtained from *http://www.marylandlawyerblog.com/2009/07/average_hourly_rate_for_lawyer.html.* Legal services were based on the national average billing rate (contracting out) from the above report and BLS hourly earnings (in-house personnel). It is assumed that 25 percent of respondents have in-house legal personnel.

[167] Based on the aggregate cost of an advanced data protection server.

significant adverse effect on the human environment.[168] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[169] The actions taken here fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act

126. The Regulatory Flexibility Act of 1980 (RFA)[170] generally requires a description and analysis of final 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.[171] 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.[172]

127. This Final Rule may have a significant economic impact on some small entities. The Commission estimates that 12 of the total small entities applicable to this final rule will experience a total one-time impact of $4,285,623 (an average of $357,135 per entity). However, the Commission has determined that 12 small entities is not a ''substantial number'' in terms of the total number of regulated small entities under this Final Rule. The Final Rule applies to the all NERC Registered Entities listed in the ''Applicability'' section of Reliability Standard CIP–002–4.[173] This list includes reliability coordinators, balancing authorities, interchange authorities, transmission service providers, transmission owners, transmission operators, generator owners, generator operators, load serving entities and regional entities. Using the NERC registry, the Commission found that the number of small entities applicable to this rule is 306. The Commission does not consider 12 out of 306 (3.9%) to be a substantial number.

128. In the September 15, 2011 NOPR, the Commission requested comment on the potential implementation cost and subsequent cost increases that could be experienced by such small entities. No comments were received.

129. Based on the foregoing, the Commission certifies that the modified Reliability Standards will not have a significant impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VI. Document Availability

130. 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 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

131. 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.

132. 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.*

VII. Effective Date and Congressional Notification

133. These regulations are effective June 25, 2012. 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 40

Electric power, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Appendix

COMMENTERS

Abbreviation	Commenter
AMP	American Municipal Power, Inc.
Constellation	Constellation Energy Group, Inc. (intervened w/o comment).
Dominion	Dominion Resources Services, Inc.
Exelon	Exelon Corporation.
FirstEnergy	FirstEnergy Service Company.
G&T Cooperatives	Associated Electric Cooperative, Inc.; Basin Electric Power Cooperative; and Tri-State Generation and Transmission Association, Inc.
Hydro-Québec	Hydro-Québec TransÉnergie.
ISO/RTO Council	The ISO/RTO Council.
ITC	International Transmission Company d/b/a ITC*Transmission,* Michigan Electric Company, LLC, ITC Midwest LLC and ITC Great Plains LLC.
KCP&L	Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company.
MISO	Midwest Independent Transmission System Operator, Inc.
NERC	North American Electric Reliability Corporation.
PG&E	Pacific Gas and Electric Company.
NV Energy	Sierra Pacific Power Company and Nevada Power Company.

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

[169] 18 CFR 380.4(a)(2)(ii).

[170] 5 U.S.C. 601–612.

[171] 13 CFR 121.101.

[172] 13 CFR 121.201, Sector 22, Utilities & n.1.

[173] *See* Reliability Standard CIP–002–4, *http://www.nerc.com/files/CIP-002-4.pdf.*

COMMENTERS—Continued

Abbreviation	Commenter
SPP RE	Southwest Power Pool Regional Entity.
Tallahassee	City of Tallahassee, Florida.
Trade Associations	American Public Power Association; Electricity Consumers Resource Council; Edison Electric Institute; Electric Power Supply Association; National Rural Electric Cooperative Association; and Transmission Access Policy Study Group.

[FR Doc. 2012–9893 Filed 4–24–12; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9586]

RIN 1545–BK83

Removal of Regulations Requiring 3% Withholding by Government Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document provides a Treasury decision that removes the final regulations contained in TD 9524 relating to withholding by government entities on payments to persons providing property or services, and makes conforming amendments to regulations to reflect the removal of these regulations. The final regulations are removed because the 3% Withholding Repeal and Job Creation Act repealed the provision of the Internal Revenue Code underlying the final regulations before the provision became effective. The guidance affects government entities that would have been required to withhold and report tax from payments to persons providing property or services and also affects the persons receiving payments for property or services from these government entities.

DATES: *Effective Date:* These regulations are effective on April 25, 2012.

Applicability Date: For dates of applicability, see §§ 31.6011(a)–4(d) and 31.6302–1(n).

FOR FURTHER INFORMATION CONTACT: A. G. Kelley, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 31 under section 3402(t) of the Internal Revenue Code (Code), relating to three percent withholding by government entities on payments for property or services. Section 3402(t) of the Code was added by section 511 of the Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109–222 (TIPRA), 120 Stat. 345, which was enacted on May 17, 2006. The Treasury Department and the IRS issued final regulations under sections 3402(t), 3406, 6011, 6051, 6071, and 6302 of the Code that were published in the **Federal Register** on May 9, 2011 (TD 9524, 76 FR 26583, 2011–23 IRB 843) (the May 2011 final regulations). Those regulations were issued to implement the requirements of section 3402(t) and conform existing regulations to section 3402(t).

Section 102 of the 3% Withholding Repeal and Job Creation Act (Pub. L. 112–56, 125 Stat. 711), which was enacted on November 21, 2011, repealed section 3402(t) of the Code. Section 3402(t) was repealed before it became effective.

This document, therefore, removes the regulatory provisions issued under section 3402(t) and related sections, and makes conforming amendments to certain regulations to reflect the removal of the section 3402(t) regulations.

At the same time as the issuance of the May 2011 final regulations, the Treasury Department and the IRS also issued proposed regulations under section 3402(t), published in the **Federal Register** on May 9, 2011 (REG–151687–10, 76 FR 26678, 2011–23 IRB 867). A related document withdraws those proposed regulations in light of the repeal of section 3402(t). See REG–151687–10.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation, and because no notice of proposed rule making is required for this rule, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Drafting Information

The principal author of these final regulations is A. G. Kelley, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Paragraph 1.** The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§§ 31.3402 and 31.3406 [Amended]

■ **Par. 2.** The following sections and paragraphs are removed:

■ 1. Remove section 31.3402(t)–0.
■ 2. Remove section 31.3402(t)–1.
■ 3. Remove section 31.3402(t)–2.
■ 4. Remove section 31.3402(t)–3.
■ 5. Remove section 31.3402(t)–4.
■ 6. Remove section 31.3402(t)–5.
■ 7. Remove section 31.3402(t)–6.
■ 8. Remove section 31.3402(t)–7.
■ 9. Remove paragraphs (h) and (i) of section 31.3406(g)–2.

■ **Par. 3.** Section 31.6011(a)–4 is amended by:

■ 1. Revising paragraphs (b)(4), (b)(5), and (d).
■ 2. Removing paragraph (b)(6).

The revisions read as follows:

§ 31.6011(a)–4 Returns of income tax withheld.

* * * * *

(b) * * *

(4) Pensions, annuities, IRAs, and certain other deferred income subject to withholding under section 3405; and

(5) Reportable payments subject to backup withholding under section 3406.

* * * * *

(d) *Effective/applicability dates.* Paragraphs (a)(1) and (a)(4)(i) of this section apply to taxable years beginning on or after December 30, 2008. Paragraph (a)(4)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraph (a)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)–4 as in effect prior to December 30, 2008. The rules of paragraph (a)(4)(ii) of this section that apply to taxable years beginning before January 1, 2010, but on or after December 30, 2008, are contained in § 31.6011(a)–4T as in effect on or after December 30, 2008. The rules of paragraph (a)(4) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)–4T as in effect prior to December 30, 2008.

§ 31.6051–5 [Removed]

■ **Par. 4.** Section 31.6051–5 is removed.

■ **Par. 5.** Section 31.6071(a)–1 is amended by:

■ 1. Revising paragraph (a)(3)(i).

■ 2. Removing paragraph (g).

The revision reads as follows:

§ 31.6071(a)–1 Time for filing returns and other documents.

(a) * * *

(3) *Information returns–(i) General rule.* Each information return in respect of wages as defined in Federal Insurance Contributions Act or of income tax withheld from wages as required under § 31.6051–2 must be filed on or before the last day of February (March 31 if filed electronically) of the year following the calendar year for which it is made, except that, if a tax return under § 31.6011(a)–5(a) is filed as a final return for a period ending prior to December 31, the information return must be filed on or before the last day of the second calendar month following the period for which the tax return is filed.

* * * * *

■ **Par. 6.** Section 31.6302–1 is amended by:

■ 1. Revising paragraph (e)(1)(iii)(C).

■ 2. Removing paragraph (e)(1)(iii)(E).

■ 3. Revising paragraph (n).

The revisions read as follows:

§ 31.6302–1 Deposit rules for taxes under the Federal Insurance Contributions Act (FICA) and withheld income taxes.

* * * * *

(e) * * *

(1) * * *

(iii) * * *

(C) Certain annuities described in section 3402(o)(1)(B); and

* * * * *

(n) *Effective/applicability dates.* Sections 31.6302–1 through 31.6302–3 apply with respect to the deposit of employment taxes attributable to payments made after December 31, 1992. To the extent that the provisions of §§ 31.6302–1 through 31.6302–3 are inconsistent with the provisions of §§ 31.6302(c)–1 and 31.6302(c)–2, a taxpayer will be considered to be in compliance with §§ 31.6302–1 through 31.6302–3 if the taxpayer makes timely deposits during 1993 in accordance with §§ 31.6302(c)–1 and 31.6302(c)–2. Paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6,* (e)(2), (f)(4)(i), (f)(4)(iii), (f)(5) *Example 3,* and (g)(1) of this section apply to taxable years beginning on or after December 30, 2008. Paragraph (f)(4)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraphs (e)(2) and (g)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6302–1 as in effect prior to December 30, 2008. The rules of paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6,* (f)(4)(i), (f)(4)(iii), and (f)(5) *Example 3* of this section that apply to taxable years beginning on or after January 1, 2006, and before December 30, 2008, are contained in § 31.6302–1T as in effect prior to December 30, 2008. The rules of paragraphs (b)(4) and (f)(4) of this section that apply to taxable years beginning before January 1, 2006, are contained in § 31.6302–1 as in effect prior to January 1, 2006. The rules of paragraph (g) of this section eliminating use of Federal tax deposit coupons apply to deposits and payments made after December 31, 2010.

■ **Par. 7.** Section 31.6302–4 is amended by:

■ 1. Revising paragraphs (b)(4) and (b)(5).

■ 2. Removing paragraph (b)(6).

■ 3. Revising paragraph (e).

The revisions read as follows:

§ 31.6302–4 Deposit rules for withheld income taxes attributable to nonpayroll payments.

* * * * *

(b) * * *

(4) Annuities withheld under section 3405, relating to withholding on pensions, annuities, IRAs, and certain other deferred income; and

(5) Amounts withheld under section 3406, relating to backup withholding with respect to reportable payments.

* * * * *

(e) *Effective/applicability date.* Section 31.6302–4(d) applies to deposits and payments made after December 31, 2010.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: April 17, 2012.

Emily S. McMahon,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2012–9887 Filed 4–24–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS ASHLAND (LSD 48) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective April 25, 2012 and is applicable beginning April 16, 2012.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jaewon Choi, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS ASHLAND (LSD 48) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without

interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights; and Annex I, paragraph 2(k) as described in Rule 30 (a)(i), pertaining to the vertical separation between anchor lights. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, amend part 706 of title 32 of the CFR as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table Three by adding, in alpha numerical order, by vessel number, an entry for USS ASHLAND (LSD 48); and

■ B. In Table Five by revising the entry for USS ASHLAND (LSD 48).

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE THREE

Vessel	Number	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters 3(b) Annex 1	Stern light, distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; 2(k) Annex 1	Anchor lights relation-ship of aft light to forward light in meters 2(k) Annex 1
*	*	*	*	*	*	*	*	
USS ASHLAND ...	LSD 48 ...	.....	.....	.....	.....	.....	.....	2.60 below.
*	*	*	*	*	*	*	*	

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I,sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
*	*	*	*	*	*
USS ASHLAND	LSD 48	.....	.....	X	63.6
*	*	*	*	*	*

Approved: April 16, 2012.

C.J. Spain,

Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law), Acting.

Dated: April 18, 2012.

J.M. Beal,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–9928 Filed 4–24–12; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2012–0182; FRL–9345–4]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 23 chemical substances which were the subject of premanufacture notices (PMNs). Nine of these chemical substances are subject to TSCA consent orders issued by EPA. This action requires persons who intend to manufacture, import, or process any of these 23 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification

will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: This rule is effective on June 25, 2012. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on May 9, 2012.

Written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs must be received on or before May 25, 2012 (see Unit VI. of the **SUPPLEMENTARY INFORMATION**).

For additional information on related reporting requirement dates, see Units I.A., VI., and VII. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0182, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2012–0182. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2012–0182. EPA's policy is that all comments received will be included in the 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 regulations.gov or email. The 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 regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the 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 docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. 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 subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this rule. Potentially affected entities may include, but are not limited to:

- Manufacturers, importers, or processors of one or more subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in § 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a

copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What action is the agency taking?

EPA is promulgating these SNURs using direct final procedures. These SNURs will require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of a chemical substance for any activity designated by these SNURs as a significant new use. Receipt of such notices allows EPA to assess risks that may be presented by the intended uses and, if appropriate, to regulate the proposed use before it occurs. Additional rationale and background to these rules are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** issue of April 24, 1990 (55 FR 17376) (April 24, 1990 SNUR). Consult that preamble for further information on the objectives, rationale, and procedures for SNURs and on the basis for significant new use designations, including provisions for developing test data.

B. What is the agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Persons who must report are described in § 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to these SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), 5(h)(2), 5(h)(3), and 5(h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the 23 chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this unit.

IV. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for 23 chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) number (if assigned for non-confidential chemical identities).
- Basis for the TSCA section 5(e) consent order or, for non-section 5(e) SNURs, the basis for the SNUR (i.e., SNURs without TSCA section 5(e) consent orders).
- Tests recommended by EPA to provide sufficient information to evaluate the chemical substance (see Unit VIII. for more information).
- CFR citation assigned in the regulatory text section of this rule.

The regulatory text section of this rule specifies the activities designated as significant new uses. Certain new uses, including production volume limits (i.e., limits on manufacture and importation volume) and other uses designated in this rule, may be claimed as CBI. Unit IX. discusses a procedure companies may use to ascertain whether a proposed use constitutes a significant new use.

This rule includes nine PMN substances (P–07–537, P–07–706, P–10–135, P–10–358, P–11–264, P–11–561, P–11–567, P–11–568, and P–11–569) that are subject to ''risk-based'' consent orders under TSCA section 5(e)(1)(A)(ii)(I) where EPA determined that activities associated with the PMN substances may present unreasonable risk to human health or the environment. Those consent orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The so-called ''5(e) SNURs'' on these PMN substances are promulgated pursuant to § 721.160, and are based on and consistent with the provisions in the underlying consent orders. The 5(e) SNURs designate as a ''significant new use'' the absence of the protective

measures required in the corresponding consent orders.

Where EPA determined that the PMN substance may present an unreasonable risk of injury to human health via inhalation exposure, the underlying TSCA section 5(e) consent order usually requires, among other things, that potentially exposed employees wear specified respirators unless actual measurements of the workplace air show that air-borne concentrations of the PMN substance are below a New Chemical Exposure Limit (NCEL) that is established by EPA to provide adequate protection to human health. In addition to the actual NCEL concentration, the comprehensive NCELs provisions in TSCA section 5(e) consent orders, which are modeled after Occupational Safety and Health Administration (OSHA) Permissible Exposure Limits (PELs) provisions, include requirements addressing performance criteria for sampling and analytical methods, periodic monitoring, respiratory protection, and recordkeeping. However, no comparable NCEL provisions currently exist in 40 CFR part 721, subpart B, for SNURs. Therefore, for these cases, the individual SNURs in 40 CFR part 721, subpart E, will state that persons subject to the SNUR who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under § 721.30. EPA expects that persons whose § 721.30 requests to use the NCELs approach for SNURs are approved by EPA will be required to comply with NCELs provisions that are comparable to those contained in the corresponding TSCA section 5(e) consent order for the same chemical substance.

This rule also includes SNURs on 14 PMN substances (P–05–714, P–11–128, P–11–338, P–11–481, P–11–594, P–11–654, P–12–22, P–12–23, P–12–24, P–12–25, P–12–26, P–12–33, P–12–51, and P–12–52) that are not subject to consent orders under TSCA section 5(e). In these cases, for a variety of reasons, EPA did not find that the use scenario described in the PMN triggered the determinations set forth under TSCA section 5(e). However, EPA does believe that certain changes from the use scenario described in the PMN could result in increased exposures or releases, thereby constituting a ''significant new use.'' These so-called ''non-5(e) SNURs'' are promulgated pursuant to § 721.170. EPA has determined that every activity designated as a ''significant new use'' in all non-5(e) SNURs issued under § 721.170 satisfies the two requirements stipulated in § 721.170(c)(2), i.e., these significant new use activities, ''(i) are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and (ii) may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified'' for the PMN substance.

PMN Number P–05–714

Chemical name: Polyether ester acid compound with a polyamine amide (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as an additive for industrial paints, industrial coatings, and architectural coatings. Based on test data on the PMN substance, EPA predicts toxicity to aquatic organisms may occur if releases of the PMN substance to surface water, from uses other than described in the PMN, exceed the releases expected from the use described in the PMN. For the use described in the PMN, significant environmental releases are not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as described in the PMN may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i).

Recommended testing: EPA has determined that the results of a fish acute toxicity mitigated by humic acid test (Office of Pollution Prevention, Pesticides and Toxic Substances (OPPTS) Test Guideline 850.1085) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10410.

PMN Number P–07–537

Chemical name: Alkanenitrile, bis(cyanoalkyl)amino (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) consent order: June 19, 2009.

Basis for TSCA section 5(e) consent order: The PMN states that the generic (non-confidential) use of the PMN substance will be as a chemical intermediate. Based on test data on the PMN substance, EPA identified concerns for neurotoxicity to workers from dermal and inhalation exposures. The NCEL is 70 microgram/cubic meter ($\mu g/m^3$) as an 8-hour time-weighted average. In addition, based on ecological structure-activity relationship (EcoSAR) analysis of test data on structurally similar aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 700 parts per billion (ppb). The consent order was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) based on a finding that this substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the consent order requires:

1. Use of personal protective equipment including impervious gloves (when there is potential dermal exposure) and either a National Institute for Occupational Safety and Health (NIOSH)-certified respirator with an assigned protection factor (APF) of at least 5, or compliance with a NCEL of 70 $\mu g/m^3$ as an 8-hour time-weighted average (when there is potential inhalation exposure).
2. Establishment and use of a hazard communication program.
3. Manufacture and use of the PMN substance only as a site-limited intermediate.
4. Submission of certain human health testing prior to exceeding the confidential production volume limit specified in the consent order.
5. Disposal of the PMN substance only by incineration or landfill.
6. No release of the PMN substance into the waters of the United States.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the results of a neurotoxicity study in rodents (Organisation for Economic Co-operation and Development (OECD) Test Guideline 424); a fish early-life stage toxicity test (OPPTS Test Guideline 850.1085); and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the human health and environmental effects of the PMN substance. The PMN submitter has agreed not to exceed the confidential production volume limit specified in the consent order without performing the neurotoxicity test. The consent order does not require the submission of the fish and daphnid testing at any specified time or production volume. However, the order's restrictions on manufacture, import, processing, distribution in commerce, use, and disposal of the PMN will remain in effect until the consent order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10411.

PMN Number P–07–706

Chemical name: Phosphonic acid ester (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) consent order: April 8, 2009.

Basis for TSCA section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as a chemical intermediate. Based on test data on the PMN substance and an analogous chemical, EPA identified concerns for oncogenicity, mutagenicity, reproductive/developmental toxicity, skin irritation, and sensitization to workers from dermal and inhalation exposures. The NCEL is 1.0 milligram (mg)/m^3 as an 8-hour time-weighted average. The consent order was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) based on a finding that this substance may present an unreasonable risk of injury to human health. To protect against this risk, the consent order requires:

1. Use of personal protective equipment including dermal protection (when there is potential dermal exposure) and a NIOSH-certified respirator with an assigned protection factor (APF) of at least 15, or compliance with a NCEL of 1.0 mg/m^3 as an 8-hour time-weighted average (when there is potential inhalation exposure).
2. Establishment and use of a hazard communication program.
3. Submission of certain human health testing prior to exceeding the confidential production volume limit specified in the consent order.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the results of a combined repeated dose toxicity with the reproduction/developmental toxicity screening test (OECD Test Guideline 422) and a mammalian erythrocyte micronucleus test (OECD Test Guideline 474) would help characterize possible human health risks of the PMN substance. The PMN submitter has agreed not to exceed the confidential production volume limit specified in the consent order without performing these tests. The consent order does not require the submission of a genetic toxicology: rodent dominant lethal assay test (OECD Test Guideline 478) at any specified time or production volume. However, the consent order's restrictions on manufacture, import, processing, distribution in commerce, use, and disposal of the PMN will remain in effect until the consent order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10412.

PMN Number P–10–135

Chemical name: Fluorinated dialkyl ketone (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) consent order: October 21, 2011.

Basis for TSCA section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as a heat transfer fluid. Based on test data on the PMN substance and analogs, EPA identified concerns for oncogenicity and liver effects from dermal and inhalation exposures. The consent order was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) based on a finding that this substance may present an unreasonable risk of injury to human health. To protect against this risk, the consent order prohibits exceedance of the confidential annual production volume limit specified in the consent order. The SNUR designates as a ''significant new use'' the absence of this protective measure.

Recommended testing: EPA has determined that a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) and a reproduction/developmental toxicity screening test (OECD Test Guideline 421, with modifications) would help characterize the human health effects of the PMN substance. The consent order does not require the submission of this testing at any specified time or production volume. However, the consent order's restrictions on manufacture, import, processing, distribution in commerce, use, and disposal of the PMN will remain in effect until the consent order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10413.

PMN Number P–10–358

Chemical name: Iron(1+), chloro[rel-1,5-dimethyl (1R,2S,4R,5S)- 9,9-dihydroxy-3-methyl-2,4-di(2-pyridinyl-.kappa.N)-7-[(2-pyridinyl-.kappa.N)methyl]-3,7-diazabicyclo[3.3.1]nonane-1,5-dicarboxylate-.kappa.N3,.kappa.N7]-, chloride (1:1), (OC-6–63)-.

CAS number: 478945–46–9.

Effective date of TSCA section 5(e) consent order: February 7, 2011.

Basis for TSCA section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as a coatings additive at concentrations not to exceed 1.0 percent. Based on test data on the PMN substance, EPA identified concerns for systemic toxicity, neurotoxicity, dermal sensitization, acute toxicity and immunotoxicity from dermal exposure. The consent order was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) based on a finding that this substance may present an unreasonable risk of injury to human health. To protect against these risks, the consent order requires:

1. Use of personal protective equipment including dermal protection (when there is potential dermal exposure).
2. Establishment and use of a hazard communication program.
3. Use of the PMN substance only as described in the PMN.
4. That annual manufacture and importation volume not exceed the confidential limit specified in the consent order.
5. No manufacture, processing, or use of the PMN substance in the form of a powder or a solid.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the results of an acute oral toxicity test (OPPTS Test Guideline 870.1100) in rabbits would help characterize the human health effects of the substance. The consent order does not require submission of the testing at any specified time or production volume. However, the consent order's restrictions on manufacture, import, processing, distribution in commerce, use, and disposal of the PMNs will remain in effect until the consent order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10414.

PMN Number P–11–128

Chemical name: 3H-indolium, 2-[2-[3-[2-(1,3-dihydro-1,3,3-trimethyl-2H-indol-2-ylidene)ethylidene]-2-[(1-phenyl-1H-tetrazol-5-yl)thio]-1-cyclohexen-1-yl]ethenyl]-1,3, 3-trimethyl-, chloride (1:1).

CAS number: 440102–72–7.

Basis for action: The PMN states that the substance will be used as a dye used in the manufacture of imaging media/products. Based on EcoSAR analysis of test data on cationic dyes, EPA predicts toxicity to aquatic organisms may occur as a result of releases of the PMN substance to surface water from manufacture or import in quantities greater than the 10,000 kilograms (kg) per year production volume stated in the PMN. At the annual production volume of 10,000 kg stated in the PMN,

there were no significant environmental concerns. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that exceeding an annual manufacturing and importation volume of 10,000 kg may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10415.

PMN Number P–11–264

Chemical name: Brominated polyphenyl ether (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) consent order: November 22, 2011.

Basis for TSCA section 5(e) consent order: The PMN states that the generic (non-confidential) use of the PMN substance will be as a flame retardant. EPA expects that brominated dibenzodioxins (BDD) and dibenzofurans (BDF) may be generated during manufacture of the PMN substance and may be potential decomposition products of the PMN substance in the environment. Human health concerns from exposure to BDD and BDF include cancer, reproductive and developmental toxicity, and immunotoxicity. EPA expects the PMN to be highly persistent in the environment and that it may be bioavailable based on data on related substances. EPA also has environmental concerns based on the high degree of bromination of the PMN substance and the potential presence of BDD/BDF impurities that may form during manufacturing and may be decomposition products in the environment. Current knowledge of the ecotoxicity of BDD and BDF indicate adverse effects may occur in the parts per trillion range in rainbow trout embryos and juveniles. The consent order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II), based on a finding that this substance and potential impurities and degradants may present an unreasonable risk of injury to human health and the environment, the substance may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substance. To protect against these risks the consent order requires:

1. No exceedance of the maximum levels of BDD and BDF in the PMN substance as specified in the consent order.

2. Manufacture of the PMN substance only at the site specified in the PMN and only using the process described in the PMN unless the dioxin/furan testing required in the consent order is conducted and the test results submitted to EPA within 16 months of commencement of manufacture at the additional site or process.

3. The molecular weight of the manufactured PMN substance be equal to or greater than the weight reported in the PMN.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the results of the following tests would help characterize the possible health and environmental effects of the PMN substance, its impurities and its degradation products. The consent order contains two (confidential) production limits. The PMN submitter has agreed not to exceed the first production limit without performing an anaerobic aquatic metabolism test (OPPTS Test Guideline 835.4400) and an amphibian metamorphosis assay (OECD Test Guideline 231). The PMN submitter has also agreed not to exceed a second production limit without performing a dietary exposure bioaccumulation fish test (OECD Test Guideline 305, draft dated October 14, 2011) and a test of the PMN substance for BDD and BDF content by high-resolution gas chromatography/high-resolution mass spectrometry (HRGC/HRMS) (EPA Test Method 8290A). EPA has also determined that the following tests would help characterize the environmental effects of the PMN substance. The consent order does not require the submission of the following information at any specified time or production volume: A fish early-life stage toxicity test (OPPTS Test Guideline 850.1400), a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300), and an algal toxicity, tiers I and II test (OPPTS Test Guideline 850.5400). However, the consent order's restrictions on manufacture, import, processing, distribution in commerce, use, and disposal of the PMN will remain in effect until the consent order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10416.

PMN Number P–11–338

Chemical name: Biphenyl alkyl morpholino ketone (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as a photo initiator. Based on EcoSAR analysis of test data on analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 2 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a ready biodegradability test (OPPTS Test Guideline 835.3110); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II test (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance. EPA also recommends that the special considerations for conducting laboratory studies (OPPTS Test Guideline 850.1000) be followed to facilitate solubility in the test media, because of the PMN's low water solubility.

CFR citation: 40 CFR 721.10417.

PMN Number P–11–481

Chemical name: 1,2-Cyclohexanedicarboxylic acid, 1-butyl 2-(phenylmethyl) ester.

CAS number: 1200806–67–2.

Basis for action: The PMN states that the generic (non-confidential) use of the substance is as an additive for polymers. Based on EcoSAR analysis of test data on analogous esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 2 ppb. Therefore, EPA has not determined that the proposed

manufacture, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 2 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10418.

PMN Number P–11–561

Chemical name: Tetrafluoroethylene chlorotrifluoroethylene copolymer (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) consent order: January 27, 2012.

Basis for TSCA section 5(e) consent order: The PMN states that the substance will be used as a polymer used in automotive fuel hoses. Based on EPA analysis of the potential content of the polymer, EPA is concerned that some long-chain perfluorinated substances could be present and if degraded, especially under thermal conditions, could be released into the environment. EPA has concerns that the PMN substance and its thermal degradation products will persist in the environment, could bioaccumulate or biomagnify, and could be toxic to humans, wild mammals, and birds. These concerns are based on data on analog chemicals, including perfluorooctanoic acid (PFOA) and other perfluorinated carboxylates, which include the presumed environmental degradant of the PMN substance. There is pharmacokinetic and toxicological data in animals on PFOA, as well as epidemiological and blood monitoring data in humans. Toxicity studies on PFOA indicate developmental, reproductive, and systemic toxicity in various species, as well as cancer. These factors, taken together, raise concerns for potential adverse chronic effects from the presumed degradation product in humans and wildlife. The consent order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II), based on a finding that this substance may present an unreasonable risk of injury to human health and the environment, the substance may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substance and its potential degradation products. To protect against this exposure and risk, the consent order requires the PMN substance be manufactured, processed, distributed in commerce, and used only as a polymer in automotive fuel hoses and the submitter has agreed to analyze, report, and limit specific fluorinated impurities of the PMN substance where the carbon chain meets or exceeds a specified length. The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the results of certain fate and physical/chemical property testing identified in the consent order would help characterize possible effects of the substances and their degradation products. The consent order does not require submission of the testing at any specified time or production volume. However, the consent order's restrictions on manufacture, import, processing, distribution in commerce, use, and disposal of the PMN will remain in effect until the consent order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10419.

PMN Numbers P–11–567, P–11–568, and P–11–569

Chemical name: Fluoropolymers (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) consent order: January 27, 2012.

Basis for TSCA section 5(e) consent order: The PMNs state that the generic (non-confidential) use of the PMN substances will be in the manufacture of elastomer containing materials (P–11–567 and P–11–569), and a component of film, wire, and cable (P–11–568). Based on SAR analysis of test data on analogous high molecular weight polymers, EPA identified concerns for lung effects through lung overload if respirable particles of the intact PMN substances are inhaled. In addition, EPA has concerns for the formation of potential incineration or other decomposition products from the PMN substances. These perfluorinated products may be released to the environment from incomplete incineration of the PMN substances at low temperatures. EPA has preliminary evidence, including data on some fluorinated polymers, suggesting that, under some conditions, the PMN substance could degrade in the environment. EPA has concerns that these degradation products will persist in the environment, could bioaccumulate or biomagnify, and could be toxic to people, wild mammals, and birds. These concerns are based on data on analog chemicals, including PFOA and other perfluorinated carboxylates, which include the presumed environmental degradant of the PMN substance. There is pharmacokinetic and toxicological data in animals on PFOA, as well as epidemiological and blood monitoring data in humans. Toxicity studies on PFOA indicate developmental, reproductive, and systemic toxicity in various species, as well as cancer. These factors, taken together, raise concerns for potential adverse chronic effects from the presumed degradation product in humans and wildlife. The consent order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II), based on a finding that this substance may present an unreasonable risk of injury to human health and the environment, the substance may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substance and its potential degradation products. To protect against these risks, the consent order requires the submitter has agreed to analyze, report, and limit specific fluorinated impurities of the PMN substances where the carbon chain meets or exceeds a specified length and risk notification. The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the results of certain fate and physical/chemical property testing identified in the consent order would help characterize possible effects of the substances and their degradation products. The consent order does not require submission of the testing at any specified time or production volume. However, the consent order's restrictions on manufacture, import, processing, distribution in commerce, use, and disposal of the PMNs will remain in effect until the consent order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10420.

PMN Number P–11–594

Chemical name: Mercaptoalkoxysilane (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as an epoxy catalyst. Based on EcoSAR analysis of test data on analogous alkoxysilanes, esters, and phenols, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb of the PMN substance in surface waters. As described in the PMN, the substance will not be released to water. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 2 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10421.

PMN Number P–11–654

Chemical name: Phenol, 2-[[[3-(1H-imidazol-1-yl)propyl]imino]phenylmethyl]-5-(octyloxy)-.

CAS number: 1332716–20–7.

Basis for action: The PMN states that the substance will be used as an epoxy catalyst. Based on EcoSAR analysis of test data on analogous Schiff bases and phenols, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance will not be released to water. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10422.

PMN Numbers: P–12–22, P–12–23, P–12–24, P–12–25, and P–12–26

Chemical names: Complex strontium aluminum, rare earth doped (generic).

CAS numbers: Not available.

Basis for action: The PMNs state that the PMN substances will be used as dye used in the manufacture of imaging media/products. Based on analogous respirable and poorly soluble substances, in particular, titanium dioxide, EPA identified concerns for potential lung overload to workers from inhalation exposure to the PMN substances. Specifically, the Agency predicts potential toxicity to workers from inhalation when more than 5% of the PMN substances particles are less than 10 microns. For the uses described in the PMNs, significant worker exposure is unlikely, when no more than 5% of particles are less than 10 microns. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of the substances other than as described in the PMNs may cause serious health effects. Based on this information, the PMN substances meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substances.

CFR citation: 40 CFR 721.10423.

PMN Number P–12–33

Chemical name: Benzoic acid, 4-(1,1-dimethylethyl)-, methyl.

CAS number: 26537–19–9.

Basis for action: The PMN states that the substance will be used as an intermediate in the manufacture of an imaging product. Based on submitted test data on p-tert-butyl benzoic acid, EPA identified concerns for neurotoxicity; reproductive toxicity (male); and adverse effects to the liver, kidney, and lung. In addition, based on data on benzoic acid, EPA identified concerns for developmental toxicity and hypersensitivity. These concerns are for effects to workers from inhalation and dermal exposures to the PMN substance. For the chemical intermediate use described in the PMN, significant worker exposure is unlikely, as dermal and inhalation exposures are not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, use of the substance other than as an intermediate may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that a combined repeated dose toxicity with the reproduction/developmental toxicity screening test (OPPTS Test Guideline 870.3650) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10424.

PMN Numbers: P–12–51 and P–12–52

Chemical names: Substituted alkylamides (generic).

CAS numbers: Not available.

Basis for action: The PMNs state that the generic (non-confidential) use of the substances will be as polymer foam additives. Based on test data on analogous chemical substances and information on the Material Safety Data Sheet (MSDS), the Agency identified concerns for irritation to all exposed tissues, solvent irritation, and solvent neurotoxicity to workers from dermal exposure to the PMN substances. For the use described in the PMNs, significant worker exposure is unlikely, as dermal exposure is not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, use of the substances other than as described in the PMNs may cause serious health effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a combined repeated dose toxicity with the reproduction/developmental toxicity screening test (OPPTS Test Guideline 870.3650); a bacterial reverse mutation test (OPPTS Test Guideline 870.5100); and a mammalian erythrocyte micronucleus test (OPPTS Test Guideline 870.5395) would help characterize the human health effects of the PMN substances.

CFR citation: 40 CFR 721.10425.

V. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA concluded that for 9 of the 23 chemical substances, regulation was warranted under TSCA section 5(e), pending the development

of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. The SNUR provisions for these chemical substances are consistent with the provisions of the TSCA section 5(e) consent orders. These SNURs are promulgated pursuant to § 721.160 (see Unit II.).

In the other 14 cases, where the uses are not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern established at § 721.170 were met, as discussed in Unit IV.

B. Objectives

EPA is issuing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this rule:

- EPA will receive notice of any person's intent to manufacture, import, or process a listed chemical substance for the described significant new use before that activity begins.
- EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for the described significant new use.
- EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.
- EPA will ensure that all manufacturers, importers, and processors of the same chemical substance that is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the Internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html.*

VI. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule, as described in § 721.160(c)(3) and § 721.170(d)(4). In accordance with § 721.160(c)(3)(ii) and § 721.170(d)(4)(i)(B), the effective date of this rule is June 25, 2012 without further notice, unless EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments before May 25, 2012.

If EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before May 25, 2012, EPA will withdraw the relevant sections of this direct final rule before its effective date. EPA will then issue a proposed SNUR for the chemical substance(s) on which adverse or critical comments were received, providing a 30-day period for public comment.

This rule establishes SNURs for a number of chemical substances. Any person who submits adverse or critical comments, or notice of intent to submit adverse or critical comments, must identify the chemical substance and the new use to which it applies. EPA will not withdraw a SNUR for a chemical substance not identified in the comment.

VII. Applicability of Rule to Uses Occurring Before Effective Date of the Rule

Significant new use designations for a chemical substance are legally established as of the date of publication of this direct final rule April 25, 2012.

To establish a significant ''new'' use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. TSCA section 5(e) consent orders have been issued for 9 chemical substances and the PMN submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no other person may commence such activities without first submitting a PMN. For chemical substances for which an NOC has not been submitted at this time, EPA concludes that the uses are not ongoing. However, EPA recognizes that prior to the effective date of the rule, when chemical substances identified in this SNUR are added to the TSCA Inventory, other persons may engage in a significant new use as defined in this rule before the effective date of the rule. However, 19 of the 23 chemical substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions (per 40 CFR 720.25 and § 721.11), the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

As discussed in the April 24, 1990 SNUR, EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of this direct final rule rather than as of the effective date of the rule. If uses begun after publication were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements because a person could defeat the SNUR by initiating the significant new use before the rule became effective, and then argue that the use was ongoing before the effective date of the rule. Persons who begin commercial manufacture, import, or processing of the chemical substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including any extensions expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person meets the conditions of advance compliance under § 721.45(h), the person is considered exempt from the requirements of the SNUR.

VIII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. The two exceptions are:

1. Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)).

2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a TSCA section 4 test rule or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. In cases where EPA issued a TSCA section 5(e) consent order that requires or recommends certain testing, Unit IV. describes those tests. Unit IV. also lists recommended testing for non-5(e) SNURs. Descriptions of tests are

provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection and test reporting. To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.'' The Organisation for Economic Co-operation and Development (OECD) test guidelines are available from the OECD Bookshop at *http://www.oecdbookshop.org* or SourceOECD at *http://www.sourceoecd.org.* To access EPA Method 8290A, please go to *http://www.epa.gov/osw/hazard/testmethods/sw846/pdfs/8290a.pdf.*

In the TSCA section 5(e) consent orders for several of the chemical substances regulated under this rule, EPA has established production volume limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. Listings of the tests specified in the TSCA section 5(e) consent orders are included in Unit IV. The SNURs contain the same production limits as the TSCA section 5(e) consent orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture, import, or processing.

The recommended tests specified in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Potential benefits of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at § 721.1725(b)(1).

Under these procedures a manufacturer, importer, or processor may request EPA to determine whether a proposed use would be a significant new use under the rule. The manufacturer, importer, or processor must show that it has a *bona fide* intent to manufacture, import, or process the chemical substance and must identify the specific use for which it intends to manufacture, import, or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture, import, or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers, importers, and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, i.e., the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture, import, or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

X. SNUN Submissions

According to § 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in § 721.25 and 40 CFR 720.40. e-PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2012–0182.

XII. Statutory and Executive Order Reviews

A. Executive Order 12866

This rule establishes SNURs for several new chemical substances that were the subject of PMNs, or TSCA section 5(e) consent orders. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the

table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act

On February 18, 2012, EPA certified pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), that promulgation of a SNUR does not have a significant economic impact on a substantial number of small entities where the following are true:

1. A significant number of SNUNs would not be submitted by small entities in response to the SNUR.

2. The SNUN submitted by any small entity would not cost significantly more than $8300.

A copy of that certification is available in the docket for this rule.

This rule is within the scope of the February 18, 2012 certification. Based on the Economic Analysis discussed in Unit XI. and EPA's experience promulgating SNURs (discussed in the certification), EPA believes that the following are true:

- A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
- Submission of the SNUN would not cost any small entity significantly more than $8,300. Therefore, the promulgation of the SNUR would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this rule. As such, EPA has determined that this rule does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

E. Executive Order 13132

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This rule does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This rule does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this rule.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled ''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

XIII. Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.,* EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 19, 2012.

Ward Penberthy,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, add the following sections in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR Citation	OMB Control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.10410	2070–0012
721.10411	2070–0012
721.10412	2070–0012
721.10413	2070–0012
721.10414	2070–0012
721.10415	2070–0012
721.10416	2070–0012
721.10417	2070–0012
721.10418	2070–0012
721.10419	2070–0012
721.10420	2070–0012
721.10421	2070–0012
721.10422	2070–0012
721.10423	2070–0012
721.10424	2070–0012
721.10425	2070–0012
* * * * *	

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PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add § 721.10410 to subpart E to read as follows:

§ 721.10410 Polyether ester acid compound with a polyamine amide (generic) (P–05–714).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyether ester acid compound with a polyamine amide (PMN P–05–714) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (additive for industrial paints, industrial coatings, and architectural coatings).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 5. Add § 721.10411 to subpart E to read as follows:

§ 721.10411 Alkanenitrile, bis(cyanoalkyl)amino (generic) (P–07–537).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkanenitrile, bis(cyanoalkyl)amino (PMN P–07–537) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after it has been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (a)(4), (a)(5), (a)(6)(i), (a)(6)(ii), (a)(6)(v), (a)(6)(vi), (b) (concentration set at 1.0 percent), and (c). The following National Institute for Occupational Safety and Health (NIOSH)-certified respirator with an assigned protection factor (APF) of at least 5 meets the minimum requirements for § 721.63(a)(4): NIOSH-certified air-purifying, tight-fitting full-face respirator equipped with N100 (if oil aerosols absent), R100, or P100 filters; NIOSH-certified powered air-purifying respirator equipped with a loose- fitting hood or helmet and high efficiency particulate air (HEPA) filters; NIOSH-certified powered air-purifying respirator equipped with a tight-fitting facepiece (full-face) and HEPA filters; or NIOSH-certified supplied-air respirator operated in pressure demand or continuous flow mode and equipped with a hood or helmet, or tight-fitting facepiece (full-face) and HEPA filters.

(A) As an alternative to the respiratory requirements listed in paragraph (a)(2)(i), a manufacturer, importer, or processor may choose to follow the new chemical exposure limit (NCEL) provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is 70 microgram/cubic meter ($\mu g/m^3$) as an 8-hour time-weighted average. Persons who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will receive NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e)(concentration set at 1.0 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(1)(iii), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv) (use respiratory protection, or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 70 $\mu g/m^3$), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), (g)(4)(iii), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(h) and (q).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(v) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 6. Add § 721.10412 to subpart E to read as follows:

§ 721.10412 Phosphonic acid ester (generic) (P–07–706).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as phosphonic acid ester (PMN P–07–706) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after it has been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6)(i), (a)(6)(v), (a)(6)(i), (a)(6)(ii), (a)(6)(v), (a)(6)(vi), (b) (concentration set at 0.1 percent) and (c). The following National Institute for Occupational Safety and Health (NIOSH)-approved respirators with an assigned protection

factor (APF) of 15 meet the minimum requirements for § 721.63 (a)(4): NIOSH-certified air-purifying, tight-fitting full-face respirator equipped with the appropriate gas/vapor cartridges (organic vapor, acid gas, or substance-specific); NIOSH-certified powered air-purifying respirator equipped with a loose-fitting hood or helmet and the appropriate gas/vapor cartridges (organic vapor, acid gas, or substance-specific); NIOSH-certified powered air-purifying respirator with a tight-fitting facepiece (full-face) and equipped with the appropriate gas/vapor cartridges (organic vapor, acid gas, or substance-specific); NIOSH-certified supplied-air respirator operated in pressure demand or continuous flow mode and equipped with a hood or helmet, or tight-fitting facepiece (full-face); or NIOSH-certified supplied-air respirator operated in pressure demand or continuous flow mode and equipped with a loose-fitting hood or helmet or a tight-fitting facepiece (full-face) if no cartridge service life testing is available.

(A) As an alternative to the respiratory requirements listed in paragraph (a)(2)(i), a manufacturer, importer, or processor may choose to follow the new chemical exposure limit (NCEL) provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is 1.0 millgram/cubic meter (mg/m^3) as an 8-hour time-weighted-average. Persons who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will receive NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(vi), (g)(1)(vii), (g)(1)(ix), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv) (use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 1.0 mg/m^3), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 7. Add § 721.10413 to subpart E to read as follows:

§ 721.10413 Fluorinated dialkyl ketone (generic) (P–10–135).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as fluorinated dialkyl ketone (PMN P–10–135) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(t).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

■ 8. Add § 721.10414 to subpart E to read as follows:

§ 721.10414 Polycyclic polyamine diester organometallic compound (generic) (P–10–358).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as iron(1+), chloro[rel-1,5-dimethyl (1R,2S,4R,5S)-9,9-dihydroxy-3-methyl-2,4-di(2-pyridinyl-.kappa.N)-7-[(2-pyridinyl-.kappa.N)methyl]-3,7-diazabicyclo[3.3.1]nonane-1,5-dicarboxylate-.kappa.N3,.kappa.N7]-, chloride (1:1), (OC–6–63)-(PMN P–10–358, CAS No. 478945–46–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after it has been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2), (a)(3), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (g)(1)(i), (g)(1)(iii), (g)(1)(iv), (g)(1)(viii), (g)(2)(i), (g)(2)(v), (g)(3)(i), (g)(3)(ii), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j), (t), (v)(1), (v)(2), (w)(1), (w)(2), (x)(1), and (x)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 9. Add § 721.10415 to subpart E to read as follows:

§ 721.10415 3H-indolium, 2-[2-[3-[2-(1,3-dihydro-1,3,3-trimethyl-2H-indol-2-ylidene)ethylidene]-2-[(1-phenyl-1H-tetrazol-5-yl)thio]-1-cyclohexen-1-yl]ethenyl]-1, 3, 3-trimethyl-, chloride (1:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 3H-indolium, 2-[2-[3-[2-(1,3-dihydro-1,3,3-trimethyl-2H-indol-2-ylidene)ethylidene]-2-[(1-phenyl-1H-tetrazol-5-yl)thio]-1-cyclohexen-1-yl]ethenyl]-1, 3, 3-trimethyl-, chloride (1:1) (PMN P–11–128, CAS No. 440102–72–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(s) (10,000 kilogram (kg)).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance,

(2) *Limitations or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

■ 10. Add § 721.10416 to subpart E to read as follows:

§ 721.10416 Brominated polyphenyl ether (generic) (P–11–264).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as brominated polyphenyl ether (PMN P–11–264) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after it has been completely reacted (cured).

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (manufacture of the substance at a molecular weight greater than or equal to that described in PMN P–11–264), § 721.80 (k) (manufacture at the facility described in PMN P–11–264 or by the process described in PMN P–11–264 (changes in manufacturing processes include, but are not limited to, changes in feedstock, reaction conditions, and/or product isolation and purification) unless the brominated dibenzodioxin (BDD)/brominated dibenzofuran (BDF) testing (EPA Test Method 8290A) required in the consent order is conducted at the new facility or for the new manufacturing method and the test results submitted to EPA within 16 months of changing the manufacturing process or commencement of manufacture at a different facility; manufacture of the substance where levels of the fifteen BDD/BDF congeners are detected at or below the Levels of Quantification (LOQs) published in EPA's Dioxin test rule (40 CFR 766.27)).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 11. Add § 721.10417 to subpart E to read as follows:

§ 721.10417 Biphenyl alkyl morpholino ketone (generic) (P–11–338).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as biphenyl alkyl morpholino ketone (PMN P–11–338) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 12. Add § 721.10418 to subpart E to read as follows:

§ 721.10418 1,2-Cyclohexanedicarboxylic acid, 1-butyl 2-(phenylmethyl) ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance is identified as 1,2-cyclohexanedicarboxylic acid, 1-butyl 2-(phenylmethyl) ester (PMN P–11–481, CAS No. 1200806–67–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 13. Add § 721.10419 to subpart E to read as follows:

§ 721.10419 Tetrafluoroethylene chlorotrifluoroethylene copolymer (generic) (P–11–561).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as tetrafluoroethylene chlorotrifluoroethylene copolymer (PMN P–11–561) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after it has been completely reacted (cured).

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (manufacture, processing, distribution in commerce, and use of PMN P–11–561 substance only as a polymer in automotive fuel hoses; analysis and reporting and limitations of maximum impurity levels of certain fluorinated impurities).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

■ 14. Add § 721.10420 to subpart E to read as follows:

§ 721.10420 Fluoropolymers (generic) (P–11–567, P–11–568, and P–11–569).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as fluoropolymers (PMNs P–11–567, P–11–568, and P–11–569) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substances after it has been completely reacted (cured). These PMN substances, which have been molded into final articles and which are recycled into non-virgin raw material are again subject to the requirements of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and

any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive this substance from the employer are provided a MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (analysis and reporting and limitations of maximum impurity levels of certain fluorinated impurities).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 15. Add § 721.10421 to subpart E to read as follows:

§ 721.10421 Mercaptoalkoxysilane (generic) (P–11–594).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as mercaptoalkoxysilane (PMN P–11–594) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 16. Add § 721.10422 to subpart E to read as follows:

§ 721.10422 Phenol, 2-[[[3-(1H-imidazol-1-yl)propyl]imino]phenylmethyl]-5-(octyloxy)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phenol, 2-[[[3-(1H-imidazol-1-yl)propyl]imino]phenylmethyl]-5-(octyloxy)- (PMN P–11–654, CAS No. 1332716–20–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 17. Add § 721.10423 to subpart E to read as follows:

§ 721.10423 Complex strontium aluminum, rare earth doped (generic) (P–12–22, P–12–23, P–12–24, P–12–25, and P–12–26).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as complex strontium aluminum, rare earth doped (PMNs P–12–22, P–12–23, P–12–24, P–12–25, and P–12–26) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (manufacture, processing, or use where no more than 5% of particles are less than 10 microns).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 18. Add § 721.10424 to subpart E to read as follows:

§ 721.10424 Benzoic acid, 4-(1,1-dimethylethyl)-, methyl.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzoic acid, 4-(1,1-dimethylethyl)-, methyl (PMN P–12–33, CAS No. 26537–19–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 19. Add § 721.10425 to subpart E to read as follows:

§ 721.10425 Substituted alkylamides (generic) (P–12–51 and P–12–52).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as substituted alkylamides (PMNs P–12–51 and P–12–52) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Docket No. CDC–2011–0010]

42 CFR Part 88

RIN 0920–AA45

World Trade Center Health Program Requirements for the Addition of New WTC-Related Health Conditions

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Final rule.

SUMMARY: Title I of the James Zadroga 9/11 Health and Compensation Act of 2010 amended the Public Health Service Act (PHS Act) to establish the World Trade Center (WTC) Health Program. Sections 3311, 3312, and 3321 of Title XXXIII of the PHS Act require that the WTC Program Administrator develop regulations to implement portions of the WTC Health Program established within the Department of Health and Human Services (HHS). The WTC Health Program, which is administered by the Director of the National Institute for Occupational Safety and Health (NIOSH), within the Centers for Disease Control and Prevention (CDC), provides medical monitoring and treatment to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery and cleanup workers who responded to the September 11, 2001, terrorist attacks in New York City, Shanksville, PA, and at the Pentagon, and to eligible survivors of the New York City attacks. This final rule establishes the processes by which the WTC Program Administrator may add a new condition to the list of WTC-related health conditions through rulemaking, including a process for considering petitions by interested parties to add a new condition.

DATES: This final rule is effective May 25, 2012.

FOR FURTHER INFORMATION CONTACT: Roy M. Fleming, Sc.D., Senior Science Advisor, World Trade Center Health Program, Office of the Director, National Institute for Occupational Safety and Health, 1600 Clifton Road NE., MS–E74, Atlanta, GA 30329; telephone 866–426–3673 (this is a toll-free number). Information requests may also be submitted by email to *wtcpublicinput@cdc.gov.*

SUPPLEMENTARY INFORMATION: This preamble is organized as follows:

I. Public Participation
II. Background
  A. WTC Health Program Statutory Authority
  B. Addition of New Health Conditions for Coverage in the WTC Health Program
III. Summary of the Final Rule and Response to Comments
IV. Regulatory Assessment Requirements
  A. Executive Order 12866 and Executive Order 13563
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act
  D. Small Business Regulatory Enforcement Fairness Act
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  F. Executive Order 12988 (Civil Justice)
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  I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)
  J. Plain Writing Act of 2010
V. Final Rule

I. Public Participation

HHS received comments from six individuals and organizations on the notice of proposed rulemaking published in the **Federal Register** on July 1, 2011 (76 FR 38938). One anonymous commenter expressed anger about the WTC Health Program's cost to American taxpayers; another individual asked that leukemia and other blood cancers be added to the list of WTC-related health conditions; and a physician experienced with treating WTC-related health conditions requested that a mental disorder be added to the list of WTC-related health conditions. Those comments are outside the scope of this rulemaking and could not be considered. HHS received substantive comments from the New York State Laborers' Health & Safety Trust Fund, the Communication Workers of America, and the WTC Health Program Survivor Steering Committee. Those comments are described and addressed below.

II. Background

A. WTC Health Program Statutory Authority

Title I of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347), amended the Public Health Service Act (PHS Act) to add Title XXXIII [1] establishing the WTC Health Program within HHS. HHS issued an interim final rule on July 1, 2011 (76 FR 38914), which codified the Program in 42 CFR Part 88. Sections 88.1 through 88.16 were included in that rulemaking; this final rule establishing § 88.17 was developed in a separate rulemaking.

The WTC Health Program provides medical monitoring and treatment benefits to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery and cleanup workers (including those who are Federal employees) who responded to the September 11, 2001, terrorist attacks, and to eligible survivors of the New York City attacks. The WTC Health Program will expand to include eligible firefighters and related personnel, law enforcement officers, and rescue, recovery and cleanup workers who responded to the September 11, 2001, terrorist attacks at the Pentagon and Shanksville, PA. The WTC Program Administrator has gathered information that may serve as a basis for such enrollment, and is working to develop eligibility criteria for these responder groups.

All references to the WTC Program Administrator in this notice mean the NIOSH Director or his or her designee.

Title XXXIII of the PHS Act authorizes the WTC Program Administrator to establish a process by which health conditions, including cancer, may be considered for addition to the list of WTC-related health conditions. This final rule establishes this process.

B. Addition of New Health Conditions for Coverage in the WTC Health Program

The list of WTC-related health conditions defined in sections 3312 and 3322 of Title XXXIII of the PHS Act may be amended in the future to add other conditions for which exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the September 11, 2001, terrorist attacks, based on an examination by a medical professional with experience in treating or diagnosing the health conditions included in the applicable list of WTC-related health conditions, is substantially likely to be a significant factor in aggravating, contributing to, or causing the illness or condition (Title XXXIII, Sec. 3312(a)(1)(A)(i)).

Procedures for the addition of a new condition are established in this final rule. The addition of a new condition

[1] Title XXXIII of the Public Health Service Act is codified at 42 U.S.C. 300mm to 300mm–61. Those portions of the Zadroga Act found in Titles II and III of Public Law 111–347 do not pertain to the World Trade Center Health Program and are codified elsewhere.

could be initiated either by petition from an interested party or at the discretion of the WTC Program Administrator, as specified in this final rule.

III. Summary of Final Rule and Response to Comments

Section 88.1 Definitions

This amendment to Part 88 would add the definition of ''interested party'' to the list of definitions established by interim final rule on July 1, 2011 (76 FR 38914).

Comment: HHS received two comments requesting that the definition of ''interested party'' be expanded to reference survivor organizations.

HHS response: The definition of ''interested party'' was taken directly from Title I of the James Zadroga 9/11 Health and Compensation Act of 2010. Although the statutory definition of ''interested party'' does not explicitly mention ''survivor organizations,'' HHS believes that the definition includes ''survivor organizations.'' HHS does not agree that amending the rule text is necessary and is therefore not amending the definition.

Section 88.17 Addition of Health Conditions to the List of WTC-Related Health Conditions

In accordance with the requirements specified in Title XXXIII of the PHS Act, § 88.17 establishes the process by which an interested party could petition the WTC Program Administrator to add a condition to the list of WTC-related health conditions identified in § 88.1. Under the provisions of § 88.17(a)(1), the petition must include the name and contact information of the interested party; the name and description of the condition the party would like the WTC Program Administrator to add to the list of WTC-related health conditions; and an explanation of the reasons for adding the condition, which must include the medical basis for the association between the September 11, 2001, terrorist attacks and the condition to be added.

HHS has received some communications for which it is unclear whether the author intends to petition for the addition of a health condition or whether the author is expressing personal concerns. Since a petition results in Federal action, as specified under this rule, it is important that the intent to petition be unambiguous. Accordingly, HHS has amended the final rule text to clarify that the petition must state the petitioner's intent to petition for the addition of a health condition.

The provisions of § 88.17(a)(2) incorporate specifications in Title XXXIII of the PHS Act regarding the addition of new conditions. Within 60 days of receipt of the petition, the WTC Program Administrator will either: request a recommendation of the WTC Health Program Scientific/Technical Advisory Committee (STAC); open the proposed condition to public comment by publishing a notice of proposed rulemaking (NPRM) in the **Federal Register**; publish the WTC Program Administrator's determination not to publish an NPRM; or publish in the **Federal Register** a determination that not enough evidence exists to perform any of the above actions. HHS has amended the final rule text to acknowledge that a petition may request the addition of more than one health condition.

HHS has also inserted § 88.17(a)(4) into the final rule to clarify that the Administrator shall be required to reconsider a previously-considered (but not added) health condition for inclusion on the list of WTC-related health conditions in response to a petition only when the petition includes a new medical basis for the association between the terrorist attacks and the condition. A new medical basis could include a health study, whether original or updated, not previously considered by the WTC Program Administrator. A new clinical case report on a particular health condition which compiles data from one or more patients may not necessarily be considered a new medical basis if the Administrator has previously considered one or more cases of the health condition. The Administrator retains the discretion, however, to reconsider a health condition for any reason on his own initiative, with or without the receipt of a petition.

Comment: One commenter requested that all submitted petitions be shared with the STAC regardless of whether the WTC Program Administrator seeks a formal recommendation from the Committee.

HHS response: HHS appreciates this suggestion and agrees that, in the interest of keeping the STAC informed of relevant public interest, petitions received by the WTC Program Administrator will be shared with the Committee and with the public via the Program's Web site. HHS does not believe that amending the rule text is warranted.

Comment: A commenter also asked that a mechanism be developed to allow at least two members of the STAC to request to consider a petition and make a recommendation in the event that the WTC Program Administrator has determined not to publish an NPRM or where the Administrator determines that insufficient evidence exists to take action on a petition.

HHS response: According to the requirements of Title XXXIII of the PHS Act, the Committee's role is to review evidence and make recommendations to the WTC Program Administrator at the request of the Administrator, not to provide unsolicited reviews. Any work conducted by the STAC must be consistent with the purposes for which the Committee may be utilized as identified by the statute and the Committee charter. Therefore, this comment is not adopted.

Subsection (b) also incorporates the statutory requirement that the WTC Program Administrator may publish an NPRM concerning the addition of a WTC-related health condition to the list. The Administrator would consider publishing an NPRM where the review of cancers required by Sec. 3312(a)(5)(A) of Title XXXIII of the PHS Act indicates that a type of cancer should be added, or where the review of WTC Health Program monitoring data reveals the prevalence of a condition not previously identified by the statute or Program. The protocol for such a review will take into account an evaluation of the exposure data associated with the terrorist attacks, and an evaluation of available epidemiologic, toxicologic, and medical evidence relevant to evaluating the possible association between the health condition under consideration and exposures associated with the September 11, 2001, terrorist attacks. How these various relevant sources of scientific and medical information will be evaluated, separately and in relation to each other, will depend on the evidence available for a given health condition under consideration. HHS notes that scientists generally look for consistency in terms of disease-mechanism theories, toxicologic and epidemiologic findings, and medical observation. The addition of any health condition requires rulemaking, and the public will have the opportunity to consider and comment on the review methods applied in any actual case.

The WTC Program Administrator may extend the comment period described above based upon a finding of good cause. In the case of such an extension, the Administrator shall publish notice in the **Federal Register**.

Comment: HHS received several comments concerning deadlines not specified in the regulatory text. One commenter suggested that HHS did not include every deadline related to the addition of a WTC-related health

condition provided by the statute. Two comments asked that we specify a time frame for the publication of an NPRM or a **Federal Register** notice indicating that the WTC Program Administrator has determined not to publish an NPRM; one asked that we specify the publication of an NPRM 30 days following a STAC recommendation. Comments also requested that we specify a time frame for publication of a final rule; one asked that we require publication within 60 days after the close of an NPRM comment period.

HHS response: Each deadline specified by the PHS Act with regard to this matter has been incorporated into the regulatory text. We have specified a time frame for the publication of an NPRM following a STAC recommendation in Sec. 88.17(b)(2) according to the time frame specified in the statute. We agree with commenters who pointed out that we neglected to specify a time frame for publication of a **Federal Register** notice indicating a decision not to publish an NPRM following receipt of a STAC recommendation, and have amended the rule text accordingly. However, Congress did not specify a time frame for publication of a final rule. HHS is concerned that establishing such requirements by regulation could negatively impact the thorough review of scientific evidence supporting or opposing the inclusion of a specific health condition. Because of the need to ensure that a thorough review has been conducted in all cases, HHS is not making changes to the rule based on these comments. Every effort will be made to promptly review public comments and STAC recommendations, and that publication of a final rule will occur in as efficient and timely a manner as is possible.

Comment: One commenter requested that HHS develop procedures for the WTC Program Administrator to notify an individual when a new condition is added, if the individual was previously denied coverage for that condition.

HHS response: Information about newly-added WTC-related health conditions will be provided on the WTC Health Program Web site and shared with all Program physicians. Program physicians would be best placed to advise individuals on whether applying for certification of a newly-designated WTC-related health condition is appropriate. The WTC Health Program will consider this request further to identify other ways in which Program participants may be notified of a new WTC-related health condition.

IV. Regulatory Assessment Requirements

A. Executive Order 12866 and Executive Order 13563

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

This final rule is considered a ''significant regulatory action'' within the meaning of E.O. 12866. The rule establishes processes by which the WTC Program Administrator may consider the addition of health conditions to the current statutory list of WTC-related health conditions covered by this program. This strictly procedural rule does not itself propose the addition of any conditions and hence it does not provide for any benefits nor impose any costs, other than the minor incidental administrative costs to HHS of considering possible additions. Under any circumstance, HHS would be required to conduct rulemaking to make an addition, as required by Title XXXIII of the PHS Act. Accordingly, any quantifiable costs and benefits associated with adding a condition would be addressed in such future rulemaking.

This rule does not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; it does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; it does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; nor does it raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires each agency to consider the potential impact of its regulations on small entities including small businesses, small governmental units, and small not-for-profit organizations. HHS believes that this rule has ''no significant economic impact upon a substantial number of small entities'' within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This regulation has no impact on small businesses or other small entities as specified under the RFA. The rule establishes procedures by which the WTC Health Program Administrator may consider the addition of health conditions to the current statutory list of WTC-related health conditions covered by this program. These procedures do not impose any requirements or direct costs on small entities. They do not involve small entities, except that a small entity could potentially be considered an ''interested party'' under these procedures, eligible to petition the WTC Program Administrator for the addition of a health condition.

The Secretary of HHS has certified to the Chief Counsel, Office of Advocacy of the Small Business Administration, that this rule does not have a significant impact on a substantial number of small entities. Accordingly, no regulatory impact analysis is required.

C. Paperwork Reduction Act

HHS has determined that this final rule contains data collection and record keeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1955 (44 U.S.C. 3501–3420). A description of these provisions is given below with an estimate of the annual reporting burden. Included in the estimate of the annual reporting burden is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information. These data collection and record keeping requirements have been approved under OMB control number 0920–0929, exp. April 30, 2015.

Project: Adding a Health Condition to the Statutory List of WTC–Related Health Conditions (42 CFR 88.17)—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description: Title I of the James Zadroga Health and Compensation Act of 2010 amended the Public Health Service Act (PHS Act) to establish the World Trade Center (WTC) Health Program. Sections 3311, 3312, and 3321 of Title XXXIII of the PHS Act require that the WTC Program Administrator develop regulations to implement portions of the WTC Health Program established within the Department of Health and Human

Services (HHS). This final rule establishes the processes by which the WTC Program Administrator may add a new condition to the list of WTC-related health conditions through rulemaking, including a process for considering petitions by interested parties to add a new condition; the process will be codified at 42 CFR 88.17.

Section 88.17, entitled ''Addition of Health Conditions to the List of WTC–Related Health Conditions,'' describes the process and data collection requirements that an interested party should follow to petition the WTC Program Administrator to add a condition to the list of WTC-related health conditions. HHS expects to receive no more than 100 petitions annually. We assume that interested parties will be enrolled WTC responders, screening-eligible survivors, certified-eligible survivors, or members of groups who advocate on behalf of responders or survivors. We estimate that an individual will spend an average of 40 hours gathering information to substantiate a request to add a health condition and assembling the petition. HHS requests input from the public on these estimates, which are reflected in the table below. The total burden on the public is estimated to be 4,000 hours.

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Responder/Survivor/Advocate	Petition for the addition of health conditions	100	1	40

D. Small Business Regulatory Enforcement Fairness Act

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.), HHS will report the promulgation of this rule to Congress prior to its effective date.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' For purposes of the Unfunded Mandates Reform Act, this final rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million by State, local or Tribal governments in the aggregate, or by the private sector. For 2011, the inflation adjusted threshold is $136 million.

F. Executive Order 12988 (Civil Justice)

This final rule has been drafted and reviewed in accordance with Executive Order 12988, ''Civil Justice Reform,'' and will not unduly burden the Federal court system. This rule has been reviewed carefully to eliminate drafting errors and ambiguities.

G. Executive Order 13132 (Federalism)

HHS has reviewed this final rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

H. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this rule on children. HHS has determined that the rule would have no environmental health and safety effect on children.

I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, HHS has evaluated the effects of this final rule on energy supply, distribution or use, and has determined that the rule will not have a significant adverse effect.

J. Plain Writing Act of 2010

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. HHS has attempted to use plain language in promulgating the final rule consistent with the Federal Plain Writing Act guidelines.

V. Final Rule

List of Subjects in 42 CFR Part 88

Aerodigestive disorders, Appeal procedures, Health care, Mental health conditions, Musculoskeletal disorders, Respiratory and pulmonary diseases.

Text of the Rule

For the reasons discussed in the preamble, the Department of Health and Human Services amends 42 CFR part 88 as follows:

■ 1. The authority citation for part 88 continues to read as follows:

Authority: 42 U.S.C. 300mm–300mm–61, Pub. L. 111–347, 124 Stat. 3623.

■ 2. Amend § 88.1 by adding the definition of ''interested party'' in alphabetical order to read as follows:

§ 88.1 Definitions.

* * * * *

Interested party means a representative of any organization representing WTC responders, a nationally recognized medical association, a WTC Health Program Clinical Center of Excellence or Data Center, a State or political subdivision, or any other interested person.

* * * * *

■ 3. Add § 88.17 to read as follows:

§ 88.17 Addition of health conditions to the list of WTC-related health conditions.

(a) Any interested party may petition the WTC Program Administrator to add a condition to the list of WTC-related health conditions.

(1) Each petition shall state an intent to petition and be sent to the WTC Program Administrator. The petition shall include:

(i) Name and contact information of the interested party;

(ii) Name and description of the condition(s) to be added; and

(iii) Reasons for adding the condition(s), including the medical basis for the association between the September 11, 2001, terrorist attacks and the condition(s) to be added.

(2) Not later than 60 days after the receipt of a petition, the WTC Program Administrator shall:

(i) Request a recommendation of the WTC Health Program Scientific/Technical Advisory Committee; or

(ii) Publish in the **Federal Register** a proposed rule to add such health condition; or

(iii) Publish in the **Federal Register** the WTC Program Administrator's determination not to publish a proposed rule and the basis for that determination; or

(iv) Publish in the **Federal Register** a determination that insufficient evidence exists to take action under paragraph (a)(2)(i) through (iii) of this section.

(3) The WTC Program Administrator may consider more than one petition simultaneously when the petitions propose the addition of the same health condition. Scientific/Technical Advisory Committee recommendations and **Federal Register** notices initiated by the WTC Program Administrator pursuant to paragraph (a)(2) of this section may respond to more than one petition.

(4) The WTC Program Administrator shall be required to consider a new petition for a health condition previously reviewed by the WTC Program Administrator and determined not to qualify for addition to the list of WTC-related health conditions only if the new petition presents a new medical basis (i.e., not previously reviewed) for the association between the September 11, 2001, terrorist attacks and the condition to be added.

(b) The WTC Program Administrator may propose to add a condition to the list of WTC-related health conditions by publishing a proposed rule in the **Federal Register** and providing interested parties a period of 30 days to submit written comments. The WTC Program Administrator may extend the comment period for good cause.

(1) If the WTC Program Administrator requests a recommendation from the WTC Health Program Scientific/Technical Advisory Committee, the Advisory Committee shall submit its recommendation to the WTC Program Administrator no later than 60 days after the date of the transmission of the request or no later than a date specified by the Administrator (but not more than 180 days after the request). If the WTC Program Administrator decides to publish a proposed rule or a determination not to publish a proposed rule in the **Federal Register**, he or she shall do so no later than 60 days after the date of transmission of the Advisory Committee recommendation.

(2) [Reserved]

Dated: January 26, 2012.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2012–9425 Filed 4–24–12; 8:45 am]

BILLING CODE P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 14

[CG Docket No. 10–213 and 10–145, WT Docket No. 96–198; FCC 11–151]

Implementing the Provisions of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's document Implementing the Provisions of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010, (*Report and Order*). This notice is consistent with the *Report and Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

DATES: The amendments to 47 CFR 14.5, 14.20(d), 14.31, 14.32, and 14.34 through 14.52, published at 76 FR 82354, December 30, 2011, are effective April 25, 2012.

FOR FURTHER INFORMATION CONTACT: Rosaline Crawford, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 418–2075, or email *Rosaline.Crawford@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on April 16, 2012, OMB approved, for a period of three years, the information collection requirements contained in the Commission's *Report and Order,* FCC 11–151, published at 76 FR 82354, December 30, 2011. The OMB Control Number is 3060–1167. The Commission publishes this notice as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1167, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov <mailto:PRA@fcc.gov>.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov <mailto:fcc504@fcc.gov>* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on April 16, 2012, for the information collection requirements contained in the Commission's rules at 47 CFR 14.5, 14.20(d), 14.31, 14.32, and 14.34 through 14.52.

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, 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 that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1167.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Pub. L. 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1167.

OMB Approval Date: April 16, 2012.

OMB Expiration Date: April 30, 2015.

Title: Accessible Telecommunications and Advanced Communications Services and Equipment.

Form Number: N/A.

Type of Review: New collection.

Respondents: Individuals or households; businesses or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 9,454 respondents; 119,660 responses.

Estimated Time per Response: .50 to 40 hours.

Frequency of Response: Annual, one time, and on occasion reporting requirements; recordkeeping requirement; third-party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information

collection is contained in sections 1–4, 255, 303(r), 403, 503, 716, 717, and 718 of the Act, 47 U.S.C. 151–154, 255, 303(r), 403, 503, 617, 618, and 619.

Total Annual Burden: 408,695 hours.

Total Annual Cost: $110,588.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints and Inquiries,'' in the **Federal Register** on December 15, 2009 (74 FR 66356) which became effective on January 25, 2010.

In addition, upon the service of an informal or formal complaint, a service provider or equipment manufacturer must produce to the Commission, upon request, records covered by 47 CFR 14.31 of the Commission's rules and may assert a statutory request for confidentiality for these records. All other information submitted to the Commission pursuant to Subpart D of Part 14 of the Commission's rules or to any other request by the Commission may be submitted pursuant to a request for confidentiality in accordance with 47 CFR 0.459 of the Commission's rules.

Privacy Impact Assessment: Yes. The Privacy Impact Assessment (PIA) was completed on June 28, 2007. It may be reviewed at: <*http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html*>. The Commission is in the process of updating the PIA to incorporate various revisions made to the SORN.

Note: The Commission will prepare a revision to the SORN and PIA to cover the PII collected related to this information collection, as required by OMB's Memorandum M–03–22 (September 26, 2003) and by the Privacy Act, 5 U.S.C. 552a.

Needs and Uses: On October 7, 2011, in document FCC 11–151, the Commission released a *Report and Order* adopting final rules to implement sections 716 and 717 of the Communications Act of 1934 (the Act), as amended, which were added to the Act by the ''Twenty-First Century Communications and Video Accessibility Act of 2010'' (CVAA). *See* Public Law 111–260, § 104. Section 716 of the Act requires providers of advanced communications services and manufacturers of equipment used for advanced communications services to make their services and equipment accessible to individuals with disabilities, unless doing so is not achievable. *See* 47 U.S.C. 617. Section 717 of the Act establishes new recordkeeping requirements and enforcement procedures for service providers and equipment manufacturers that are subject to sections 255, 716, and 718 of the Act. *See* 47 U.S.C. 618. Section 255 of the Act requires telecommunications and interconnected VoIP services and equipment to be accessible, if readily achievable. *See* 47 U.S.C. 255. Section 718 of the Act requires web browsers included on mobile phones to be accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. *See* 47 U.S.C. 619.

Specifically, the rules adopted in document FCC 11–151 have the following possible related information collection requirements:

(a) The rules adopted in document FCC 11–151 establish procedures for advanced communications service providers and equipment manufacturers to seek waivers from the accessibility obligations of section 716 of the Act and, in effect, waivers from the recordkeeping requirements and enforcement procedures of section 717 of the Act. Waiver requests may be submitted for individual or class offerings of services or equipment which are designed for multiple purposes, but are designed primarily for purposes other than using advanced communications services. All such waiver petitions will be put on public notice for comments and oppositions.

(b) The CVAA and the rules adopted in document FCC 11–151 require service providers and equipment manufacturers that are subject to sections 255, 716, or 718 of the Act to maintain records of the following: (1) Their efforts to consult with people with disabilities; (2) descriptions of the accessibility features of their products and services; and (3) information about the compatibility of their products with peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access. These recordkeeping requirements are necessary to facilitate enforcement of accessibility obligations. Document FCC 11–151 provides flexibility by allowing covered entities to keep records in any format, recognizing the unique recordkeeping methods of individual entities. Because complaints regarding accessibility of a service or equipment may not occur for years after the release of the service or equipment, covered entities must keep records for two years from the date the service ceases to be offered to the public or the equipment ceases to be manufactured. Service providers and equipment manufacturers are not required to keep records of their consideration of achievability or the implementation of accessibility, but they must be prepared to carry their burden of proof in any enforcement proceeding, which requires greater than conclusory or unsupported claims.

(c) The CVAA and the rules adopted in document FCC 11–151 require an officer of service providers and equipment manufacturers that are subject to sections 255, 716, or 718 of the Act to certify annually to the Commission that records are kept in accordance with the recordkeeping requirements. The certification must be supported with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the entity with personal knowledge of the representations provided in the company's certification, verifying the truth and accuracy of the information. The certification must also identify the name and contact details of the person or persons within the company that are authorized to resolve accessibility complaints, and the agent designated for service of process. The certification must be filed with the Consumer and Governmental Affairs Bureau on or before April 1 each year for records pertaining to the previous calendar year. The certification must be updated when necessary to keep the contact information current.

(d) The Commission also established procedures in document FCC 11–151 to facilitate the filing of formal and informal complaints alleging violations of sections 255, 716, or 718 of the Act. Those procedures include a nondiscretionary pre-filing notice procedure to facilitate dispute resolution. As a prerequisite to filing an informal complaint, complainants must first request dispute assistance from the Consumer and Governmental Affairs Bureau's Disability Rights Office.

The rules adopted in document FCC 11–151 temporarily exempt advanced communications service providers and equipment manufacturers from the accessibility obligations of section 716 of the Act and, in effect, from the recordkeeping requirements and enforcement procedures of section 717 of the Act, if they qualify as small business concerns under the Small Business Administration's (SBA) rules and size standards for the industry in which they are primarily engaged. These size standards are based on the maximum number of employees or maximum annual receipts of a business concern. The SBA categorizes industries for its size standards using the North

American Industry Classification System (NAICS).

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2012–9912 Filed 4–24–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100804324–1265–02]

RIN 0648–BC11

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Biennial Specifications and Management Measures; Inseason Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

SUMMARY: This final rule announces an inseason change to management measures in the Pacific Coast groundfish fisheries. This action, which is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), is intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks. This rule also implements changes to the incidental retention allowance for halibut in the primary sablefish fishery under the authority of the Northern Pacific Halibut Act.

DATES: Effective 0001 hours (local time) May 1, 2012. Comments on this final rule must be received no later than May 25, 2012.

ADDRESSES: You may submit comments, identified by FDMS docket number NOAA–NMFS–2010–0194 by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Fax:* 206–526–6736, Attn: Colby Brady
- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, Attn: Colby Brady.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Colby Brady (Northwest Region, NMFS), phone: 206–526–6117, fax: 206–526–6736, *colby.brady@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpo.gov/fdsys/search/home.action.* Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS.

On November 3, 2010, NMFS published a proposed rule to implement the 2011–2012 harvest specifications and management measures for most species of the Pacific Coast groundfish fishery (75 FR 67810). The final rule to implement the 2011–12 harvest specifications and management measures for most species of the Pacific Coast Groundfish Fishery was published on May 11, 2011 (76 FR 27508). This final rule was subsequently amended by several inseason actions (76 FR 39313, 76 FR 67092, 76 FR 79122, 77 FR 12503, 77 FR 22679). On September 27, 2011, NMFS published a proposed rule to implement final 2012 specifications for overfished species and assessed flatfish species pursuant to Secretarial Amendment 1 to the Groundfish FMP (76 FR 59634). That final rule was effective January 1, 2012. These specifications and management measures are codified in the CFR (50 CFR part 660, subparts C through G).

Changes to current groundfish management measures implemented by this action were recommended by the Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its April 1–April 6, 2012 meeting. The Council recommended adjusting the biennial groundfish management measures for the remainder of the biennial period to respond to updated fishery information and additional inseason management needs. The adjustment to fishery management measures are not expected to result in greater impacts to overfished species than originally projected through the end of 2012. Estimated mortality of overfished and target species are the result of management measures designed to achieve, to the extent possible, but not exceed, annual catch limits (ACLs) of target species while fostering the rebuilding of overfished stocks by remaining within their rebuilding ACLs.

Limited Entry Fixed Gear Fishery Management Measures

Sablefish Daily Trip Limit Fishery

In 2011, the amount of sablefish harvested in the limited entry fixed gear sablefish daily trip limit (DTL) fishery North of 36° N. lat. exceeded its sablefish allocation by 60 mt above its collective target (the northern DTL fixed gear share). This did not impact the northern sablefish ACL, since the rationalized Individual Fishing Quota (IFQ) trawl fishery left 148 mt of sablefish un-harvested in the northern area. However, it is expected that since the IFQ fishery participants have one full year of experience in the IFQ fishery, then higher sablefish allocation attainments will be attained, in which case another overage by the northern LE fixed gear could possibly exceed the northern sablefish ACL. To ensure that harvest opportunities for this healthy stock do not exceed the northern LE fixed gear share allocation, the Council considered decreases to trip limits for sablefish in this fishery and the potential impacts on overall catch levels. Landings projections were made by the Council advisory Groundfish Management Team (GMT) for the northern LE fixed gear fishery under the current 2012 trip limit scenario, which projected an overage in the LE North fishery of 16%, or 43 mt. Projections for the other three fixed gear sablefish fisheries were tracking within their targets for 2012.

Therefore, the Council recommended and NMFS is implementing trip limit changes for the limited entry fixed gear fishery North of 36° N. lat. that decrease sablefish DTL fishery limits from ''1,300 lb (590 kg) per week, not to exceed 5,000 lb (2,268 kg) of per 2 months'' to ''1,000 lb (454 kg) per week, not to exceed 4,000 lb (1,814 kg) per 2 months'' beginning in period 3, May 1, 2012 through the end of the year. This decrease in trip limits is not anticipated to increase projected impacts to overfished species.

Incidental Halibut Retention

The International Pacific Halibut Commission (IPHC) establishes total allowable catch (TAC) amounts for Pacific halibut each year in January. Under the authority of the Northern Pacific Halibut Act, and implementing regulations at 50 CFR 300.63, a catch sharing plan, developed by the Pacific Council and implemented by the Secretary, allocates portions of the annual TAC among fisheries off Washington, Oregon, and California. The catch sharing plan for Pacific halibut fisheries in Area 2A (waters off the U.S. West coast) allows an incidental total catch limit for halibut for the 2012 sablefish primary season (i.e. tier limit fishery) of 21,173 lb (9,604 kg). This total catch limit of 21,173 lb (9,604 kg) in 2012 is higher than what has been available to the sablefish primary fishery in recent years (2010–11), which was not high enough to justify an incidental catch limit of halibut in the sablefish primary fishery north of Pt. Chehalis, WA (46°53.30′ N. lat.). The retention limits for halibut were not revised as part of the 2011–2012 harvest specifications and management measures because the Total Allowable Catch of halibut for 2012 was not determined until the IPHC meeting in January, 2012. Although the International Pacific Halibut Commission (IPHC) recommended coast-wide catch limits for 2012 totaled 33,540,000 lb (15,213,488 kg), which is a coast-wide decrease of 18.3% from the 2011 catch limit of 41,070,000 lb. (18,629,038 kg), the area 2A allocation increased 8% from 910,000 lb. (412,769 kg) in 2011 to 989,000 lb. (448,603 kg) for 2012. Due to the increase in the Pacific halibut TAC for area 2A, and the resulting increase in the amount of Pacific halibut available to the sablefish primary fishery as incidental take, the Council considered options to revise the catch ratio established in the groundfish regulations at 50 CFR 660.231 at their first opportunity, the March 2012 meeting. These options were developed to reduce incidental impacts to Pacific halibut in the sablefish primary fishery, and stay below the lower 2012 Pacific halibut allocation. After the opportunity for public review and comment, the Council, at their April meeting, made their final recommendation for adjusting the incidental retention limits for Pacific halibut in the sablefish primary fishery in order to allow incidental take and keep mortality of halibut below the 2012 catch limit of 21,173 lb (9,604 kg).

In order to allow incidental halibut catch in the sablefish primary fishery, which is currently not allowed, the Council recommended and NMFS is implementing incidental halibut retention regulations at 50 CFR 660.231(b)(3)(iv) to read as follows: ''50 lb (23 kg) dressed weight of halibut for every 1,000 pounds (454 kg) dressed weight of sablefish landed and up to 2 additional halibut in excess of the 50-pounds-per-1,000-pound ratio per landing.'' NMFS in including enforcement related provisions recommended by the Council in 2009, the last time an incidental allowance was allowed. Consequently, the landing requirement applies also to possession, and the term ''dressed'' is described to mean halibut landed eviscerated with their heads on.

Classification

These actions are taken under the authority of 50 CFR 660.60(c) and 50 CFR 300.63(b)(3) and are exempt from review under Executive Order 12866.

These increases in sablefish limits are taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and are in accordance with 50 CFR part 660, the regulations implementing the FMP. The adjustment to the halibut incidental catch limit in the sablefish primary fishery is taken under the authority of the Northern Pacific Halibut Act and implementing regulations, and is consistent with the approved catch sharing plan. These actions are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

This final rule makes routine inseason adjustments to groundfish fishery management measures based on the best available information and is taken pursuant to the regulations implementing the Pacific Coast Groundfish FMP.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective May 1, 2012.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b)(3)(B) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective May 1, 2012.

The recently available information upon which the changes to the incidental halibut retention in the sablefish primary fishery north of Pt. Chehalis, WA (46°53.30′ N. lat.), and the subsequent proposed management measure changes are based were originally provided to the Council, and the Council made its potential recommendations available for public comment, at its March 2–7, 2012 meeting. The Council considered the public comments on this matter as well as additional recently available information upon which the changes to the limited entry fixed gear sablefish trip limits North of 36° N. lat. at its April 1–6, 2012 meeting. At the April Council meeting, the Council recommended that these changes be implemented by May 1, 2012. There was not sufficient time after that meeting to draft this document and undergo proposed and final rulemaking before these actions need to be in effect. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent NMFS from managing fisheries using the best available science to approach, without exceeding, the ACLs for federally managed species in accordance with the FMP and applicable laws. The adjustments to management measures in this document affect commercial fisheries off northern California to Washington State. These adjustments to management measures must be implemented in a timely manner, by May 1, 2012, to: Allow fishermen an opportunity to harvest their limits in 2012 for sablefish, and allow incidental catch of halibut in the sablefish primary fishery to keep impacts below the 2012 halibut Area 2A allocation.

Decreases to the sablefish cumulative limits in the limited entry fixed gear

fishery continue to allow fishermen opportunities to harvest available healthy stocks while staying within the ACLs for these species. Furthermore, these adjustments to management measures must be implemented in a timely manner to allow limited entry primary sablefish fishermen North of Pt. Chehalis, WA (46°53.30′ N. lat.) to prosecute their intended sablefish fishing strategies while accessing a portion of incidental halibut bycatch in a manner that is consistent with the 2A catch sharing plan. If this rule is not implemented immediately, the public could have incorrect information regarding allowed limited entry fixed gear sablefish trip limits, and allowed fishing activities for groundfish fisheries management, which would cause confusion and be inconsistent with the intent of the Council. It would be contrary to the public interest to delay implementation of these changes until after public notice and comment, because making this regulatory change by May 1, 2012, allows harvest as intended by the Council in fisheries that are important to coastal communities in a manner that prevents ACLs of overfished and target species from being exceeded. Furthermore, changes to the sablefish primary fishery regulations to allow incidental halibut retention limits for the sablefish primary fishery are necessary to reduce halibut impacts in area 2A, keeping total mortality of halibut below the 2012 area 2A allocation. These changes must be implemented in a timely manner by May 1, 2012, to allow sablefish fishermen sustainable incidental take in a manner that prevents early closure of the incidental halibut fishery. It would be contrary to the public interest to wait to implement these changes until after public notice and comment, because a delay in reducing retention limits could cause incidental halibut to be unavailable for harvest for as long as possible throughout the sablefish primary season, which runs through October 31.

No aspect of this action is controversial and no change in operating practices in the fishery is required from those intended in this inseason adjustment.

Delaying these changes would also keep management measures in place that are not based on the best available information. Such delay would impair achievement of the Pacific Coast Groundfish FMP objectives of providing for year-round harvest opportunities, extending fishing opportunities as long as practicable during the fishing year, or staying within ACLs or allocations for Pacific halibut.

Accordingly, for the reasons stated above, NMFS finds good cause to partially waive prior notice and comment and the delay in effectiveness.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: April 20, 2012.

Galen Tromble,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.231, paragraph (b)(3)(iv) is revised to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery management.

* * * * *

(b) * * *

(3) * * *

(iv) *Incidental halibut retention north of Pt. Chehalis, WA (46°53.30′ N. lat.).* From May 1 through October 31, vessels authorized to participate in the sablefish primary fishery, licensed by the International Pacific Halibut Commission for commercial fishing in Area 2A (waters off Washington, Oregon, California), and fishing with longline gear north of Pt. Chehalis, WA (46°53.30′ N. lat.) may possess and land up to the following cumulative limits: 50 lb (23 kg) dressed weight of halibut for every 1,000 pounds (454 kg) dressed weight of sablefish landed and up to 2 additional halibut in excess of the 50-pounds-per-1,000-pound ratio per landing. ''Dressed'' halibut in this area means halibut landed eviscerated with their heads on. Halibut taken and retained in the sablefish primary fishery north of Pt. Chehalis may only be landed north of Pt. Chehalis and may not be possessed or landed south of Pt. Chehalis.

* * * * *

■ 3. Table 2 (North) to part 660, Subpart E, is revised to read as follows:

BILLING CODE 3510–22–P

Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 05012012

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[6/]					
2	46°16' N. lat. - 43°00' N. lat.	30 fm line[6/] - 100 fm line[6/]					
3	43°00' N. lat. - 42°00' N. lat.	20 fm line[6/] - 100 fm line[6/]					
4	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[6/]					
	See § 660.60 and § 660.230 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
5	**Minor slope rockfish [2/] & Darkblotched rockfish**	4,000 lb/ 2 months					
6	**Pacific ocean perch**	1,800 lb/ 2 months					
7	**Sablefish**	1,300 lb. per week, not to exceed 5,000 lb/ 2 months		1,000 lb. per week, not to exceed 4,000 lb/2 months			
8	**Longspine thornyhead**	10,000 lb/ 2 months					
9	**Shortspine thornyhead**	2,000 lb/ 2 months					
10	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
11	**Arrowtooth flounder**						
12	**Petrale sole**						
13	**English sole**						
14	**Starry flounder**						
15	**Other flatfish[1/]**						
16	**Whiting**	10,000 lb/ trip					
17	**Minor shelf rockfish[2/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
18	**Canary rockfish**	CLOSED					
19	**Yelloweye rockfish**	CLOSED					
20	**Minor nearshore rockfish & Black rockfish**						
21	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]					
22	42° - 40°10' N. lat.	8,500 lb/ 2 months, of which no more than 1,200 lb may be species other than black rockfish 3/					
23	**Lingcod[4/]**	CLOSED		800 lb/ 2 months		400 lb/ month	CLOSED
24	**Pacific cod**	1,000 lb/ 2 months					
25	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
26	**Other fish[5/]**	Unlimited					

TABLE 2 (North)

1/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.
5/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon and longnose skate are included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

* * * * *

■ 4. Table 2 (South) to part 660, Subpart E, is revised to read as follows:

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 05012012

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N. lat.	30 fm line[5/] - 150 fm line[5/]					
2	South of 34°27' N. lat.	60 fm line[5/] - 150 fm line[5/] (also applies around islands)					
	See § 660.60 and § 660.230 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months					
4	**Splitnose**	40,000 lb/ 2 months					
5	**Sablefish**						
6	40°10' - 36° N. lat.	1,300 lb/ week, not to exceed 5,000 lb/ 2 months		1,000 lb. per week, not to exceed 4,000 lb/2 months			
7	South of 36° N. lat.	1,800 lb/ week					
8	**Longspine thornyhead**	10,000 lb / 2 months					
9	**Shortspine thornyhead**						
10	40°10' - 34°27' N. lat.	2,000 lb/ 2 months					
11	South of 34°27' N. lat.	3,000 lb/ 2 months					
12	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
13	**Arrowtooth flounder**						
14	**Petrale sole**						
15	**English sole**						
16	**Starry flounder**						
17	**Other flatfish[1/]**						
18	**Whiting**	10,000 lb/ trip					
19	**Minor shelf rockfish[2/], Shortbelly, Widow rockfish, and Bocaccio (including Chilipepper between 40°10' - 34°27' N. lat.)**						
20	40°10' - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb/ 2 months may be any species other than chilipepper.					
21	South of 34°27' N. lat.	3,000 lb/ 2 months	CLOSED	3,000 lb/ 2 months			
22	**Chilipepper rockfish**						
23	40°10' - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly, widow and bocaccio limits - - See above					
24	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA					
25	**Canary rockfish**	CLOSED					
26	**Yelloweye rockfish**	CLOSED					
27	**Cowcod**	CLOSED					
28	**Bronzespotted rockfish**	CLOSED					
29	**Bocaccio**						
30	40°10' - 34°27' N. lat.	Bocaccio included under Minor shelf rockfish, shortbelly, widow & chilipepper limits -- See above					
31	South of 34°27' N. lat.	300 lb/ 2 months	CLOSED	300 lb/ 2 months			

TABLE 2 (South)

Table 2 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC	
32	**Minor nearshore rockfish & Black rockfish**							
33	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	1,000 lb/ 2 months	
34	Deeper nearshore							
35	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months	900 lb/ 2 months			
36	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months				
37	California scorpionfish	1,200 lb/ 2 months[7/]	CLOSED	1,200 lb/ 2 months	1,200 lb/ 2 months			
38	**Lingcod**[3/]	CLOSED		800 lb/ 2 months			400 lb/ month	CLOSED
39	**Pacific cod**	1,000 lb/ 2 months						
40	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months			
41	**Other fish**[4/]	Unlimited						

TABLE 2 (South)

1/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

4/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon and longnose skate are included in the trip limits for "other fish."

5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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[FR Doc. 2012–9963 Filed 4–20–12; 4:15 pm]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 77, No. 80
Wednesday, April 25, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–FV–11–0092; FV12–930–1 PR]

Tart Cherries Grown in the State of Michigan, et al.; Increasing the Primary Reserve Capacity and Revising Exemption Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on proposed revisions to the primary inventory reserve capacity and the exemption provisions applicable to handler diversion activities prescribed under the marketing order for tart cherries (order). The order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, and is administered locally by the Cherry Industry Administrative Board (Board). This action would increase the volume of tart cherries that can be placed in the primary inventory reserve from 50 million pounds to 100 million pounds and would revise exemption provisions by limiting diversion credits for new market development and market expansion activities to one year. These changes are intended to facilitate sales and lessen the impact of market expansion activities on volume restriction calculations.

DATES: Comments must be received by May 10, 2012.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324–3775, Fax: (863) 325–8793, or Email: *Jennie.Varela@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 930, as amended (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, 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.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule invites comments on proposed revisions to the primary inventory reserve capacity and the exemption provisions applicable to handler diversion activities prescribed under the order. This action would increase the volume of tart cherries that can be placed in the primary inventory reserve from 50 million pounds to 100 million pounds and would revise exemption provisions by limiting diversion credits for new market development and market expansion activities to one year. These changes are intended to facilitate sales and lessen the impact of new market development and market expansion activities on volume restriction calculations. These changes were recommended by the Board at its meetings on September 15, 2011, and November 2, 2011, respectively.

Section 930.55 of the order provides authority for the establishment of a primary inventory reserve as part of the order's volume control provisions. Section 930.50(i) of the order establishes a cap of 50 million pounds on the primary inventory reserve, but provides authority to raise that limit if necessary, provided that any recommendation for change is made by the Board on or before September 30 to become effective for the following crop year.

Section 930.59 of the order authorizes handler diversion. When volume regulation is in effect, handlers may fulfill any restricted percentage requirement in full or in part by acquiring diversion certificates or by voluntarily diverting cherries or cherry products in a program approved by the Board, rather than placing cherries in an inventory reserve. These eligible diversion activities include, in part, use for new market development and market expansion activities.

Section 930.159 of the order's administrative rules specifies methods of handler diversion, including using cherries or cherry products for exempt purposes prescribed under § 930.162. Section 930.162 establishes the terms and conditions of exemption that must be satisfied for handlers to receive diversion certificates for exempt uses. Section 930.162(b) defines the activities which qualify for exemptions including new market development and market expansion. New market development and market expansion activities include, but are not limited to, sales of cherries into markets that are not yet commercially established, product line extensions, or segmentation of markets along geographic or other definable characteristics.

In July 2011, the Board established an ad hoc committee (committee) to examine the volume regulation process under the order and recommend changes that might benefit the industry. The committee made a series of recommendations, mostly administrative in nature, which were discussed by the entire Board at its September and November meetings. The recommended administrative changes were approved by the Board and the proposed changes to the primary reserve and diversion credits for market expansion activities, are the subject of this action.

The order provides for the use of volume regulation to stabilize prices and improve grower returns during periods of oversupply. At the beginning of each season, the Board examines production and sales data to determine whether a volume regulation is necessary and if so, announces free and restricted percentages to limit the volume of tart cherries on the market. Free percentage cherries can be used to supply any available market, including domestic markets for pie filling, water packed, and frozen tart cherries. Restricted percentage cherries can be placed in reserve, marketed through exempt activities, including market expansion, or diverted in orchard or at the processing plant.

When using reserves to meet their restricted percentage, handlers have two inventory reserve pools available, a primary reserve currently limited to 50 million pounds and an unlimited secondary reserve. Reserves allow the industry to mitigate the impact of oversupply in large crop years, while allowing the industry to supply markets in years when production falls below demand. Volume in the secondary reserve cannot be released unless the primary reserve is empty. Most reserve inventory flows in and out of the primary reserve, and it is rarely at zero, making it difficult to release volume from the secondary reserve.

Accessing reserves, particularly at the beginning of a crop year when the new crop has yet to be harvested, has become more important in recent seasons. When the order was promulgated, tart cherries were primarily processed as ingredients or into pie filling and a 50 million pound primary reserve met the needs of the industry. However, dried cherries, juice, and juice concentrate are growing segments of the industry, and some handlers are also manufacturing finished products for retail. The additional processing steps for these new products, as well as the growing variety of retail products have changed reserve needs. At any given time, handlers now hold more volume in reserve.

Additionally, in years when a crop is short or demand exceeds expectations, the Board can vote to issue a reserve release. During the 2010–2011 season, the Board found it necessary to issue two such releases. The Board believes increasing the capacity of the primary reserve to 100 million pounds would facilitate the release of reserve cherries when they are needed. Moving additional reserve volume into the primary pool, which is easier to access, should allow the industry to be more responsive to changes in demand and supply, and allow handlers more flexibility in how they utilize the reserve. The intent of this action is not to increase the volume of cherries in reserve, but to shift a greater volume into the primary reserve where it is more accessible to meet handler needs. This change should not impact volume restriction calculations.

Accordingly, at its meeting on September 15, 2011, the Board recommended increasing the capacity of the primary inventory reserve from 50 million pounds to 100 million pounds. Fifteen Board members voted for this change and two abstained.

In addition to discussing the primary reserve, the Board also considered changes to diversion credits. These credits are a handler's alternative to placing fruit in reserve in order to comply with their restricted percentage under volume restriction. The order provides that fruit used for certain exempt purposes, including new market development and market expansion, is eligible to receive diversion credits. Market expansion is defined as an activity that expands the sale of either tart cherries or the products in which tart cherries are an ingredient. The Board currently limits the duration of any diversion credit for new market development and market expansion to three years.

The Board believes that new market development and market expansion activities have been successful in increasing sales. Some Board members expressed that these activities have been very helpful in developing the dried cherry and juice segments. Earlier regulations limited the volume that could receive diversion credit to 10 million pounds. However, the Board believed the limitation could be discouraging expansion and in 2006 recommended removing the diversion credit volume limitations. Since that time, the use of new market development and market expansion activities to meet restricted percentages has grown. The current three-year average for diversion credit for market expansion activities is approximately 35 million pounds a year.

In its discussions of this issue, the Board sought to find a solution that would continue to encourage new market development and market expansion projects, but reduce the impact these credits have on volume restriction calculations. While market expansion activities designated for diversion credit represent about 15 percent of gross sales, these sales are not included in the average sales figure used to determine optimum supply for volume regulation. The Board estimates that limiting credits to one year would lower the annual average credit for market expansion to 16 million pounds, or 19 million pounds below the current average.

With this action, it is anticipated that the difference in volume between the three-year credit and one year credit for market expansion would shift to free sales helping to reduce the calculated restricted percentage. Using current numbers, assuming that the difference of 19 million pounds would be counted as free sales, this change would reduce the calculated surplus. Reducing the calculated surplus would, in turn, help lower restricted percentages. The Board believes this change would help make the calculations under volume regulation more reflective of industry conditions.

Accordingly, at its November 2, 2011, meeting, the Board voted unanimously to revise exemption provisions applicable to handler diversion activities by limiting diversion credits for market expansion activities to one year, with the time limit beginning with the date of the first shipment. The Board also noted that projects approved prior to this action would be allowed to finish their three-year cycle.

Initial 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 action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and 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 40 handlers of tart cherries who are subject to regulation under the marketing order and approximately 600 producers of tart cherries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service, and Board data, the average annual grower price for tart cherries during the 2010–11 season was $0.221 per pound, and total shipments were around 270 million pounds. Therefore, average receipts for tart cherry producers were around $99,000, well below the SBA threshold for small producers. In 2010, The Food Institute estimated an f.o.b. price of $0.84 per pound for frozen tart cherries, which make up the majority of processed tart cherries. Using this data, average annual handler receipts were about $5.7 million, also below the SBA threshold for small agricultural service firms. Assuming a normal distribution, the majority of producers and handlers of tart cherries may be classified as small entities.

This action would increase the volume of tart cherries that can be placed in the primary inventory reserve from 50 million pounds to 100 million pounds and would revise the exemption provisions pertaining to handler diversion activities by limiting diversion credits for new market development and market expansion activities to one year. These changes are intended to facilitate sales and lessen the impact of such activities on volume restriction calculations. This rule would add § 930.155 to the rules and regulations to establish the increased limit for the primary inventory reserve, and would revise § 930.162 of the regulations regarding exemptions as they pertain to handler diversion activities. The authority for these actions is provided in §§ 930.50 and 930.59 of the order. The Board recommended these actions at meetings on September 15, 2011, and November 2, 2011.

The Board believes these changes would better align regulations with industry needs and practices, facilitate the release of restricted fruit, and help avoid over-restriction. It is not anticipated that this action would impose additional costs on handlers or growers, regardless of size. Handlers of all sizes could realize a cost savings by not having to store product relegated to the secondary reserve, which is difficult to access.

Further, increasing the maximum volume that can be held in the primary reserve would allow handlers to be more responsive to industry needs by making reserves easier to access in periods of short supply or increased demand, which could facilitate sales. Changes in processing and cherry products have created a situation in which handlers may have more volume on hand at any given time, furthering the need to access reserves. Expanding the volume available in the primary reserve would assist handlers in managing their stocks and would help maintain a steady inventory of finished products to supply retailers and consumers.

Additionally, the Board believes limiting diversion credits for market expansion to one year would move more sales into the free sales category for purposes of computing volume regulations. This would reduce the calculated surplus, and in turn lower restrictions. Lower restrictions would allow handlers to have a greater portion of their volume available for free sales. This could facilitate additional sales which could improve returns for growers and handlers.

This rule is expected to benefit producers, handlers, and consumers. The effects of this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The Committee discussed alternatives to these changes, including not increasing the primary reserve capacity, as well as eliminating diversion credits for market expansion rather than limiting them to one year. Regarding the change to primary reserve capacity, the Board agreed that changes in the industry necessitated this change and that it was in the industry's best interest to have this change in place by the next season. In discussing the change to diversion credits for market expansion, the Board considered phasing out diversion credits for market expansion altogether. However, some Board members believed that offering diversion credit for these activities had been beneficial to the industry and thus should not be eliminated entirely. The Board believes limiting credits to a maximum of one year would continue to encourage handlers to enter new markets, but lessen the impact on volume restriction calculations. Therefore, these alternatives were rejected.

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. 0581–0177, (Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large tart cherry 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.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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

The Board formed a committee to review the order's volume regulation procedures and suggest changes to the Board. This committee held meetings where these issues were discussed in detail. These meetings were public meetings and both large and small entities were able to participate and express their views. In addition, the Board's meetings were widely publicized throughout the tart cherry industry and all interested persons were invited to attend and participate in Board deliberations on all issues. Like all Board meetings, the September 15, 2011, and November 2, 2011, meetings were public meetings and all entities,

both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because the Board would like to have this rule in place as soon as possible so handlers can consider these changes when making plans for the upcoming season. Further, handlers are aware of these proposed changes, which were discussed and recommended at public meetings and interested parties had the opportunity to provide input. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 930.150 is added to read as follows:

§ 930.150 Primary inventory reserve.

Beginning July 1, 2012, the primary inventory reserve may not to exceed 100 million pounds.

3. Section 930.162 is amended by adding a sentence at the end of section (b)(2) to read as follows:

§ 930.162 Exemptions.

* * * * *

(b) * * *

(2) * * * In addition, shipments of tart cherries or tart cherry products in new market development and market expansion outlets are eligible for handler diversion credit for a period of one year from the handler's first date of shipment into such outlets.

* * * * *

Dated: April 17, 2012.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2012–9860 Filed 4–24–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0421; Directorate Identifier 2012–NM–042–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Boeing Company Model 757 airplanes. This proposed AD was prompted by a report of in-flight fracture of the right windshield (window 1) on the flight deck and multiple reports of electrical arcs at the terminal blocks of the flight deck windshields resulting in smoke and fire. This proposed AD would require repetitive inspections of electrical heat terminals on the left and right windshields for damage, and corrective actions if necessary. This proposed AD would also allow for replacing an affected windshield with a windshield equipped with different electrical connections, which would terminate the repetitive inspections for that windshield. We are proposing this AD to prevent smoke and fire in the flight deck, which can lead to loss of visibility, and injuries to or incapacitation of the flight crew.

DATES: We must receive comments on this proposed AD by June 11, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above 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, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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: Elias Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6478; fax: 425–917–6590; email: *Elias.Natsiopoulos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0421; Directorate Identifier 2012–NM–042–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 have received nine reports from eight operators that electrical arcs occurred at the lower terminal blocks of the flight deck windshields. AD 2010–15–01, Amendment 39–16367 (75 FR 39804, July 13, 2010), addresses the lower electrical connections. We have also received reports of four failures of upper terminal blocks on Model 757 airplanes. In more than one incident, the arcs resulted in open flames. While in flight, one Model 757–200 series airplane experienced smoke in the cockpit, followed by the fracture of the inner pane of the first officer's windshield (right window 1). This windshield fracture resulted in total loss of the first officer's outside visibility and small shards of glass striking the first officer. Examination of the fractured windshield revealed evidence of arcing at the upper outboard (J1) and the upper inboard (J4) windshield electrical heat terminal connections. The inner pane fracture initiated beneath the J4 terminal block.

The electrical connections on the windshields are made with lugs that attach with screws to the terminal block. A loose connection increases the heat at the terminal, which can cause damage to the internal joints (including solder, if present). Damaged solder joints are the primary cause of the electrical arcs. The primary cause of loose connections is the incorrectly torqued or incorrectly installed screw. This condition, if not corrected, could result in smoke and fire in the flight deck, which can result in the loss of visibility, and injuries to or incapacitation of the flightcrew.

Other Related Rulemaking

On July 6, 2010, the FAA issued AD 2010–15–01, Amendment 39–16367 (75 FR 39804, July 13, 2010), applicable to certain Boeing Model 757, 767, and 777 series airplanes, which requires repetitive inspections for damage of the electrical terminal (J5 terminal) at the left and right flight deck window 1 windshield, and corrective actions if necessary. The most forward flight deck windows are referred to as windshields and named left and right window 1 respectively. The actions required by that AD are intended to prevent smoke and fire in the cockpit, which could lead to loss of visibility, and injuries to or incapacitation of the flight crew. Accomplishing the actions in this proposed AD would terminate the requirements of AD 2010–15–01 for Model 757 airplanes.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 16, 2011 (for Model 757–200, –200PF, and –200CB series airplanes); and Boeing Special Attention Service Bulletin 757–30–0020, Revision 3, dated December 16, 2011 (for Model 757–300 series airplanes). This service information describes procedures for repetitive detailed inspections for damage (including, but not limited to, arcing, loose terminals, heat damage, cross-threaded connections, and cracking) of the wiring and electrical terminals J1, J4, and J5 at the left and right flight deck windshields; and corrective actions if necessary.

The corrective actions include applying correct torque to a loose electrical connection, replacing any damaged terminal lug with a new lug, repairing damaged wiring, and replacing an unserviceable windshield with a new or serviceable windshield. Boeing Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 16, 2011 (for Model 757–200, –200PF, and –200CB series airplanes); and Boeing Special Attention Service Bulletin 757–30–0020, Revision 3, dated December 16, 2011 (for Model 757–300 series airplanes); specify that the replacement windshield can be either a new or serviceable windshield that uses screws and lugs for the electrical connection, or a new or serviceable windshield that uses pins and sockets for the electrical connections.

For airplanes on which a new windshield that uses pins and sockets is installed, Boeing Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 16, 2011 (for Model 757–200, –200PF, and –200CB series airplanes); and Boeing Special Attention Service Bulletin 757–30–0020, Revision 3, dated December 16, 2011 (for Model 757–300 series airplanes); also specify changing the related wire bundle and cutting the bulb seal to give clearance for terminals on the replacement windshield. This service information specifies that installing a windshield that uses pins and sockets for the electrical connections eliminates the need for the repetitive detailed inspections for that windshield.

Boeing Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 16, 2011 (for Model 757–200, –200PF, and –200CB series airplanes); and Boeing Special Attention Service Bulletin 757–30–0020, Revision 3, dated December 16, 2011 (for Model 757–300 series airplanes); also specify repetitive detailed inspections for damage of any windshield that is replaced with a windshield that uses screws and lugs for the heat connection, or if a windshield heat power connection is reassembled on windshields that use screws and lugs for the heat connection.

FAA's Determination

We are proposing 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 the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

Differences Between the Proposed AD and the Service Information

Although Boeing Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 16, 2011 (for Model 757–200, –200PF, and –200CB series airplanes); and Boeing Special Attention Service Bulletin 757–30–0020, Revision 3, dated December 16, 2011 (for Model 757–300 series airplanes); recommend accomplishing certain inspections, window replacement, and reassembly of the electrical connections within 500 flight hours or 150 days, whichever occurs first, we have determined that a compliance time of within 500 flight hours after the effective date of this AD addresses the identified unsafe condition soon enough to ensure an adequate level of safety for the affected fleet. This difference has been coordinated with The Boeing Company.

Costs of Compliance

We estimate that this proposed AD affects 664 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed inspection of windshields.	3 work-hours × $85 per hour = $255 per inspection cycle.	$0	$255 per inspection cycle.	$169,320 per inspection cycle.

We estimate the following costs to do any necessary corrective actions that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these corrective actions.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Windshield replacement and changes to related wiring including lug replacement.	9 work-hours × $85 per hour = $765 per windshield.	$19,687 per windshield	$20,452 per windshield.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2012–0421; Directorate Identifier 2012–NM–042–AD.

(a) Comments Due Date

We must receive comments by June 11, 2012.

(b) Affected ADs

This AD affects AD 2010–15–01, Amendment 39–16367 (75 FR 39804, July 13, 2010).

(c) Applicability

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

(1) Model 757–200, –200PF, and –200CB airplanes identified in Boeing Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 16, 2011.

(2) Model 757–300 airplanes identified in Boeing Special Attention Service Bulletin 757–30–0020, Revision 3, dated December 16, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 30, Ice and Rain Protection.

(e) Unsafe Condition

This AD was prompted by a report of in-flight fracture of the right windshield (window 1) on the flightdeck and multiple reports of electrical arcs at the terminal blocks of the flight deck windshields resulting in smoke and fire. We are issuing this AD to prevent smoke and fire in the flight deck, which can lead to loss of visibility, and injuries to or incapacitation of the flight crew.

(f) Compliance

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

(g) Inspection and Repair

Within 500 flight hours after the effective date of this AD, except as required by paragraph (h) of this AD: Do a detailed inspection for damage of the wiring and electrical terminal blocks (J1, J4, and J5 terminals) at the left and right flight deck window 1 windshield, and do all applicable corrective actions, by accomplishing all the applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 16, 2011 (for Model 757–200, –200PF, and –200CB series airplanes); or Boeing Special Attention Service Bulletin 757–30–0020, Revision 3, dated December 16, 2011 (for Model 757–300 series airplanes). Except as provided by paragraph (j) of this AD, do all applicable corrective actions before further flight. Repeat the detailed inspection thereafter at the applicable interval specified in paragraph (g)(1) or (g)(2) of this AD. Doing the replacement specified in paragraph (k) of this AD terminates the repetitive inspection

requirements of this paragraph for that replaced flight deck windshield.

(1) For flight deck windshields manufactured by GKN Aerospace (GKN) with screw/lug electrical connections, repeat the detailed inspection thereafter at intervals not to exceed 12,000 flight hours or 48 months, whichever occurs later.

(2) For flight deck windshields manufactured by PPG Aerospace (PPG) with screw/lug electrical connections, repeat the detailed inspection thereafter at intervals not to exceed 6,000 flight hours or 24 months, whichever occurs later.

(h) Compliance Time Exception for Previous Inspection

For airplanes on which inspections of the J1, J4, and J5 terminals, as specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–30–0019, Revision 2, dated April 19, 2010 (for Model 757–200, –200PF, and –200CB series airplanes); or Boeing Special Attention Service Bulletin 757–30–0020, Revision 2, dated March 31, 2010 (for Model 757–300 series airplanes); were accomplished before the effective date of this AD: Do the actions required by paragraph (g) of this AD at the applicable compliance time specified in paragraphs (h)(1) and (h)(2) of this AD. Repeat the inspection thereafter at the applicable intervals specified in paragraphs (g)(1) or (g)(2) of this AD.

(1) For flight deck windshields manufactured by GKN with screw/lug electrical connections: At the later of the times specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD.

(i) Within 12,000 flight hours or 48 months, whichever occurs later, after accomplishing the inspection.

(ii) Within 500 flight hours after the effective date of this AD.

(2) For flight deck windshields manufactured by PPG with screw/lug electrical connections: At the later of the times specified in paragraphs (h)(2)(i) and (h)(2)(ii) of this AD.

(i) Within 6,000 flight hours or 24 months, whichever occurs later, after accomplishing the inspection.

(ii) Within 500 flight hours after the effective date of this AD.

(i) Inspection for Replaced Windshield or Reassembled Heat Power Connection

For any windshield replaced after the effective date of this AD with a windshield that uses screws and lugs for electrical heat connection, or if a windshield heat power connection is reassembled on windshields that use screws and lugs for windshield heat connections: Do the actions required in paragraph (g) of this AD within 500 flight hours after the windshield replacement or connection reassembly, and thereafter at the applicable interval specified in paragraph (g)(1) or (g)(2) of this AD, as applicable.

(j) Exception to Compliance Time for Certain Windshield Replacement

If, during the inspection required by paragraph (g) or (i) of this AD, the screw is found cross threaded: Do the applicable actions specified in paragraph (j)(1) or (j)(2) of this AD.

(1) If the terminal lug is loose and cannot be tightened: Before further flight, replace that windshield, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 16, 2011 (for Model 757–200, –200PF, and –200CB series airplanes); or Boeing Special Attention Service Bulletin 757–30–0020, Revision 3, dated December 16, 2011 (for Model 757–300 series airplanes).

(2) If the terminal lug is tight or can be tightened: Replace that windshield within 500 flight hours after the inspection, in accordance with the Accomplishment Instructions Boeing Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 16, 2011 (for Model 757–200, –200PF, and –200CB series airplanes); or Boeing Special Attention Service Bulletin 757–30–0020, Revision 3, dated December 16, 2011 (for Model 757–300 series airplanes).

(k) Optional Terminating Action

Replacing a flight deck windshield that uses screws and lugs for the electrical connections with a flight deck windshield that uses pins and sockets for the electrical connections, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 16, 2011 (for Model 757–200, –200PF, and –200CB series airplanes); or Boeing Special Attention Service Bulletin 757–30–0020, Revision 3, dated December 16, 2011 (for Model 757–300 series airplanes); ends the repetitive inspection requirements of paragraph (g) of this AD for that windshield.

(l) Related AD Termination

Accomplishing the actions required by this AD terminates the requirements of AD 2010–15–01, Amendment 39–16367 (75 FR 39804, July 13, 2010), paragraphs (g), (j), and (k), for that airplane only.

(m) Credit for Previous Actions

This paragraph provides credit for the actions required by this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 757–30–0019, Revision 2, dated April 19, 2010 (for Model 757–200, –200PF, and –200CB series airplanes); or Boeing Special Attention Service Bulletin 757–30–0020, Revision 2, dated March 31, 2010 (for Model 757–300 series airplanes).

(n) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office, 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.

(o) Related Information

(1) For more information about this AD, contact Elias Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6478; fax: 425–917–6590; email: *Elias.Natsiopoulos@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, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–9916 Filed 4–24–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket Nos. AD12–14–000 and AD11–11–000]

Open Access and Priority Rights on Interconnection Facilities

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Inquiry.

SUMMARY: In this Notice of Inquiry, the Commission seeks comment on open access and priority rights for capacity on interconnection facilities.

DATES: Comments are due June 11, 2012.

ADDRESSES: You may submit comments, identified by docket number and in accordance with the requirements posted on the Commission's Web site, *http://www.ferc.gov*. Comments may be submitted by any of the following methods:

- *Agency Web Site:* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format, at *http://www.ferc.gov/docs-filing/efiling.asp*.

• *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand-deliver an original and copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426. These requirements can be found on the Commission's Web site, see, *e.g.,* the ''Quick Reference Guide for Paper Submissions,'' available at *http://www.ferc.gov/docs-filing/efiling.asp*, or via phone from Online Support at (202) 502–6652 or toll-free at 1–866–208–3676.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

Becky Robinson (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8868.

Christopher Thomas (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8412.

Olga Kolotushkina (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6024.

SUPPLEMENTARY INFORMATION:

139 FERC ¶ 61,051

	Docket Nos.
Open Access and Priority Rights on Interconnection Facilities	AD12–14–000
Priority Rights to New Participant-Funded Transmission	AD11–11–000

Notice of Inquiry

April 19, 2012.

1. In this Notice of Inquiry (NOI), the Commission seeks to explore whether, and, if so, how the Commission should revise its current policy concerning priority rights and open access with regard to certain interconnection facilities. In a series of cases that have come before the Commission in recent years, the Commission has treated certain interconnection facilities [1] as transmission facilities for purposes of open access policies. However, the Commission has permitted an owner of interconnection facilities to have priority to capacity over its facilities for its existing use at the time of a third-party request for service.[2] In the instance where an owner of interconnection facilities has specific, pre-existing generator expansion plans with milestones for construction of generation facilities and can demonstrate that it has made material progress toward meeting those milestones, the Commission may grant priority rights for the capacity on the interconnection facilities to those future generation projects or expansions as well.[3] Further, an affiliate of the current interconnection facility owner that is developing its own generator projects also may obtain priority rights to the capacity on the interconnection facilities by meeting the ''specific plans and milestones'' standard with respect to future use, provided that the plans include a future transfer of ownership of the interconnection facilities to such an affiliate.[4] This granting of priority rights preserves the ability of the generation developer to deliver its output to the point of interconnection with the transmission system, so long as it can make the relevant showing to the Commission sufficient to justify priority. The Commission requires that, upon receipt of a request for transmission service from an unaffiliated third party, a *pro forma* Open Access Transmission Tariff (OATT) must be filed by the owner of the facilities considered interconnection facilities under Order No. 2003 within 60 days of the date of the request.[5]

2. To date, the Commission has applied this policy on a case-by-case basis. The Commission's current policy is guided by the desire to prevent undue discrimination by ensuring that third parties have open access to available transfer capability that is not being used by the owner of the interconnection facilities. In doing so, the Commission has considered priority access to firm service, and granted waivers of certain provisions in the *pro forma* OATT to reflect the limited service available over interconnection facilities and the limited ability of generation developers to support certain OATT ancillary services and requirements.

3. Through this Notice of Inquiry, the Commission seeks comment on options for addressing priority rights on interconnection facilities given the responses filed to the March 2011 technical conference, which identified a number of concerns with the Commission's current policy. As discussed in the sections that follow, the Commission seeks comments on alternative approaches to govern third-party requests for service and priority rights: continued use of an OATT framework with potential modification and clarification, including the potential introduction of a safe harbor period, and a case-by-case determination on the generation developer's priority rights; and use of a Large Generator Interconnection Agreement (LGIA)/Large Generator Interconnection Procedures (LGIP) framework in which the existing LGIA provisions that govern third-party use of a transmission provider's interconnection facilities would be extended to interconnection customer's interconnection facilities (i.e., allowing parties to mutually agree to the use of and compensation for the facilities). The Commission also seeks comment on the scope of our inquiry in this proceeding and whether, as a threshold matter, there is a need to reconsider the Commission policy as set forth in the recent series of cases.[6]

4. We note that there are numerous and potentially detailed issues embedded within the broad categories of this NOI. We encourage all interested stakeholders to address the specific questions for which the Commission seeks comment and to include as appropriate any proposed tariff language that should be considered.[7] We also encourage comments on how any individual potential policy change discussed below would affect the viability of other policies (*e.g.,* if the Commission were to adopt a safe harbor period, what are the implications for the current policy of demonstrating specific plans and milestones to secure priority rights)?

[1] As noted below, the Commission in the past has used the term ''generator lead lines'' to describe the class of facilities at issue in this proceeding. In this NOI, we will use the term ''interconnection facilities,'' except when referencing comments on generator lead lines.

[2] *See Milford Wind Corridor, LLC,* 129 FERC ¶ 61,149, at P. 24 (2009) (*Milford*); *Terra-Gen Dixie Valley, LLC,* 132 FERC ¶ 61,215, at P. 49 (2010) (*Terra-Gen I*).

[3] *Aero Energy LLC,* 116 FERC ¶ 61,149, at P. 28 (2006) (*Aero*); *Milford,* 129 FERC ¶ 61,149 at P. 22; and *Alta Wind,* 134 FERC ¶ 61,109, at P. 16–17 (2011) (*Alta Wind*). Such plans and initial progress also must pre-date a valid request for service. *Terra-Gen I,* 132 FERC ¶ 61,215 at P. 53.

[4] *See Milford,* 129 FERC ¶ 61,149 at P. 5.

[5] *Black Creek Hydro, Inc.,* 77 FERC ¶ 61,232, at 61,941 (1996); *Termoelectrica U.S., LLC,* 105 FERC ¶ 61,087, at P. 11 (2003).

[6] *See, e.g., Aero,* 116 FERC ¶ 61,149; *Milford,* 129 FERC ¶ 61,149; *Terra-Gen I,* 132 FERC ¶ 61,215; and *Alta Wind,* 134 FERC ¶ 61,109.

[7] The Commission distinguishes this proceeding from the North American Electric Reliability Corporation's (NERC) current investigation into the applicability of Reliability Standards to interconnection facilities (Project 2010–07). Comments related to NERC's investigation are not the subject of this Notice of Inquiry and should be directed to NERC.

I. Background

5. Interconnection facilities are constructed to enable a generation facility or multiple generation facilities to transmit power from the generation facility to the integrated transmission grid. They are radial in nature, with a single point of interconnection with the network grid, and power flows toward the network grid, with no electrical loads between the generation facilities and the point of interconnection with the network grid. Interconnection facilities can be relatively short ancillary components to a single generation facility.[8] Alternatively, they may span much longer distances and represent significant transmission capacity, being capable of interconnecting additional generation projects.[9]

6. Ownership and operation of interconnection facilities may take several forms. Under Order No. 2003,[10] generation developers that wish to interconnect their generation facilities to the integrated transmission grid must submit an interconnection request to the relevant transmission provider pursuant to the transmission provider's LGIP and develop an LGIA. Interconnection facilities that are owned, controlled, or operated by the transmission provider, regardless of which party constructed the facilities, are designated as transmission provider's interconnection facilities under the LGIA. Third party use of the transmission provider's interconnection facilities is governed by the provisions of the LGIA.[11] This provision permits the parties to negotiate for a third party to use the interconnection facilities and entitles the original interconnection customer to compensation for capital expenses it incurred to pay for the transmission provider's interconnection facilities and to compensation for the ongoing costs, including operation and maintenance costs, based on a *pro rata* use among the parties.

7. However, where a generation developer has funded and constructed a portion of the interconnection facilities, and does not transfer ownership or operational control of those facilities to the transmission provider after construction, under the *pro forma* LGIA those facilities are classified as interconnection customer's interconnection facilities. That is, interconnection customers' interconnection facilities are located between the generation facility and the point at which either the transmission provider's interconnection facilities begin or the point of interconnection with the transmission provider's transmission system. Section 9.9.2 of the *pro forma* LGIA is inapplicable to third-party requests for use of an interconnection customer's interconnection facilities. These interconnection customer's interconnection facilities are the types of facilities at issue in this proceeding.

March 2011 Technical Conference

8. The Commission held a technical conference in March 2011 to explore, among other things, the application of the Commission's open access policies to generator lead lines[12] in the instance when affiliated or unaffiliated third-party generators also seek to use these facilities.[13] Generally, commenters assert that these policies may be unduly burdensome and ill-suited for generator lead lines, and may have detrimental implications for the future development and financing of generator lead lines and their associated generation projects, especially renewable energy projects.[14] Specifically, commenters[15] argue that the Commission should recognize the commercial, technological, legal, and other differences between transmission lines and these generator lead lines when considering open access principles in the context of radial generator lead lines. Further, commenters raise a number of concerns with the Commission's current practice of imposing an OATT Filing requirement on generator lead line developers.

9. Among the unique attributes of generator lead lines, commenters suggest the following features: (1) Generator lead lines are radial lines that serve the limited and sole purpose of connecting generation facilities to the transmission network, i.e., they are not an element of the integrated transmission network; (2) generator lead lines do not provide benefits to the transmission system in terms of capability or reliability, and cannot be relied on for coordinated operation of the transmission system; (3) an outage on the generator lead lines would not affect the entire transmission system; (4) generator lead lines do not provide ancillary services; (5) generator lead lines are often located in remote regions not in close proximity to load; (6) generator lead lines are owned by entities entirely different than those that typically own transmission; and (7) generator lead lines are viewed by their developers and banks providing financing as an integral part of the whole, not as a project or business separate from the generating facility.[16]

10. Among the main concerns raised, commenters[17] identify a ''free rider'' problem that, in their opinion, produces a disincentive to be the first developer to build a generator lead line, while creating a relative advantage for other generation developers to be second in line.[18] Several commenters[19] argue that being subject to the open access requirements of Order Nos. 888, 889, and 890 (including the obligations to file an OATT within 60 days of a request for service and to administer an OATT, Open Access Same Time Information System, Standards of Conduct, and Uniform System of Accounts) imposes significant costs and difficulties for independent developers, especially small ones that are not affiliated with large utilities.[20] These developers assert that complying with such responsibilities, in addition to the obligation to commence studies related to a third-party request for service, may require expenditure of a significant portion of their capital, and require

[8] *See, e.g., Southern Company Serv., Inc.,* Docket No. ER12–554–000 (involving an approximately 2,000 foot interconnection facility).

[9] *See, e.g., Bayonne Energy Center,* 136 FERC ¶ 61,019 (2011) (involving a 345 kV interconnection facility); *Terra-Gen I,* 132 FERC ¶ 61,215 (involving a 212 mile interconnection facility).

[10] *Standardization of Generator Interconnection Agreements and Procedures,* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g,* Order No. 2003–A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g,* Order No. 2003–B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g,* Order No. 2003–C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs* v. *FERC,* 475 F3d. 1277 (D.C. Cir. 2007), *cert. denied,* 552 U.S. 1230 (2008).

[11] Section 9.9.2 states ''* * * if the Parties mutually agree, such agreement not to be unreasonably withheld, to allow one or more third parties to use Transmission Provider's Interconnection Facilities, or any part thereof, Interconnection Customer will be entitled to compensation for the capital expenses it incurred in connection with the Interconnection Facilities based upon the *pro rata* use of the Interconnection Facilities by the Transmission Provider, all third-party users and the Interconnection Customer * * *.''

[12] The technical conference announcements and participants used the term ''generator lead lines.'' While for this NOI we think it is appropriate to hold the discussion in terms of interconnection facilities, in the interest of being true to the comments, we will maintain the use of the term ''generator lead lines'' in this section.

[13] *Priority Rights to New Participant-Funded Transmission,* March 15, 2011 Technical Conference, AD11–11–000.

[14] The list of entities that filed comments or participated at this conference is in Appendix A of this NOI.

[15] First Wind, Invenergy, Duke, and NextEra.

[16] *See, e.g.,* First Wind at 2–4; Invenergy at 1–2; Duke at 5–6; and NextEra at 12–13.

[17] Invenergy, CAHW, First Wind, Puget, and MidAmerican.

[18] *See, e.g.,* Puget at 14–15; MidAmerican at 14–15.

[19] SCE, BP, CAHW, Puget, National Grid, MidAmerican, and Wenner.

[20] *See, e.g.,* Puget at 7–8; AWEA at 10.

additional expertise, hardware, software, and staffing resources.[21]

11. Although these expenses may generally be considered normal costs of operating in a regulated environment, commenters argue that the costs are triggered by a relatively low threshold event—a written request unaccompanied by any deposit.[22] Thus, commenters assert that the minimal commitment required for third-party requests for transmission service on generator lead lines may not sufficiently distinguish serious customers from those who may have merely a speculative interest in taking transmission service, while the generator lead line owner is immediately affected by having to file an OATT, expend significant staff resources, and incur significant costs to evaluate the feasibility of providing the requested service.[23]

12. Commenters also state that priority rights on their generator lead line are essential for the financing of generation projects because priority rights provide lenders with assurance that developers will still be able to use the line for their planned generation facilities.[24] Commenters assert that lenders are wary of financing generation projects without a guarantee that the generator lead line will have sufficient capacity available to transmit the generation to the grid, for both early and later phases of their generation projects.[25] In addition, commenters [26] argue that generator developers are concerned with the policy of demonstrating ''specific plans and milestones,'' as it is unclear to them which milestones need to be described and which factors would adequately demonstrate material progress towards those milestones. They note that, although the Commission has found certain evidence sufficient in prior cases,[27] its review was limited largely to privileged and confidential evidence, which could not be described in the Commission orders or otherwise disclosed to the public.[28] Also, commenters argue that, given the uncertainty of generation project development due to financing, permitting, and various other factors, it may be neither possible for a generator developer to provide the needed detail about phases of generation that will be constructed in the future, nor prudent for developers to prematurely enter into binding contractual commitments merely for purposes of attempting to demonstrate priority rights.[29]

13. Commenters note that certain sections of the *pro forma* OATT may be inapplicable to generator lead lines on a generic basis. For instance, commenters argue that a single circuit generator lead line can only provide firm or non-firm point-to-point service and cannot provide network service,[30] so the *pro forma* OATT's standard terms and conditions for network service are unnecessary.[31] Additionally, several commenters assert that because generator lead line owners do not have the capability to supply many ancillary services to third parties, the ancillary services provisions of the *pro forma* OATT are likewise inapplicable.[32] Further, commenters argue that the planning requirements included in Attachment K of the OATT may be an unnecessary regulatory burden for generator developers of generation lead lines, as they have no native load growth, they do not own network transmission facilities, will not typically expand their lines absent a request for service, and the costs of such facilities are not socialized or based on a regional planning needs analysis.[33]

14. Commenters concede that generator lead line owners are free to propose non-rate terms and conditions that differ from the *pro forma* OATT, where each deviation is supported by a demonstration that it is consistent with or superior to the *pro forma* OATT or does not apply given the particular generator lead line owner's business model.[34] However, rather than the Commission continuing to evaluate such requests on a case-by-case basis, some commenters [35] suggest that the Commission should establish a new *pro forma* OATT to apply generically to all generator lead lines.

15. As an alternative to the current Commission policy, some commenters suggest expanding section 9.9.2 of the LGIA, which addresses third-party access to transmission provider's interconnection facilities, to apply to interconnection customer's interconnection facilities as well, and argue that doing so would render unnecessary the requirement for the original interconnection customer to file an OATT when a third party requests service on their interconnection facilities.[36] They argue that treating a generator requesting access to interconnection facilities as an interconnection request is a pragmatic approach that more accurately characterizes the service being sought, and eliminates the unduly burdensome and costly obligations imposed upon generation developers under the Commission's current policies that commenters assert impedes the development of location-constrained renewable generation.[37]

16. Further, commenters express concern that the current policy does not adequately engage the transmission provider in the process of interconnecting a third-party requestor of service on a generator lead line.[38] To reach load and serve customers under current policy, a third party may be required to make separate requests for access to the original interconnection customer's interconnection facilities and the transmission provider's interconnection facilities, as well as a transmission service request on the interconnecting transmission provider's transmission system.[39] Commenters assert that this bifurcated process is inefficient.[40]

17. Transmission providers,[41] however, caution the Commission against discriminating against existing transmission providers *vis-à-vis* independent merchant transmission developers with regard to priority rights or other regulatory requirements. Transmission providers argue that any separate treatment for independent developers is not appropriate, as transmission providers do not want to

[21] *Id.*

[22] *See, e.g.,* BP at 8; CAWH at 3; and NextEra at 20–21. Commenters appear to be referring to sections 17.2, 18.2, or 29.2 of the *pro forma* OATT, which set forth information required for a completed application. In addition, where the owner of the facilities does not have an OATT on file, a third-party customer does not need to submit a deposit as part of its application for transmission service to the interconnection facilities. *See Sagebrush, a California Partnership,* 130 FERC ¶ 61,093, at P 57, *order on reh'g,* 132 FERC ¶ 61,234 (2010) (*Sagebrush*). We note that the deposit is required once an OATT is filed. *See also Sagebrush,* 132 FERC ¶ 61,234 at P 44; *Terra-Gen I,* 132 FERC ¶ 61,215 at n.84.

[23] *See, e.g.,* BP at 8; NextEra at 20–21.

[24] *See, e.g.,* First Wind at 3–4.

[25] *See, e.g.,* Allete at 2.

[26] Allete, BP and NextEra.

[27] *See Aero,* 118 FERC ¶ 61,210 at P 22; *Milford,* 129 FERC ¶ 61,149 at P 22; and *Alta Wind,* 134 FERC ¶ 61,109 at P 17.

[28] NextEra at 22; BP Wind at 7.

[29] *See, e.g.,* NextEra at 24; First Wind at 4.

[30] *See, e.g., Sagebrush,* 130 FERC ¶ 61,093 at P 29 (waiving the *pro forma* OATT's provisions for network service to a single transmission line that does not have a control area or the generation resources necessary to provide network service). *See also Terra-Gen Dixie Valley, LLC,* 134 FERC ¶ 61,027, at P 10–12 (2011) (*Terra-Gen II*).

[31] *See, e.g.,* First Wind at 6–7.

[32] *See, e.g.,* First Wind at 6–7; AWEA at 11; Edison Mission at 25; and NextEra at 13.

[33] *See, e.g.,* NextEra at 19–20.

[34] *See, e.g., Montana-Alberta Tie, Inc.,* 116 FERC ¶ 61,071, at P 60 (2006) (*MATL*).

[35] NextEra, AWEA, SCE, CAHW, NU/NSTAR, and First Wind.

[36] Puget at 8; Edison Mission at 17.

[37] Edison Mission at 19.

[38] *See, e.g.,* Puget at 11.

[39] Puget at 9.

[40] *See, e.g., id.* at 10.

[41] SCE at 3; Puget at 7; and MidAmerican at 6.

be disadvantaged or discouraged from constructing generator lead lines. Instead, these commenters favor any future policies or clarifications of existing policy to be based on the type of facility being constructed, not on the entity that is proposing to own the facility.[42]

II. Discussion

A. Scope of Inquiry

18. In this NOI, the Commission seeks comment on various options for addressing third-party access to and priority rights on interconnection customer's interconnection facilities. Appendix B to this document provides a schematic and explanation of what the Commission believes to be a typical situation. Much of the discussion and questions in this NOI derive from this understanding. As discussed above, Order No. 2003 addresses third party use of transmission provider interconnection facilities, but not interconnection customer interconnection facilities. With a goal of ensuring that a third party generator (G2) may be able to interconnect to interconnection customer interconnection facilities that in some instances have been 30, 50, or even hundreds of miles long, and up to 345 kV, the Commission has in a series of recent cases treated interconnection customer interconnection facilities as transmission facilities for purposes of open access policies and required that the original developer (G1) file an OATT within 60 days of a request for service on these facilities. In light of comments received, and as discussed in the sections that follow, the Commission seeks comments on two alternative approaches to govern third-party use and priority rights to use: (1) Continued use of an OATT framework with potential modification and clarification, including the potential introduction of a safe harbor period, and a case-by-case determination on the generation developer's priority rights; or (2) use of a LGIA/LGIP framework in which the existing LGIA provisions that govern third-party use of transmission provider's interconnection facilities would be extended to interconnection customer's interconnection facilities. In addition to the details of each approach, the Commission seeks comment on the relative ability of each to meet customer needs while ensuring that the rates, terms, and conditions of jurisdictional services remain just and reasonable and not unduly discriminatory.

19. At the outset, however, the Commission also seeks comment on the scope of our inquiry in this proceeding and whether, as a threshold matter, there is a need to reconsider existing Commission policies. With the passage of time, concerns raised at the March 2011 technical conference and in subsequent comments may have been addressed as the industry has considered the Commission's existing precedent. If not, additional views on what approach would be most effective in addressing third-party requests for service and/or evaluating priority rights on interconnection facilities would be useful. The Commission encourages commenters to discuss their views of the needs of their business models in the context of the Commission's open access and interconnection policies, which are designed to ensure that transmission service is made available on terms that are just and reasonable and not unduly discriminatory.

20. As noted above, the Commission intends that the focus of this proceeding is on interconnection customers' interconnection facilities as a class of facilities. If commenters disagree that this is the set of facilities at issue, then they should explain their understanding of the facilities at issue (referencing the drawing in Appendix B) and respond to the questions below in terms of the set of facilities they believe is at issue, and clarify that they are doing so. Similarly, if commenters distinguish application of certain policies based on the size of a facility or other characteristics, then they should respond to the questions below in terms of the relevant characteristics, and clarify that they are doing so.

21. Specifically, the Commission seeks comment on these issues:

i. To what specific set of facilities are commenters' concerns directed? That is, are commenters' concerns directed toward access to interconnection customer interconnection facilities, or to both interconnection customer interconnection facilities and transmission provider interconnection facilities?

ii. Is requiring interconnection customer interconnection facilities to provide third-party access under an OATT framework necessary to ensure against undue discrimination and ensure just and reasonable rates, given that developers of remote generation are building interconnection facilities of considerable length and/or size?

iii. Has the Commission's current policy blurred the pre-existing line between interconnection service and transmission service with respect to providing for third-party access to interconnection facilities in such a way as to create unintended consequences?

iv. Has industry largely adapted to current Commission policy such that the Commission should continue its current policy? If not, should the Commission respond to concerns expressed at the Technical Conference with (a) potential clarification of and modification to its current policy of treating interconnection facilities under the OATT framework; or (b) adoption of a framework under which it would consider issues of third-party access and priority rights under its interconnection rules and procedures?

v. Should the Commission consider different treatment for larger versus smaller interconnection facilities, *e.g.,* treating larger interconnection facilities under the OATT framework and smaller interconnection facilities under the LGIA/LGIP framework? If so, what would be the appropriate threshold for separating large versus small interconnection facilities (*e.g.,* voltage, miles, or potential third party interconnection)? Should any distinctions be made among existing interconnection facilities, planned expansions of existing interconnection facilities, and new interconnection facilities, for any of the options?

vi. From commenters' perspective, is there a meaningful distinction between the interconnection/operation of facilities proposed to provide independent transmission service (*e.g., Chinook*[43]) and generator interconnection facilities of long length and high voltage (*e.g., Terra Gen I*)?

vii. Are there circumstances under which it would be feasible and/or desirable to allow the generation developer to choose whether its interconnection facilities would be governed by the OATT framework or the LGIA/LGIP framework, with the attendant rights and responsibilities of either choice?

viii. For purposes of access policies, should the Commission distinguish between affiliates and nonaffiliates even when parties have otherwise agreed to the terms and conditions of access to the facilities?

ix. Are there additional approaches that the Commission should consider? Be specific as to details. For example, commenters mention common facilities agreements (CFAs) as a means for parties to agree on access to interconnection customer's interconnection facilities.[44] Commenters also mention a rebuttable *de minimis* exception for small interconnection customer's interconnection facilities.

x. To the extent that the concerns regarding third-party use and priority rights do not exist for transmission provider's interconnection facilities, why would a generation developer that builds its own interconnection facilities choose to retain operational control of them as opposed to

[42] *See, e.g.,* Puget at 3.

[43] *Chinook Power Transmission, LLC,* 126 FERC ¶ 61,134 (2009) (*Chinook*).

[44] *See, e.g., BP Wind Energy North America Inc.,* 129 FERC ¶ 61,207 (2009) (for an order accepting a CFA among affiliated parties and granting waiver of the requirements of Order Nos. 888 and 890). *See Sky River, LLC,* 134 FERC ¶ 61,064, at P 13 (2011) (for an order rejecting a CFA between unaffiliated parties and denying waiver of the requirements of Order Nos. 888 and 890). *But see Ashtabula Wind, LLC,* 127 FERC ¶ 61,215 at P 10 (2009) (granting waiver of the OATT requirements of Order Nos. 888 and 890 in the context of a Common Facilities Agreement between two unaffiliated parties).

turning them over to the transmission provider?

B. Alternative Approaches for Comment

1. Open Access Transmission Tariff Framework

22. If the Commission were to maintain reliance on the existing OATT framework, should it be modified to recognize the characteristics of interconnection customer's interconnection facilities and needs of generation developers?

a. Clarification of Specific Plans and Milestones Evaluation

23. Our current case-by-case policy of determining a generation developer's priority rights to its interconnection facilities provides a degree of flexibility and recognizes that there is not necessarily a standard method for development of generation projects. However, as mentioned above, some commenters voice concerns that the Commission's current case-by-case evaluation of generation developers' requests for priority rights on their interconnection facilities based on the demonstration of specific plans and milestones for construction of their generation projects is not clear. To address this concern, the Commission could be more prescriptive on the ''specific plans and milestones'' standard to provide direction to generation developers seeking to establish their firm priority rights. Such requirements could include the type of evidence that would be indicative of sufficient ''specific plans and milestones,'' and the factors to be considered in determining whether ''material progress has been made.''

24. The Commission seeks comment on issues related to the evaluation of specific plans and milestones in requests for priority rights to use capacity on interconnection customer's interconnection facilities. Specifically:

i. Should the Commission continue its practice of evaluating requests for priority rights for interconnection customer's interconnection facilities on a case-by-case basis? If so, should the existing standards used to evaluate sufficiency of evidence to demonstrate priority be clarified or modified? How?

ii. Should the Commission require generation developers to meet a given set of uniform criteria to secure priority rights? If so, what are the necessary criteria and what types of evidence are sufficient to demonstrate these criteria? Or, should generation developers have the flexibility to demonstrate the sufficiency of their plans based on various criteria, and what might these criteria be? In this regard, how should the Commission balance needs for regulatory certainty and flexibility?

b. OATT Filing Trigger

25. The Commission's current policy to grant waiver of the requirement to file an OATT prior to the receipt of a third-party request for transmission is designed to reduce the regulatory burden on entities that did not intend to be transmission providers. However, as noted above, several commenters express concern with the existing standard for what constitutes a valid third-party request for service on interconnection customer's interconnection facilities. One panelist suggests that the standard for a third-party request should be at least to match the level of generation development that has been demonstrated by the original interconnection customer,[45] although one commenter argues that this is an impossible standard because a generation developer is limited in how far it can proceed with its project until it has secured transmission capacity.[46] One commenter also argues that generation developers should be allowed to require that transmission customers satisfy more stringent creditworthiness standards than currently required, because generation developers, in forming their business models and capital structure, do not contemplate taking on significant credit risks of competing generators.[47]

26. Some commenters suggest modifying the rules for when and under what circumstances an OATT would need to be filed. For example, commenters argue that extending the current 60-day requirement to file an OATT is justified because of a possibility that a third party requesting service might withdraw after the generation developer has incurred significant costs in putting an OATT into place, including the internal structure to administer it.[48] One commenter suggests requiring the generation developer to file a notice of a request for service within a certain number of days after receiving a request, and requiring them to file an OATT only after a generation interconnection agreement or a transmission service agreement is executed. They argue that this process would allow the generation developer to focus on performing the necessary studies instead of filing an OATT.[49]

27. The Commission seeks comment on issues related to third-party requests and when to require an OATT to be filed. Specifically:

i. Should the Commission alter the standard for what constitutes a third-party request for service on interconnection customer's interconnection facilities? If so, what should the standard be? What would be the advantages and disadvantages of doing so, compared to current policy?

ii. Should the standard that is required for a third-party request for service be the same standard that is required for the original interconnection customer (or its affiliate) to request priority rights, i.e., the specific plans and milestones demonstration discussed above? Why or why not? Would this raise confidentiality concerns, and if so, how could those be mitigated or avoided?

iii. Should the Commission alter the requirement that a third-party request triggers an OATT Filing requirement by the original interconnection customer within 60 days of receipt of a request for service? If so, how?

iv. If the Commission were to alter the requirement that a third-party request triggers an OATT Filing requirement by the original interconnection customer, should there be different approaches when affiliates gain access to the interconnection facilities as opposed to when nonaffiliates gain access?

v. Would it enhance regulatory certainty for the Commission to amend the LGIA to include contractual terms apprising the interconnection customer that it will become a transmission provider if a third party requests transmission service over its interconnection customer interconnection facilities?

vi. Would the creation of a *pro forma* tailored OATT (discussed below) ease the burden on the generation developer to the point that the existing 60-day window for filing an OATT would be sufficient?

vii. Some commenters argue that under current Commission policy, third parties must make up to four sequential requests for service (for interconnection and transmission services, from both the original interconnection customer and the transmission provider) to deliver their power. These commenters use this as an argument in favor of using the LGIA/LGIP framework. Is there a way under the OATT framework to coordinate the requests that a third party would need to make?

c. Tailored OATT

28. Order No. 888 set forth a *pro forma* tariff that provides standardized terms and conditions for the provision of open access transmission service. The unique features of interconnection facilities may warrant tailoring the terms and conditions of the OATT to correspond to these unique features for providing open access transmission service. One option for recognizing these differences and for responding to the concerns laid out above may be to continue to use a *pro forma* OATT framework but, on a generic basis, modify the *pro forma* OATT to establish a tailored set of terms and conditions for service, i.e., a *pro forma* ''tailored

[45] Transcript at 128 (citing Kurt Adams of First Wind).

[46] Gradient at 7.

[47] Edison Mission at 24.

[48] BP Wind at 8; NextEra at 20–21.

[49] NextEra at 20–21.

OATT,'' that would apply to a well-defined set of interconnection facilities.

29. The Commission has previously granted waiver of specific provisions of the *pro forma* OATT to accommodate unique situations. For instance, as mentioned above, because interconnection facilities are not networked facilities, the Commission has granted waiver of the *pro forma* OATT requirement to provide network services on interconnection facilities.[50] Also, because the transmission provider to which the interconnection facilities are interconnected is required to have an OATT that provides for ancillary services on a non-discriminatory basis, and because of the physical limitations of interconnection facilities, the Commission has granted waiver of the *pro forma* OATT requirement to provide ancillary services.[51]

30. Many generation developers argue that the *pro forma* OATT is not well-suited for interconnection facilities and that these facilities should either be substantially or entirely exempt from *pro forma* OATT requirements.[52] Some of those commenters argue that using a tailored OATT could address several of the concerns with existing policy by lessening the time, expense, and other burdens inherent in developing, filing, and administering an OATT. Proponents also argue that this approach would reduce confusion and the risk of inconsistency, which is heightened by employing a case-by-case waiver approach.[53]

31. Several participants in the Technical Conference identify *pro forma* OATT provisions they believe could be eliminated to create a *pro forma* tailored OATT. One commenter submitted a proposed *pro forma* ''Radial OATT.'' [54] Commenters argue that the network service provisions,[55] the requirement to provide scheduling services,[56] and the requirement to provide ancillary services,[57] all provisions which the Commission has previously waived for interconnection customer's interconnection facilities, should be removed from a tailored OATT framework.

32. Additionally, commenters argue that some other provisions the Commission has not waived are inappropriate for interconnection facilities. Specifically, commenters argue that requiring generation developers to adopt comparable Attachment K transmission planning process procedures makes little sense, and that instead the Commission should direct the generation developer, after receiving a request for service, to participate in the interconnecting transmission provider's Attachment K process.[58] Commenters also suggest that the *pro forma* OATT requirement to calculate Available Transfer Capability may be inapplicable to interconnection facilities.[59] Additionally, one commenter argues that developing rates for point-to-point transmission service for Schedules 7 and 8 may be particularly burdensome for generation developers not experienced with traditional rate regulation and that do not usually follow the Uniform System of Accounts,[60] and also suggests waiver of the Open Access Same-Time Information System and the Standards of Conduct.[61] Another commenter suggests allowing generation developers to use a single set of interconnection procedures and a single interconnection agreement for all generators, instead of separate procedures and agreements for large and small generators, because there is a limited set of potential customers.[62] Another commenter argues that generation developers should not have an obligation to expand their interconnection facilities if there is insufficient capacity for a third party's intended use.[63]

33. Commenters also identify provisions in the *pro forma* OATT that they think should be modified in a tailored OATT framework. For instance, several commenters argue that, while the *pro forma* OATT requires the use of average line losses, it is appropriate for interconnection facilities to use incremental line losses, because they are discrete facilities and do not form a network.[64] One commenter asserts that allocating average line losses under section 15.7 of the *pro forma* OATT fails to recognize that each successive user increases the losses borne by earlier users because losses increase as the line becomes fully used, and can render the power contracts of earlier users uneconomical or interfere with their ability to supply contracted power.[65]

34. The Commission seeks comments on these issues. Specifically:

i. Would a *pro forma* tailored OATT accomplish the Commission's goals of ensuring non-discriminatory access? Is a *pro forma* tailored OATT appropriate in these circumstances, or should the Commission continue to evaluate requests for waiver of certain *pro forma* OATT provisions on interconnection facilities on a case-by-case basis?

ii. Does a *pro forma* tailored OATT provide developers clarity beyond that which has already been established by Commission precedent on the applicability of the *pro forma* OATT to interconnection facilities?

iii. How does a *pro forma* tailored OATT framework compare to the other options presented here in terms of commercial viability?

iv. What are the relative benefits and drawbacks of the *pro forma* tailored OATT framework as compared to the existing policy? How should the Commission distinguish use of a *pro forma* tailored OATT for interconnection facilities and use of the *pro forma* OATT for public utility transmission providers that have divested their generation and thus may have limited ability to provide all OATT services, *e.g.,* ancillary services? Similarly, should the Commission distinguish interconnection facilities that may use a *pro forma* tailored OATT from transmission facilities that may typically receive waiver of some *pro forma* OATT provisions, such as merchant transmission lines? If so, how?

v. Identify the *pro forma* OATT provisions that should be excluded from a *pro forma* tailored OATT. Why should these be excluded?

vi. What, if any, new or modified provisions only applicable to interconnection facilities should be added to a *pro forma* tailored OATT? Why?

vii. If the Commission were to pursue a *pro forma* tailored OATT, should the Commission adopt the proposed *pro forma* Radial OATT submitted by NextEra? [66] Please explain and be specific as to any changes that would need to be made to that proposal.

viii. If a *pro forma* tailored OATT did not include a requirement to provide ancillary services, would relying on the public utility transmission provider to provide these services create an undue burden on the public utility transmission provider?

ix. Should all interconnection customer's interconnection facilities be eligible to provide service under a tailored OATT? If not, which facilities should be excluded? Is the size of the facilities (for example, length, capacity, voltage) relevant to being eligible for tailored OATT treatment?

[50] *See Sagebrush,* 130 FERC ¶ 61,093 at P 29; *Terra-Gen Dixie Valley, LLC,* 135 FERC ¶ 61,134, at P 12 (2011) (*Terra-Gen III*).

[51] *See Sagebrush,* 130 FERC ¶ 61,093 at P 29; *Terra-Gen III,* 135 FERC ¶ 61,134 at PP 31–33.

[52] *See, e.g.,* SCE at 4; Edison Mission at 13–14; Puget at 6; NextEra at 6; and First Wind at 7.

[53] NextEra at 2–3.

[54] NextEra at Attachment 1.

[55] CAHW at 23–24; Edison Mission at 22; NextEra at 15–16; and First Wind at 6–7.

[56] AWEA at 11; NextEra at 13.

[57] AWEA at 11; Edison Mission at 25; and NextEra at 11–12.

[58] NextEra at 19–20; AWEA at 12; CAHW at 23; and NU/NSTAR at 7–8.

[59] *See, e.g.,* CAHW at 23; NextEra at 9–11.

[60] CAHW at 23–24.

[61] *Id.* at 24.

[62] Edison Mission at 27. They note the Commission rejected this idea in *Sagebrush,* 130 FERC ¶ 61,093 at P 52, but has allowed the use of a single set of procedures and a single agreement by the Midwest ISO.

[63] Invenergy at 11.

[64] *See, e.g.,* NextEra at 14–15; CAHW at 23; and Invenergy at 9–10.

[65] CAHW at 23.

[66] NextEra at Attachment 1.

d. Safe Harbor

35. A variation on the OATT framework is a safe harbor period. Within a safe harbor the generation developer would have a grace period in which the open access rules determined to be relevant for interconnection customer's interconnection facilities would not apply, to allow for the phased development of generation projects over that period. Accordingly, a generation developer would be assumed to have priority rights to capacity on its interconnection facilities during the safe harbor period.

36. The Commission previously rejected a proposal for a safe harbor period of firm priority rights in *Milford,* stating that such a period would be inconsistent with Commission precedent granting waiver of open access requirements unless and until the owner of the line receives a request for transmission service.[67] Nevertheless, many of the commenters [68] suggest this option as a means to protect generation developers' priority rights to use their interconnection facilities for their phased generation project development.

37. The Commission seeks comments on issues related to a safe harbor period. Specifically:

i. Is a safe harbor period a viable approach? What are the benefits and drawbacks of the safe harbor period approach, as compared with the current case by case demonstration of specific plans and milestones, or the other options presented herein? For instance, to what extent could such a safe harbor period be used as a means to prevent others from accessing the transmission system?

ii. If the Commission were to institute a safe harbor period, should a generation developer be allowed to provide access to its interconnection facilities to others during the safe harbor period? If so, how should the Commission guard against discriminatory access?

iii. If the Commission were to institute a safe harbor period, could the Commission adopt for the safe harbor period the requirement, currently applicable where the Commission has granted priority rights, that a generation developer make any currently unused capacity available to third parties until such time as its future generation projects come on line, in a way that is consistent with the objectives of a safe harbor period?

iv. What would be the appropriate duration for the safe harbor period? Should there be differences in the duration of the safe harbor period based upon different resource types (geothermal, wind, solar, etc.)? If so, how can such distinctions be justified?

v. Should a safe harbor period be established to begin automatically from some fixed milestone date (*e.g.,* such as the in-service date of the interconnection facilities)? If so, what should that milestone be? Or, should a developer be required to make a demonstration before it qualifies for a safe harbor (*e.g.,* such as plans for phased generation development)? If the latter, what should be required to make such demonstration?

vi. What types of interconnection facilities should qualify, and how should a generation developer identify itself as one that is pursuing phased generation development? Should there be an upper or lower limit on physical characteristics of the interconnection facilities such as length, voltage, capacity, etc. to qualify for safe harbor treatment?

vii. Should there be intermediate development requirements to maintain safe harbor status? What would these requirements be? If requirements are not satisfied, what consequences are appropriate?

2. LGIA/LGIP

38. An alternative framework for dealing with third-party requests for service and priority rights on interconnection customer's interconnection facilities would be to rely on a modified version of the LGIA/LGIP. Some commenters suggest expanding section 9.9.2 of the *pro forma* LGIA, which addresses third-party access to transmission provider's interconnection facilities, to apply to interconnection customer's interconnection facilities as well, and argue that doing so would render unnecessary the requirement for the generation developer to file an OATT.[69] They argue that this would provide access to interconnection customer's interconnection facilities in the same manner that access to transmission provider's interconnection facilities is now provided.[70] One commenter suggests that the Commission could also revise the definition of Affected System to include interconnection customer's interconnection facilities specifically, which would mean that these facilities would be studied as part of subsequent interconnection studies performed by the transmission provider for other interconnection customers, because an interconnection system impact study is defined in the *pro forma* LGIA as ''an engineering study that evaluates the impact of the proposed interconnection on the safety and reliability of Transmission Provider's Transmission System and, if applicable, an Affected System.'' [71] Commenters also propose that, under an LGIA framework, third parties should apply directly to the transmission provider (and not the generation developer) for access to excess capacity on the interconnection customer's interconnection facilities at the same time that they apply for service on the transmission provider's interconnection facilities and transmission system.[72] These commenters argue that this process would be preferable to the Commission's current policy, under which a new interconnection customer could be required to negotiate separately with the generation developer and the transmission provider. Commenters further argue that involving the transmission provider at the onset of the process is more efficient because the transmission provider is critical to assessing system impacts, providing support such as ancillary services, and coordinating reliability issues.[73]

39. Commenters add that section 9.9.2 of the *pro forma* LGIA recognizes an opportunity for interconnection customers and the transmission provider to negotiate a multi-party agreement to determine the amount of compensation owed to an interconnection customer for capital expenses related to the transmission provider's interconnection facilities, as well as the allocation of on-going expenses.[74] Some commenters suggest that the Commission could develop a *pro forma* multi-party agreement to be used by entities in negotiating under section 9.9.2.[75]

40. Generally, commenters argue that treating a third-party request for access to interconnection customer's interconnection facilities as an interconnection request is a pragmatic approach that more accurately characterizes the service being sought, and eliminates the unduly burdensome and costly obligations imposed upon generation developers under the Commission's current policies which commenters assert impede the development of location-constrained renewable generation.[76] Commenters characterize expanding section 9.9.2 of the *pro forma* LGIA as an administratively simple and less onerous way to facilitate access to interconnection customer's interconnection facilities.[77]

41. The Commission seeks comment on whether treating third-party use of interconnection facilities as interconnection service is a workable

[67] *Milford,* 129 FERC ¶ 61,149 at P 23.

[68] AWEA, BP, CAHW, Edison Mission, First Wind, Gradient, Invenergy, NextEra, and Sempra.

[69] Puget at 8; Edison Mission at 17; Allete at 2; SCE at 3–4; and MidAmerican at 15–16.

[70] Puget at 15.

[71] Edison Mission at 18 (referencing definitions in LGIA section 1).

[72] Puget at 9–10.

[73] *Id.*

[74] *See, e.g.,* Edison Mission at 18.

[75] *Id.*

[76] Edison Mission at 19.

[77] Puget at 8; Edison Mission at 19; and SCE at 3–4.

alternative to current Commission policy. Specifically:

i. If the Commission were to expand section 9.9.2 to govern third party use of interconnection customer's interconnection facilities, what would prevent the original interconnection customer from evading negotiations with the third party (which is likely its competitor), withholding capacity for reasons other than a legitimate planned project, or putting excessive cost responsibilities on the third party?

ii. Would extending section 9.9.2 as discussed above be sufficient to enable the transmission provider to facilitate granting third parties access to the interconnection customer's interconnection facilities? Or would other arrangements or modifications to the *pro forma* LGIA be needed to give the transmission provider that ability? For example, what commercial arrangements between the transmission provider and the original interconnection customer would be required to enable third-party interconnection to the interconnection customer's interconnection facilities?

iii. What are the benefits and drawbacks of a third party requesting interconnection service from the transmission provider, rather than from the original interconnection customer?

iv. Should the *pro forma* LGIA be modified to include an obligation to expand the existing capacity of the interconnection customer's interconnection facilities to accommodate a third-party request for interconnection service? If so, should the obligation apply to the original interconnection customer or the transmission provider? Would such a modification be consistent with the roles and responsibilities established in the rest of the *pro forma* LGIA for whichever party the obligation applies to (i.e., either the original interconnection customer or the transmission provider)?

v. Are there other issues associated with third-party use of the interconnection customer's interconnection facilities that would require other modifications to the *pro forma* LGIA? If so, what are the issues, and what would these modifications be? For example, as the term is defined in the *pro forma* LGIA, interconnection facilities are ''sole use'' facilities. If the Commission were to rely on the interconnection rules and procedures to govern third party use of interconnection facilities, would we need to eliminate language in the LGIA/LGIP that refers to these as ''sole use'' facilities? If so, what would be the collateral consequences?

vi. In addition to the modifications to the *pro forma* LGIA/LGIP identified above, would there be benefit in the Commission developing other *pro forma* agreements to facilitate third-party access to the interconnection customer's interconnection facilities (*e.g., pro forma* multi-party agency agreements, service agreements, cost-sharing agreements, etc.), or should those agreements be developed by the affected entities and reviewed by the Commission on a case-by-case basis?

vii. How would expanding the *pro forma* LGIA to govern third-party requests for service on the interconnection customer's interconnection facilities otherwise solve the concerns identified above? Are there other concerns with current Commission policy on access to interconnection customer's interconnection facilities that would remain under an LGIA/LGIP framework?

viii. Should there be a limit (*e.g.,* with respect to voltage, capacity, or length) to the interconnection customer's interconnection facilities that would qualify for treatment under the LGIA/LGIP framework discussed above?

ix. How would an LGIA/LGIP approach compare to the other options presented here in terms of commercial viability and removing barriers to the development of location-constrained generation?

42. The Commission also seeks comment on how priority rights to interconnection customer's interconnection facilities for phased generation development would work within an LGIA/LGIP framework. In making a valid interconnection request under the *pro forma* LGIP, an interconnection customer must submit (1) A $10,000 deposit, (2) a completed application with detailed generator data (Appendix 1 of the LGIP), and (3) a demonstration of site control or post an additional deposit of $10,000.[78] Additionally, the LGIA stipulates various milestones that must be logged with dates for completion in Appendix B of the LGIA. If future generation phases are included in an initial request for interconnection service, then meeting these milestones as a means to demonstrate intended future use of the facilities would arguably be similar in substance to the Commission's current policy of demonstrating plans and milestones to secure priority rights, though relying solely on the interconnection rules and procedures for securing priority rights would nevertheless be a different approach than the Commission's current policy of demonstrating plans and milestones. The LGIP stipulates that a generator with a higher queued interconnection request or an executed LGIA (or unexecuted LGIA that a party has requested be filed with the Commission) is included in the base case for any subsequent Interconnection Feasibility or System Impact Study.[79] So as long as the initial interconnection request or executed LGIA includes later phases of a generation project, under the interconnection rules and procedures with a modified section 9.9.2 to include interconnection customer interconnection facilities, the generation developer would not risk losing its planned interconnection service simply because a third party also seeks to use the interconnection customer interconnection facilities. Rather, the full capacity of the original interconnection customer's request, including capacity for future phases of generation if those are included in the original LGIA that was developed, is unavailable for use by any third party. This is currently how the transmission provider treats transmission provider interconnection facilities when it studies a new interconnection request. The Commission seeks comment, however, on whether this is a viable and fair approach for demonstrating and securing priority rights to capacity for phased generation projects. Specifically:

i. For generation projects that are built in phases, is it possible and/or typical to request the interconnection facilities be constructed in such a manner as to accommodate the capacity for future phases in an initial interconnection request and/or LGIA? How have developers been submitting interconnection requests and executing LGIAs for phased projects; i.e., have developers been including the capacity necessary for future generation phases in the initial interconnection request under LGIP?

ii. How would the LGIA/LGIP approach fit with the current standard of demonstrating plans and milestones on a case-by-case basis to receive priority rights for future phases of a generation project? Does the existing *pro forma* LGIA/LGIP contain a sufficiently clear procedure, *e.g.,* in submitting and maintaining a valid interconnection request and meeting the milestones set forth in Appendix B, such that this procedure might serve a similar purpose as the current standard of demonstrating specific plans and milestones?

iii. If no separate priority rights request for a generation developer to establish capacity rights for its interconnection facilities would be necessary, what are the benefits and/or drawbacks of such an approach?

iv. How would adopting an LGIA/LGIP framework otherwise affect generation developers seeking priority rights on their interconnection customer's interconnection facilities for their phased generation projects? If the generation developer plans to eventually use currently unused capacity on interconnection facilities, should the *pro forma* LGIA be modified to require that capacity on interconnection facilities be made available for third-party use until the generation developer is ready to use that capacity?

III. Comment Procedures

43. The Commission invites interested persons to submit comments on the matters, issues and specific questions identified in this notice. Comments are due 45 days from publication in the **Federal Register**. Comments must refer to Docket No. AD12–14, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

[78] LGIP section 3.3.1.

[79] *See* LGIP section 6.2 and 7.3.

44. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

45. Commenters unable to file comments electronically must mail or hand deliver an original and copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

46. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

IV. Document Availability

47. 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 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

48. 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.

49. 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.*

By direction of the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

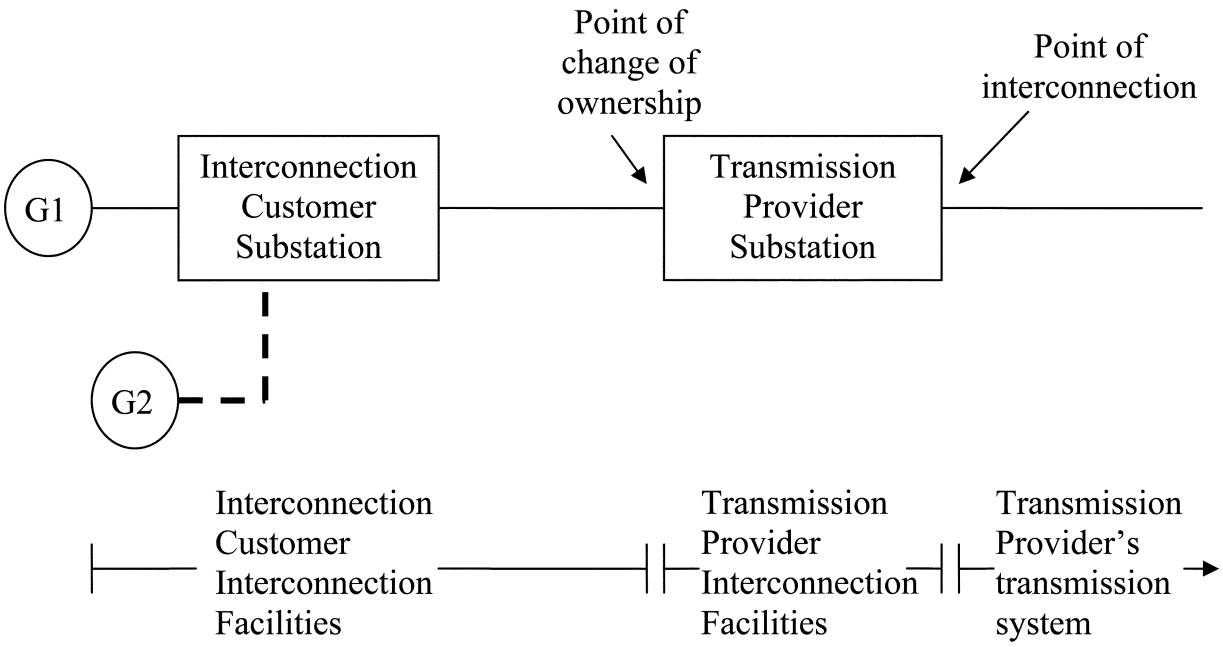
Appendix A

List of Commenters and Participants in Docket No. AD11–11–000

Adam Wenner *
Allete, Inc. d/b/a Minnesota Power
American Wind Energy Association (AWEA)
Anbaric Transmission (Anbaric)
BP Wind Energy North America (BP Wind)
California High Wind Partners (CAHW)
Clean Line Energy Partners (Clean Line)
Duke Energy (Duke)
Edison Mission Energy (Edison Mission)
Electric Power Supply Association (EPSA)
First Wind Holdings (First Wind)
Gradient Resources (Gradient)
Grasslands Renewable Energy (Grasslands)
Horizon Wind Energy LLC (Horizon)
Invenergy Wind & Invenergy Thermal (Invenergy)
LS Power Transmission (LS Power)
MidAmerican Energy Holdings Co. (MidAmerican)
National Grid USA (National Grid)
NextEra Energy Resources (NextEra)
Northeast Utilities (Northeast)
Northwestern Energy (Northwestern)
Pattern Transmission (Pattern)
Puget Sound Energy (Puget)
San Diego Gas & Electric (SDG&E)
Sempra Generation (Sempra)
Shell Wind Energy (Shell)
Southern California Edison (SCE)
Southern Co. (Southern)
Tonbridge Power (Tonbridge)
Transmission Access Policy Study Group (TAPS)
Transmission Developers, Inc. (TDI)
United Illuminating Co. (United)
Western Independent Transmission Group (WITG)
Zephyr Power Transmission (Zephyr)

* Comments filed after due date.

Appendix B



Order No. 2003 addresses third party use of Transmission Provider Interconnection Facilities, which are those that are owned, controlled, or operated by the Transmission Provider. Order No. 2003 permits the interconnection customer to build, own, control, and operate interconnection facilities, which are then defined as Interconnection Customer Interconnection Facilities under the LGIP/LGIA, but Order No. 2003 does not address third party use of Interconnection Customer Interconnection Facilities. With a goal of ensuring that a third party generator (G2 in the above schematic) may be able to interconnect to Interconnection Customer Interconnection Facilities that in some instances have been 30, 50, or even hundreds of miles long, the

Commission has in a series of recent cases considered these Interconnection Customer Interconnection Facilities to be open access transmission facilities and required that the original developer (G1 in the above schematic) file an OATT within 60 days of a request for service on these facilities. In light of comments received, this NOI seeks feedback on whether the filing of an OATT, modifications to the LGIA/LGIP, or other means are better for addressing third-party access to facilities at issue here.

[FR Doc. 2012–9848 Filed 4–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 101

[Docket No. USCBP–2012–0006]

Extension of Port Limits of Indianapolis, IN

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: U.S. Customs and Border Protection (CBP) is proposing to extend the geographical limits of the port of entry of Indianapolis, Indiana. The proposed extension will make the boundaries more easily identifiable to the public and will allow for uniform and continuous service to the extended area of Indianapolis, Indiana. The proposed change is part of CBP's continuing program to use its personnel, facilities, and resources more efficiently, and to provide better service to carriers, importers, and the general public.

DATES: Comments must be received on or before June 25, 2012.

ADDRESSES: Please submit comments, identified by docket number, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2012–0006.
- *Mail:* Border Security Regulations Branch, Office of International Trade, U.S. Customs and Border Protection, Mint Annex, 799 9th Street NW., Washington, DC 20229–1179.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and 19 CFR 103.11(b) on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Border Security Regulations Branch, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Roger Kaplan, Office of Field Operations, U.S. Customs and Border Protection, (202) 325–4543, or by email at *Roger.Kaplan@dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

II. Background

As part of its continuing efforts to use CBP's personnel, facilities, and resources more efficiently, and to provide better service to carriers, importers, and the general public, CBP is proposing to extend the limits of the Indianapolis, Indiana, port of entry. CBP ports of entry are locations where CBP officers and employees are assigned to accept entries of merchandise, clear passengers, collect duties, and enforce the various provisions of customs, immigration, agriculture, and related U.S. laws at the border. The term ''port of entry'' is used in the Code of Federal Regulations (CFR) in title 8 for immigration purposes and in title 19 for customs purposes. For customs purposes, CBP regulations list designated CBP ports of entry and the limits of each port in section 101.3(b)(1) of title 19 (19 CFR 101.3(b)(1)).[1]

Indianapolis was designated as a customs port of entry by the President's message of March 3, 1913, concerning a reorganization of the customs service pursuant to the Act of August 24, 1912 (37 Stat. 434; 19 U.S.C. 1). Although CBP is not aware of any document which specifically sets forth the geographical boundaries of the Indianapolis port of entry, the port limits are generally understood to be the corporate limits of the city of Indianapolis.

In 1970, by act of the Indiana legislature, the city of Indianapolis consolidated with the surrounding county of Marion. However, four municipalities within Marion County remained excluded from the corporate limits of Indianapolis. Additionally, members of the trade community have expressed a need for CBP services in areas west and south of the city limits.

CBP would like to extend the boundaries of the port of entry of Indianapolis, Indiana, to include all the territory within the boundaries of Marion County, Indiana, as well as portions of the neighboring counties of Boone, Hendricks, and Johnson. This update is necessary to clarify the geographic limits of the port. The update will also allow CBP to better serve the public in the greater Indianapolis area, by providing regular service to (1) municipalities within Indianapolis that are not technically within the city limits, and to (2) locations to the immediate west and south of the city. The proposed change in the boundaries of the port of Indianapolis, Indiana, will not result in a change in the service that is provided to the public by the port and will not require a change in the staffing or workload at the port.

III. Proposed Port Limits of Indianapolis, Indiana

The new port limits of Indianapolis, Indiana, are proposed as follows:

In the State of Indiana, all of Marion County; that part of Boone County which is west of Interstate Route 65 and east of State Route 39; that part of Hendricks County which is east of State Route 39; and that part of Johnson County which is east of State Route 37, north of State Route 144, and west of Interstate Route 65.

CBP has included a map of the proposed port limits in the docket as ''Attachment: Port of Entry of Indianapolis—Proposed Limits.''

IV. Statutory and Regulatory Reviews

A. Executive Orders 12866 and 13563

DHS does not consider this proposed rule to be a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive

[1] Ports of entry for immigration purposes are currently listed at 8 CFR 100.4.

Order 13563. The proposed change is intended to expand the geographical boundaries of the Indianapolis, Indiana, port of entry and make the boundaries more easily identifiable to the public. There are no new costs to the public associated with this rule, and the rule does not otherwise implicate the factors set forth in section 3(f) of Executive Order 12866. Accordingly, this rule has not been submitted to the Office of Management and Budget for review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires federal agencies to examine the impact a rule would have on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This proposed rule merely expands the limits of an existing port of entry and does not impose any new costs on the public. Accordingly, we certify that this rule would not have a significant economic impact on a substantial number of small entities.

C. Signing Authority

The signing authority for this document falls under 19 CFR 0.2(a) because the extension of port limits is not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, this notice of proposed rulemaking may be signed by the Secretary of Homeland Security (or her delegate).

V. Authority

This change is proposed under the authority of 5 U.S.C. 301; 6 U.S.C. 203; 19 U.S.C. 2 & note, 66, and 1624.

VI. Proposed Amendment to the Regulations

If the proposed port limits are adopted, CBP will amend the list of CBP ports of entry at 19 CFR 101.3(b)(1) to reflect the new description of the limits of the Indianapolis, Indiana, port of entry.

Dated: April 10, 2012.

Janet Napolitano,

Secretary of Homeland Security.

[FR Doc. 2012–9996 Filed 4–24–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–137589–07]

RIN 1545–BH60

Local Lodging Expenses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the deductibility of expenses for lodging when not traveling away from home (local lodging). The regulations affect taxpayers who pay or incur expenses for local lodging.

DATES: Comments or a request for a public hearing must be received by July 24, 2012.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–137589–07), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–137589–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–137589–07).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, R. Matthew Kelley, (202) 622–7900; concerning submission of comments or a request for a hearing, Funmi Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 relating to the deduction of local lodging expenses.

Section 1.262–1 of the Income Tax Regulations generally disallows a deduction for local lodging expenses. The proposed regulations allow taxpayers to deduct local lodging expenses as ordinary and necessary business expenses in appropriate circumstances.

Business Expenses Generally

Section 162(a) of the Internal Revenue Code (Code) allows a deduction for all of the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Whether an expense is ordinary and necessary is a question of fact. In general, a trade or business expense is ordinary if it is normal, usual, or customary in the taxpayer's type of business. An expense is necessary if it is appropriate and helpful for the development of the taxpayer's business. See *Commissioner* v. *Heininger,* 320 U.S. 467, 475 (1943). An expense that serves primarily to furnish the taxpayer with a social or personal benefit, and is only secondarily related to business, is not a necessary business expense under section 162(a).

Employee Expenses

An expense that an employee must bear as a condition of employment may be a deductible employee business expense. See *Sibla* v. *Commissioner,* 611 F.2d 1260 (9th Cir. 1980), acq. (1985–2 CB viii) (contributions to firemen's mess required as a condition of employment are deductible business expenses). However, expenses that primarily are for the employee's personal benefit or convenience are not deductible employee business expenses. See *Commissioner* v. *Flowers,* 326 U.S. 465 (1946) (a taxpayer's expenses for lodging near his principal work location, to avoid a long commute to and from his primary residence, were nondeductible personal expenses incurred solely because of the taxpayer's decision to maintain his primary residence far from his work location).

Deductible Employee Expenses

The tax consequences to an employee who is reimbursed by an employer for an expense, or who receives property or services resulting from an employer's payment of an expense, depend on whether the expense is one that would have been deductible if paid directly by the employee.

For example, if an employee pays an expense and an employer reimburses the employee under a reimbursement or other expense allowance arrangement, the reimbursement is not includible in the employee's income if it is made under an accountable plan. A reimbursement is treated as made under an accountable plan only if it is made for an expense that would be deductible by the employee under sections 161 through 199. See sections 62(a)(2)(A) and 62(c).

Similarly, if an employer provides property or services to an employee in the course of business, the value of the benefit to the employee is excludable from the employee's income if the benefit constitutes a working condition fringe under section 132(a)(3). A working condition fringe is defined as

property or services provided to an employee to the extent that, if the employee paid for the property or services, the payment would be allowable as a deduction to the employee under section 162 or 167.

Nondeductible Personal Expenses

Section 262(a) provides that, except as otherwise provided in Chapter 1 of the Code, no deduction is allowed for personal, living, or family expenses.

Section 1.262–1(b)(5) provides, as examples of personal, living, and family expenses, that the costs of a taxpayer's meals incurred when not traveling away from home (local meals) are generally nondeductible personal expenses. Local meal expenses may be deducted, however, if they otherwise qualify as ordinary and necessary business expenses under section 162 or as expenses for the production of income under section 212. In contrast, lodging expenses incurred when not traveling away from home (local lodging) are nondeductible personal expenses. Thus, local lodging expenses that would otherwise qualify as trade or business expenses under section 162 or as production of income expenses under section 212 are not deductible under the current general rule.

Local Lodging Expenses

The cost of local lodging that a taxpayer pays or incurs primarily for the taxpayer's convenience or personal benefit is not an ordinary and necessary expense of a business or income-producing activity. Similarly, the cost of local lodging provided to an employee by an employer for the employee's convenience or personal benefit would not be deductible by the employee if the employee paid the cost directly. Therefore, the value of the lodging under those circumstances is not excludible from the gross income of an employee as a working condition fringe under section 132(a)(3), and reimbursement for the cost of the lodging under those circumstances is not a payment under an accountable plan under § 1.62–2(c). Consequently, unless excludible on another basis, the value of the lodging or the amount of reimbursement under those circumstances is includible in the employee's income under section 61 as compensation for services. See §§ 1.61–21(a)(3), 1.62–2, and 1.132–1.

The cost of local lodging is for the convenience or personal benefit of an employee (or other recipient) if, for example, the lodging is provided to the employee (1) as additional compensation, such as to provide a weekend at a luxury hotel or resort; (2) to enable the employee to avoid a long-distance commute (*Commissioner* v. *Flowers*); (3) because the employee is required to work overtime (*Coombs* v. *Commissioner,* 608 F.2d 1269, 1273 (9th Cir. 1979)); (4) as housing for a recently relocated employee while the employee searches for permanent housing; or (5) for the employee's indefinite personal use (*International Artists, Ltd,* v. *Commissioner,* 55 T.C. 94 (1970)). An employer may deduct the costs the employer incurs in providing the lodging in each of these cases under section 162(a) as compensation for services. See §§ 1.162–7(a) and 1.162–25T. However, because the primary purpose of the lodging is to provide the employee with a personal benefit, if the employee pays the cost of the lodging directly, the employee may not deduct the expense as an ordinary and necessary business expense under section 162(a). Therefore, a cash reimbursement of the cost is not excludible from the employee's gross income under section 62(c) and the value of the lodging is not excludible from the employee's gross income under section 132(d) as a working condition fringe.

Expenditures for local lodging may qualify as deductible ordinary and necessary expenses under appropriate circumstances if all other requirements of section 162 are met. For example, an employer may require its employees to stay at a local hotel for the *bona fide* purpose of facilitating training or team building directly connected with the employer's trade or business. Similarly, a professional sports team may require its employees (players and coaches) to stay at a local hotel the night before a home game to ensure physical preparedness and allow for last minute training. Under these circumstances, the cost of the lodging is primarily for the business purposes of the employer and not to provide a personal benefit to the employees. The cost of the lodging would be deductible by an employee under section 162 if the employee paid the cost directly, and thus the value of the lodging may be excluded from the employee's gross income as a working condition fringe if other requirements are satisfied. Similarly, a payment from the employer reimbursing the employee for the cost of the lodging may be excluded from the employee's gross income as a payment under an accountable plan if all the requirements of an accountable plan are met.

Notice 2007–47 (2007–1 CB 1393) (see § 601.601(d)(2) of this chapter) advises taxpayers that the IRS and the Treasury Department intend to amend the treatment of the costs of a taxpayer's local lodging under § 1.262–1(b)(5). The notice provides that, pending issuance of additional published guidance, the IRS will not apply § 1.262–1(b)(5) to expenses for local lodging of an employee that an employer provides to the employee or requires the employee to obtain, if: (1) The lodging is provided on a temporary basis; (2) the lodging is necessary for the employee to participate in or be available for a *bona fide* business meeting or function of the employer; and (3) the expenses are otherwise deductible by the employee, or would be deductible if paid by the employee, under section 162(a).

Explanation of Provisions

These regulations propose to amend the regulations under sections 162 and 262. The proposed regulations under section 162 provide that expenses paid or incurred for local lodging may be deductible as ordinary and necessary expenses of a taxpayer's trade or business, including the trade or business of being an employee. The proposed regulations provide a safe harbor for certain local lodging at a business meeting, conference, or other activity or function. Other local lodging expenses may be deductible as business expenses depending on the facts and circumstances.

The proposed regulations under section 262 provide that a taxpayer's costs incurred for local lodging are personal expenses unless the expenses are deductible under section 162. Comments are specifically requested on whether the section 262 regulations should be amended to provide that local lodging expenses are not personal expenses if they are deductible under section 212.

The proposed regulations also amend the regulations under section 262 to remove references to section 217 that are obsolete. Section 217 was amended by the Revenue Reconciliation Act of 1993, Public Law 103–66 (107 Stat. 417). Under the amendments, lodging when not traveling away from home and meals are not deductible as moving expenses.

Effective/Applicability Date

The regulations are proposed to apply to expenses paid or incurred on or after the date these regulations are published as final regulations in the **Federal Register**. However, until these regulations are published as final regulations in the **Federal Register**, taxpayers may apply the proposed regulations to expenses paid or incurred in taxable years for which the period of limitation on credit or refund under section 6511 has not expired.

Effect on Other Documents

Notice 2007–47 is obsoleted as of April 25, 2012.

Special Analyses

This notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the ''Addresses'' heading. The Treasury Department and the IRS invite comments on all aspects of the proposed rules. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is R. Matthew Kelley of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.162–31 is added to read as follows:

§ 1.162–31 Expenses paid or incurred for lodging when not traveling away from home.

(a) *In general.* Expenses paid or incurred for lodging when not traveling away from home (local lodging) generally are personal, living, or family expenses that are nondeductible under section 262(a). Under certain circumstances, however, expenses for local lodging may be deductible under section 162(a) as ordinary and necessary expenses paid or incurred in connection with carrying on a taxpayer's trade or business, including a trade or business as an employee. Whether local lodging expenses are paid or incurred in carrying on a taxpayer's trade or business is determined under all the facts and circumstances. One factor is whether the taxpayer incurs the expense because of a *bona fide* condition or requirement of employment imposed by the taxpayer's employer. Expenses paid or incurred for local lodging that is lavish or extravagant under the circumstances or that primarily provides an individual with a social or personal benefit are not incurred in carrying on a taxpayer's trade or business.

(b) *Safe harbor for local lodging at business meetings and conferences.* An individual's expenses for local lodging will be treated as ordinary and necessary business expenses if—

(1) The lodging is necessary for the individual to participate fully in or be available for a *bona fide* business meeting, conference, training activity, or other business function;

(2) The lodging is for a period that does not exceed five calendar days and does not recur more frequently than once per calendar quarter;

(3) If the individual is an employee, the employee's employer requires the employee to remain at the activity or function overnight; and

(4) The lodging is not lavish or extravagant under the circumstances and does not provide any significant element of personal pleasure, recreation, or benefit.

(c) *Examples.* The provisions of this section are illustrated by the following examples. In each example the employer and the employees meet all other requirements (such as substantiation) for deductibility of the expense and for exclusion from income as a working condition fringe or payment under an accountable plan.

Example 1. (i) Employer conducts training for its employees at a hotel near Employer's main office. The training is directly connected with Employer's trade or business. Some employees attending the training are traveling away from home and some employees are not traveling away from home. Employer requires all employees attending the training to remain at the hotel overnight for the *bona fide* purpose of facilitating the training. Employer pays the costs of the lodging at the hotel directly to the hotel and does not treat the value as compensation to the employees.

(ii) Employer has a noncompensatory business purpose for paying the lodging expenses. Employer is not paying the expenses primarily to provide a social or personal benefit to the employees. If the employees who are not traveling away from home had paid for their own lodging, the expenses would have been deductible under section 162(a) as ordinary and necessary business expenses of the employees. Therefore, the value of the lodging is excluded from the employees' income as a working condition fringe under section 132(a) and (d).

(iii) Employer may deduct the lodging expenses, including lodging for employees who are not traveling away from home, as ordinary and necessary business expenses under section 162(a).

Example 2. (i) The facts are the same as in *Example 1,* except that the employees pay the cost of their lodging at the hotel directly to the hotel, Employer reimburses the employees for the cost of the lodging, and Employer does not treat the reimbursement as compensation to the employees.

(ii) Employer is reimbursing the lodging expenses for a noncompensatory business purpose and not primarily to provide a social or personal benefit to the employees. The employees incur the expenses in performing services for the employer. If Employer had not reimbursed the employees who are not traveling away from home for the cost of the lodging, the expenses would have been deductible under section 162(a) as ordinary and necessary business expenses of the employees. Therefore, the reimbursements to the employees are made under an accountable plan and are excluded from the employees' gross income.

(iii) Employer may deduct the lodging expense reimbursements, including reimbursements for employees who are not traveling away from home, as ordinary and necessary business expenses under section 162(a).

Example 3. (i) Employer is a professional sports team. Employer requires its employees (players and coaches) to stay at a local hotel the night before a home game to conduct last minute training and ensure the physical preparedness of the players. Employer pays the lodging expenses directly to the hotel and does not treat the value as compensation to the employees.

(ii) Employer has a noncompensatory business purpose for paying the lodging expenses. Employer is not paying the lodging expenses primarily to provide a social or personal benefit to the employees. If the employees had paid for their own lodging, the expenses would have been deductible by the employees under section 162(a) as ordinary and necessary business expenses.

Therefore, the value of the lodging is excluded from the employees' income as a working condition fringe.

(iii) Employer may deduct the expenses for lodging the players and coaches at the hotel as ordinary and necessary business expenses under section 162(a).

Example 4. (i) Employer hires Employee, who currently resides 500 miles from Employer's business premises. Employer pays for temporary lodging for Employee near Employer's business premises while Employee searches for a residence.

(ii) Employer is paying the temporary lodging expense primarily to provide a personal benefit to Employee by providing housing while Employee searches for a residence. Employer incurs the expense only as additional compensation and not for a noncompensatory business purpose. If Employee paid the temporary lodging expense, the expense would not be an ordinary and necessary employee business expense under section 162(a) because the lodging primarily provides a personal benefit to Employee. Therefore, the value of the lodging is includible in Employee's gross income as additional compensation.

(iii) Employer may deduct the lodging expenses as ordinary and necessary business expenses under section 162(a) and § 1.162–25T.

Example 5. (i) Employee normally travels two hours each way between her home and her office. Employee is working on a project that requires Employee to work late hours. In order to maximize Employee's availability to work on the project, Employer provides Employee with lodging at a hotel near the office.

(ii) Employer is paying the temporary lodging expense primarily to provide a personal benefit to Employee by relieving her of the daily commute to her residence. Employer incurs the expense only as additional compensation and not for a noncompensatory business purpose. If Employee paid the temporary lodging expense, the expense would not be an ordinary and necessary business expense under section 162(a) because the lodging primarily provides a personal benefit to Employee. Therefore, the value of the lodging is includible in Employee's gross income as additional compensation.

(iii) Employer may deduct the lodging expenses as ordinary and necessary business expenses under section 162(a) and § 1.162–25T.

Example 6. (i) Employer requires an employee to be ''on duty'' each night to respond quickly to emergencies that may occur outside of normal working hours. Employees who work daytime hours each serve a ''duty shift'' once each month in addition to their normal work schedule. Emergencies that require the duty shift employee to respond occur regularly. Employer has no sleeping facilities on its business premises and pays for a hotel room nearby where the duty shift employee stays until called to respond to an emergency.

(ii) Employer has a noncompensatory business purpose for paying the lodging expenses. Employer is not providing the lodging to duty shift employees primarily to provide a social or personal benefit to the employees. If the employees had paid for their lodging, the expenses would have been deductible by the employees under section 162(a) as ordinary and necessary business expenses. Therefore, the value of the lodging is excluded from the employees' income as a working condition fringe.

(iii) Employer may deduct the lodging expenses as ordinary and necessary business expenses under section 162(a).

(d) *Effective/applicability date.* This section applies to expenses paid or incurred on or after the date these regulations are published as final regulations in the **Federal Register**. However, until these proposed regulations are published as final regulations in the **Federal Register**, taxpayers may apply the proposed regulations to local lodging expenses that are paid or incurred in taxable years for which the period of limitation on credit or refund under section 6511 has not expired.

Par. 3. In § 1.262–1, paragraph (b)(5) is amended to read as follows:

§ 1.262–1 Personal, living, and family expenses.

* * * * *

(b) * * *

(5) Expenses incurred in traveling away from home (which include transportation expenses, meals, and lodging) and any other transportation expenses are not deductible unless they qualify as expenses deductible under section 162 (relating to trade or business expenses), section 170 (relating to charitable contributions), section 212 (relating to expenses for production of income), section 213 (relating to medical expenses), or section 217 (relating to moving expenses), and the regulations under those sections. The taxpayer's costs of commuting to his place of business or employment are personal expenses and do not qualify as deductible expenses. For expenses paid or incurred before the date these regulations are published as final regulations in the **Federal Register**, a taxpayer's expenses for lodging when not traveling away from home (local lodging) are nondeductible personal expenses. For expenses paid or incurred on or after the date these regulations are published as final regulations in the **Federal Register**, a taxpayer's expenses for local lodging are personal expenses and are not deductible unless they qualify as deductible expenses under section 162. However, until these regulations are published as final regulations in the **Federal Register**, taxpayers may deduct local lodging expenses that qualify under section 162 and are paid or incurred in taxable years for which the period of limitation on credit or refund under section 6511 has not expired. Except as permitted under section 162 or 212, the costs of a taxpayer's meals not incurred in traveling away from home are nondeductible personal expenses.

* * * * *

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012–9885 Filed 4–24–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–151687–10]

RIN 1545–BJ98

Withholding on Payments by Government Entities to Persons Providing Property or Services

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking relating to withholding by government entities on payments to persons providing property or services. The proposed regulations are withdrawn because Public Law 112–56, ''The 3% Withholding Repeal and Job Creation Act,'' repealed the provision of the Internal Revenue Code underlying the proposed rules. The guidance affects government entities that would have been required to withhold and report tax from payments to persons providing property or services and also affects the persons receiving payments for property or services from these government entities.

FOR FURTHER INFORMATION CONTACT: A.G. Kelley, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 3402(t) of the Internal Revenue Code (Code) was added by section 511 of the Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109–222 (TIPRA), 120 Stat. 345, which was enacted on May 17, 2006.

Section 102 of the 3% Withholding Repeal and Job Creation Act (Pub. L. 112–56, 125 Stat. 711), which was enacted on November 21, 2011, repealed section 3402(t) of the Code.

The Treasury Department and the IRS issued proposed regulations under section 3402(t), published in the

Federal Register on May 9, 2011 (REG–151687–10, 76 FR 26678, 2011–23 IRB 867). This document withdraws those proposed regulations in light of the repeal of section 3402(t).

At the same time as the issuance of the proposed regulations, the Treasury Department and the IRS issued final regulations under sections 3402(t), 3406, 6011, 6051, 6071, and 6302 of the Code that were published in the **Federal Register** on May 9, 2011 (TD 9524, 76 FR 26583, 2011–23 IRB 843). A related document (TD 9586, REG–148417–11) removes the final regulations under section 3402(t) and makes conforming amendments to the regulations under other sections reflecting that removal.

List of Subjects in 26 CFR Part 31

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–151687–10) that was published in the **Federal Register** on May 9, 2011 (76 FR 26678) is withdrawn.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012–9886 Filed 4–24–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SATS No. ND–053–FOR; Docket ID OSM–2012–0006]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the ''North Dakota program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''). North Dakota proposes changes to the North Dakota Administrative Code to address letter of credit provisions in the collateral bond rule under Administrative Code Section 69–5.2–12–04. The changes involve the financial information and notices that banks issuing a letter of credit must provide to the North Dakota Public Service Commission (hereinafter, the ''Commission'').

This document gives the times and locations that the North Dakota program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t. May 25, 2012. If requested, we will hold a public hearing on the amendment on May 21, 2012. We will accept requests to speak until 4 p.m., m.d.t. on May 10, 2012.

ADDRESSES: You may submit comments by either of the following two methods:

Federal eRulemaking Portal: *www.regulations.gov.* This proposed rule has been assigned Docket ID: OSM–2012–0006. If you would like to submit comments through the Federal eRulemaking Portal, go to *www.regulations.gov* and follow the instructions.

• Mail/Hand Delivery/Courier:

Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, POB 11018, 150 East B Street, Casper, Wyoming 82601–1018.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''III. Public Comment Procedures'' in the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to viewing the docket and obtaining copies of documents at *www.regulations.gov,* you may review copies of the North Dakota program, this amendment, a listing of any public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of the amendment by contacting OSM's Casper Field Office.

Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, PO Box 11018, 150 East B Street, Casper, Wyoming 82601–1018, (307) 261–6555, *jfleischman@osmre.gov.*

James Deutsch, Director, Reclamation Division, North Dakota Public Service Commission, 600 East Boulevard, Dept. 408, Bismarck, North Dakota 58505–0480, (701) 328–2251, *jdeutsch@nd.gov.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Telephone: (307) 261–6555. Internet: *jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program in the December 15, 1980 **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.15 and 934.30.

II. Description of the Proposed Amendment

By letter dated February 2, 2012, North Dakota sent us a proposed amendment to its program (Administrative Record Document ID No. OSM–2012–0006–0002) under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota sent the amendment to include changes made at its own initiative to the North Dakota Administrative Code (NDAC). The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Specifically, North Dakota proposes to change letter of credit provisions in the collateral bond rule under NDAC 69–5.2–12–04. The financial information that banks issuing a letter of credit must provide to the Commission is specifically addressed. An option is being added to let banks provide a certified copy of financial reports that

are required by a Federal agency rather than submit a balance sheet that is certified by a certified public accountant (CPA). Additionally, a change that affects the provision requiring banks to give the Commission notice of actions alleging insolvency or bankruptcy is also being proposed. North Dakota is proposing these changes both in order to be compliant with state and Federal banking regulations and to assist banks that could possibly have difficulty submitting CPA certified balance sheets.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the North Dakota program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent state or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of 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 in the electronic docket for this rulemaking at *www.regulations.gov.* 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.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on May 10, 2012. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 7, 2012.

Allen D. Klein,

Director, Western Region.

[FR Doc. 2012–9869 Filed 4–24–12; 8:45 am]

BILLING CODE 4310–05–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 381

[Docket No. 2011–2 CRB NCEB II]

Determination of Reasonable Rates and Terms for Noncommercial Broadcasting

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Proposed rule.

SUMMARY: The Copyright Royalty Judges are publishing for comment proposed rates and terms for use of certain works in connection with noncommercial broadcasting for the period commencing January 1, 2013, and ending on December 31, 2017.

DATES: Comments and objections, if any, are due no later than May 25, 2012.

ADDRESSES: Comments and objections may be sent electronically to *crb@loc.gov.* In the alternative, send an original, five copies and an electronic copy on a CD either by mail or by hand delivery. Please do not use multiple means of transmission. Comments and objections may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments and objections must be addressed to: Copyright Royalty Board, P.O. Box. 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments and objections must be brought to the Copyright Office, Public Information Office, Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000, between 8:30 a.m. and 5 p.m. If delivered by a commercial courier, comments and objections must be delivered between 8:30 a.m. and 4 p.m. to the Congressional Courier Acceptance Site located at 2nd and D Street NE., Washington, DC, and the envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, Room LM–403, 101 Independence Avenue SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: LaKeshia Keys, Program Specialist, by telephone: (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 118 of the Copyright Act, title 17 of the United States Code, establishes a statutory license for the use of certain copyrighted works in connection with noncommercial television and radio broadcasting. Chapter 8 of the Copyright Act requires the Copyright Royalty Judges (''Judges'') to conduct proceedings every five years to determine the rates and terms for the section 118 license.[1] 17 U.S.C. 801(b)(1), 804(b)(6). In accordance with section 804(b)(6), the Judges commenced the proceeding to set rates and terms for the period 2008–2012 on January 9, 2006, 71 FR 1453, and published final regulations setting those rates and terms on November 30, 2007. 72 FR 67646. Therefore, the next proceeding to determine the rates and terms for the section 118 license was to be commenced in January 2011 for the period 2013–2017. 17 U.S.C. 804(b)(6).

Accordingly, the Judges published in the **Federal Register** a notice commencing the proceeding to determine the rates and terms for the 2013–2017 period and requesting interested parties to submit their petitions to participate. 76 FR 591 (January 5, 2011). Petitions to Participate were received from: The American Society of Authors, Composers and Publishers (''ASCAP''); SESAC, Inc.; Broadcast Music, Inc. (''BMI''); Educational Media Foundation (''EMF''); Music Reports, Inc.; National Public Radio, the Public Broadcasting Service, and noncommercial radio and television stations eligible to receive funding from the Corporation for Public Broadcasting jointly (''NPR/PBS/CPB''); National Religious Broadcasters Noncommercial Music License Committee (''NRBNMLC''); the Church Music Publishers' Association; the National Music Publishers' Association, Inc. and the Harry Fox Agency, jointly (''NMPA/HFA''); the Catholic Radio Association (''CRA''); and the American Council on Education (''ACE''). The Judges set the timetable for the three-month negotiation period, see 17 U.S.C. 803(b)(3), and directed the participants to submit their written direct statements no later than October 31, 2011. In response to the October 31 deadline, the Judges received written direct statements from CRA, BMI, ASCAP, and Music Reports, Inc.[2] as well as several notifications of settlement and proposed rates and terms for the Copyright Royalty Judges to adopt.

There are two ways that copyright owners and public broadcasting entities[3] may negotiate rates and terms under the section 118 statutory license. First, copyright owners may negotiate rates and terms with specific public broadcasting entities for the use of all of the copyright owners' works covered by the license. Section 118(b)(2) provides that such license agreements ''shall be given effect in lieu of any determination by the * * * Copyright Royalty Judges,'' provided that copies of the agreement are submitted to the Judges ''within 30 days of execution.'' 17 U.S.C. 118(b)(2). The Judges received several agreements in this category for which no further action is required.

Second, copyright owners and public broadcasting entities may negotiate rates and terms for categories of copyrighted works and uses that would be binding on all owners and entities and submit them to the Judges for approval. Section 801(b)(7)(A) provides that in such event:

> (i) The Copyright Royalty Judges shall provide those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and
>
> (ii) the Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms and rates.

17 U.S.C. 801(b)(7)(A). The Judges received seven proposals within this category from the following participants: (1) SESAC and ACE; (2) BMI and ACE; (3) ASCAP and ACE; (4) NMPA/HFA and NRBNMLC; (5) SESAC and NRBNMLC, (6) ASCAP and NRBNMLC; and (7) BMI and NRBNMLC.[4]

ACE Joint Proposals

The joint proposals entered into by ACE and each of SESAC, BMI, and ASCAP propose to modify the royalty rates set forth in § 381.5. The rates proposed in the ASCAP/ACE and BMI/ACE submissions reflect a change in both the fees and the fee structure, going from a flat rate to tiered rates primarily based on the number of full-time students enrolled in the educational entity operating the station, with an exception that looks to the college radio station's authorized effective radiation power (''ERP'') as set forth in its current FCC license. ASCAP/ACE Joint Proposal at 4; BMI/ACE Joint Proposal at 4. Moreover, the proposed rates for ASCAP and BMI eliminate the need for the historic annual Consumer Price Index adjustments, as the proposed rates increase at the rate of two percent per year. *Id.* at 5.

The SESAC/ACE submission retains a flat rate which is then adjusted, starting in 2014, by the change in the Consumer Price Index or two percent, whichever is greater. SESAC/ACE Joint Proposal at 2.[5]

Each joint proposal proposes to require that each annual payment of the royalty rate be accompanied by a declaration stating the number of full-time students enrolled in the educational entity operating the station and/or the ERP as specified in the entity's current FCC license. *See* proposed § 381.5(d).

NRBNMLC Joint Proposals

The joint proposals entered into by NRBNMLC and each of NMPA/HFA, ASCAP, BMI, and SESAC propose carrying forward unchanged the current provisions set forth in §§ 381.1 (except

[1] Prior to the enactment of the Copyright Royalty and Distribution Reform Act of 2004, which established the Copyright Royalty Judges, rates and terms for the section 118 statutory license were set under the Copyright Arbitration Royalty Panel system, which was administered by the Librarian of Congress.

[2] Pursuant to 17 U.S.C. 803(b)(6)(C)(x), the Judges set the 60-day discovery period to run from November 30, 2011, through January 30, 2012. During the discovery period, Music Reports, Inc., and CRA each withdrew from the proceeding on December 13, 2011, and January 27, 2012, respectively. CRA also requested that the Judges vacate their Order dated January 20, 2012, compelling CRA to produce certain discovery; the Judges deny this request as moot, given CRA's withdrawal from the proceeding.

[3] A ''public broadcasting entity'' is defined as a ''noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in paragraph (2) of subsection (c)'' of section 118. 17 U.S.C. 118(f).

[4] On October 31, 2011, EMF notified the Judges that as a member of NRBNMLC it was a party to each of the joint proposals involving NRBNMLC.

[5] The proposed elimination of the CPI adjustments for ASCAP and BMI necessitated a change to § 381.10. However, no proposed language was provided with the initial proposals. Consequently, the Judges issued an order requesting proposed language to § 381.10, and the parties provided the same. *See Order Regarding Submission of Settlement Proposals,* Docket No. 2011–3 CRB NCEB II (February 2, 2012). *See also* Joint Submission of American Council on Education, the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc. (filed March 16, 2012).

to replace ''2008'' with ''2013'' and ''2012'' with ''2017''), 381.2, 381.9, and 381.11.

The joint proposal between NMPA/HFA and NRBNMLC stated that the rates in § 381.7(b)(4) should remain the same as those currently set for 2008–2012, ''subject to the additional provisions'' of §§ 381.7(b)(3) and (5), since they ''are reasonable'' and ''no circumstances exist that would warrant modification of these fees.'' NMPA/HFA and NRBNMLC Joint Proposal at 2. The proposal also stated that separate negotiations were ongoing between HFA and NMPA and NPR and PBS with respect to provisions in § 381.7 other than § 381.7(b)(4). *Id.* at 2–3. When such proposal did not appear to be forthcoming, the Judges issued an order requesting in part that such proposal, if finalized, be submitted by March 16, 2012, in order to allow for publication of all proposed rates and terms in a single document. *See Order Regarding Submission of Settlement Proposals,* Docket No. 2011–2 CRB NCEB II (February 2, 2012); *see also* n.5. However, after receiving no responsive filings, the Judges issued a subsequent order requiring HFA, NMPA, NPR, and PBS to show cause why the provisions to be covered by their separate proposal (§§ 381.7(b)(1)(i)–(iii), 381.7(b)(2)(i)–(iv), 381.7(c), 381.7(d), and 381.7(e)) should not be removed from Part 381. See Order to Show Cause, Docket No. 2011–2 CRB NCEB II (March 28, 2012). In response, HFA, NMPA, NPR and PBS submitted their joint proposal covering the provisions specified in the March 28 order. Specifically, they proposed that the rates set forth in §§ 381.7(b)(1) and (2) ''be changed to reflect a rate increase consistent with the prior percentage increase from the 2003–2007 license period to the 2008–2012 license period'' as such increase ''is fair and reasonable.'' Response to Order to Show Cause, and Joint Proposal of the Harry Fox Agency, Inc., National Music Publishers' Association, Inc., National Public Radio, Inc. and Public Broadcasting Service, at 3 (April 4, 2012). These parties proposed no changes to §§ 381.7(c)–(e) and requested that these provisions be carried forward as is because they ''are fair and reasonable in that they facilitate efficient, consistent and accurate payments of royalties for uses governed by [§] 381.7.'' *Id.* at 4.

Each of the joint proposals between NRBNMLC and ASCAP, BMI, and SESAC propose modifications to § 381.6. Under the proposals, alternatives have been provided to a Religious/Community Noncommercial Radio Station in determining its Population Count which is the basis of the rates paid. In addition, the proposals include a new reduced rate for a Religious/Community Noncommercial Radio Station using a talk format necessitating a number of newly defined terms. Finally, the proposals address a Religious/Community Noncommercial Radio Station's broadcast of in-band, on-channel, digital radio (''HD Radio'') signals.

Other Provisions

Finally, the Judges have removed and reserved two sections for which no proposals were submitted. Specifically, § 381.4, which governed performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities of 17 U.S.C. 118(c), and § 381.8, which governed the terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works in PBS-distributed programs as well as in other than PBS-distributed programs, have been removed and their section numbers reserved.

As noted above, the public may comment and object to any or all of the proposed regulations contained in this notice. Such comments and objections must be submitted no later than May 25, 2012.

List of Subjects in 37 CFR Part 381

Copyright, Music, Radio, Television, Rates.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend Part 381 to Chapter III of title 37 of the Code of Federal Regulations to read as follows:

PART 381—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

1. The authority citation for part 381 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

§ 381.1 [Amended]

2. Section 381.1 is amended by removing ''2008'' and adding ''2013'' in its place and by removing ''2012'' and adding ''2017'' in its place.

§ 381.4 [Removed and Reserved]

3. Remove and reserve § 381.4.

4. Section 381.5 is amended by revising paragraphs (c) and (d) to read as follows:

§ 381.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

* * * * *

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, the royalty rates shall be as follows:

(i)

	Number of full-time students	2013	2014	2015	2016	2017
Level 1	<1,000	$319	$325	$332	$339	$345
Level 2	1,000–4,999	369	376	384	392	399
Level 3	5,000–9,999	505	515	525	535	546
Level 4	10,000–19,999	655	668	681	695	708
Level 5	20,000 +	822	838	855	872	890

(ii) Level 1 rates as set forth in paragraph (c)(1)(i) of this section, shall also apply to College Radio Stations with an authorized effective radiated power (ERP), as that term is defined in 47 CFR 73.310(a), of 100 Watts or less, as specified on its current FCC license, regardless of the size of the student population.

(2) For all such compositions in the repertory of BMI, the royalty rates shall be as follows:

(i)

	Number of full-time students	2013	2014	2015	2016	2017
Level 1	<1,000	$319	$325	$332	$339	$345
Level 2	1,000–4,999	369	376	384	392	399
Level 3	5,000–9,999	505	515	525	535	546
Level 4	10,000–19,999	655	668	681	695	708
Level 5	20,000 +	822	838	855	872	890

(ii) Level 1 rates, as set forth in paragraph (c)(2)(i) of this section, shall also apply to College Radio Stations with an authorized effective radiated power (ERP), as that term is defined in 47 CFR 73.310(a), of 100 Watts or less, as specified on its current FCC license, regardless of the size of the student population.

(3) For all such compositions in the repertory of SESAC, the royalty rates shall be as follows:

(i) 2013: $140.00 per station;

(ii) 2014: $140 per station, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section;

(iii) 2015: The 2014 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section;

(iv) 2016: The 2015 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section;

(v) 2017: The 2016 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.

(vi) Such cost of living adjustment to be made in accordance with the greater of

(A) The change, if any, in the Consumer Price Index (all consumers, all items) published by the U.S. Department of Labor, Bureau of Labor Statistics during the twelve (12) month period from the most recent Index, published before December 1 of the year immediately prior to the applicable year, or

(B) Two percent (2%).

(4) For the performance of any other such compositions: $1.

(d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year. Each annual payment to ASCAP, BMI and SESAC shall be accompanied by a signed declaration stating the number of full-time students enrolled in the educational entity operating the station and/or the effective radiated power (ERP) as specified in its current FCC license. An exact copy of such declaration shall be furnished to each of ASCAP, BMI and SESAC.

* * * * *

5. Section 381.6 is amended as follows:

a. By redesignating paragraphs (b) through (e) as paragraphs (c) through (f), respectively;

b. By adding a new paragraph (b);

c. By revising newly redesignated paragraph (d);

d. By revising newly redesignated paragraph (e); and

e. By removing current paragraph (f).

The additions and revisions to § 381.6 read as follows:

§ 381.6 Performance of musical compositions by other public broadcasting entities.

* * * * *

(b) Definitions. As used in paragraphs (d) and (e) of this section, the following terms and their variant forms mean the following:

(1) *Feature Music* shall mean any performance of a musical work, whether live or recorded, that is the principal focus of audience attention. Feature Music does not include bridge, background, or underscore music, themes or signatures, interstitial music between programs such as in public service announcements or program sponsorship identifications, brief musical transitions in and out of program segments (not to exceed 60 seconds in duration), incidental performances of music during broadcasts of public, religious, or sports events, or brief performances during news, talk, religious, and sports programming of no more than 30 seconds in duration.

(2) *Population Count.* The combination of:

(i) The number of persons estimated to reside within a station's Predicted 60 dBu Contour, based on the most recent available census data; and

(ii) The nonduplicative number of persons estimated to reside in the Predicted 60 dBu Contour of any Translator or Booster Station that extends a public broadcasting entity's signal beyond the contours of a station's Predicted 60 dBu Contour.

(iii) In determining Population Count, a station or a Translator or Booster Station may use and report the total population data, from a research company generally recognized in the broadcasting industry, for the radio market within which the station's community license is located.

(3) *Predicted 60 dBu Contour* shall be calculated as set forth in 47 CFR 73.313.

(4) *Talk Format Station* shall mean a noncommercial radio station:

(i) Whose program content primarily consists of talk shows, news programs, sports, community affairs or religious sermons (or other non-music-oriented programming);

(ii) That performs Feature Music in less than 20% of its programming annually; and

(iii) That performs music-oriented programming for no more than four (4) programming hours during the hours from 6 a.m. to 10 p.m. each weekday, with no two (2) hours of such programming occurring consecutively, with the exception of up to five (5) weekdays during the year.

(5) *Weekday* shall mean the 24-hour period starting at 12 a.m. through 11:59 p.m. on Mondays, Tuesdays, Wednesdays, Thursdays and Fridays occurring between January 1 of a given year up to and including Thanksgiving day of that year.

(6) *Translator Station* and *Booster Station* shall have the same meanings as set forth in 47 CFR 74.1201.

* * * * *

(d) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, the royalty rates shall be as follows:

(i) Music Fees (Stations with 20% or more programming containing Feature Music):

	Population count	2013	2014	2015	2016	2017
Level 1	0–249,999	$631	$644	$657	$670	$683
Level 2	250,000–499,999	1,126	1,149	1,171	1,195	1,219

	Population count	2013	2014	2015	2016	2017
Level 3	500,000–999,999	1,688	1,722	1,756	1,791	1,827
Level 4	1,000,000–1,499,999	2,251	2,296	2,342	2,389	2,437
Level 5	1,500,000–1,999,999	2,814	2,870	2,928	2,986	3,046
Level 6	2,000,000–2,499,999	3,377	3,445	3,513	3,584	3,655
Level 7	2,500,000–2,999,999	3,939	4,018	4,098	4,180	4,264
Level 8	3,000,000 and above	5,628	5,741	5,855	5,972	6,092

(ii) Talk Format Station Fees (Stations with <20% Feature Music programming):

	Population count	2013	2014	2015	2016	2017
Level 1	0–249,999	$631	$644	$657	$670	$683
Level 2	250,000–499,999	631	644	657	670	683
Level 3	500,000–999,999	631	644	657	670	683
Level 4	1,000,000–1,499,999	788	804	820	836	853
Level 5	1,500,000–1,999,999	985	1,005	1,025	1,045	1,066
Level 6	2,000,000–2,499,999	1,182	1,206	1,230	1,254	1,279
Level 7	2,500,000–2,999,999	1,379	1,406	1,434	1,463	1,492
Level 8	3,000,000 and above	1,970	2,009	2,049	2,090	2,132

(2) For all such compositions in the repertory of BMI, the royalty rates shall be as follows:

(i) Music Fees (Stations with 20% or more programming containing Feature Music):

	Population count	2013	2014	2015	2016	2017
Level 1	0–249,999	$631	$644	$657	$670	$683
Level 2	250,000–499,999	1,126	1,149	1,171	1,195	1,219
Level 3	500,000–999,999	1,688	1,722	1,756	1,791	1,827
Level 4	1,000,000–1,499,999	2,251	2,296	2,342	2,389	2,437
Level 5	1,500,000–1,999,999	2,814	2,870	2,928	2,986	3,046
Level 6	2,000,000–2,499,999	3,377	3,445	3,513	3,584	3,655
Level 7	2,500,000–2,999,999	3,939	4,018	4,098	4,180	4,264
Level 8	3,000,000 and above	5,628	5,741	5,855	5,972	6,092

(ii) Talk Format Station Fees (Stations with <20% Feature Music programming):

	Population count	2013	2014	2015	2016	2017
Level 1	0–249,999	$631	$644	$657	$670	$683
Level 2	250,000–499,999	631	644	657	670	683
Level 3	500,000–999,999	631	644	657	670	683
Level 4	1,000,000–1,499,999	788	804	820	836	853
Level 5	1,500,000–1,999,999	985	1,005	1,025	1,045	1,066
Level 6	2,000,000–2,499,999	1,182	1,206	1,230	1,254	1,279
Level 7	2,500,000–2,999,999	1,379	1,406	1,434	1,463	1,492
Level 8	3,000,000 and above	1,970	2,009	2,049	2,090	2,132

(3) For all such compositions in the repertory of SESAC, the royalty rates shall be as follows:

(i) Music fees for stations with >=20% Feature Music programming:

	Population count	2013	2014	2015	2016	2017
Level 1	0–249,999	$138	$140	$143	$146	$149
Level 2	250,000–499,999	230	234	239	244	248
Level 3	500,000–999,999	345	352	359	366	373
Level 4	1,000,000–1,499,999	459	468	478	487	497
Level 5	1,500,000–1,999,999	574	586	597	609	622
Level 6	2,000,000–2,499,999	689	702	716	731	745
Level 7	2,500,000–2,999,999	804	820	836	853	870

	Population count	2013	2014	2015	2016	2017
Level 8	3,000,000 and above	1,149	1,171	1,195	1,219	1,243

(ii) Talk fees for stations with <20% Feature Music programming:

	Population count	2013	2014	2015	2016	2017
Level 1	0–249,999	$138	$140	$143	$146	$149
Level 2	250,000–499,999	138	140	143	146	149
Level 3	500,000–999,999	138	140	143	146	149
Level 4	1,000,000–1,499,999	161	164	167	170	174
Level 5	1,500,000–1,999,999	201	205	209	213	218
Level 6	2,000,000–2,499,999	241	246	251	256	261
Level 7	2,500,000–2,999,999	281	287	293	299	305
Level 8	3,000,000 and above	402	410	418	427	435

(4) For the performance of any other such compositions, in 2013 through 2017, $1.

(e) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year. Each annual payment shall be accompanied by a signed declaration stating the Population Count of the public broadcasting entity and the source for such Population Count. An exact copy of such declaration shall be furnished to each of ASCAP, BMI and SESAC. Upon prior written notice thereof from ASCAP, BMI and SESAC, a public broadcasting entity shall make its books and records relating to its Population Count available for inspection. In the event that a public broadcasting entity wishes to be deemed a Talk Format Station, then such entity shall provide a signed declaration stating that Feature Music is performed in less than 20% of its annual programming and that it complies with the caps set forth in paragraph (b)(4) of this section. An exact copy of such declaration shall be furnished to each of ASCAP, BMI and SESAC. Upon prior written notice thereof from ASCAP, BMI or SESAC, a public broadcasting entity shall make its program schedule or other documentation supporting its eligibility as a Talk Format Station available for inspection.

* * * * *

6. Section 381.7 is amended as follows:

a. By revising paragraphs (b)(1)(i)(A)–(D) and (b)(1)(ii)(A)–(D);

b. By revising paragraphs (b)(2)(i)–(iv);

c. In paragraph (b)(4), by removing ''2008–2012'' and adding ''2013–2017'' in its place; and

d. In paragraph (b)(5), by removing ''2012'' and adding ''2017'' in its place.

The revisions to § 381.7 read as follows:

§ 381.7 Recording rights, rates and terms.

* * * * *

(b) * * *

(1)(i) * * *

	2013–2017
(A) Feature	$116.37
(B) Concert feature (per minute)	$34.95
(C) Background	$58.81
(D) Theme:	
(*1*) Single program or first series program	$58.81
(*2*) Other series program	$23.88

(ii) * * *

	2013–2017
(A) Feature	$9.62
(B) Concert feature (per minute)	$2.53
(C) Background	$4.18
(D) Theme:	
(*1*) Single program or first series program	$4.18
(*2*) Other series program	$1.66

* * * * *

(2) * * *

	2013–2017
(i) Feature	$12.60
(ii) Concert feature (per minute)	$18.49
(iii) Background	$6.31
(iv) Theme:	
(A) Single program or first series program	$6.31
(B) Other series program	$2.52

* * * * *

§ 381.8 [Removed and Reserved]

7. Remove and reserve § 381.8.

8. Section 381.10 is amended as follows:

a. In paragraph (a), by removing ''2007'' and adding ''2013'' in its place in each place it appears and by removing ''2006'' and adding ''2012'' in its place, and by removing ''On each December 1'' and adding ''On or before each December 1'' in its place;

b. By revising paragraph (b);

c. In paragraph (c), by adding ''the'' before ''rates'', by removing ''381.5'' and adding ''381.5(c)(3)'' in its place, and by adding ''(30)'' after ''thirty''.

The revisions to § 381.10 read as follows:

§ 381.10 Cost of living adjustment.

* * * * *

(b) On the same date of the notices published pursuant to paragraph (a) of this section, the Copyright Royalty Judges shall publish in the **Federal Register** a revised schedule of the rates for § 381.5(c)(3), the rate to be charged for compositions in the repertory of SESAC, which shall adjust the royalty amounts established in a dollar amount according to the greater of

(1) The change in the cost of living determined as provided in paragraph (a) of this section, or

(2) Two percent (2%).

(3) Such royalty rates shall be fixed at the nearest dollar.

* * * * *

Dated: April 20, 2012.

Stanley C. Wisniewski,

U.S. Copyright Royalty Judge.

[FR Doc. 2012–9927 Filed 4–24–12; 8:45 am]

BILLING CODE 1410–72–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 262 and 265

TANF Assistance and Electronic Benefit Transfer Transactions; Request for Public Comment

AGENCY: Department of Health and Human Services (HHS), Administration for Children and Families, Office of Family Assistance (OFA).

ACTION: Request for public comment.

SUMMARY: The Office of Family Assistance (OFA) is interested in learning about how States deliver Temporary Assistance to Needy Families (TANF) assistance to beneficiaries, whether States have implemented policies and practices to prevent electronic benefit transfer transactions involving TANF assistance in liquor stores, casinos, gambling casinos, or other gaming establishments, and retail establishments which provide adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; what the States' experiences have been in implementing such policies and practices; and whether States place other similar types of restrictions on assistance usage. OFA also is interested in learning about States' current approaches to ensuring that recipients have adequate access to their cash assistance, including policies that provide access to assistance with no fees or charges or current approaches to imposing fees or charges in connection with receipt of assistance, along with other information relevant to considering what might be minimal fees or charges. Additionally, OFA is interested in hearing the perspectives of vendors, consumer advocates, and any other individuals or entities that have information that could be relevant to the development and implementation of policies and procedures to prevent electronic benefit transfer transactions in certain establishments, and to ensuring access to cash assistance with minimal fees or charges, including opportunities to access assistance without fees or charges.

The information provided will be used to inform OFA as it develops regulations to implement Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96), which, among other things, requires States to prevent the use of TANF assistance in electronic benefit transfer transactions at specified locations.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 11, 2012.

ADDRESSES: Interested persons may submit written comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: TANFEBTTransactions@acf.hhs.gov* Please include ''Comments on EBT **Federal Register** Notice'' in the subject line of the message.
- *Mail or Courier Delivery:* Robert Shelbourne, Office of Family Assistance, Administration for Children and Families, 901 D Street SW., 5th Floor, Washington, DC 20447.

Instructions: If you choose to use an express, overnight, or other special delivery method, ensure that delivery may be made at the address listed under the **ADDRESSES** section. We urge interested parties to submit comments electronically to ensure that they are received in a timely manner. All comments received will be posted without change to *http://www.regulations.gov*. This will include any personal information provided.

FOR FURTHER INFORMATION CONTACT: Robert Shelbourne, Office of Family Assistance, 901 D Street SW., 5th Floor, Washington, DC 20447, (202) 401–5150.

SUPPLEMENTARY INFORMATION: On February 22, 2012, President Obama signed the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96). Section 4004 of the Act requires States (but does not require Tribes) to prevent the use of Temporary Assistance for Needy Families (TANF) assistance in electronic benefit transfer (EBT) transactions at specified locations. In particular, the law requires States receiving TANF grants ''to maintain policies and practices as necessary to prevent assistance provided under the State program funded under this part from being used in any electronic benefit transfer transaction in any liquor store; any casino, gambling casino, or gaming establishment; or any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.'' The law defines an electronic benefit transfer transaction as ''the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.''

The law imposes a new reporting requirement as well as a new penalty. Each State is required to report to HHS by February 22, 2014, on its implementation of policies and practices related to restricting recipients' use of EBT cards at the locations specified in the previous paragraph. As required by the law, HHS shall reduce a State's block grant if the State fails to comply with this reporting requirement or if, based on the information that the State reports, HHS finds that the State has not implemented and maintained the required policies and practices. Furthermore, States are required to include in their State plans a statement outlining how they intend to implement policies and procedures to prevent access to assistance through electronic fund transfer transactions at casinos, liquor stores, and establishments providing adult-oriented entertainment. The State plan also must include an explanation of how the State plans to ensure that (1) recipients of the assistance have adequate access to their cash assistance, and (2) recipients of assistance have access to using or withdrawing assistance with minimal fees or charges, including an opportunity to access assistance with no fee or charges, and are provided information on applicable fees and surcharges that apply to electronic fund transactions involving the assistance, and that such information is made publicly available.

The Office of Family Assistance is seeking responses to the following questions to help inform us as we draft the regulation to implement the statutory requirement. We do not intend to respond to comments provided in response to this Request for Public Comment. However, in the notice of proposed rulemaking, we will provide a general summary of the comments that influenced our policy decisions, and will respond to comments submitted in response to the notice of proposed rulemaking when a final rule is issued.

Questions

Please identify the question to which you are responding.

Benefit Delivery System

1. What method or methods of delivery does your State use to provide TANF assistance? For example, does the State use checks, direct deposit into recipient checking account, Electronic Benefit Transfer (EBT) cards, Electronic Payment Cards (EPC) (co-branded with Visa or MasterCard)?

2. For each method used, does the State currently track the site at which a transaction occurs? If the State is able to identify the site at which a transaction occurs, what process does or would the State need to initiate to determine if the site was a liquor store, gaming establishment or adult entertainment venue? Are there different issues for different types of venues?

Implementing EBT Restrictions

3. For those with knowledge of what has happened in a State or States that have implemented some form of EBT transaction restriction:

a. What is the nature of your restriction? Please provide as much

specificity as possible, including the definitions used for any establishment type for which TANF benefit access was restricted. If the State's restriction appears to differ from the EBT transaction restriction contained in section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012, please describe those differences.

b. Was the restriction put in place in response to a legislative mandate or by executive action without a specific legislative mandate? If in response to a legislative mandate, what did the legislature require?

c. If your State imposes EBT transaction restrictions relating to liquor stores, casinos, gambling casinos, or other gaming establishments, or retail establishments which provide adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment, can you please indicate: which of these locations are subject to restriction, and what is the definition used to describe the restricted location?

d. What specific method and procedures does the State use?

e. What challenges to implementation have been encountered and how did the State address them?

f. Please provide any information available concerning initial and continuing costs.

g. Does the State identify locations where benefit access is to be restricted through a manual process, an automated process or some combination of the two? Please describe the process for identifying these locations.

h. Has your State implemented what you consider an effective method of restricting access to EBT usage at specified locations? Please describe why you think it is effective (e.g. cost effective, achieves desired outcomes)?

i. What concerns have been raised by businesses, electronic benefit vendors, and/or TANF recipients, relating to access, cost, or other issues, in relation to the restrictions? Have particular concerns been raised relating to rural areas of the State? If so, what are those concerns, and how, if at all, have those concerns been addressed?

j. If your State passes through child support to families receiving TANF assistance, how, if at all, do the TANF assistance restrictions affect provision of passed-through child support?

k. Are your State's restrictions limited to TANF assistance, or do they affect any other benefits provided electronically? If the restrictions are limited to TANF assistance, how, if at all, do restrictions on accessing TANF assistance affect access to any other benefits?

l. Are there particular issues not discussed above that have arisen in design or implementation that could be useful for OFA to be aware of in the development of regulations relating to this topic?

4. With regards to States that have not implemented EBT transaction restrictions, have you considered and examined issues relevant to implementation of such restrictions? If so, can you identify issues and considerations that have arisen for you as you considered such requirements?

5. For any State, do you currently have information about the incidence of the use of TANF assistance EBT transactions in liquor stores, gaming establishments, and adult entertainment venues?

Access Fees or Charges

6. With respect to any State, please describe the fees and charges that TANF recipients face when accessing their TANF assistance benefits. If the fees or charges differ based on number of withdrawals or where or how benefits are accessed (such as via an ATM vs. point of sale transaction), please describe the differences in fees under all relevant benefit access mechanisms.

7. Does your State provide any mechanism that allows TANF assistance recipients to access benefits without facing any fees or charges? If so, please describe.

8. How, if at all, does your State make information available to TANF assistance recipients about where to access TANF benefits, the fees and charges associated with accessing benefits under various scenarios, and how benefits can be accessed without any fees or charges?

9. What, if anything, do you think should be done to reduce the costs of accessing TANF benefits?

10. Please describe any access barriers, that you think TANF assistance recipients currently face or could face under the restrictions and what mechanisms, if any, you think could reduce those access barriers while ensuring that TANF benefits are not accessed through EBT transactions at those establishments for which access is restricted under section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012.

EBT Vendor Input

11. For companies that provide electronic benefit services to States with respect to TANF assistance, please describe the implementation issues you think States could or would face in implementing the restriction required under section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012. Please describe technical issues, cost implications, and access implications as well as mechanisms for addressing problems identified.

We welcome any other comments you have about the TANF EBT provisions contained in Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012.

Dated: April 5, 2012.

Earl Johnson,

Director, Office of Family Assistance.

[FR Doc. 2012–9260 Filed 4–24–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–XB162

Atlantic Highly Migratory Species; Public Conference Call Regarding Recreational Yellowfin Tuna Fishery Data Collection

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public conference call.

SUMMARY: In order to better inform the public and NMFS, a conference call that is open to the public will be held to discuss historical and future data collection in the U.S. recreational yellowfin tuna fishery and the relationship to international yellowfin tuna management (e.g., quota establishment or tracking landings).

DATES: An operator-assisted conference call that is open to the public will be held on April 27, 2012, from 10 a.m. to noon, EDT (phone number 888–593–8429; participant pass code 1629891). During this call, members of the public may ask questions and provide comments, after a brief background presentation.

FOR FURTHER INFORMATION CONTACT: Randy Blankinship at 727–824–5399 or Dianne Stephan at 978–281–9347.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tuna Conventions Act (ATCA), which authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement

recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA. On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, implementing the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan, which details the management measures for Atlantic HMS fisheries.

At its 2011 meeting, the International Commission for the Conservation of Atlantic Tunas (ICCAT) actively considered country-specific yellowfin tuna allocations, as well as the potential landings histories that could be the basis for those allocations. While the final recommendation did not establish any country-specific allocations, some members of the Atlantic Highly Migratory Species Advisory Panel and the public have expressed an interest in discussing historical and future data collection in the U.S. recreational yellowfin tuna fishery, in case the issue comes up at the 2012 ICCAT meeting.

NMFS is facilitating the public discussion of this topic through this public conference call. The purpose of this call is to discuss historical and future data collection in the U.S. recreational yellowfin tuna fishery and the relationship to international yellowfin tuna management (e.g., quota establishment or tracking landings). During the call, the background of recreational yellowfin tuna data collection—as well as recent international management developments—will be briefly reviewed. The potential for future data collection will also be discussed. The public will have the opportunity to ask questions and engage in the discussion.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 20, 2012.

Galen Tromble,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–9971 Filed 4–20–12; 4:15 pm]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 77, No. 80

Wednesday, April 25, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 19, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: Evaluation of User Satisfaction with NAL Internet Sites.

OMB Control Number: 0518–0040.

Summary of Collection: There is a need to measure user satisfaction with the National Agricultural Library (NAL) Internet sites in order for NAL to comply with Executive Order 12862, which directs federal agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. NAL Internet sites are a vast collection of Web pages created and maintained by component organizations of NAL, and are visited by 4.6 million people per month on average. The information generated from this research will enable NAL to evaluate the success of this new modality in response to fulfilling its legislative mandate to disseminate vital agricultural information and truly become the national digital library of agriculture.

Need and Use of the Information: The purpose of the research is to ensure that intended audiences find the information provided on the Internet sites easy to access, clear, informative, and useful. The research will provide a means by which to classify visitors to the NAL Internet sites, to better understand how to serve them. If the information is not collected, NAL will be hindered from advancing its mandate to provide accurate, timely information to its users community.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; State, Local or Tribal Government.

Number of Respondents: 10,800.

Frequency of Responses: Reporting: Monthly.

Total Burden Hours: 900.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–9871 Filed 4–24–12; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2011–0008]

Compliance Guide for Residue Prevention and Agency Testing Policy for Residues

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability and opportunity for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of a compliance guide for the prevention of violative residues in livestock slaughter establishments. FSIS has posted this compliance guide on its Web page and it may be used immediately. FSIS also welcomes comments on this compliance guide, which will be revised as needed. This notice also discusses changes to the FSIS Residue Repeat Violator List and announces the Agency's intention to subject to increased testing animals from producers who are under an injunction obtained by the Food and Drug Administration because of drug use practices that have led to residue violations.

DATES: Submit written comments by June 25, 2012.

ADDRESSES: FSIS invites interested persons to submit comments on this notice and the compliance guide, which can be accessed at *http://www.fsis.usda.gov/Regulations_&_Policies/Compliance_Guides_Index/index.asp.* Comments may be submitted by either of the following methods:

- Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.
- Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items: Send to U.S. Department of Agriculture (USDA), FSIS, Docket Clerk, Patriots Plaza 3, 1400 Independence Avenue SW., Room 8–163A, Mailstop 3782, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–

2011–0008. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or to comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Daniel Engeljohn, Ph.D., Assistant Administrator for Office of Policy and Program Development, FSIS, U.S. Department of Agriculture, Room 349–E, Jamie Whitten Building, 14th and Independence, SW., Washington DC 20250–3700; telephone (202) 205–0495, fax (202) 720–2025; *daniel.engeljohn@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The U.S. National Residue Program (NRP) is administered by FSIS to collect data on chemical residues in domestic and imported meat, poultry, and egg products and to keep products that are adulterated because of illegal residues out of commerce. FSIS collects samples of meat, poultry, and egg products at federally inspected establishments and analyzes the samples at FSIS laboratories for chemical residues of veterinary drugs, pesticides, and environmental contaminants. With the implementation of the Hazard Analysis and Critical Control Points (HACCP) inspection system, another important component of the NRP is to provide verification of residue control in HACCP systems. As part of the HACCP regulation under 9 CFR part 417, establishments are required to conduct a hazard analysis and to consider the food safety hazards that can be expected to arise from drug and other chemical residues.

The USDA Office of Inspector General (OIG) report of January 29, 2010, reflecting its review of the NRP with regard to cattle, identified as a contributing factor to violative residue problems the practice of slaughter establishments continuing to purchase livestock from repeat residue violators. OIG also noted that there is often insufficient information at slaughter establishments to identify the producers responsible for the violative residues. The OIG review also underscored the fact that there are two slaughter classes of livestock, dairy cows and bob veal, that account for 90 percent of the residues found in animals presented for slaughter, pointing to the need for the Agency to continue to focus compliance efforts on cull dairy cows and bob veal.

This Compliance Guide emphasizes that establishments, especially those that slaughter dairy cows and bob veal calves, should apply five basic measures to reduce or prevent the occurrence of violative residues. The guide recommends that establishments should: (1) Confirm producer history; (2) buy animals from producers who have a history of providing residue-free animals and have effective residue prevention programs; (3) ensure that animals are adequately identified to enable traceback; (4) supply information to FSIS at ante-mortem inspection showing that animals in the lot did not come from repeat violators; and (5) notify producers in writing if their animals are found to have either violative residues or detectable levels that do not exceed the tolerance levels established by FDA and FSIS. Persistent non-violative levels residues may indicate a pattern of usage that could result in a violation at some point.

The Compliance Guide discusses the Agency's revised *Residue Repeat Violator List,* which has been streamlined for greater ease of use. The List now includes only producers who have provided more than one animal with a violative residue during the past 12 months. The List is also now presented in two differing forms. ''Part I'' is intended for use by Agency inspection personnel and contains comprehensive information on the individual residue findings (e.g., tissue identified with the violation, chemical compound identified, concentration), organized alphabetically by state and firm name. ''Part II'' is intended for use by industry and lists producers that have been the source of multiple animals with residue violations and does not provide the technical information contained in Part I. The Agency invites comments on these recent revisions to the List, especially comments related to the List's utility and ease of use. Should the Agency be providing additional information on producers who supply animals with violative residues?

The Compliance Guide explains that establishments that do not use the information in the Residue Repeat Violator List, either directly or through a letter or certification, would not be taking advantage of a tool to identify livestock from known repeat violators. If an establishment does not follow this guide, and FSIS finds violative residues, the establishment's HACCP system may be inadequate under 9 CFR 417.6.

FSIS has also been asked recently whether producers could be removed from the Residue Repeat Violator List in less than 12 months in certain circumstances, e.g., if a producer goes three consecutive months without any new violations. The Agency is evaluating this issue and invites comments on it.

FSIS recently increased testing for residues of carcasses in establishments with violations associated with the same producer or at establishments that fail to apply the residue control measures described in the Compliance Guide. The notices with instructions to FSIS personnel concerning increased testing for residues are available at *http://www.fsis.usda.gov/OPPDE/rdad/FSISNotices/21-11.pdf* and*http://www.fsis.usda.gov/OPPDE/rdad/FSISNotices/12-11.pdf.*

In addition, FSIS intends to increase its testing for residues in animals from producers who are under an injunction obtained by the Food and Drug Administration because of drug use practices that have led to residue violations. This action is consistent with FSIS's policy of increasing testing of carcasses at slaughter establishments that are attributable to producers with multiple residue violations.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2010_Notices_Index/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://*

www.fsis.usda.gov/news_and_events/email_subscription/. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on April 18, 2012.

Alfred V. Almanza,

Administrator.

[FR Doc. 2012–9797 Filed 4–19–12; 4:15 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Delegation of Authority From the Regional Forester, Pacific Southwest Region, to Forest Supervisor, Eldorado National Forest, for the El Dorado County Rubicon Trail Forest Road and Trail Act Easement

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Regional Forester, Pacific Southwest Region, hereby delegates to the Forest Supervisor, Eldorado National Forest, authority to grant a Forest Road and Trail Act easement to El Dorado County for the Rubicon Trail.

DATES: April 19, 2012.

ADDRESSES: USDA Forest Service, Pacific Southwest Region, 1323 Club Drive, Vallejo, CA 94592.

FOR FURTHER INFORMATION CONTACT: Ramiro Villalvazo, Director, Public Services, (707) 562–8856.

Randy Moore,

Regional Forester.

[FR Doc. 2012–9945 Filed 4–24–12; 8:45 am]

BILLING CODE M

DEPARTMENT OF AGRICULTURE

Forest Service

Grand Mesa, Uncompahgre and Gunnison National Forests; Colorado; Federal Coal Lease Modifications COC–1362 & COC–67232

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Grand Mesa, Uncompahgre and Gunnison National Forests (GMUG) must decide whether or not to consent to Bureau of Land Management (BLM) modifying the Federal Coal Leases COC–1362 and COC–67232 by adding 800 and 922 acres, respectively, to them. If the GMUG does consent to lease, it will prescribe conditions (as stipulations) for the protection of non-mineral resources

DATES: Public comments for this project were received between April 21 and May 21, 2010 during the preparation of an Environmental Assessment. Comments received during that period will be also be considered in this analysis. These comments have informed the issue analysis and alternative development. Additionally, the agency will continue to accept public comments throughout the preparation of the Draft Environmental Impact Statement, which is estimated to be released in May, 2012. The final environmental impact statement is expected in July, 2012.

ADDRESSES: Written comments should be addressed to Grand Mesa, Uncompahgre, and Gunnison National Forest, Attn: Forest Supervisor, 2250 HWY50, Delta, CO 81416. Comments may also be sent via email to *comments-rocky-mountain-gmug@fs.fed.us* or via facsimile to 970–874–6698.

FOR FURTHER INFORMATION CONTACT: Niccole Mortenson, 406–329–3163 or *nmortenson@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

Under 43 CFR part 3432 (as amended by the Energy Policy Act of 2005), the holder of a federal coal lease may apply to modify a lease by adding up to 960 acres. The federal agencies are responding to applications to modify existing leases. The GMUG and BLM have identified the need to consider issuing two coal lease modifications for federal coal lands immediately adjacent to exiting federal coal leases COC–1362 and COC–67232. The purpose of the lease modifications is to ensure that compliant and super-compliant coal reserves are recovered.

The BLM, charged with administration of the mineral estate on these Federal lands, is required, by law, to consider leasing Federally-owned minerals for economic recovery. The USDA–Forest Service (FS), as the surface management agency, considers consenting to the BLM leasing reserves underlying lands under its jurisdiction, and prescribes stipulations for the protection of non-mineral resources.

Proposed Action

Within the jurisdiction of the Forest Service, the proposed action is to consent to BLM modifying existing federal coal leases COC–1362 and COC-67232 by adding 800 and 922 additional acres (respectively) to ensure that compliant and super-compliant coal reserves are recovered and not bypassed, and to identify stipulations for the protection of non-mineral (i.e. surface) resources.

The proposed lease modifications are located in Gunnison County, Colorado in portions of sections 10, 11, 13, 14, 22, 23 of T.14S. R. 90W., 6th PM. The modification areas include National Forest System (NFS) surface lands managed by the GMUG and the coal estate managed by the BLM.

The proposed action deals primarily with underground mining. It is assumed that longwall mining practices would be used. Surface disturbance may include soil subsidence due to removal of the coal. In the event that post-lease surface activities are proposed and authorized, other soil disturbance may occur due to temporary road construction and drilling of methane drainage wells. A Reasonably Foreseeable Mine Plan (RFMP) has been developed to address potential environmental effects. It is detailed to the extent possible and will be included in the analysis.

Possible Alternatives

No Action Alternative—Analysis of the No Action alternative is required by CEQ 40 CFR 1502.14(d). Under the no action alternative, the lease modifications would not be approved, and no mining would occur in these specific areas. Impacts from mining coal under these areas would not occur on these lands, and the effects from on-going land uses could continue including coal mining activities such as exploration and monitoring related to mine activities, as well as continued recreation and grazing. The land would continue to be managed according to Forest Plan standards, goals and guidelines.

The Following is Common to All Action Alternatives-Within the jurisdiction of the Forest Service, the proposed action is to consent to BLM modifying existing federal coal leases COC–1362 and COC–67232 by adding 800 and 922 additional acres (respectively) to ensure that compliant and super-compliant coal reserves are recovered and not bypassed, and to identify stipulations for the protection of non-mineral (i.e. surface) resources.

The proposed action deals primarily with underground mining. It is assumed

that longwall mining practices would be used. Minor surface disturbance would occur on Forest Service lands as a result of subsidence. In the event that post-lease surface activities are proposed and authorized, other soil disturbance may occur due to temporary road construction and drilling of methane drainage wells. A Reasonably Foreseeable Mine Plan (RFMP) has been developed to address potential environmental effects and is detailed to the extent necessary without being predecisional.

Stipulations for Action Alternatives

As part of the Proposed Action alternative the GMUG Forest Supervisor must decide if the existing stipulations on the existing parent leases are sufficient for the protection of non-mineral (i.e. surface) resources. If not, additional stipulations that will provide for the protection of non-mineral resources must be prescribed. The list below describes the stipulations on the parent leases, and their applicability to the lease modifications and additional or modified stipulations identified for the protection of visual resources Canada lynx.

In accordance with Forest Service Manual (FSM) 2820, the Standard Notice for Lands under the Jurisdiction of Agriculture is part of the parent leases, and hence would apply to the lease modifications. This Standard Notice includes requirements for Cultural and Paleontological Resources, and Threatened and Endangered Species is noted in the list below. Further, the Standard Notice contains the following language: ''The permittee/lessee must comply with all the rules and regulations of the Secretary of Agriculture set forth at Title 36, Chapter II, of the Code of Federal Regulations governing the use and management of the National Forest System (NFS) when not inconsistent with the rights granted by the Secretary of Interior in the permit. The Secretary of Agriculture's rules and regulations must be complied with for (1) all use and occupancy of the NFS prior to approval of an exploration plan by the Secretary of the Interior, (2) uses of all existing improvements, such as forest development roads, within and outside the area permitted by the Secretary of the Interior, and (3) use and occupancy of the NFS not authorized by the permit/operation approved by the Secretary of the Interior.''

Cultural and Paleontological Resources—The FS is responsible for assuring that the leased lands are examined to determine if cultural resources are present and to specify mitigation measures. Prior to undertaking any surface-disturbing activities on the lands covered by this lease, the lessee or operator, unless notified to the contrary by the FS, shall: Contact the FS to determine if a site specific cultural resource inventory is required. If a survey is required then:

- Engage the services of a cultural resource specialist acceptable to the FS to conduct a cultural resource inventory of the area of proposed surface disturbance. The operator may elect to inventory an area larger than the area of proposed disturbance to cover possible site relocation which may result from environmental or other considerations. An acceptable inventory report is to be submitted to the FS for review and approval at the time a surface disturbing plan of operation is submitted.
- Implement mitigation measures required by the FS and BLM to preserve or avoid destruction of cultural resource values. Mitigation may include relocation of proposed facilities, testing, salvage, and recordation or other protective measures. All costs of the inventory and mitigation will be borne by the lessee or operator, and all data and materials salvaged will remain under the jurisdiction of the U.S. Government as appropriate.
- The lessee or operator shall immediately bring to the attention of the FS and BLM any cultural or paleontological resources or any other objects of scientific interest discovered as a result of surface operations under this license, and shall leave such discoveries intact until directed to proceed by FS and BLM.

Endangered or Threatened Species—The FS is responsible for assuring that the leased land is examined prior to undertaking any surface-disturbing activities to determine effects upon any plant or animal species listed or proposed for listing as endangered or threatened, or their habitats. The findings of this examination may result in some restrictions to the operator's plans or even disallow use and occupancy that would be in violation of the Endangered Species Act of 1973 by detrimentally affecting endangered or threatened species or their habitats. The lessee/operator may, unless notified by the FS that the examination is not necessary, conduct the examination on the leased lands at his discretion and cost. This examination must be done by or under the supervision of a qualified resource specialist approved by the FS. An acceptable report must be provided to the FS identifying the anticipated effects of a proposed action on endangered or threatened species or their habitats.

If there is reason to believe that Sensitive, Threatened or Endangered species of plants or animals, or migratory bird species of high Federal interest are present, or become present in the lease area, the Lessee/Operator shall be required to conduct an intensive field inventory of the area to be disturbed and/or impacted. The inventory shall be conducted by a qualified specialist, and a report of findings prepared. A plan will be made that recommends protection for these species or action necessary to mitigate the disturbance. The cost of conducting such inventory, preparing reports and carrying out mitigation measures shall be borne by the Lessee/Operator.

Canada Lynx—To comply with the GMUG Forest Plan 2008 amendment, the following special constraints will apply if surface use on the lease is proposed in lynx habitat:

- Winter access will be limited to designated routes.

Further, should surface-disturbing operations be proposed on the lease in lynx habitat, the following special constraints may apply, depending on site-specific circumstances:

- Remote monitoring of the development sites and facilities may be required to reduce snow compaction.
- A reclamation plan (e.g. road reclamation and vegetation rehabilitation) for sites and facilities that promotes the restoration of lynx habitat may be required.
- Public motorized use on new roads constructed for project-specific purposes will be restricted.
- Access roads will be designed to provide for effective closures and will be reclaimed or decommissioned at project completion if they are no longer needed for other management objectives.
- New permanent roads will not be built on ridge tops or in saddles, if possible, or in areas identified as important for lynx habitat connectivity. New roads will be situated away from forested stringers, if possible.

Raptors—For raptors (except American kestrel) the Lessee will be required to: Conduct surveys for nesting raptors on the lease prior to development of any surface facilities, and no surface activities will be allowed within ½-mile radius of active nest sites between the dates of February 1 and August 15, unless authorized by the Forest Service on a site-specific basis.

Big Game Winter Range—In order to protect big game wintering areas, elk calving areas, and other key wildlife habitat and/or activities, specific surface use may be curtailed during specific times of year. Specific time restrictions

for specific species will be evaluated by the Forest Service at the individual project stage, and any additional site specific conditions of use developed at that time.

Water Depletions—In the future, if water to be used for mine related activities is taken from a source that is considered to be tributary waters by the U.S. Fish and Wildlife Service, or which exceeds a depletion amount previously consulted upon, the permitting agency must enter into consultation with the U.S. Fish and Wildlife Service to determine appropriate conservation measures to offset effects to listed fish and critical habitat in the upper Colorado River Basin.

Breeding Birds—If surface disturbance is proposed on the lease, the lessee/operators will be required to conduct breeding bird surveys prior to surface disturbance.

Geologic Hazards—

COC–1362 Modification—No surface occupancy would be allowed in areas of high geologic hazard or high erosion potential, or on slopes which exceed 60%. Special interdisciplinary team analysis and mitigation plans detailing construction and mitigation techniques would be required on areas where slopes range from 40–60 percent. The interdisciplinary team could include engineers, soil scientist, hydrologist, landscape architect, reclamation specialist and mining engineer.

COC–67232 Modification—No surface occupancy would be allowed in areas of high geologic hazard or high erosion potential. Special interdisciplinary team analysis and mitigation plans detailing construction and mitigation techniques would be required on areas where slopes range from 40–60 percent. The interdisciplinary team could include engineers, soil scientist, hydrologist, landscape architect, reclamation specialist and mining engineer.

Baseline Information—The operator/lessee would be required to perform adequate baseline studies to quantify existing surface and subsurface resources. Existing data can be used for baseline analyses provided that the data is adequate to locate, quantify, and demonstrate interrelationships between geology, topography, hydrogeology, and hydrology. Baseline studies are critical to the success of future observation and assessment of mining related effects on resources.

Monitoring Program—The operator/lessee of the lease tract would be required to establish or amend a monitoring program to be used as a continuing record of change over time of area resources in order to assess mining induced impacts. The monitoring program shall provide the procedures and methodologies to adequately assess interrelationships between geology, topography, hydrogeology, and hydrology identified in the baseline assessment to mining activities in the lease tract area. The monitoring program shall incorporate baseline data so as to provide a continuing record over time.

Riparian, Wetland or Floodplain—Surface use or disturbances (except for surface subsidence and resource monitoring purposes defined in the approved mining permit) will avoid riparian, wetland or floodplain areas, and a buffer zone surrounding these areas (the definition of riparian areas and appropriate buffer zone will be consistent with that defined in the Forest Service Manual and Rocky Mountain Region's Water Conservation Practices Handbook. Wetland definition will follow Army Corps of Engineers guidelines) unless no practical alternatives exist.

Subsidence (Language from COC–1362 parent lease)—If subsidence adversely affects surface resources in any way (including, but not limited to a documented water loss), the Lessee, at their expense will be responsible to: Restore stream channels, stock ponds, protect stream flow with earthwork or temporary culverts, restore affected roads, or provide other measures to repair damage or replace any surface water and/or developed ground water source, stock pond, water conveyance facilities, with water from an alternate source in sufficient quantity and quality to maintain existing riparian habitat, livestock and wildlife use, or other land uses as authorized by 36 CFR part 251. The Lessee/Operator shall be responsible for monitoring, repairing and/or mitigating subsidence effects on existing facilities under Special Use Permit with the Forest Service. Monitoring, repair and/or mitigation, if needed, would be performed at the Lessee's expense. These requirements will be coordinated with the District Ranger and the Special Use Permittee.

Roadless (Lease Notice Only)—All or parts of the following lands encompassed in this lease are in the West Elk Inventoried Roadless Area and may be subject to restrictions on road-building pursuant to rules and regulations of the Secretary of Agriculture applicable at the time any roads may be proposed on the lease. Legal descriptions are approximate. Locations of any proposed surface use would be verified for relationship to IRA boundaries using site-specific maps if/when surface operations are proposed.

Visuals—Within the lease modification area, the lessee will work with the District Ranger and his/her representative to see that all mine operations are situated on the ground in such a manner that reasonably minimizes impacts to the scenic integrity of that landscape, as prescribed in the Forest Plan.

Coal Mine Methane—The parent leases also contain lease terms from BLM regarding coal mine methane that would be carried forward to the lease modifications. These are addressed as lease addendum as follows:

Sec. 3. Notwithstanding the language in Sec. 2 of this lease and subject to the terms and conditions below, lessee is authorized to drill for, extract, remove, develop, produce and capture for use or sale any or all of the coal mine methane from the above described lands that it would otherwise be required to vent or discharge for safety purposes by applicable laws and regulations. For purposes of this lease, ''coal mine methane'' means any combustible gas located in, over, under, or adjacent to the coal resources subject to this lease, that will or may infiltrate underground mining operations.

Sec. 4. Notwithstanding any other provision of this lease, nothing herein shall, nor shall it be interpreted to, waive, alter or amend lessee's right to vent, discharge or otherwise dispose of coal mine methane as necessary for mine safety or to mine the coal deposits consistent with permitted underground mining operations and federal and state law and regulation. Lessee shall not be obligated or required to capture for use or sale coal mine methane that would otherwise be vented or discharged if the capture of coal mine methane, independent of activities related to mining coal, is not economically feasible or if the coal mine methane must be vented in order to abate the potential hazard to the health or safety of the coal miners or coal mining activities. In the event of a dispute between lessor and lessee as to the economic or other feasibility of capturing for use or sale the coal mine methane, lessor's remedy as a prevailing party shall be limited to recovery of the compensatory royalties on coal mine methane not captured for use or sale by lessee. Lessee shall have the right to continue all mining activities under the lease, including venting coal mine methane, pending resolution of any dispute regarding the application of the terms of Sections 3 and 4.

Sec. 2(c) COAL MINE METHANE OPERATIONS AND ROYALTIES—Notwithstanding the language in Part II, Section 2(a) of this lease, the royalty

shall be 12.5 percent of the value of any coal mine methane that is captured for use or sale from this lease. For purposes of this lease, the term ''capture for use or sale'' shall not include and the royalty shall not apply to coal mine methane that is vented or discharged and not captured for the economic or safety reasons described in Part I, Section 4 of this lease. Lessee shall have no obligation to pay royalties on any coal mine methane that is used on or for the benefit of mineral extraction at the West Elk coal mine. When not inconsistent with any express provision of this lease, the lease is subject to all rules and regulations related to Federal gas royalty collection in Title 30 of the Code of Federal Regulations now or hereinafter in effect and lessor's rules and regulations related to applicable reporting and gas measurement now or hereinafter in effect

Severability—In the event any provision of this addendum is subject to a legal challenge or is held to be invalid, unenforceable or illegal in any respect, the validity, legality and enforceability of this lease will not in any way be affected or impaired thereby and lessee will retain, in accordance with the terms of this lease, the exclusive right and privilege to drill for, mine, extract, remove or otherwise process and dispose of the coal deposits, upon, or under the lands described in this lease, including the right to vent or discharge coal mine methane for safety purposed as required by applicable laws and regulation.

Proposed Action (Alternative 2)—Includes all of the information common to all action alternatives above. Because leasing itself does not involve any mineral development or surface disturbance, it is necessary to project the amount of surface use or activity that may result during lease development in order to disclose potential effects and inform decision-making. To facilitate analyzing potential surface impacts, the analysis will assume a reasonably foreseeable mine plan (RFMP) for this leasing decision. It must be noted however, that decisions pertaining to surface use and disturbance, with the exception of subsidence impacts, are not made at the leasing stage. Rather, the decisions related to permit-related surface activities are made when and if site-specific surface uses are proposed, and are evaluated through the State permitting process based on their own merits. The environmental effects analysis of post-lease surface use and disturbance associated with this alternative will include subsidence and methane drainage well pads. Under the regulatory framework of the 2001 Roadless Area Conservation Rule, future road building is prohibited; however methane drainage is permitted.

Alternative 3—Includes all of the information common to all action alternatives above. Similar to Alternative 2, the analysis will assume a RFMP for this alternative. However, the environmental effects of this alternative will be analyzed under the regulatory framework of the Proposed Colorado Roadless Rule. As the proposed rule would apply to this leasing decision, temporary road building would be allowed.

Lead and Cooperating Agencies

Cooperating Agencies:
- Uncompahgre Field Office, Bureau of Land Management
- Colorado State Office, Bureau of Land Management
- Western Region, Office of Surface Mining Reclamation and Enforcement
- Colorado Division of Reclamation Mining and Safety (pending)

Responsible Official

GMUG Forest Supervisor

Nature of Decision To Be Made

Given the purpose and need, the Authorized Officer will review the proposed action, the other alternatives, and the environmental consequences in order to decide the following:

- Whether or not to consent to the BLM modifying existing Federal Coal Lease COC–1362 by adding 800 acres according to the Federal Coal Leasing Amendments Act of 1976;
- Whether or not to consent to the BLM modifying existing Federal Coal Lease COC–67232 by adding 922 acres according to the Federal Coal Leasing Amendments Act of 1976;
- Prescribe stipulations needed for the protection of non-mineral resources by determining if the existing stipulations on the parent lease are sufficient. If they are not sufficient, prescribe additional stipulations that will provide for the protection of non-mineral resources.

The Forest Service Authorized Officer will determine if the activity is consistent with the GMUG Forest Plan.

The Forest Service decision will be made based on the analysis relative to the No Action and Proposed Action Alternatives.

The BLM is preparing a separate leasing analysis under their regulations. The BLM Colorado State Director is the Authorized Officer for the BLM, and will decide whether or not to modify the existing coal lease under the Mineral Leasing Act, as amended, and the federal regulations under 43 CFR 3400. The Uncompahgre Field Office Manager is responsible for providing the State Director with briefings and recommendations.

Specifically, the BLM will decide whether to:

- Adopt the No-Action Alternative (no leasing);
- Adopt the proposed action (lease the coal as applied for by the applicants);
- Adopt an alternative with features of both of the alternatives; or
- Adopt the action alternative with additional mitigation measures.

BLM cannot issue leases without the consent of the surface managing agency.

OSM is a cooperating agency per an existing Memorandum of Understanding and may prepare a mining plan modification related to the subsequent permitting of these lease modifications.

Preliminary Issues

Preliminary issues have been identified during the preparation of an Environmental Assessment. They include the following:

Indirect and Cumulative Environmental Effects of Leasing—

- Surface disturbance other than from mining (subsidence) may occur as a result of mining.
- Reasonably foreseeable impacts to the surface and other resources may occur as a result of mining.

Mitigation Measures—Forest Service must validate the effectiveness of proposed mitigation measures.

Air Quality—

- Effects of the proposed action may occur on air quality including ambient ozone, $PM_{2.5}$, PM_{10}, VOCs, Class I areas in compliance with the Clean Air Act.
- Cumulative effects to air quality associated with coal burning may occur as a result of the Proposed Action.

Roadless Character—Roadless character in the West Elk Roadless Area may be affected either indirectly or cumulatively through consenting to lease.

Methane—Alternatives to venting including flaring, capture and use, or destroying ventilation air (VAM) methane must be analyzed in detail.

Coal Reserve—Address the effects of adding coal reserves on coal resource recovery.

Socioeconomics—

- Coal mining activities are vital to the local and regional economies.
- Coal from the North Fork Valley helps fuel clean coal technology and provide the USA with low-cost, reliable energy.

Visual Resources—Removal of vegetation, ground disturbance and

structures related to future surface facilities needed to manage methane may negatively impact visuals.

Wildlife—Removal of vegetation related to future surface facilities needed to manage methane may negatively impact Canada lynx.

Subsidence—

- Subsidence may affect wildlife habitat, including effects to riparian habitat
- Subsidence may affect water resources including local water quality and quantity.
- Subsidence may affect cultural resources.
- Subsidence may affect other land uses, including range improvements, cattle trails and other multiple uses of the land.

Climate Change—Effects on climate change may occur from mining coal which stem from the release of methane through the mine ventilation system, release of methane through any gob vent boreholes and release of CO_2 caused by the burning of coal that is mined.

Scoping Process

In addition to receiving and considering previous comments from the public, the agency continues to accept and consider public comments to guide the development of this environmental impact statement and the resulting decision. Additional comments should clearly articulate the reviewer's concerns and contentions, and focus on the adequacy of stipulations proposed as they relate to the protection of surface resources. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: April 19, 2012.

Sherry Hazelhurst,

Acting Forest Supervisor.

[FR Doc. 2012–9920 Filed 4–24–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval to Revise and Extend a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Egg, Chicken, and Turkey Surveys. A revision to burden hours will be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by June 25, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0004, by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

SUPPLEMENTARY INFORMATION:

Title: Egg, Chicken, and Turkey Surveys.

OMB Number: 0535–0004.

Expiration Date of Approval: October 31, 2012.

Type of Request: Intent to seek approval to revise and extend a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue State and national estimates of crop and livestock production, disposition, and prices. The Egg, Chicken, and Turkey Surveys obtain basic poultry statistics from voluntary cooperators throughout the Nation. Statistics are published on placement of pullet chicks for hatchery supply flocks; hatching reports for broiler-type, egg-type, and turkey eggs; number of layers on hand; total table egg production; and production and value estimates for eggs, chickens, and turkeys. The frequency of the surveys being conducted include weekly, monthly and annually. This information is used by producers, processors, feed dealers, and others in the marketing and supply channels as a basis for production and marketing decisions. Government agencies use these estimates to evaluate poultry product supplies. The information is an important consideration in government purchases for the National School Lunch Program and in formulation of export-import policy. The current expiration date for this docket is October 31, 2012. NASS intends to request that the surveys be approved for another 3 years.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This notice is submitted in accordance with the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

Estimate of Burden: Public reporting burden for this collection of information is estimated between 8 and 15 minutes per respondent per survey.

Respondents: Farmers, ranchers, farm managers, and farm contractors.

Estimated Number of Respondents: 3,100.

Estimated Total Annual Burden on Respondents: 4,200 hours.

Copies of this information collection and related instructions can be obtained without charge from the NASS Clearance Officer, at (202) 690–2388 or at: *ombofficer@nass.usda.gov.*

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, March 21, 2012.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2012–9991 Filed 4–24–12; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension for a currently approved information collection in support of the program for the 1890 Land Grant Institutions Rural Entrepreneurial Outreach and Development Initiative Program.

DATES: Comments on this notice must be received by June 25, 2012 to be considered.

FOR FURTHER INFORMATION CONTACT: Natalie Melton, Program Management Specialist, Rural Development, USDA, STOP 3250, Room 4217, 1400 Independence Avenue SW., Washington, DC 20250–3250. Telephone: (202) 690–1371, email: *Natalie.melton@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 1890 Land Grant Institutions Rural Entrepreneurial Outreach and Development Initiative Program.

OMB Number: 0570–0041.

Expiration Date of Approval: July 31, 2012.

Type of Request: Extension of a currently approved information collection.

Abstract: The collection of this information will allow the Agency to determine the eligibility of the applicants; determine the specific purpose for which the funds will be utilized; determine the timeframes or dates by which activities surrounding the use of funds will be accomplished; determine the feasibility of the project; and to evaluate applicants' experience in managing similar activities.

Without the collection of this information, there would be no basis on which to award funds.

Estimate of Burden: Public reporting burden for this collection is estimated to average 2.5 hours per response.

Respondents: Only 1890 Land Grant Institutions of Higher Education and Tuskegee University.

Estimated Number of Respondents: 18.

Estimated Number of Responses per Respondent: 17.

Estimated Number of Responses: 297.

Estimated Total Annual Burden on Respondents: 728 hours.

Copies of this information collected can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch: (202) 692–0040.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Development, including whether the information will have practical utility; (b) the accuracy of Rural Development's estimate of the burden to collect the required information, including the validity of the strategy used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments on the paperwork burden may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, Rural Development, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: April 18, 2012.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2012–9975 Filed 4–24–12; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Announcement of Small, Socially-Disadvantaged Producer Grant (SSDPG) Application Deadlines in Fiscal Year 2012

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of funding availability.

SUMMARY: The Rural Business-Cooperative Service announces the availability of approximately $3 million in competitive grant funds for the FY 2012 SSDPG program. See the Consolidated and Further Continuing Appropriations Act, 2012 (2012 Appropriations Act) (Pub. L. 112–55). We request proposals from applicants that will provide technical assistance to small, socially-disadvantaged agricultural producers in rural areas. Eligible applicants include Cooperatives, Groups of Cooperatives, and Cooperative Development Centers. The maximum award per grant is $175,000.

DATES: Completed applications for grants must be submitted on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than July 24, 2012 to be eligible for FY 2012 grant funding. Late applications are not eligible for FY 2012 grant funding.

Electronic copies must be received by April 25, 2012, to be eligible for FY 2012 grant funding. Late applications will not be eligible for FY 2012 grant funding.

ADDRESSES: Application materials for the SSDPG program may be obtained at *http://www.rurdev.usda.gov/BCP_SSDPG.html* or by contacting your USDA Rural Development State Office. Contact information for State Offices can be found at *http://www.rurdev.usda.gov/recd_map.html*

Paper applications must be submitted to the USDA Rural Development State Office in the State where your organization's main office is located. Electronic applications must be submitted through the Grants.gov Web site at *http://www.grants.gov.* Please read the instructions found on the Grants.gov Web site and follow them carefully.

FOR FURTHER INFORMATION CONTACT: Visit the program Web site at *http://www.rurdev.usda.gov/BCP_SSDPG.html* for application assistance or contact your USDA Rural Development State Office. You are strongly encouraged to contact your State Office well in advance of the deadline to discuss your Project and ask any questions about the application process.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency Name: USDA Rural Business Cooperative Service.

Funding Opportunity Title: Small, Socially-Disadvantaged Producer Grant.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance Number: 10.77.1

Dates: Application Deadline: Completed applications for grants may be submitted on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than July 24, 2012 to be eligible for FY 2012 grant funding. Late applications are not eligible for FY 2012 grant funding.

Complete electronic copies must be received by July 24, 2012, to be eligible for FY 2012 grant funding. Late applications are not eligible for FY 2012 grant funding.

I. Funding Opportunity Description

The 2012 Appropriations Act authorized up to $3 million for grants for Cooperative Development Centers, individual Cooperatives, or Groups of Cooperatives that serve socially-disadvantaged groups and where a majority of their governing board is comprised of members of socially-disadvantaged groups or at least 75 percent of their membership is comprised of socially-disadvantaged producers. The SSDPG Program is authorized by 310B (e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932). The primary objective of the SSDPG program is to provide Technical Assistance to Small, Socially-Disadvantaged Agricultural Producers. Grants are awarded on a competitive basis. The maximum award amount per grant is $175,000.

Definitions

Agency—Rural Business-Cooperative Service, an agency of the United States Department of Agriculture (USDA) Rural Development or a successor agency.

Agricultural Commodity—An unprocessed product of farms, ranches, nurseries, and forests. Agricultural commodities include: livestock, poultry, and fish; fruits and vegetables; grains, such as wheat, barley, oats, rye, triticale, rice, corn, and sorghum; legumes, such as field beans and peas; animal feed and forage crops; seed crops; fiber crops, such as cotton; oil crops, such as safflower, sunflower, corn, and cottonseed; trees grown for lumber and wood products; nursery stock grown commercially; Christmas trees; ornamentals and cut flowers; and turf grown commercially for sod. Agricultural commodities do not include horses or animals raised as pets, such as cats, dogs, and ferrets.

Conflict of Interest—A situation in which the ability of a person or entity to act impartially would be questionable due to competing professional or personal interests. An example of conflict of interest occurs when the grantee's employees, board of directors, including their immediate family, have a legal or personal financial interest in the recipients receiving the benefits or services of the grant.

Cooperative—A farmer- or rancher-owned and -controlled business, organized and chartered as a cooperative, from which benefits are derived and distributed equitably on the basis of use by each of the farmer or rancher owners whose primary focus is to provide assistance to Small, Socially-Disadvantaged Agricultural Producers and where a majority of their governing board is comprised of individuals who are members of socially-disadvantaged groups or at least 75 percent of their membership is comprised of socially-disadvantaged producers.

Cooperative Development Center—A nonprofit corporation or accredited institution of higher education that is established or operated by the grantee for rural cooperative development. It may or may not be an independent legal entity separate from the grantee. The Center's main objective is to assist Cooperatives with their startup, expansion or operational improvement in order to promote development in rural areas of services and products, processes that can be used in the marketing of products, or enterprises that create Value-Added to farm products through processing or marketing activities. Cooperative development activities may include, but are not limited to, Technical Assistance, research services, educational services and advisory services. Operational improvement includes making the Cooperative more efficient or better managed.

Cooperative Programs—The office within Rural Business-Cooperative Service, and any successor organization, that administers programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451 *et seq.*) and such other programs identified in USDA regulations.

Economic Development—The economic growth of an area as evidenced by increase in total income, employment opportunities, decreased out-migration of population, value of production, increased diversification of industry, higher labor force participation rates, increased duration of employment, higher wage levels, or gains in other measurements of economic activity, such as land values.

Feasibility Study—An analysis of the economic, market, technical, financial, and management feasibility of a proposed Project.

Group of Cooperatives—A group of Cooperatives whose primary focus is to provide assistance to Small, Socially-Disadvantaged Agricultural Producers and where a majority of their governing board is comprised of individuals who are members of socially-disadvantaged groups or at least 75 percent of their membership is comprised of socially-disadvantaged producers.

Operating Cost—The day-to-day expenses of running a business; for example: utilities, rent, salaries, depreciation, product production costs, marketing and advertising, and other basic overhead items.

Project—Includes all activities to be funded by the Small Socially-Disadvantaged Producer Grant.

Rural and Rural Area—Any area of a State:

(1) Not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States; and

(2) The contiguous and adjacent urbanized area,

(3) Urbanized areas that are rural in character as defined by 7 U.S.C. 1991 (a)(13), as amended by Section 6018 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246 (June 18, 2008).

(4) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self-government, and legal powers set forth in a charter granted by the State. Notwithstanding any other provision of this paragraph, within the areas of the County of Honolulu, Hawaii, and the Commonwealth of Puerto Rico, the Secretary may designate any part of the areas as a rural area if the Secretary determines that the part is not urban in character, other than any area included in the Honolulu census designated place (CDP) or the San Juan CDP.

Rural Development—A mission area within USDA consisting of the Office of Under Secretary for Rural Development, Rural Development Business and Cooperative Programs, Rural Development Housing Programs, and Rural Development Utilities Programs and any successors.

Small, Socially-Disadvantaged Producer—Socially-Disadvantaged persons or at least 75 percent Socially-Disadvantaged Producer-owned entities including farmers, ranchers, loggers, agricultural harvesters, and fishermen, that have averaged $250,000 or less in annual gross sales of agricultural products in the last 3 years.

Socially-Disadvantaged Producer—Individual agricultural producer who is

a member of a group whose members have been subjected to racial, ethnic or gender prejudice, without regard for their individual qualities.

State—Includes each of the several states, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, as may be determined by the Secretary to be feasible, appropriate and lawful, the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau.

Technical Assistance—An advisory service performed for the benefit of a Small, Socially-Disadvantaged Producer such as market research; product and/or service improvement; legal advice and assistance; Feasibility Study, business plan, and marketing plan development; and training. Technical Assistance does not include the Operating Costs of a cooperative being assisted.

Value-Added—The incremental value that is realized by the producer from an agricultural commodity or product as the result of a change in its physical state, differentiated production or marketing, as demonstrated in a business plan, or product segregation. Incremental value may be realized by the producer as a result of either an increase in value to buyers or the expansion of the overall market for the product. Examples include milling wheat into flour, slaughtering livestock or poultry, making strawberries into jam, and marketing of organic products.

II. Award Information

A. *Type of Award:* Grant.

B. *Fiscal Year Funds:* FY 2012.

C. *Approximate Total Funding:* $3 million.

D. *Approximate Number of Awards:* 17.

E. *Floor of Award Range:* None.

F. *Ceiling of Award Range:* $175,000.

G. *Anticipated Award Date:* September 1, 2012.

H. *Budget Period Length:* 12 months.

I. *Project Period Length:* 12 months.

III. Eligibility Information

A. *Eligible Applicants.* Grants may be made to Cooperatives, Groups of Cooperatives, and Cooperative Development Centers. You must be able to verify your legal structure in the State in which you are incorporated. Grants may not be made to public bodies or to individuals.

B. *Cost Sharing or Matching.* No matching funds are required.

C. *Other Eligibility Requirements*

Use of Funds: Funds may only be used for Technical Assistance Projects as defined in this Notice.

Project Area Eligibility: The proposed Project must take place in a Rural Area as defined in this Notice.

Grant Period Eligibility: If awarded, grant funds must be used within 12 months. Applications must have a time frame of one year or less. Your proposed time frame should begin no earlier than the grant award date and end no later than December 31, 2013. However, you should note that the anticipated award date is September 1 so your proposed start date should be after September 1, 2012. Projects must be completed within the 12-month time frame. The Agency has the option to approve requests to extend the grant period for up to 12 months. However, if you receive another SSDPG grant during the next grant cycle, the first grant must be closed before funds can be obligated for the new grant. Applications that request funds for a time period ending after December 31, 2013, will not be considered for funding.

Completeness Eligibility: Your application must provide all of the information requested in Section IV (B) of this Notice. Applications lacking sufficient information to determine eligibility and scoring will be considered ineligible.

Multiple Grant Eligibility: You may only submit one SSDPG grant application each funding cycle.

Activity Eligibility: Your application must propose Technical Assistance that will benefit Small Socially-Disadvantaged Producers in Rural Areas. Please review section IV (G) of this Notice, ''Funding Restrictions,'' carefully. Your application will be ineligible for funding if it includes ineligible costs that equal more than 10 percent of total Project costs. If your application contains ineligible costs that equal or are less than 10 percent of total Project costs, it may still be considered for funding. You must remove the ineligible costs from the budget if your application is selected for funding. You can replace the ineligible costs with eligible activities or reduce the grant award by the amount of ineligible costs. Applications that duplicate current activities or activities paid for by other grant programs will not be funded.

IV. Application and Submission Information

A. *Address to Request Application Package.* The application package for applying on paper for this funding opportunity is located at *http://www.rurdev.usda.gov/BCP_SSDPG.html.* You may also contact your USDA Rural Development State Office for more information. Contact information for State Offices is located at *http://www.rurdev.usda.gov/recd_map.html.*

B. *Content and Form of Submission.* Applications must be submitted on paper or electronically. Applications may not be submitted by electronic mail or facsimile. An application guide may be viewed at *http://www.rurdev.usda.gov/BCP_SSDPG.html.* We recommend that you use the application template provided on the Web site. The template can be filled out electronically and printed out for submission with the required forms for paper submission or it can be filled out electronically and submitted as an attachment through *http://www.grants.gov.*

Please visit Grants.gov well in advance of the application deadline if you plan to apply electronically to make sure you have enough time to get the proper authentication and have sufficient computer resources to complete the application process.

You must prepare and submit the following information to complete your application. Information submitted as part of the application will be protected to the extent permitted by law.

1. Form SF–424, ''Application for Federal Assistance,'' must be completed, signed, and include a Dunn and Bradstreet Data Universal Numbering System (DUNS) number. You must also maintain registration in the Central Contractor Registration (CCR) database. See 2 CFR § 25.200(b). The DUNS number is a nine-digit identification number which uniquely identifies business entities. There is no charge. To obtain a DUNS number, access *http://www.dnb.com/us/* or call 866–705–5711. Similarly, applicants may register for the CCR at *http://www.ccr.gov.* Assistance with CCR registration is available by calling 1–866–606–8220. The CCR CAGE Code and expiration date may be handwritten on the SF–424. For more information, see the SSDPG web site at *http://www.rurdev.usda.gov/BCP_SSDPG.html* or contact the USDA Rural Development State Office at *http://www.rurdev.usda.gov/recd_map.html.*

2. Form SF–424A, ''Budget Information—Non-Construction Programs.'' This form must be completed and submitted as part of the application package.

3. Form SF–424B, ''Assurances—Non-Construction Programs.'' This form must be completed, signed, and submitted as part of the application package.

4. Table of Contents. Your application must contain a detailed Table of Contents (TOC) immediately following the SF–424B. The TOC must include page numbers for each part of the

application. Page numbers should begin immediately following the TOC.

5. Executive Summary. A summary of the proposal, not to exceed one page, must briefly describe the Project, tasks to be completed, and other relevant information that provides a general overview of the Project.

6. Eligibility Discussion. A detailed discussion, not to exceed four pages, must describe how you meet the following requirements:

(i) Applicant Eligibility. You must describe how you meet the definition of a Cooperative, Group of Cooperatives, or Cooperative Development Center. If applying as a Cooperative or a Group of Cooperatives, you must verify your incorporation in the State that you have applied by providing the State's Certificate of Good Standing, and your Articles of Incorporation and By-Laws. If applying as a Cooperative Development Center, you must provide evidence of your status as a nonprofit corporation or an accredited institution of higher education and a copy of your mission statement. You must apply as only one type of applicant.

(ii) Use of Funds. You must provide a detailed discussion on how the proposed Project activities meet the definition of Technical Assistance.

(iii) Project Area. You must provide specific information that details the location of the Project area and explain how the area meets the definition of ''Rural Area.''

(iv) Grant Period. You must provide a time frame for the proposed Project and discuss how the Project will be completed within that time frame.

7. Budget/Work plan. You must describe, in detail not to exceed four pages, the purpose of the grant, what type of assistance will be provided, and the total amount of funds needed for the Project. The budget must also present a breakdown of estimated costs associated with each task/activity for each Project. The amount of grant funds requested will be reduced if the applicant does not have justification for all costs.

8. Evaluation Criteria. Each of the evaluation criteria in this Notice must be addressed in narrative form, with a maximum of two pages for each individual evaluation criteria. Failure to address each evaluation criteria will result in the application being determined ineligible.

C. *Submission Dates and Times*

Application Deadline Date: July 24, 2012.

Explanation of Deadlines: Paper applications must be POSTMARKED and mailed, shipped, or sent overnight by the deadline date. Electronic applications must be received by *http://www.grants.gov* by the deadline date. If your application does not meet the deadline, it will not be considered for funding. You will be notified if your application did not meet the submission deadline.

D. *National Environmental Policy Act.* We have determined that the activities proposed under the SSDPG program do not have a significant effect on the quality of the environment. You do NOT have to submit an Environmental Impact Statement. See 7 CFR part 1940, subpart G.

E. *Civil Rights Compliance Requirements.* All grants made under this Notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A) and Section 504 of the Rehabilitation Act of 1973.

F. *Intergovernmental Review of Applications.* Executive Order (EO) 12372, Intergovernmental Review of Federal Programs, applies to this program. This EO requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many States have established a Single Point of Contact (SPOC) to facilitate this consultation. A list of States that maintain a SPOC may be obtained at *http://www.whitehouse.gov/omb/grants_spoc*. If your State has a SPOC, you may submit your application directly for review. Any comments obtained through the SPOC must be provided to Rural Development for consideration as part of your application. If your State has not established a SPOC or you do not want to submit your application to the SPOC, Rural Development will submit your application to the SPOC or other appropriate agency or agencies.

You are also encouraged to contact Cooperative Programs at 202–720–8460 or *cpgrants@wdc.usda.gov* if you have questions about this process.

G. *Federal Funding and Transparency Act Requirements.* Please note that you must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and register in the Central Contractor Registration (CCR) prior to submitting a pre-application. See 2 CFR 25.200(b). In addition, you must maintain registration in the CCR database at all times during which you have an active Federal award or an application. All recipients of Federal financial assistance are required to report information about first-tier sub awards and executive compensation. See 2 CFR part 170. Finally, an applicant must have the necessary processes and systems in place to comply with the reporting requirements in 2 CFR 170.200(b), as long as it is not exempted from reporting. Exemptions are identified at 2 CFR 170.110(b).

H. *Funding Restrictions.* Grant funds must be used for Technical Assistance. No funds made available under this solicitation shall be used to:

1. Plan, repair, rehabilitate, acquire, or construct a building or facility, including a processing facility;
2. Purchase, rent, or install fixed equipment, including processing equipment;
3. Purchase vehicles, including boats;
4. Pay for the preparation of the grant application;
5. Pay expenses not directly related to the funded Project;
6. Fund political or lobbying activities;
7. Fund any activities prohibited by 7 CFR parts 3015 or 3019;
8. Fund architectural or engineering design work for a specific physical facility;
9. Fund any direct expenses for the production of any commodity or product to which value will be added, including seed, rootstock, labor for harvesting the crop, and delivery of the commodity to a processing facility;
10. Fund research and development;
11. Purchase land;
12. Duplicate current activities or activities paid for by other funded grant programs.
13. Pay costs of the Project incurred prior to the date of grant approval;
14. Pay for assistance to any private business enterprise that does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;
15. Pay any judgment or debt owed to the United States;
16. Pay the Operating Costs of the Cooperative, Group of Cooperatives, or Cooperative Development Center;
17. Pay expenses for applicant employee training; or
18. Pay for any goods or services from a person who has a Conflict of Interest with the grantee.

V. Application Scoring Criteria Review Information

A. *Criteria.* All eligible and complete applications will be evaluated based on the following criteria. Failure to address any one of the following criteria by the application deadline will result in the application being determined ineligible and the application will not be considered for funding. The total points possible for the criteria are 60. Any application receiving less than 35 total points will not be funded.

1. *Technical Assistance (0–15 points).* We will evaluate your application to determine your ability to assess the needs of Small Socially-Disadvantaged Producers, plan and conduct appropriate and effective Technical Assistance, and identify the expected outcomes of that assistance.

(i) 0 points are awarded if you do not address this criterion.

(ii) 5 points are awarded if you show weakness in addressing this criterion.

(iii) 10 points are awarded if you show you meet part but not all of the criterion.

(iv) 15 points are awarded if you identify specific needs of the Socially-Disadvantaged Producers to be assisted; clearly explain a logical and detailed plan of assistance for addressing those needs; and discuss realistic outcomes of planned assistance.

2. *Experience (0–15 points).* Points are awarded based upon length of experience of identified staff or consultants in providing Technical Assistance, as defined in this Notice. You must describe the specific type of Technical Assistance experience for each identified staff member or consultant, as well as years of experience in providing that assistance. In addition, resumes for each individual staff member or consultant must be included as an attachment, listing their experience for the type of Technical Assistance proposed. The attachments will not count toward the maximum page total. We will compare the described experience to the work plan to determine relevance of the experience.

(i) 0 points are awarded if the staff or consultants demonstrate no relevant experience in providing Technical Assistance.

(ii) 5 points are awarded if at least one of the identified staff or consultants demonstrates more than two years of experience in providing relevant Technical Assistance.

(iii) 10 points are awarded if at least one of the identified staff or consultants demonstrates 5 or more years of experience in providing relevant Technical Assistance.

(iv) 15 points are awarded if all of the identified staff or consultants demonstrate 5 or more years of experience in providing relevant Technical Assistance.

3. *Commitment (0–15 points).* We will evaluate your commitment to providing Technical Assistance to Small, Socially-Disadvantaged Producers in Rural Areas. Points are awarded based upon the number of Socially-Disadvantaged Producers being assisted. You must list the number and location of Small, Socially-Disadvantaged Producers that will directly benefit from the assistance provided.

(i) 0 points are awarded if you do not address this criterion.

(ii) 5 points are awarded if the proposed Project will benefit 1–10 Small, Socially-Disadvantaged Producers.

(iii) 10 points are awarded if the proposed Project will benefit 11–50 Small, Socially-Disadvantaged Producers.

(iv) 15 points are awarded if the proposed Project will benefit more than 50 Small, Socially-Disadvantaged Producers.

4. *Work Plan/Budget (0–10 points).* The work plan will be reviewed for detailed actions and a timetable for implementing the proposal. Clear, logical, and realistic plans will result in a higher score. Budgets will be reviewed for completeness.

(i) 0 points are awarded if you do not address this criterion.

(ii) 5 points are awarded if you provide a work plan and budget with a cost breakdown but show weakness in addressing this criterion.

(iii) 10 points are awarded if you provide a detailed work plan that is clear and logical and a budget with a breakdown of estimated costs associated with proposed tasks.

4. *Local support (0–5 points).* Applications are reviewed for local support of the Technical Assistance activities. Applicants that demonstrate strong support from potential beneficiaries and other developmental organizations will receive more points than those not showing such support.

(i) 0 points are awarded if you do not address this criterion.

(ii) 1 point is awarded if you provide 2–3 support letters that show support from potential beneficiaries and/or support from local organizations.

(iii) 2 points are awarded if you provide 4 -5 support letters that show support from potential beneficiaries and/or support from local organizations.

(iv) 3 points are awarded if you provide 6–7 support letters that show support from potential beneficiaries and/or support from local organizations.

(v) 4 points are awarded if you provide 8–9 support letters that show support from potential beneficiaries and/or support from local organizations.

(vi) 5 points are awarded if you provide 10 support letters that show support from potential beneficiaries and/or support from local organizations.

You may submit a maximum of 10 letters of support. These letters should be included as an attachment to the application and will not count against the maximum page total. Additional letters from industry groups, commodity groups, local and State government, and similar organizations should be referenced, but not included in the application package. When referencing these letters, provide the name of the organization, date of the letter, the nature of the support, and the name and title of the person signing the letter.

B. *Review and Selection Process.* We will screen all proposals to determine whether the application is eligible and responsive to the requirements in this Notice. Eligible applications will be scored by the applicable State Office and then submitted to the National Office for review and ranking. The National Office will review the scores based upon the point allocation specified in this Notice. Applications are funded in scoring rank order and submitted to the Administrator in rank order with funding level recommendations. The Administrator will break scoring ties based on Agency priorities for geographic distribution of grants, and serving underserved groups and underserved areas.

C. *Anticipated Announcement and Award Dates.* The announcement of award selections is expected to occur on or about September 1, 2012, subject to funding.

VI. Award Administration Information

A. *Award Notices.* Successful applicants will receive a notification of tentative selection for funding from Rural Development. Applicants must comply with all applicable statutes, regulations, and this Notice before the grant award will receive final approval.

Unsuccessful applicants will receive notification, including appeal rights, by mail.

B. *Administrative and National Policy Requirements.* 7 CFR parts 3015 and 3019, and subparts A and F of 7 CFR part 4284 are applicable to grants made under this Notice. These regulations may be obtained at *http://www.gpoaccess.gov/cfr/index.html.*

The following additional requirements apply to grantees selected for this program:

- Agency approved Grant Agreement.
- Letter of Conditions.
- Form RD 1940–1, ''Request for Obligation of Funds.''
- Form RD 1942–46, ''Letter of Intent to Meet Conditions.''
- Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.''
- Form AD–1048, ''Certification Regarding Debarment, Suspension,

Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.''

• Form AD–1049, ''Certification Regarding a Drug-Free Workplace Requirement (Grants).''

• Form RD 400–4, ''Assurance Agreement.''

Additional information on these requirements can be found at *http://www.rurdev.usda.gov/BCP_SSDPG.html.*

Fund Disbursement: We will determine, based on 7 CFR Parts 3015, 3016 and 3019, as applicable, whether disbursement of a grant will be by advance or reimbursement. As needed, but not more frequently than once every 30 days, an original SF–270, ''Request for Advance or Reimbursement,'' may be submitted to Rural Development. Your request for advance shall not be made in excess of reasonable costs for the month covered.

Reporting Requirements: Grantees must provide Rural Development with an original or an electronic copy that includes all required signatures of the following reports. The reports should be submitted to the Agency contact listed on the Grant Agreement and Letter of Conditions. Failure to submit satisfactory reports on time may result in suspension or termination of the grant. Grantees will submit:

1. Form SF–425. A ''Federal Financial Report,'' listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end each March 31 and September 30. Reports are due 30 days after the reporting period ends.

2. Semi-annual performance reports comparing accomplishments to the objectives stated in the proposal, identifying all tasks completed to date and providing documentation supporting the reported results. If the original schedule provided in the work plan is not being met, the report should discuss the problems or delays that may affect completion of the Project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds must be discussed. Reports are due as provided in paragraph (1) of this section. Supporting documentation must also be submitted for completed tasks. The supporting documentation for completed tasks includes, but is not limited to, feasibility studies, marketing plans, business plans, articles of incorporation, and bylaws as they relate to the assistance provided.

3. Final Project performance reports comparing accomplishments to the objectives stated in the proposal, identifying all tasks completed, and providing documentation supporting the reported results. If the original schedule provided in the work plan was not met, the report must discuss the problems or delays that affected completion of the Project. Compliance with any special condition on the use of award funds must be discussed. Supporting documentation for completed tasks must also be submitted. The supporting documentation for completed tasks includes, but is not limited to, Feasibility Studies, marketing plans, business plans, articles of incorporation, and bylaws as they relate to the assistance provided. The final performance report is due within 90 days of the completion of the Project. The report must also include a summary at the end of the report with the number of Small Socially-Disadvantaged Producers assisted to help in documenting the annual performance goals of the SSDPG program for Congress.

VII. Agency Contacts

For general questions about this announcement and for program Technical Assistance, please contact the appropriate State Office as indicated in the **ADDRESSES** section of this Notice.

VIII. Discrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider and employer.

Dated: April 13, 2012.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2012–9997 Filed 4–24–12; 8:45 am]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Florida 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 meeting of the Florida Advisory Committee (Committee) will convene on Thursday, May 24, 2012. The meeting will convene at 2 p.m. and adjourn at approximately 3 p.m. The meeting will be held at Brevard Community College, 1519 Clearlake Road, Building 2, Cocoa, Florida, 32922. The purpose of the meeting is for the Committee to discuss its ex-felon voting rights project.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by June 25, 2012. Written comments may be mailed to the Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth St., SW., Suite 16T126, Atlanta, GA, 30303. They may also be faxed to the Commission at (404) 562–7005, or emailed to the Commission at *erodriguez@usccr.gov.* Persons who desire additional information may contact the Southern Regional Office at (404) 562–7000.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov*, or may contact the Southern Regional Office at the above email or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, April 20, 2012.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–9907 Filed 4–24–12; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; 2013–2015 American Community Survey Methods Panel Testing

AGENCY: U.S. Census Bureau.

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 June 25, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Cheryl Chambers, U.S. Census Bureau, American Community Survey Office, Washington, DC 20233, by FAX to (301) 763–8070 or email at *acso.communications@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The American Community Survey (ACS) collects detailed socioeconomic data from about 3.5 million households in the United States and 36,000 in Puerto Rico each year. The ACS also collects detailed socioeconomic data from about 195,000 residents living in Group Quarter (GQ) facilities. Resulting tabulations from that data collection are provided on a yearly basis. The ACS allows the Census Bureau to provide timely and relevant housing and socio-economic statistics for even low levels of geography.

An ongoing data collection effort with an annual sample of this magnitude requires that the ACS continue research, testing and evaluations aimed at improving data quality, achieving survey cost efficiencies, and improving ACS questionnaire content and related data collection materials. The ACS Methods Panel is a research program that is designed to address and respond to survey issues and needs. During the 2013–2015 period, the Methods Panel may include testing methods for increasing survey efficiencies, reducing survey cost, lessening respondent burden, and improving response rates. Testing may also include methods that might increase data quality. At this time, plans are in place to propose several tests: A 2013 Questionnaire Design Test, a 2015 ACS Content Test, and a series of Internet tests. Since the ACS Methods Panel is designed to address emerging issues, we may conduct additional testing as needed. Testing would focus on methods for reducing data collection costs, improving data quality or testing new questions that have an urgent need to be included on the ACS.

During the 2010 Content Test, the Census Bureau determined that the ACS paper questionnaire did not contain enough space to accommodate certain configurations of proposed content changes. Thus, we need to test an alternative questionnaire design to accommodate additional content on the ACS mail questionnaire. In the 2013 ACS Questionnaire Design Test, we will study the impact of a longer (36-page) questionnaire against our current 28-page form. We will also study whether changing the size of the form to a standard size (8.5″x11″) booklet has an impact on response, compared to both the 28-page (current ACS form) and 36-page forms. The results of this testing will help the Census Bureau to decide which questionnaire format change performs best on response and data quality.

This test will also include several changes to evaluate making the questionnaire more compatible with optical character recognition software, including altering the response box formats for numeric write-in fields to allow them to be captured automatically rather than keyed. It will help provide insight on how effective the new response boxes are at reducing keying, and thus the potential cost savings. Lastly, this test will include a quick look at variations in the relationship and marital status questions per the Office of Management and Budget (OMB) initiative to ensure these questions are inclusive of all relationship types and partnerships.

Second, in response to Federal agencies' requests for new and revised ACS questions, the Census Bureau plans to conduct the 2015 ACS Content Test. Changes to the current ACS content and the addition of new content will be identified through the OMB Interagency Committee for the ACS in 2013. The objective of the 2015 ACS Content Test, for both new and existing questions, is to determine the impact of changing question wording, response categories, and redefinition of underlying constructs on the quality of the data collected. The Census Bureau proposes to evaluate changes to the questions by comparing the revised questions to the current ACS questions, or for new questions, to compare the performance of question versions to each other as well as to other well-known sources of such information.

The Census Bureau conducted two Internet tests on the ACS in 2011, both of which studied the impact of different notifications of an Internet option in the survey invitations. Based on these tests, the ACS plans to begin collecting data using the Internet in January 2013. One problem detected in the 2011 tests was the impact of Internet break-offs on item nonresponse for questions in the later part of the survey. The Internet tests in 2013–2015 will look at potential ways to restructure messaging and change the Internet design to help reduce break-offs, lower item nonresponse and encourage response in a timely manner. We will also reexamine the possibility of using the Internet to collect data in Puerto Rico.

II. Method of Collection

Questionnaire Design Test—Data collection for this test will follow the same protocol proposed for ACS production starting in 2013. That is, the first mailing to sampled cases will ask them to use the Internet to respond to the survey. If they have not responded within about two and a half weeks, they will receive a paper questionnaire. By using the standard ACS protocol for this test, we can see whether the paper form design has any impact on overall self-response, and also on response by Internet or mail. We will not conduct Computer-Assisted Telephone Interviews (CATI) or Computer-Assisted Personal Interviews (CAPI) nonresponse follow-up on test cases.

2015 Content Test—The ACS Content Test data collection protocol will be based on the protocol used in the production ACS. That is, we will collect data across four modes (Internet, mail, CATI and CAPI). During CATI and CAPI interviews in the 2015 Content Test, we will use Computer Audio Recorded Interviewing (CARI) technology to record portions of the interview related to the questions being tested for use in behavior coding. There will also be a Content Follow-up reinterview as part of the content test where we will attempt a follow-up CATI reinterview with all households that responded in the field test and for whom we have a

telephone number. This reinterview will focus on the particular questions that we are evaluating in the field test, and will not include every question asked in the original interview.

Internet Tests—We will use the same modes we offer in ACS production in the first month of data collection for the Internet tests; that is, we will send a mailing asking sampled units to respond online, with a nonresponse follow-up mailing of a paper questionnaire about two and a half weeks later. There are no plans to conduct CATI or CAPI nonresponse follow-up on test cases.

III. Data

OMB Control Number: 0607–0936.

Form Number: ACS–1, ACS–1(PR)SP, ACS CATI(HU), ACS CAPI(HU) and ACS RI(HU).

Type of Review: Regular submission.

Affected Public: Individuals, households, and GQ facilities.

Estimated Number of Respondents: We plan to contact the following number of respondents: Questionnaire Design Test: 40,000 sampled addresses; 2013–2015 Internet Tests, 200,000 sampled addresses in United States, 4,000 in Puerto Rico; 2015 Content Test: 70,000 sampled addresses during the field test and 40,000 responding addresses during the content follow-up conducted by telephone. Other potential testing includes a second Content Reinterview survey (as a follow-up to the 2012 Content Reinterview Survey) to assess data quality: 90,000 sampled households from ACS production; follow-up testing as needed from the Questionnaire Design Test: 20,000 sampled addresses; and potential testing of methodological changes to the administration of the ACS in Group Quarter facilities (Two tests of 75 facilities each with 15 residents selected in each facility (approximately 1,125 residents in each test)).

Estimated Time per Response: Estimates are: Questionnaire Design Test: 40 minutes; Internet Test, 40 minutes; Content Test field test, 40 minutes, Content Test follow-up, 15 minutes; Content Reinterview Study, 20 minutes; other potential test for questionnaire design and Group Quarters testing, 40 minutes.

Estimated Total Annual Burden Hours: The estimate is an annual average of 87,771 hours.

Estimated Total Annual Cost: Except for their time, there is no cost to respondents.

Respondent Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. Section 182.

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: April 20, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–9939 Filed 4–24–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Client Focus Groups and Qualitative Interviews

AGENCY: International Trade Administration (ITA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 25, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Suzan Winters, (202) 482–6042, *suzan.winters@trade.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration's U.S. Commercial Service (CS) is mandated by Congress to help U.S. businesses, particularly small and medium-sized companies, export their products and services to global markets.

As part of its mission, the CS uses ''Quality Assurance Surveys'' to collect feedback from the U.S. business clients it serves. These surveys ask the client to evaluate the U.S. Commercial Service on its customer service provision. Results from the surveys are used to make improvements to the agency's business processes in order to provide better and more effective export assistance to U.S. companies. In addition to collecting client feedback through Quality Assurance Surveys, the CS uses client focus groups as a mechanism to obtain further client feedback and substantiate customer service trends seen in the Surveys. Qualitative client focus group data will enrich the quantitative survey data by providing insights and a descriptive context to explain the trends that emerge in the quantitative data.

The CS uses the focus group questions to address quality improvement issues. The focus group discussion guide will enable CS to obtain a better understanding of actions that can be taken to improve the export-related services that CS provide to U.S. firms. In providing these services, the CS promotes the goods and services of small and medium-sized U.S. businesses in foreign markets.

II. Method of Collection

U.S. firms will be recruited via telephone to participate in focus group discussions. Firms may be current Commercial Service clients or potential clients. Data will be collected through either face-to-face focus group discussion forums (6–8 participants per focus group) and conference calls, or through one-on-one qualitative interviews either in person or via phone. A moderator will facilitate the discussions and notes will be transcribed via computer. All comments from participants will be anonymous.

III. Data

OMB Control Number: 0625–0254.

Form Number(s): None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 96.

Estimated Time per Response: Surveys, 30–45 minutes; Focus Groups, 1 hour and 15 minutes.

Estimated Total Annual Burden Hours: 74.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 20, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–9967 Filed 4–24–12; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: This notice advises the public that the Western Pacific Fishery Management Council (Council) will convene a meeting of the Hawaii Regional Ecosystem Advisory Committee (REAC) in Honolulu, HI.

DATES: The Hawaii REAC meeting will be held Friday, May 11, 2012. For the specific date, times, and agenda for the meeting see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting of the Hawaii REAC will be held at the Council Office, 1164 Bishop St. Suite 1400, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: Schedule and Agenda for the Hawaii Regional Ecosystem Advisory Committee Meeting:

8:30 a.m.–5 p.m. Friday, May 11, 2012

1. Welcome and Introduction of Members
2. Approval of Draft Agenda
3. REAC Overview and 2011 Meeting Recommendations
4. Agency Protected Species Overview and Updates
   a. Federal Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), Migratory Bird Treaty Act (MBTA) Updates
   b. State of Hawaii Protected Species Rules, Regulations and Updates
5. Protected Species in Our Ecosystem
   a. Humpback Whales
      i. Status of Humpback Whale Hawaii Breeding Population
      ii. Ecosystem Impacts of Humpback Whales in the North Pacific Foraging Grounds
   b. Odontocetes (Toothed Whales)
      i. Marine Mammal Protection Act: What You Should Know
      ii. List of Fisheries and Hawaii Troll and Charter Fisheries
      iii. Fishermen's Perspective on Marine Mammal Interactions
      iv. Discussion on Monitoring and Addressing Small Vessel Fishery Impacts on Odontocetes
   c. ESA Petition and Status of Review for Coral
      i. Coral Status Review
      ii. REAC Review and Discussion of the Coral Management Report
   d. ESA Petition for Hawaiian Green Turtles
      i. Green Turtle Petition & Review Process
      ii. State of Hawaii Green Turtle Management Plan
      iii. Discussion on Future Green Turtle Management in Hawaii
6. Public Comments
7. Discussion and Recommendations

The order in which agenda items are addressed may change. Public comment periods will be provided throughout each agenda. The REAC will meet as late as necessary to complete scheduled business.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 20, 2012.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–9950 Filed 4–24–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA714

Endangered Species; File No. 15634

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that NMFS Southwest Fisheries Science Center (SWFSC), 3333 N. Torrey Pines Ct., La Jolla, CA 92037, [Responsible Party: Lisa Ballance, Ph.D.] has been issued a permit to take leatherback sea turtles (*Dermochelys coriacea*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Colette Cairns, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On September 21, 2011, notice was published in the **Federal Register** (76 FR 58471) that a request for a scientific research permit to take leatherback sea turtles had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

A five-year permit has been issued to the SWFSC to continue long-term monitoring of the status of leatherback sea turtles off the coasts of California, Oregon, and Washington. The purpose of the work is to identify critical forage habitats, genetic stock structure, migratory corridors, and potential fishery impacts for leatherbacks. Sea turtles would be located by aerial surveys and approached by vessel for remote tissue sampling and transmitter attachment. A subset of animals would be captured by breakaway hoopnet for additional observation, sampling, marking and/or tagging procedures before release.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) Was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 20, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–9962 Filed 4–24–12; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2012–0007]

Impact of Overdraft Programs on Consumers

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for information; extension of comment period.

SUMMARY: On February 28, 2012, the Bureau of Consumer Financial Protection (the Bureau) published in the **Federal Register** a notice and request for information regarding the impacts of overdraft programs on consumers (the Overdraft Notice). The Overdraft Notice allowed a 60-day comment period, closing on April 30, 2012. To allow parties more time to consider and craft their responses, the Bureau has determined that an extension of the comment period until June 29, 2012, is appropriate.

DATES: The comment period for the Overdraft Notice published February 28, 2012, at 77 FR 12031, is extended. Responses must now be received on or before June 29, 2012.

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

- *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: cfpb_overdraft_comments@cfpb.gov*.
- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

Instructions: Please submit your comments or responses using only one method. The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Please note the number of any question to which you are responding at the top of each response (respondents need not answer each question). In general, all comments received will be posted without change to *http://www.regulations.gov*. In addition, comments will be available for public inspection and copying at 1700 G Street, NW., Washington, DC, 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning 202–435–7275. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information such as account numbers or Social Security Numbers should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For general inquiries, submission process questions, or any additional information, please contact Monica Jackson, Office of the Executive Secretary, 202–435–7275.

SUPPLEMENTARY INFORMATION: On February 28, 2012, the Bureau published the Overdraft Notice in the **Federal Register.**[1] The Overdraft Notice requested information from the public regarding overdraft programs and their costs, benefits, and risks to consumers. The Overdraft Notice posed several questions to understand:

- Lower cost alternatives to overdraft protection programs;
- Consumer alerts and information provided regarding balances and overdraft triggers;
- Impacts of changes to Regulation DD, Regulation E, and Overdraft opt-in rates;
- Impacts of changes in financial institutions' operating policies;
- The economics of overdraft programs; and
- Long-term impacts on Consumers.

[1] 77 FR 12031.

The comment period for the Overdraft Notice was to close on April 30, 2012.

The Bureau received written requests from two industry trade groups for an extension of the Overdraft Notice comment period.[2] The request letters indicated more time would enable a higher quality response and yield greater insight to the Bureau. The letters also pointed out that the Bureau's study of overdrafts is not governed by a statutory deadline.

The Bureau believes that it is important to allow interested persons more time to consider the issues raised in the Overdraft Notice and prepare their responses. Accordingly, the Bureau is extending the period allotted for comments received pursuant to the Overdraft Notice. The comment period will now close on June 29, 2012.

Dated: April 18, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–9851 Filed 4–24–12; 8:45 am]

BILLING CODE 4810–AM–P

COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION

[OJP (OJJDP) Docket No. 1587]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Coordinating Council on Juvenile Justice and Delinquency Prevention.

ACTION: Notice of meeting.

SUMMARY: The Coordinating Council on Juvenile Justice and Delinquency Prevention (Council) announces its next meeting.

DATES: Friday, May 11, 2012 from 10 a.m. to 12:15 p.m.

ADDRESSES: The meeting will take place in the third floor main conference room at the U.S. Department of Justice, Office of Justice Programs, 810 7th St. NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Visit the Web site for the Coordinating Council at *www.juvenilecouncil.gov* or contact Robin Delany-Shabazz, Designated Federal Official, by telephone at 202–307–9963 **[Note:** this is not a toll-free telephone number], or

[2] Letter to Monica Jackson (Mar. 30, 2012), signed by Richard M. Whiting, Executive Director & General Counsel of the Financial Services Roundtable; letter to David Silberman (Apr. 10, 2012), signed by Richard R. Riese, Senior Vice President, Center for Regulatory Compliance, American Bankers Association.

by email at *Robin.Delany-Shabazz@usdoj.gov* or *Geroma.Void@usdoj.gov.* The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The Coordinating Council on Juvenile Justice and Delinquency Prevention, established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2) will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5601, et seq. Documents such as meeting announcements, agendas, minutes, and reports will be available on the Council's Web page, *www.juvenilecouncil.gov,* where you may also obtain information on the meeting.

Although designated agency representatives may attend, the Council membership is composed of the Attorney General (Chair), the Administrator of the Office of Juvenile Justice and Delinquency Prevention (Vice Chair), the Secretary of Health and Human Services (HHS), the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Director of the Office of National Drug Control Policy, the Chief Executive Officer of the Corporation for National and Community Service, and the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement. The nine additional members are appointed by the Speaker of the House of Representatives, the Senate Majority Leader, and the President of the United States. Other federal agencies take part in Council activities including the Departments of Agriculture, Defense, the Interior, and the Substance and Mental Health Services Administration of HHS.

Meeting Agenda

The preliminary agenda for this meeting includes: (a) Presentations on and discussions of family and youth engagement work; (b) an update on information sharing activities; and (c) other agency announcements.

Registration

For security purposes, members of the public who wish to attend the meeting must pre-register online at *www.juvenilecouncil.gov* no later than Monday, May 7, 2012. Should problems arise with web registration, call Daryel Dunston at 240–221–4343 or send a request to register to Mr. Dunston. Include name, title, organization or other affiliation, full address and phone, fax and email information and send to his attention either by fax to 301–945–4295, or by email to *ddunston@edjassociates.com.* [**Note:** these are not toll-free telephone numbers.] Additional identification documents may be required. Space is limited.

Note: Photo identification will be required for admission to the meeting.

Written Comments: Interested parties may submit written comments and questions by Monday, May 7, 2012, to Robin Delany-Shabazz, Designated Federal Official for the Coordinating Council on Juvenile Justice and Delinquency Prevention, at *Robin.Delany-Shabazz@usdoj.gov.* The Coordinating Council on Juvenile Justice and Delinquency Prevention expects that the public statements presented will not repeat previously submitted statements. Written questions from the public may also be invited at the meeting.

Melodee Hanes,

Acting Administrator.

[FR Doc. 2012–9846 Filed 4–24–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Secretary of the Navy Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Closed Meeting.

SUMMARY: The SECNAV Advisory Panel will meet from 8:30 a.m. to 5 p.m. on May 23, 2012, for a series of classified discussions on the Asia-Pacific region to include the international strategic environment, U.S. operational capabilities and shortfalls, foreign capabilities and intentions and the maritime strategic outlook in contested areas. These sessions will include discussions of classified operations and human intelligence activities. These sessions will also include a proprietary industry briefing on new or evolving energy technologies. For these reasons, these meetings will be closed to the public.

DATES: The meeting will be held on May 23, 2012, from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held in the Pentagon N89 Conference Room at the Pentagon.

FOR FURTHER INFORMATION CONTACT: CAPT Henry J. Hendrix, SECNAV Advisory Panel, Office of the Deputy Under Secretary of the Navy (Plans, Policy, Oversight & Integration), 1000 Navy Pentagon, Washington, DC 20350–1000, 703–695–3032.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. The discussion of such information cannot be adequately segregated from other topics, which precludes opening these meetings to the public. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: April 18, 2012.

J.M. Beal,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–9930 Filed 4–24–12; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Thursday, May 10, 2012. The hearing will be part of the Commission's regularly scheduled business meeting. The conference session and business meeting both are open to the public and will be held at the Commission's office building, located at 25 State Police Drive, West Trenton, New Jersey.

The morning conference session will begin at 11 a.m. and will include a presentation on PCB reductions in the Delaware Estuary and resolutions recognizing the contributions of Gary Paulachok, former Deputy Delaware River Master, U.S. Geological Survey, and William Douglass, former Executive Director of the Upper Delaware Council, both of whom recently retired.

Items for Public Hearing. The subjects of the public hearing to be held during the 1:30 p.m. business meeting on May 10, 2012 include draft dockets for which the names and brief descriptions will be posted on the Commission's Web site at *www.drbc.net* at least 10 days prior to the meeting date and complete draft dockets will be posted on the Web site

ten days prior to the meeting date. Additional public records relating to the dockets may be examined at the Commission's offices. Please contact William Muszynski at 609–883–9500, extension 221, with any docket-related questions.

In addition to the hearings on draft dockets, a public hearing also will be held during the 1:30 p.m. business meeting on proposed resolutions to: (a) Adopt the Commission's annual budget for the fiscal year ending June 30, 2013; and (b) approve election of the Commission Chair, Vice Chair and Second Vice Chair for fiscal year 2013.

Other Agenda Items. Other agenda items include resolutions (a) authorizing participation in the New Jersey State Health Benefits Program for SHBP Dental Plan Coverage; (b) authorizing the Executive Director to terminate a purchase order agreement with one firm and retain another to complete the design of the Ruth Patrick River Garden; and (c) authorizing the Executive Director to execute an agreement for the preparation of an actuarial evaluation for the Commission's post-retirement benefits in accordance with Government Accounting Standards Board Statement No. 45 (''GASB 45''). The standard business meeting items also will be addressed, including: adoption of the Minutes of the Commission's March 7, 2012 business meeting, announcements of upcoming meetings and events, a report on hydrologic conditions, reports by the Executive Director and the Commission's General Counsel, and a public dialogue session.

Opportunities to Comment. Individuals who wish to comment for the record on a hearing item or to address the Commissioners informally during the public dialogue portion of the meeting are asked to sign up in advance by contacting Ms. Paula Schmitt of the Commission staff, at *paula.schmitt@drbc.state.nj.us* or by phoning Ms. Schmitt at 609–883–9500 ext. 224. Written comment on items scheduled for hearing may be submitted in advance of the meeting date to: Commission Secretary, P.O. Box 7360, 25 State Police Drive, West Trenton, NJ 08628; by fax to Commission Secretary, DRBC at 609–883–9522 or by email to *paula.schmitt@drbc.state.nj.us.* Written comment on dockets should also be furnished directly to the Project Review Section at the above address or fax number or by email to *william.muszynski@drbc.state.nj.us.*

Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how we can accommodate your needs.

Agenda Updates. Note that conference items are subject to change and items scheduled for hearing are occasionally postponed to allow more time for the Commission to consider them. Please check the Commission's Web site, *www.drbc.net*, closer to the meeting date for changes that may be made after the deadline for filing this notice.

Dated: April 19, 2012.

Pamela M. Bush,

Esquire, Commission Secretary.

[FR Doc. 2012–9947 Filed 4–24–12; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests; Office of Postsecondary Education; Graduate Assistance in Areas of National Need (GAANN) Performance Report

SUMMARY: Graduate Assistance in Areas of National Need (GAANN) grantees must submit a performance report annually. The reports are used to evaluate grantee performance. Further, the data from the reports will be aggregated to evaluate the accomplishments and impact of the GAANN Program as a whole. Results will be reported to the Secretary in order to respond to Government Performance and Results Act (GPRA) requirements.

DATES: Interested persons are invited to submit comments on or before June 25, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04846. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Graduate Assistance in Areas of National Need (GAANN) Performance Report.

OMB Control Number: 1840–0748.

Type of Review: Revision.

Total Estimated Number of Annual Responses: 225.

Total Estimated Number of Annual Burden Hours: 2,475.

Abstract: Graduate Assistance in Areas of National Need (GAANN) grantees must submit a performance report annually. The reports are used to evaluate grantee performance. Further, the data from the reports will be aggregated to evaluate the accomplishments and impact of the GAANN Program as a whole. Results will be reported to the Secretary in order to respond to Government Performance and Results Act (GPRA) requirements.

Dated: April 20, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–9990 Filed 4–24–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests; Federal Student Aid; Pell Grant, ACG, and National SMART Reporting Under the Common Origination and Disbursement (COD) System

SUMMARY: The Federal Pell Grant, ACG, and National SMART Programs are student financial assistance programs authorized under the Higher Education Act of 1965 (HEA), as amended. These programs provide grant assistance to an eligible student attending an institution of higher education. The institution determines the student's award and disburses program funds to the student on behalf of the Department (ED). To account for the funds disbursed, institutions report student payment information to ED electronically. COD is a simplified process for requesting, reporting, and reconciling Pell Grant, ACG, and National SMART funds.

DATES: Interested persons are invited to submit comments on or before June 25, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04843. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Pell Grant, ACG, and National SMART Reporting under the Common Origination and Disbursement (COD) System.

OMB Control Number: 1845–0039.

Type of Review: Extension.

Total Estimated Number of Annual Responses: 6,019,900.

Total Estimated Number of Annual Burden Hours: 507,362.

Abstract: The Federal Pell Grant, ACG, and National SMART Programs are student financial assistance programs authorized under the Higher Education Act of 1965 (HEA), as amended. These programs provide grant assistance to an eligible student attending an institution of higher education. The institution determines the student's award and disburses program funds to the student on behalf of the Department (ED). To account for the funds disbursed, institutions report student payment information to ED electronically. COD is a simplified process for requesting, reporting, and reconciling Pell Grant, ACG, and National SMART funds.

Dated: April 19, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–9993 Filed 4–24–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Exemplary Charter School Collaboration Awards; Proposed Definitions, Requirements, and Selection Criteria; Catalog of Federal Domestic Assistance (CFDA) Number 84.282P

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

SUMMARY: The Assistant Deputy Secretary for Innovation and Improvement proposes definitions, requirements, and selection criteria for the Exemplary Charter School Collaboration Awards (Collaboration Awards) and may use these definitions, requirements, and selection criteria for a competition in fiscal year (FY) 2012 and later years. The Assistant Deputy Secretary is taking this action to create incentives for charter schools (as defined in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended (ESEA)) to (a) collaborate with non-chartered public schools (as defined in this notice) and non-chartered local educational agencies (LEAs) to share and transfer best educational and operational practices at the elementary and secondary school levels; and (b) disseminate information about these collaborations across the Nation.

The Collaboration Awards competition would be designed to encourage charter schools and non-chartered public schools or non-chartered LEAs to share resources and responsibilities, build trust and teamwork, boost academic excellence in charter schools and non-chartered public schools alike, and provide students and their parents with a range of effective educational options.

DATES: We must receive your comments on or before May 25, 2012.

ADDRESSES: Address all comments about this notice to Erin Pfeltz, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W255, Washington, DC 20202–5970; or to Nancy Paulu, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W246, Washington, DC 20202–5970.

If you prefer to send your comments by email, use the following addresses: *erin.pfeltz@ed.gov* or *nancy.paulu@ed.gov.* You must include the phrase ''Exemplary Charter School Collaboration Awards—Comments on Proposed Definitions, Requirements, and Selection Criteria'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Erin Pfeltz at (202) 205–3525 or by email at *erin.pfeltz@ed.gov* or Nancy Paulu at (202) 205–5392 or by email at *nancy.paulu@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final definitions, requirements, and selection criteria, we urge you to identify clearly the specific proposed definition, requirement, or selection criterion that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed definitions, requirements, and selection criteria. Please let us know of ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about this notice in room 4W255, 400 Maryland Avenue SW., Washington, DC, between 8:30 a.m. and 4:00 p.m. Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record:

On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program:

The purpose of the Charter Schools Program (CSP) is to increase national understanding of the charter school model by—-

(1) Providing financial assistance for the planning, program design, and initial implementation of charter schools;

(2) Evaluating the effects of charter schools, including the effects on students, student academic achievement, staff, and parents;

(3) Expanding the number of high-quality charter schools available to students across the Nation; and

(4) Encouraging the States to provide support to charter schools for facilities financing in an amount more nearly commensurate to the amount the States have typically provided for traditional public schools.

Background:

Over the past 20 years, the charter school movement has grown in size and significance. The first charter school opened in Minnesota in 1992; today more than 5,000 charter schools are spread across the Nation. As charter schools have increased in number and popularity, so too has the tension between charter schools and traditional public schools and LEAs, as they compete for students. We believe that encouraging and facilitating collaboration between charter schools and non-chartered public schools and non-chartered LEAs can help change this dynamic.

By encouraging charter schools, other public schools, and LEAs to work together as partners, the Department, through the Collaboration Awards competition, aims to increase national understanding of the charter school model. By creating partnerships and carrying out dissemination activities, non-chartered public schools and non-chartered LEAs would get first-hand experience with the charter school model—freedom from some of the strict rules, regulations, and statutes that inhibit the flexible operation of traditional public schools and LEAs in exchange for increased accountability for producing certain results, as set forth in each school's charter. The Collaboration Awards competition would further support recent Federal initiatives that encourage Federal agencies to provide awards as incentives to stimulate innovation and promote agencies' core missions.

Authorized Activities:

The Collaboration Awards competition would be conducted as a part of the CSP's national activities. Under section 5205(a) of the ESEA, the Secretary reserves CSP funds to carry out a number of national activities, which may include, among other things, (a) providing information, training, and assistance to charter schools; (b) disseminating best or promising practices in charter schools to other public schools; (c) conducting evaluations or studies of the impact of charter schools on student achievement; and (d) providing other types of support and technical assistance to charter schools and other applicants for assistance under the CSP. The required activities that we are proposing for Collaboration Awards are within the scope of these authorized activities.

Collaboration Award grantees would collaborate, and disseminate information about the collaborations, in a broad range of areas within the scope of activities authorized under section 5205(a) of the ESEA. Awards would be based on the quality of existing or past collaboration activities as well as proposals in the grant applications for future collaboration activities, which could involve continuing, modifying, or expanding the existing or past model or models of collaboration. In making awards, the Secretary also would consider the quality of proposals to disseminate information or best practices regarding the collaboration activities upon which the award is based.

Program Authority:

The CSP is authorized under 20 U.S.C. 7221–7221i. CSP national activities are authorized under 20 U.S.C. 7221d.

Proposed Definitions

In addition to the definitions in section 5210 of the ESEA, which include the definition of *charter school,* we are proposing the following definitions for the Collaboration Awards competition. We may apply one or more of these definitions in any year in which we make awards under a Collaboration Awards competition.

Collaboration refers to the activities of a partnership in which two or more organizations or entities work together to accomplish a common goal, which may involve sharing or transferring best practices or strategies.

Non-chartered local educational agency (LEA) refers to an LEA that does not qualify as a charter school as defined in section 5210(1) of the ESEA or under State law.

Non-chartered public school refers to a public school that does not qualify as a charter school under section 5210(1) of the ESEA or under State law.

Significant compliance issue means a violation that did, will, or could lead to the revocation of a school's charter.

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under the ESEA; and, as appropriate (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: Alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests;

student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Proposed Competition Requirements

Background

The Department proposes to use the Collaboration Awards competition to encourage collaboration between charter schools and non-chartered public schools and non-chartered LEAs, as well as to disseminate information and share or transfer best practices to improve educational and operational practices in public schools, including public charter schools. The Assistant Deputy Secretary for Innovation and Improvement proposes the following requirements to support these goals. The Department may apply one or more of these requirements in any year in which this competition is in effect.

Proposed Eligibility Requirements

1. Eligible applicants are charter schools (as defined in section 5210(1) of the ESEA). In order to be eligible to receive an award under a Collaboration Awards competition, a charter school must apply in partnership with at least one non-chartered public school (as defined in this notice) or non-chartered LEA (as defined in this notice) and have the support of the partner(s) to participate in the competition. Multiple charter schools may be included in the partnership so long as they apply in partnership with each other and with at least one non-chartered public school (as defined in this notice) or non-chartered LEA (as defined in this notice).

2. The partnership must comply with the requirements for group applications set forth in 34 CFR 75.127–129.

Note: Only an eligible party under the competition may apply for a grant or be the fiscal agent for a grant. Thus a non-chartered public school or a non-chartered LEA would not be eligible to be the lead applicant or fiscal agent for an exemplary charter school collaboration award.

3. An applicant may submit more than one application if each application proposes to carry out substantially different authorized activities.

4. Applicants may not have any significant compliance issues (as defined in this notice), including in the areas of student safety, financial management, and statutory or regulatory compliance.

Proposed Application Requirements

An applicant for a Collaboration Award must—

(1) Provide a detailed narrative describing (a) the applicant's past or existing collaboration model or models (which may involve more than one area of collaboration or partner); (b) the applicant's proposal to continue, modify, or expand the collaboration model or models (which may include adding new areas of collaboration or partners); and (c) the applicant's plan to disseminate information about the collaboration model or models (which may include information about best practices) to other public schools, including chartered schools, non-chartered schools, and non-chartered LEAs. The proposed collaboration model or models may focus on a wide range of areas within the scope of activities authorized under section 5205(a) of the ESEA, which includes, but is not limited to, curriculum and instruction, data management and sharing, organization and management, personnel, facilities, finances, Federal programs, standards, assessments, special education services, English learners, students with other special needs, student transportation, and professional development and training.

Note: In a particular year, the Secretary may restrict applications to one or more areas of focus or authorized activity under section 5205(a) of the ESEA.

(2) Provide written assurance from authorized officials of the entities involved in the partnership that all participants—

- Agree to submit an application for an award under the competition and have read, understand, and agree with the application for the competition; and
- Agree to have the executive summary or narrative of the application, with proprietary information redacted, published on the U.S. Department of Education's Web site (ed.gov), data.ed.gov, the National Charter School Resource Center Web site (charterschoolcenter.org), or any other Web site or publication deemed appropriate by the Secretary;

(3) Submit a partnership agreement that meets the requirements of 34 CFR 75.128(b).

(4) Provide a clear description of the goals and desired outcomes of the proposed collaboration and current or proposed measures that would be used to gauge success in meeting those goals and desired outcomes.

(5) Describe any past, existing, or anticipated obstacles to implementing the collaboration model or models or to disseminating information about the collaboration model or models, and the strategies that were or will be used to overcome those obstacles.

(6) Specify how the award money will be used to implement the collaboration model or models and to disseminate information about the collaboration model or models in accordance with section 5205(a) of the ESEA.

(7) Specify how the award money will be shared between the partners named in the application. If grant activities will be carried out by both the applicant (the charter school) and its partner(s), the applicant must describe in the application and in the partnership agreement how the award money will be allocated between the partners, including the applicant.

Proposed Award Amounts and Funding Restrictions

(1) The Department will announce in a notice inviting applications published in the **Federal Register** the estimated amount of funds available for a given Collaboration Awards competition and the number of awards that we expect to make.

(2) A Collaboration Award grantee must use the award funds to carry out one or more of the following activities: (a) Continuing the collaboration model or models for which it received the award, as described in its grant application; (b) modifying the collaboration model or models for which it received the award, as described in the application; (c) expanding the collaboration model or models for which it received the award by adding additional areas of collaboration, as described in the application; or (d) expanding the collaboration model or models for which it received the award by adding additional partners (schools or LEAs), as described in the application. Collaboration Award grantees also must use award funds to disseminate information about the collaboration activities to other public schools, including chartered schools, non-chartered schools, and non-chartered LEAs. All activities carried out under the Collaboration Awards must fall within the scope of authorized activities set forth in section 5205(a) of the ESEA.

Proposed Selection Criteria

Background

The selection criteria we propose are designed to— (1) support collaborations between charter schools and non-chartered public schools and non-chartered LEAs that are most effective in raising student outcomes and creating efficiencies; (2) further the CSP's mission of increasing national understanding of the charter school

model; and (3) expand the number of high-quality charter schools.

Selection Criteria

The Secretary proposes the following selection criteria for Collaboration Awards competitions and further proposes that we may apply one or more of these criteria alone or in combination with one or more selection criteria (1) based on the CSP authorizing statute or (2) in 34 CFR 75.210, in any year in which this program is in effect. In the notice inviting applications or the application package, or both, we will announce the maximum possible points assigned to each criterion.

The Secretary could make awards to the top-rated applications proposing to carry out activities in specific areas of focus (e.g., curriculum and instruction, data management and sharing, organization and management) within the scope of authorized activities under section 5205(a) of the ESEA. In a particular year, the Secretary may restrict applications to one or more areas of focus. Additionally, in making awards, the Secretary could fund applications out of rank order in order to ensure that the Collaboration Awards are distributed throughout each area of the Nation or a State.

(1) *Record of and potential for success.* (A) The extent to which the applicant's past or existing collaboration model or models have improved educational outcomes and operational practices, and (B) the extent to which the applicant's proposed collaboration model or models and dissemination plan will achieve one or more of the following demonstrable results:

(i) Improved operational practices and productivity among all partners;

(ii) Improved student achievement (as defined in this notice);

(iii) Improved high school graduation rates;

(iv) Improved rates of college matriculation and college graduation; or

(v) Improved rates of attendance and graduation from other postsecondary (i.e., non-college) institutions or programs.

Note: In the notice inviting applications or the application package, or both, we may assign points individually to the factors listed under this selection criterion.

Note: The Secretary invites comment on this criterion particularly with respect to measures that might be used to determine the extent to which an applicant's proposed collaboration model or models and dissemination plan will achieve improved operational practices and productivity among all partners.

(2) *Quality of the project design.* The extent to which the applicant proposes a high-quality plan to use its award money to improve educational outcomes and operational practices in public schools, including charter schools.

(3) *Potential for scalability.* The extent to which the applicant's proposed collaboration model or models can be replicated or adapted beyond the participating partners by other public schools or non-chartered LEAs and sustained long-term.

(4) *Innovation.* The extent to which the applicant demonstrates that its proposed collaboration model or models, as well as its dissemination plan, are either (a) substantially different from other efforts in its area of focus; or (b) substantially more effective than similar efforts in its area of focus.

Final Definitions, Requirements, and Selection Criteria

We will announce the final definitions, requirements, and selection criteria in a notice in the **Federal Register**. We will determine the final definitions, requirements, and selection criteria after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing priorities or additional definitions, requirements, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these proposed definitions, requirements, and selection criteria, we will invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3 (f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practical—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavior changes.''

We are taking this proposed regulatory action only on a reasoned determination that the benefits justify the costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. The Department believes that this proposed regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)).

This helps ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

We estimate that each applicant would spend approximately 176 hours of staff time to address the proposed requirements and selection criteria, prepare the application, and obtain necessary clearances. The total number of hours for all expected applicants is an estimated 7,040 hours. We estimate the total cost per hour of the applicant-level staff who will carry out this work to be $57 per hour. The total estimated cost for all applicants would be $401,280.

We have submitted an Information Collection Request (ICR) for this collection to the Office of Management and Budget (OMB). If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by email to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this notice.

In preparing your comments you may want to review the ICR, which we maintain in the Education Department Information Collection System (EDICS) at *http://edicsweb.ed.gov.* Click on ''Browse Pending Collections.'' This proposed collection is identified as proposed collection 1855–NEW. This ICR is also available on OMB's RegInfo Web site at *www.reginfo.gov.*

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

OMB is required to make a decision concerning the collection of information contained in these proposed definitions, requirements, and selection criteria between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments on the proposed collection by May 25, 2012. This does not affect the deadline for your comments to us on the proposed definitions, requirements, and selection criteria.

Please note that a Federal agency cannot conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. We will provide the OMB control number when we publish the notice of final definitions, requirements, and selection criteria.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 20, 2012.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2012–10005 Filed 4–24–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, May 16, 2012, 5 p.m.

ADDRESSES: Atomic Testing Museum, 755 East Flamingo Road, Las Vegas, Nevada 89119.

FOR FURTHER INFORMATION CONTACT: Denise Rupp, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 630–0522; Fax (702) 295–5300 or Email: *nssab@nv.doe.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Groundwater Update
2. Student Liaison Project Update
3. Industrial Sites—Long-term Monitoring at Closed Sites

Public Participation: The EM SSAB, Nevada, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Denise Rupp at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make

oral presentations pertaining to agenda items should contact Denise Rupp at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing to Denise Rupp at the address listed above or at the following Web site: *http://nv.energy.gov/nssab/MeetingMinutes.aspx.*

Issued at Washington, DC on April 18, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–9941 Filed 4–24–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. . 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, May 21, 2012, 1 p.m.–5 p.m. Tuesday, May 22, 2012, 8:30 a.m.–4:30 p.m.

ADDRESSES: The Hilton Savannah DeSoto, 15 East Liberty Street Savannah, GA 31401.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, May 21, 2012

1 p.m. Combined Committees Session
5 p.m. Adjourn

Tuesday, May 22, 2012

8:30 a.m.—Approval of Minutes, Agency Updates
Public Comment Session
Facilities Disposition and Site Remediation Committee Report
Nuclear Materials Committee Report
Public Comment Session
12:30 p.m.—Lunch Break
1:30 p.m.—Strategic and Legacy Management Committee Report
Waste Management Committee Report
Administrative Committee Report
Public Comment Session
4:30 p.m.—Adjourn

Public Participation: The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gerri Flemming at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Gerri Flemming at the address or phone number listed above. Minutes will also be available at the following Web site: *http://cab.srs.gov/srs-cab.html.*

Issued at Washington, DC, on April 18, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–9942 Filed 4–24–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2664–002.
Applicants: Powerex Corporation.
Description: Powerex Corp submits notice of change in status.
Filed Date: 4/13/12.
Accession Number: 20120417–0202.
Comments Due: 5 p.m. ET 5/4/12.

Docket Numbers: ER12–1554–000.
Applicants: New York Independent System Operator, Inc., Consolidated Edison Company of New York, Inc.
Description: Amended Restated Agreement No 330 between Con Edison and Astoria Energy to be effective 6/16/2012.
Filed Date: 4/17/12.
Accession Number: 20120417–5182.
Comments Due: 5 p.m. ET 5/8/12.

Docket Numbers: ER12–1555–000.
Applicants: High Majestic Interconnection Services, LLC.
Description: Coordination Services Agreement between High Majestic Interconnect and HMI to be effective 6/16/2012.
Filed Date: 4/17/12.
Accession Number: 20120417–5189..
Comments Due: 5 p.m. ET 5/8/12.

Docket Numbers: ER12–1556–000.
Applicants: High Majestic Interconnection Services, LLC.
Description: CSA Between High Majestic Interconnect and HMII to be effective 6/16/2012.
Filed Date: 4/17/12.
Accession Number: 20120417–5190.
Comments Due: 5 p.m. ET 5/8/12.

Docket Numbers: ER12–1557–000.
Applicants: Southern California Edison Company.
Description: Amended LGIA Manzana Wind LLC, Manzana Wind Project to be effective 6/18/2012.
Filed Date: 4/18/12.
Accession Number: 20120418–5000.
Comments Due: 5 p.m. ET 5/9/12.

Docket Numbers: ER12–1558–000.
Applicants: Southern California Edison Company.
Description: CLGIA and Distribution Service Agmt with Mesa Wind Power Corporation to be effective 4/9/2012.
Filed Date: 4/18/12.
Accession Number: 20120418–5002.
Comments Due: 5 p.m. ET 5/9/12.

Docket Numbers: ER12–1559–000.
Applicants: High Majestic Wind Energy Center, LLC.
Description: CFA Between HMI, HMII, and High Majestic Interconnection to be effective 6/16/2012.
Filed Date: 4/18/12.
Accession Number: 20120418–5052.
Comments Due: 5 p.m. ET 5/9/12.

Docket Numbers: ER12–1560–000.
Applicants: Southern California Edison Company.

Description: Amendment to Interconnection Facilities Agreement with City of Industry to be effective 4/19/2012.

Filed Date: 4/18/12.

Accession Number: 20120418–5107.

Comments Due: 5 p.m. ET 5/9/12.

Docket Numbers: ER12–1561–000.

Applicants: LDH Rensselaer LLC.

Description: Notice of Succession to be effective 3/31/2012.

Filed Date: 4/18/12.

Accession Number: 20120418–5109.

Comments Due: 5 p.m. ET 5/9/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 18, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–9957 Filed 4–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1571–000]

Verso Bucksport 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 Verso Bucksport LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is May 9, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive 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: April 19, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–9956 Filed 4–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1563–000]

Cayuga Operating Company, 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 Cayuga Operating Company, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 9, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive 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: April 19, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–9959 Filed 4–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1566–000]

Cooper Mountain Solar 2, 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 Cooper Mountain Solar 2, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 9, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive 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: April 19, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–9960 Filed 4–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1562–000]

Somerset Operating Company, 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 Somerset Operating Company, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 9, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive 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: April 19, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–9958 Filed 4–24–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–9346–2]

Access to Confidential Business Information by CGI Federal Inc. and Its Identified Subcontractor, FedConcepts/Jorge

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, CGI Federal Inc. (CGI) of Fairfax, VA and Its Identified Subcontractor, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than May 2, 2012.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Pamela Moseley, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8956; fax number: (202) 564–8955; email address: *moseley.pamela@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. 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 subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

II. What action is the agency taking?

Under EPA contract number GS–35F–4797H, Task Order Number EP–G11D–00056, contractor CGI of 12601 Fair Lakes Circle, Fairfax, VA; and its Identified Subcontractor, FedConcepts/Jorge of 2231 Crystal Drive, Suite 400, Arlington, VA, will assist the Office of Pollution Prevention and Toxics (OPPT) by providing support for two operations security management areas:

1. Security Technical Operations, including the operations and maintenance of EPA's network security infrastructure devices and

2. Operations Security Program Management, which covers security operations oversight and monitoring, security management and reporting, security assessment and consulting and security audits support for the Wide Area Network (WAN) and the National Computer Center (NCC).

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number GS–35F–4797H, Task Order Number EP–G11D–00056, CGI and Its Identified Subcontractor will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. CGI and Its Identified Subcontractor's personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide CGI and Its Identified Subcontractor access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and the Research Triangle Park facilities in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until September 30, 2016. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

CGI and Its Identified Subcontractor's personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: April 13, 2012.

Matthew G. Leopard,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2012–9640 Filed 4–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2010–1010; FRL–9511–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: *TSCA Section 4 Test Rules, Consent Orders, Enforceable Consent Agreements, Voluntary Testing Agreements, Voluntary Data Submissions, and Exemptions from Testing Requirement* (EPA ICR No. 1139.09, OMB No. 2070–0033). The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before May 25, 2012.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2010–1010 to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *oppt.ncic@epa.gov* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mail Code: 7407T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Maryann Petrole, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mail code: 7408–M, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–554–1404; email address: *TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 10, 2011 (76 FR 49471), EPA sought comments on this renewal pursuant to 5 CFR 1320.8(d). EPA

received one supportive comment during the comment period, which did not result in any substantive change to the Supporting Statement. Any additional comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA EPA–HQ–OPPT–2010–1010, which is available for online viewing at *http://www.regulations.gov*, or in person inspection at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Pollution Prevention and Toxics Docket is 202–566–0280. Use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *www.regulations.gov*. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in *www.regulations.gov*. For further information about the electronic docket, go to *www.regulations.gov*.

Title: TSCA Section 4 Test Rules, Consent Orders, Enforceable Consent Agreements, Voluntary Testing Agreements, Voluntary Data Submissions, and Exemptions from Testing Requirement.

ICR Status: This is a request to renew an existing approved collection. This ICR is scheduled to expire on April 30, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: This ICR covers the submission of test data to the Environmental Protection Agency (EPA) to support the decision making process for an industrial chemical under the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601). Under TSCA, EPA has the authority to issue regulations designed to gather health/safety and exposure information on, require testing of, and control exposure to chemical substances and mixtures. Drugs, cosmetics, foods, food additives, pesticides, and nuclear materials are exempt from TSCA.

Under TSCA section 4, EPA must assure that appropriate tests are performed on a chemical if it decides: (1) That a chemical being considered under TSCA section 4(a) may pose an ''unreasonable risk'' or is produced in ''substantial'' quantities that may result in substantial or significant human exposure or substantial environmental release of the chemical; (2) that additional data are needed to determine or predict the impacts of the chemical's manufacture, processing, distribution, use or disposal; and (3) that testing is needed to develop such data.

In general, when the need for data is identified by EPA, EPA may obtain the needed test data (1) By issuing a test rule through notice and comment rulemaking, (2) through negotiation with industry and issuing an enforceable consent agreement (ECA), or (3) through commitments from industry, i.e., voluntary testing agreements (VTAs). Industry may also submit test data to EPA on their own initiative.

EPA uses the information collected under the authority of TSCA section 4 to assess risks associated with the manufacture, processing, distribution, use or disposal of a chemical, and to support any necessary regulatory action with respect to that chemical.

The testing specified in a rule or consent order issued under TSCA section 4 only needs to be conducted once for each specified chemical. As such, only one of the entities that manufacture, import or process the specified chemical, or a consortia formed by these entities, is expected to conduct the specified testing and report the results of that testing to EPA. In addition, an entity subject to a test rule may apply for an exemption from the testing requirement if that testing will be or has been performed by another party.

This information collection applies to reporting and recordkeeping activities associated with the information that EPA requires industry to provide in response to TSCA section 4 test rules, consent orders or voluntary agreements, and other data submissions, as well as those related to the exemption applications. As such, responses to the collection of information are either mandatory if codified (see 40 CFR part 790), and voluntary when not.

Respondents may claim all or part of a response as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

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 title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9 and included on the related collection instrument or form, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to range between 9 and 263 hours per response. Burden is defined in 5 CFR 1320.3(b).

Respondents/Affected Entities: Entities potentially affected by this ICR are manufacturers, processors, importers, users, distributors or disposers of one or more specified chemical substances.

Frequency of Collection: On occasion.

Estimated Average Number of Responses for Each Respondent: Varies by activity, but is estimated to range from 1 to 131 per respondent.

Estimated Total No. of Respondents: Varies by activity, but is estimated to range from 1 to 18.

Estimated Total Annual Burden on Respondents: 629,893 hours.

Estimated Total Annual Costs: $13,289,461, with an additional $9,628,441 for non-labor costs related to laboratory test costs.

Changes in Burden Estimates: This request represents an increase of 477,931 hours from that currently in the OMB inventory (from 151,962 hours to 629,893 hours). This increase reflects several adjustments in the estimates related to a better break-out of the different activities for the covered collection and an adjustment in projected potential future activities regarding voluntary submissions. The Agency has also adjusted all unit costs to reflect the latest available labor wage rates and has identified the non-labor costs more clearly. The Supporting Statement provides details about the

change in burden estimate. The change is an adjustment.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–9902 Filed 4–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0248; FRL–9515–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Steel Pickling, HCl Process Facilities and Hydrochloric Acid Regeneration Plants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before May 25, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0248, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2822T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 *FR* 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0248, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NESHAP for Steel Pickling, HCl Process Facilities and Hydrochloric Acid Regeneration Plants (Renewal).

ICR Numbers: EPA ICR Number 1821.07, OMB Control Number 2060–0419.

ICR Status: This ICR is schedule to expire on May 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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 title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9 and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

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 Provisions specified at 40 CFR part 63, subpart CCC. The rule applies to all facilities that pickle steel using hydrochloric acid or regenerate hydrochloric acid, and are major sources or are part of a facility that is a major source.

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, at a minimum, are required semiannually.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart CCC, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

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 Number for the EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 168 hours per response. ''Burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose and provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have

subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Steel pickling, HCl process facilities and hydrochloric acid regeneration plants.

Estimated Number of Respondents: 72.

Frequency of Response: Initially, occasionally and semiannually.

Estimated Total Annual Hour Burden: 25,316.

Estimated Total Annual Cost: $2,433,399, which includes $2,425,767 in labor costs, no capital/startup costs, and $7,632 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the labor hours in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden. However, there is an increase in the total labor and Agency costs as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. The change in cost estimates reflects updated labors rates available from the Bureau of Labor Statistics.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–9900 Filed 4–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2011–0442; FRL 9516–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Microbial Rules (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 25, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2011–0442, by using one of the following methods:

- *www.regulations.gov:* (our preferred method) Follow the on-line instructions for submitting comments.
- *Email: OW-Docket@epa.gov.*
- *Mail:* (1) EPA Docket Center, Environmental Protection Agency, Water Docket, MC: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Matthew Reed, Drinking Water Protection Division, Office of Ground Water and Drinking Water (4606M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–4719; email address: *reed.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 5, 2011 (76 FR 39092), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2011–0442, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Microbial Rules (Renewal).

ICR numbers: EPA ICR No. 1895.07, OMB Control No. 2040–0205.

ICR Status: This ICR is scheduled to expire on April 30, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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 title 40 of the Code of Federal Regulations, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Microbial Rules ICR examines Public Water System, primacy agency, and EPA burden and costs for recordkeeping and reporting requirements in support of the microbial drinking water regulations. These recordkeeping and reporting requirements are mandatory for compliance with 40 CFR parts 141 and 142. The following microbial regulations are included: Surface Water Treatment Rule (SWTR), Total Coliform Rule (TCR), Interim Enhanced Surface Water Treatment Rule (IESWTR), Filter Backwash Recycling Rule (FBRR), Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR), Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR), Ground Water Rule (GWR), and the Aircraft Drinking Water Rule (ADWR). Although the Aircraft Drinking Water Rule has a stand-alone ICR at this time, it is being included into the Microbial ICR due to the nature of information collected. The information collected for the Aircraft Drinking Water Rule is directly correlated to information collected under the Total Coliform Rule, and therefore, is appropriate to be included in the Microbial ICR. Future microbial-related rulemakings will be added to this consolidated ICR after the

regulations are finalized and the initial, rule-specific, ICRs are due to expire.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.45 hours per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Respondents/Affected Entities: Owners/operators of public water systems, commercial air carriers, state primacy agencies.

Estimated Number of Respondents: 153,083.

Frequency of Response: Varies by requirement (i.e., on occasion, monthly, quarterly, semi-annually, annually, biennially, and every 3, 6, and 9 years)

Estimated Total Annual Hour Burden: 12,920,667.

Estimated Total Annual Cost: $589,403,000, includes $135,346,345 operating and maintenance and capital costs.

Changes in the Estimates: There is an increase of 2,250,751 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The changes in burden consist of program adjustments for activities that were carried forward from existing ICRs to this Microbial Rules ICR renewal. Changes in calculated burden are a result of updating relevant baseline information for each rule with the most current and accurate information on activity compliance.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–9897 Filed 4–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0015 and EPA–HQ–OAR–2004–0016; FRL 9514–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Part 70 State Operating Permit Program (Renewal) and Part 71 Federal Operating Permit Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that two Information Collection Requests (ICRs) have been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew two existing approved collections. The ICRs, which are abstracted below, describe the nature of the two information collections and the estimated burdens and costs.

DATES: Additional comments may be submitted on or before May 25, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2004–0015 (for the Part 70 state program) or Docket ID No. EPA–HQ–OAR–2004–0016 (for the Part 71 federal program), to (1) the EPA online using *www.regulations.gov* (our preferred method), by email at *a-and-r-docket@epa.gov* or by mail to: Air and Radiation Docket and Information Center, Mailcode: 28221T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) the OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Herring, Air Quality Policy Division, Office of Air Quality Planning and Standards, (C504–05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3195; fax number: (919) 541–5509; email address: *herring.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA has submitted the following ICRs to the OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 14, 2011 (76 FR 77820), the EPA sought comments on the two ICRs pursuant to 5 CFR 1320.8(d). The EPA received no comments. Any additional comments on the two ICRs should be submitted to the EPA and the OMB within 30 days of this notice.

The EPA has established a public docket for the Part 70 ICR renewal under Docket ID No. EPA–HQ–OAR–2004–0015 and a public docket for the Part 71 ICR renewal under Docket ID No. EPA–HQ–OAR–2004–0016, which are available at *www.regulations.gov.* Use the EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments.

Title: Part 70 State Operating Permit Program (Renewal) and Part 71 Federal Operating Permit Program (Renewal).

ICR numbers: For the Part 70 regulations, EPA ICR No. 1587.12 and OMB Control No. 2060–0243. For the Part 71 regulations, EPA ICR No. 1713.10 and OMB Control No. 2060–0336.

ICR Status: The two ICRs are both scheduled to expire on April 30, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at the OMB. 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.

Abstract: Title V of the Clean Air Act (Act) requires states to develop and implement a program for issuing operating permits to all sources that fall under any Act definition of ''major'' and certain other non-major sources that are subject to federal air quality regulations. The Act further requires the EPA to develop regulations that establish the minimum requirements for those state operating permits programs, to oversee implementation of the state programs, and to operate a federal operating permits program in areas not subject to an approved state program. The EPA regulations setting forth requirements for the state operating permit program are at 40 CFR part 70, and the EPA regulations setting forth the requirements for the federal (EPA) operating permit program are at 40 CFR part 71. The part 70 program is designed to be implemented primarily by state and local permitting authorities in all areas where they have juridiction. The part 71 program is designed to be implemented primarily by the EPA in all areas where state and local agencies do not have jurisdiction, such as Indian country and offshore beyond states' seaward boundaries. The EPA may also delegate authority to implement the part 71 program on its behalf to a state, local or tribal agency if the agency requests

delegation and makes certain showings regarding its authority and ability to implement the program. One such delegate agency for the part 71 program exists at present.

In order to receive an operating permit for a major or other source subject to either of the permitting programs, the applicant must conduct the necessary research, perform the appropriate analyses and prepare the permit application with documentation to demonstrate that its facility meets all applicable statutory and regulatory requirements. Specific activities and requirements are listed and described in the Supporting Statements for the two ICRs.

State and local agencies under part 70 and the EPA (or a delegate agency) under part 71 review permit applications, provide for public review of proposed permits, issue permits based on consideration of all technical factors and public input, and review information submittals required of sources during the term of the permit. Also, under part 70, the EPA reviews certain actions of the state and local agencies and provides oversight of the programs to ensure that they are being adequately implemented and enforced. Under part 71, the EPA reviews certain actions and performs oversight for any delegate agency, consistent with the terms of a delegation agreement. Consequently, information prepared and submitted by sources is essential for sources to receive permits, and for federal, state, local and tribal permitting agencies to adequately review the permit applications and thereby properly administer and manage the program.

Since the previous renewal of this ICR, the EPA has promulgated two changes to the part 70 and 71 regulations: the Flexible Air Permits rule and the Greenhouse Gas (GHG) Tailoring rule. The first rule provides a mechanism for sources to establish provisions in their operating permits that result in fewer permit revisions necessary during the term of the permit; the second establishes levels where GHG emissions trigger permitting requirements. The information collection requirements for these regulatory revisions were approved by the OMB after the approval of the 2007 ICR renewals, and those approved changes are included and updated in these ICR renewals. Also, the previous part 71 ICR renewal identifed the EPA as the sole permitting authority, while this part 71 renewal identifies the EPA and one delegate agency, the Navaho Nation, as permitting authorities (the EPA continues to serve as a permitting authority in all areas, while the delegate agency serves as a permitting authority in a limited portion of Indian country).

Burden Statement: Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The annual public reporting and recordkeeping burden for the collection of information under parts 70 and 71 is broken down as follows:

Type of permit action	Part 70	Part 71
Number of Sources	15,940	174
Burden Hours per Response:		
Sources	250	209
Permitting Authority	84	90
Total Annual Burden Hours:		
Sources	3,977,316	36,375
Permitting Authority	1,336,370	1,254 [a]

Any minor discrepencies are due to rounding.
[a] Only delegate agency burden is shown for part 71.

Respondents/Affected Entities: Industrial plants (sources); state, local and tribal permitting authorities.

Estimated Number of Respondents: For part 70 there are 15,940 sources and 112 state and local permitting authorities. For part 71 there are 174 industry sources and 1 tribal delegate permitting authority. (The EPA serves as a permitting authority but, as a federal agency, is not a respondent.)

Estimated Total Annual Hour Burden: For part 70, the total annual burden for sources and state and local permitting authorities is 5,313,686 hours. For part 71, the total annual burden for sources and the one delegate agency (tribal) is 37,629 hours.

Estimated Total Annual Cost: For part 70, the total annual cost for sources and state and local permitting authorities is $322,734,860. For part 71, the total annual cost for sources and the one delegate agency (tribal) is $2,393,171. In both cases, all costs are labor costs; there are no capital, startup or operating and maintenance costs.

Changes in the Estimates: Since the last renewal of the part 70 ICR (in 2007), there is an decrease of about 199,000 hours (or nearly a 5 percent decrease) of annual respondent burden. This change is primarily due to an updated estimate of the number of permits expected.

Since the last renewal of the part 71 ICR (in 2007), there is an increase of over 10,000 hours of total annual respondent burden (about a 38 percent increase). This is primarily due to an updated estimate of the number of permits expected.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–9896 Filed 4–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0034; FRL–9515–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Emission Standards for Hazardous Air Pollutants (NESHAP) for Nine Metal Fabrication and Finishing Area Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request

to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before May 25, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2012–0034, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 8, 2012 (77 *FR* 6557), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2012–0034, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Nine Metal Fabrication and Finishing Area Sources (Renewal)

ICR Numbers: EPA ICR Number 2298.03, OMB Control Number 2060–0622

ICR Status: This ICR is scheduled to expire on April 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

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 XXXXXX.

These regulations apply to owners or operators of any existing or new metal fabrication and finishing facility that is an area source of hazardous air pollutants (HAP) emissions and uses or has the potential to emit metal fabrication or finishing metal HAP (MFHAP), defined to be the compounds of cadmium, chromium, lead, manganese, and nickel, or any of these metals in the elemental form with the exception of lead.

Owners or operators of the affected facilities must submit initial notification, annual compliance certifications (which include annual reports of exceedences if any have occurred.) 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, at a minimum, are required semiannually.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart XXXXXX, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for the EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 11 hours per response. ''Burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of nine metal fabrication and finishing area sources.

Estimated Number of Respondents: 1,933.

Frequency of Response: Initially, occasionally, and annually.

Estimated Total Annual Hour Burden: 20,562.

Estimated Total Annual Cost: $1,972,260, which includes $1,972,260 in labor costs; there are no capital/startup or operating and maintenance costs.

Changes in the Estimates: There is an increase in the total costs as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. The change in the cost estimates occurred due to the most updated labor rates for both respondents and the Agency. Despite the increase in burden costs, there is a decrease in the labor hours in this ICR compared to the previous ICR due to a mathematical error in

determining the person-hours per respondent.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–9898 Filed 4–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2012–0191; FRL–9347–1]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Chemical Substances Inventory (TSCA Inventory)) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document, which covers the period from March 26, 2012 to April 6, 2012, and provides the required notice and status report, consists of the PMNs and TMEs, both pending or expired, and the NOC to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before May 25, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0191, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 *regulations.gov* or email. The *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 *regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the 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 docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. 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 subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Bernice Mudd, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8951; fax number: (202) 564–8955; email address: *mudd.bernice@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the PMNs addressed in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Why is EPA taking this action?

EPA classifies a chemical substance as either an ''existing'' chemical or a ''new'' chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a ''new chemical,'' while those that are on the TSCA Inventory are classified as an ''existing chemical.'' For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.* Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for ''test marketing'' purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://ww.epa.gov/opt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals. This status report, which covers the period from March 26, 2012 to April 6, 2012, consists of the PMNs and TME, both pending or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Reports

In Table I. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA's review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—52 PMNS RECEIVED FROM 03/26/12 TO 04/06/12

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–12–0261 ...	03/26/2012	06/23/2012	CBI	(G) Rubber adhesive	(G) Polyurethane.
P–12–0262 ...	03/26/2012	06/23/2012	CBI	(G) Lubricant additive	(G) Triethanolamine oleate triester .
P–12–0263 ...	03/27/2012	06/24/2012	American Chemical, Ltd.	(S) Special catalyst for elastomer and molded two-component polyurethanes.	(S) Mercury, diphenyl[μ-[2-(tetrapropenyl) butanedioato (2-)-κ01 : .κ:.04]]di-.
P–12–0264 ...	03/28/2012	06/25/2012	CBI	(G) Oil well stimulation additive.	(G) Substituted, 2-hydroxy-n,n-dimethyl-N-[3-[[(13z)-1-oxo-13-docosen-1-yl]amino]propyl]-3-sulfo-, inner salt.
P–12–0265 ...	03/28/2012	06/25/2012	CBI	(G) Monomer	(G) Carbamic acid, N-[1-methyl-1-[3-(1-methylethenyl)phenyl]ethyl]-, substituted ester.
P–12–0266 ...	03/28/2012	06/25/2012	CBI	(G) Fracturing fluid additive.	(G) 2-propenoic acid, telomer with substituted N-[1-methyl-1-[3-(1-methylethenyl)phenyl]ethyl]carbamate and 2-propanol, peroxydisulfuric acid ([(hO)s(O)2]2O2)sodium salt (1:2)-initiated.
P–12–0267 ...	03/28/2012	06/25/2012	CBI	(G) Fracturing fluid additive.	(G) 2-propenoic acid, telomer with substituted N-[1-methyl-1-[3-(1-methylethenyl)phenyl]ethyl]carbamate and 2-propanol, sodium salt, peroxydisulfuric acid ([(hO)s(O)2]2O2) sodium salt (1:2)-initiated.
P–12–0268 ...	03/28/2012	06/25/2012	CBI	(G) Fracturing fluid additive.	(G) 2-propenoic acid, telomer with substituted N-[1-methyl-1-[3-(1-methylethenyl)phenyl]ethyl]carbamate and 2-propanol, ammonium salt, peroxy disulfuric acid ([(hO)s(O)2]2O2) sodium salt (1:2)-initiated.
P–12–0269 ...	03/28/2012	06/25/2012	CBI	(G) Fracturing fluid additive.	(G) 2-propenoic acid, telomer with substituted N-[1-methyl-1-[3-(1-methylethenyl)phenyl]ethyl]carbamate and 2-propanol, potassium salt, peroxydisulfuric acid ([(hO)s(O)2]2O2) sodium salt (1:2)-initiated.
P–12–0270 ...	03/28/2012	06/25/2012	CBI	(G) Fracturing fluid additive.	(G) 2-propenoic acid, telomer with substituted N-[1-methyl-1-[3-(1-methylethenyl)phenyl]ethyl]carbamate and 3-mercaptopropanoic acid, 1.1-diemethylpropyl 2-ethylhexaneperoxoate-initiated.

TABLE I—52 PMNS RECEIVED FROM 03/26/12 TO 04/06/12—Continued

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–12–0271 ...	03/28/2012	06/25/2012	Henkel Corporation.	(S) Hot melt type adhesive used for panel lamination and other assemblies.	(S) Hexanedioc acid, polymer with 1,6-hexanediol, α-hydro-ω-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 1,1′-methylenebis [isocyanatobenzene] and α, α′-[(1-methylethylidene)di-4,1-phenylene]bis[ω-hydroxypoly(oxy-1,2-ethanediyl)].
P–12–0272 ...	03/28/2012	06/25/2012	Henkel Corporation.	(S) Hot melt type adhesive used for panel lamination and other assemblies.	(S) 1,3-benzenedicarboylic acid, polymer with 1,4-benzenedicarboxylic acid, 2,2-dimethyl-1,3-propanediol, dodecanedioic acid, 1,2-ethanediol, hexanedioic acid, 1,6-hexanediol, α-hydroxy-ω-hydroxypoly[oxy(methyl-1,2-ethanediyl)] and 1,1′-methylenebis[4-isocyanatobenzene].
P–12–0273 ...	03/28/2012	06/25/2012	CBI	(S) Industrial coating	(S) Coconut oil, polymer with di-me malonate, pentaerythritol, phthalic anhydride and trimethylolpropane.
P–12–0274 ...	03/29/2012	06/26/2012	CBI	(G) Adhesive for open non-descriptive use.	(G) Polyisocyanate adduct.
P–12–0275 ...	03/29/2012	06/26/2012	Cytec Industries, Inc.	(S) Chemical reactant for production of proprietary chemical for the electronics industry.	(S) Phosphonium, tributyltetradecyl-, chloride.
P–12–0276 ...	03/30/2012	06/27/2012	Huntsman Corporation.	(S) Exhaust dyeing of cellulosic fabrics.	(G) Aromatic sulfonic acid azo dye salts.
P–12–0277 ...	03/30/2012	06/27/2012	CBI	(G) Platicizer and lubricant with flame retardant properties.	(G) Chloro alkanes.
P–12–0278 ...	03/30/2012	06/27/2012	CBI	(G) Platicizer and lubricant with flame retardant properties.	(G) Chloro alkanes.
P–12–0279 ...	03/30/2012	06/27/2012	CBI	(G) Platicizer and lubricant with flame retardant properties.	(G) Chloro alkanes.
P–12–0280 ...	03/30/2012	06/27/2012	CBI	(G) Platicizer and lubricant with flame retardant properties.	(G) Chloro alkanes.
P–12–0281 ...	03/30/2012	06/27/2012	CBI	(G) Platicizer and lubricant with flame retardant properties.	(G) Chloro alkanes.
P–12–0282 ...	03/30/2012	06/27/2012	CBI	(G) Platicizer and lubricant with flame retardant properties.	(G) Chloro alkanes.
P–12–0283 ...	03/30/2012	06/27/2012	CBI	(G) Platicizer and lubricant with flame retardant properties.	(G) Chloro alkanes.
P–12–0284 ...	03/30/2012	06/27/2012	CBI	(G) Platicizer and lubricant with flame retardant properties.	(G) Chloro alkanes.
P–12–0285 ...	03/30/2012	06/27/2012	TTM Technologies, Inc.	(S) Raw material for production of copper chemicals; raw material for the production of animal feed micronutrients.	(S) Copper(2+), tetraamine-, dichloride.
P–12–0286 ...	04/03/2012	07/01/2012	CBI	(G) Coating for plastics ..	(G) Lightly branched polyester.
P–12–0287 ...	04/03/2012	07/01/2012	CBI	(G) Coating for plastics ..	(G) Lightly branched aliphatic polyester.
P–12–0288 ...	04/03/2012	07/01/2012	Brueggemann Chemical U.S., Inc.	(G) Zinc is a	Carbonic acid zinc salt basic.
P–12–0289 ...	04/04/2012	07/02/2012	CBI	(G) Industrial lubricant	(G) Decanedioic acid, polymer with alcohol, isooctadecanoate.
P–12–0290 ...	04/04/2012	07/02/2012	CBI	(G) Resin will be used as one of the reactive components in a 2-part chemical anchor cartridge system.	(G) Polyurethane acrylate.
P–12–0291 ...	04/04/2012	07/02/2012	CBI	(G) Additive, open, non-dispersive use.	(G) Fluoroalkyl modified polydimethylsiloxane.

TABLE I—52 PMNS RECEIVED FROM 03/26/12 TO 04/06/12—Continued

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–12–0292 ...	04/05/2012	07/03/2012	CBI	(G) Use in carbon graphite industry.	(S) Coke (coal), secondary pitch.
P–12–0293 ...	04/05/2012	07/03/2012	CBI	(S) Conductive polymer for use in batteries.	(G) Substituted thiophene polymer.
P–12–0294 ...	04/05/2012	07/03/2012	CBI	(G) Open, non-dispersive use—PMN substance used in the manufacture of lamps.	(G) Potassium fluorosilicate modified.
P–12–0295 ...	04/05/2012	07/03/2012	CBI	(G) Leather coating component.	(G) Dihydroxyalkanoic acid-, polymer with hydrazine, polyalkylene glycol and diisocyanatoalkyl, cmpd with trialkylamine.
P–12–0296 ...	04/05/2012	07/03/2012	CBI	(G) Resin for waterborne automotive & industrial coatings.	(G) Branched acid functional polyeste.
P–12–0297 ...	04/06/2012	07/04/2012	Gelest, Inc.	(G) Synthesis of organosilane.	(G) Alkylsilane.
P–12–0298 ...	04/05/2012	07/03/2012	CBI	(G) Adhesive	(G) Vinylidene ester.
P–12–0299 ...	04/05/2012	07/03/2012	CBI	(G) Adhesive	(G) Vinylidene ester.
P–12–0300 ...	04/05/2012	07/03/2012	CBI	(G) Intermediate	(G) Poly(alkyl alkenoate).
P–12–0301 ...	04/05/2012	07/03/2012	CBI	(G) Intermediate	(G) Poly(alkyl alkenoate).
P–12–0302 ...	04/06/2012	07/04/2012	CBI	(G) Polymer for paper coatings.	(G) Fatty acid modified polyethylene terephthalate polyester resin.
P–12–0303 ...	04/06/2012	07/04/2012	CBI	(G) Polymer for paper coatings.	(G) Fatty acid modified polyethylene terephthalate polyester resin.
P–12–0304 ...	04/06/2012	07/04/2012	CBI	(G) Polymer for paper coatings.	(G) Fatty acid modified polyethylene terephthalate polyester resin.
P–12–0305 ...	04/06/2012	07/04/2012	CBI	(G) Polymer for paper coatings.	(G) Fatty acid modified polyethylene terephthalate polyester resin.
P–12–0306 ...	04/06/2012	07/04/2012	CBI	(G) Polymer for paper coatings.	(G) Fatty acid modified polyethylene terephthalate polyester resin.
P–12–0307 ...	04/06/2012	07/04/2012	CBI	(G) Polymer for paper coatings.	(G) Fatty acid modified polyethylene terephthalate polyester resin.
P–12–0308 ...	04/06/2012	07/04/2012	CBI	(G) Industrial feedstock chemical.	(G) Alkyl triglycerides, saturated and unsaturated.
P–12–0309 ...	04/06/2012	07/04/2012	Gelest, Inc.	(G) Synthesis of organosilane.	(G) Grignard reagent.
P–12–0310 ...	04/06/2012	07/04/2012	Gelest, Inc.	(G) Synthesis of organosilane.	(G) Alkylsilane.
P–12–0311 ...	04/06/2012	07/04/2012	Gelest, Inc.	(G) Precursor to an inert, thermally stable thin film barrier.	(G) Alkylsilane.
P–12–0312 ...	04/06/2012	07/04/2012	CBI	(S) Catalyst component for polymerization and oligomerization.	(S) Aluminoxanes, me.

In Table II. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received by EPA during this period: The EPA case number assigned to the TME, the date the TME was received by EPA, the projected end date for EPA's review of the TME, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the TME, and the chemical identity.

TABLE II—1 TME'S RECEIVED FROM 03/26/12 TO 04/06/12

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
T–12–0008 ...	03/29/2012	05/12/2012	Cytec Industries, Inc.	(S) Chemical reactant for production of proprietary chemical for the electronics industry.	(S) Phosphonium, tributyltetradecyl-, chloride.

In Table III. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE III—19 NOCS RECEIVED FROM 03/26/12 TO 04/06/12

Case No.	Received date	Commencement notice end date	Chemical
P–00–1087	03/28/2012	03/15/2012	(G) Di-alkyl borane.
P–06–0372	03/28/2012	03/22/2012	(G) Alkyl benzene sulfonate.
P–09–0387	04/05/2012	04/02/2012	(G) Epoxidized fatty acids, polymer with organic acids and alcohols compound with amine alcohol.
P–10–0459	03/29/2012	03/05/2012	(S) Carbonic acid, dimethyl ester, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and 1,3-propanediol.
P–11–0038	03/27/2012	03/02/2012	(S) Carbonic acid, dimethyl ester, polymer with 2,2-bis(hydroxymethyl)-1,3-propanediol, cyclohexyl ester.
P–11–0079	04/02/2012	03/22/2012	(G) Polyester, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane.
P–11–0265	03/26/2012	03/19/2012	(G) Dialkyl imidazolium salt.
P–11–0502	03/28/2012	03/27/2012	(G) Acrylic solution polymer.
P–11–0552	03/26/2012	03/15/2012	(G) Polyaminoamide, sulfate salt.
P–11–0567	03/26/2012	02/02/2012	(G) Fluoropolymer.
P–11–0569	03/26/2012	03/05/2012	(G) Fluoropolymer.
P–11–0592	03/29/2012	03/15/2012	(G) 2-substituted phtalic acid ester.
P–11–0638	03/23/2012	03/14/2012	(G) Aminocarbonyl ammonio carboxy modified polyolefin.
P–12–0001	03/23/2012	03/12/2012	(G) Aromatic isocyanate, alkyl phenol-blocked.
P–12–0033	04/03/2012	03/13/2012	(S) Benzoic acid, 4-(1,1-dimethylethyl)-, methyl.
P–12–0035	03/27/2012	03/25/2012	(G) Cobalt iron manganese oxide, carboxylic acid-modified.
P–12–0060	03/29/2012	03/23/2012	(S) 2-propenoic acid, sodium salt, reaction products with 1,3-bis(1-chloro-1-methylethyl)benzene and butadiene-isobutylene polymer.
P–12–0073	04/06/2012	04/02/2012	(G) Castor oil, polymer with hydrogenated vegetable oil, 1,1′-methylenebis[isocyanatobenzene] and isocynate.
P–12–0076	03/24/2012	02/28/2012	(G) Halide salt of alkyl-substituted nitrogen heterocycle.

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Imports, Notice of commencement, Premanufacturer, Reporting and recordkeeping requirements, Test marketing exemptions.

Dated: April 17, 2012.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2012–9919 Filed 4–24–12; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

AGENCY: Farm Credit System Insurance Corporation.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

Date and Time: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 24, 2012, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

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:

Closed Sesson

- Confidential Report on Farm Credit System Performance

Open Session

A. Approval of Minutes

- January 19, 2012 (Regular Meeting)

B. Business Reports

- FCSIC Financial Reports
- Report on Insured and Other Obligations
- Quarterly Report on Annual Performance Plan

C. New Business

- Policy Statement on Strategic Planning
- Consideration of Allocated Insurance Reserves Accounts
- Presentation of 2011 Audit Results by External Auditor Clifton Larson Allen LLP

Executive Session

- Executive Session of the FCSIC Board Audit Committee with the External Auditor

Dated: April 19, 2012.

Dale L. Aultman,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 2012–9911 Filed 4–24–12; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections 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 (a) 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; (b) the accuracy of the Commission's burden estimate; (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 the respondents, including the use of automated collection techniques or other forms of information technology; and (e) 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 June 25, 2012. 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: 3060–0340.

Title: Section 73.51, Determining Operating Power.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 750 respondents; 834 responses.

Estimated Time per Response: 0.25 to 3.0 hours.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 440 hours.

Total Annual Cost: None.

Privacy Impact Assessment(s): No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: When it is not possible to use the direct method of power determination due to technical reasons, the indirect method of determining antenna input power might be used on a temporary basis. 47 CFR Section 73.51(d) requires that a notation be made in the station log indicating the dates of commencement and termination of measurement using the indirect method of power determination. 47 CFR Section 73.51(e) requires that AM stations determining the antenna input power by the indirect method must determine the value F (efficiency factor) applicable to each mode of operation and must maintain a record thereof with a notation of its derivation. FCC staff use this information in field investigations to monitor licensees' compliance with the FCC's technical rules and to ensure that licensee is operating in accordance with its station authorization. Station personnel use the value F (efficiency factor) in the event that measurement by the indirect method of power is necessary.

OMB Control Number: 3060–0190.

Title: Section 73.3544, Application to Obtain a Modified Station License.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 325 respondents and 325 responses.

Estimated Time per Response: 0.25–1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 306 hours.

Total Annual Costs: $75,000.

Privacy Impact Assessment(s): No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: 47 CFR Section 73.3544(b) requires an informal application, see Sec. 73.3511(b), may be filed with the FCC in Washington, DC, Attention: Audio Division (radio) or Video Division (television), Media Bureau, to cover the following changes:

(1) A correction of the routing instructions and description of an AM station directional antenna system field monitoring point, when the point itself is not changed.

(2) A change in the type of AM station directional antenna monitor. See Sec. 73.69.

(3) A change in the location of the station main studio when prior authority to move the main studio location is not required.

(4) The location of a remote control point of an AM or FM station when prior authority to operate by remote control is not required.

47 CFR Section 73.3544(c) requires a change in the name of the licensee where no change in ownership or control is involved may be accomplished by written notification by the licensee to the Commission.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–9836 Filed 4–24–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection(s) Being Reviewed by the Federal Communications Commission

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: (a) 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; (b) the accuracy of the Commission's burden estimate; (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 the respondents, including the use of automated

collection techniques or other forms of information technology; and (e) 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 June 25, 2012. 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 Judith B.Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0228.

Title: Section 80.58, Compulsory Ship Inspections and Ship Inspection Certificates.

Form Numbers: FCC Forms 806, 824, 827 and 829.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, Federal Government, and state, local or tribal government.

Number of Respondents: 1,310 respondents; 1,310 responses.

Estimated Time per Response: .084 hours (5 minutes) up to 4 hours per response.

Frequency of Response: On occasion and every 5 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. Sections 4, 303, 309, 332 and 362 of the Communications Act of 1934, as amended.

Total Annual Burden: 5,445 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) as a revision after this comment period to obtain the three year clearance from them.

The requirements contained in 47 CFR 80.59 of the Commission's rules are necessary to implement the provisions of Section 362(b) of the Communications Act of 1934, as amended, which require the Commission to inspect the radio installation of large cargo ships and certain passenger ships at least once a year to ensure that the radio installation is in compliance with the requirements of the Communications Act.

Further, Section 80.59(d) states that the Commission may, upon a finding that the public interest would be served, grant a waiver of the annual inspection required by Section 362(b) of the Communications Act of 1934, for a period of not more than 90 days for the sole purpose of enabling the United States vessel to complete its voyage and proceed to a port in the United States where an inspection can be held. An information application must be submitted by the ship's owner, operator or authorized agent. The application must be submitted to the Commission's District Director or Resident Agent in charge of the FCC office nearest the port of arrival at least three days before the ship's arrival. The application must provide specific information that is in rule section 89.59.

Additionally, the Communications Act requires the inspection of small passenger ships at least once every five years.

The Safety Convention (to which the United States is a signatory) also requires an annual inspection.

However the Safety Convention permits an Administrator to entrust the inspections to either surveyors nominated for the purpose or to organizations recognized by it. Therefore, the United States can have other parties conduct the radio inspection of vessels for compliance with the Safety Convention.

The Commission allows FCC-licensed technicians to conduct these inspections. FCC-licensed technicians certify that the ship has passed an inspection and issue a safety certificate. These safety certificates, FCC Forms 806, 824, 827 and 829 (approved under OMB Control Number 3060–0835) indicate that the vessel complies with the Communications Act and the Safety Convention. These technicians are required to provide a summary of the results of the inspection in the ship's log. In addition, the vessel's owner, operator, or ship's master must certify in the ship's log that the inspection was satisfactory.

Inspection certificates issued in accordance with the Safety Convention must be posted in a prominent and accessible place on the ship (3rd party disclosure requirement).

Finally, the Commission seeks revision of this OMB control number because we are merging OMB Control Number 3060–0835 with this collection. We will retain OMB Control Number 3060–0228 as the active number and upon OMB approval voluntarily discontinue OMB Control Number 3060–0835.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–9891 Filed 4–24–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comment on revision and renewal of the information collection described below.

DATES: Comments must be submitted on or before June 25, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room NYA–5050, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to revise and renew the following currently approved collection of information:

Title: Customer Assistance.

OMB Number: 3064–0134.

Form Number: FDIC 6422/04.

Frequency of Response: On occasion.

Affected Public: Individuals, Households, Business or financial institutions.

Estimated Number of Respondents: 15000.

Estimated Time per Response: 0.5 hours.

Total Annual Burden: 7500 hours.

General Description of Collection: This collection permits the FDIC to collect information from customers of financial institutions who have inquiries or complaints about service. Customers may document their complaints or inquiries to the FDIC using a letter or an optional form (6422/04). The optional form is being revised to facilitate on-line completion and submission of the form and to shorten FDIC response times by making it easier to identify the nature of the complaint and to route the customer inquiry to the appropriate FDIC contact. A copy of the revised form can be accessed via a link directly beneath this notice on the FDIC's **Federal Register** Citations Web page: *http://www.fdic.gov/regulations/laws/federal/notices.html.*

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 20th day of April 2012.

Federal Deposit Insurance Corporation.

Robert Feldman,

Executive Secretary.

[FR Doc. 2012–9976 Filed 4–24–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 008493–028.

Title: Trans-Pacific American Flag Berth Operators Agreement.

Parties: American President Lines, Ltd., A.P. Moller Maersk A/S; and Maersk Line Limited.

Filing Party: Howard A. Levy, Esq.; 80 Wall Street, Suite 1117; New York, NY 10005–3602.

Synopsis: The amendment deletes the reference to Maersk Line Limited from the agreement.

Agreement No.: 010714–045.

Title: Trans-Atlantic American Flag Liner Operators Agreement.

Parties: A.P. Moller Maersk A/S; American President Lines, Ltd.; American Roll-On Roll-Off Carrier, LLC; Hapag-Lloyd USA, LLC.; and Maersk Line Limited.

Filing Party: Howard A. Levy, Esq.; 80 Wall Street, Suite 1117; New York, NY 10005.

Synopsis: The amendment deletes the reference to Maersk Line Limited from the Agreement.

Agreement No.: 012042–006.

Title: MOL/ELJSA Slot Exchange Agreement.

Parties: Evergreen Line Joint Service Agreement and Mitsui O.S.K. Lines, Ltd.

Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody, LLP; Gas Company Tower; 555 West Fifth Street 46th Floor; Los Angeles, CA 90013.

Synopsis: The amendment adds a new service between Vietnam, China Singapore, Spain, Morocco and the U.S. East Coast and modifies the number of slots to be exchanged in other existing services.

Agreement No.: 012165.

Title: MOL/APL/HMM Asia/USEC Slot Charter Agreement.

Parties: Mitsui O.S.K. Lines, Ltd.; APL Co. Pte Ltd and American Presidents Lines Ltd. (collectively APL); and Hyundai Merchant Marine Co., Ltd.

Filing Party: Robert B. Yoshitomi, Esq., Nixon Peabody LLP, Gas Company Tower, 555 West Fifth Street 46th Floor, Los Angeles, CA 90013.

Synopsis: The agreement authorizes MOL to charter space to APL and HMM on certain vessels MOL operates or on which MOL has space in connection with the carriage of cargo between Vietnam, China, Singapore, and the U.S. East Coast.

Agreement No.: 012166.

Title: MOL/Hanjin Space Charter Agreement.

Parties: Mitsui O.S.K. Lines, Ltd. and Hanjin Shipping Co., Ltd.

Filing Party: Robert B. Yoshitomi, Esq., Nixon Peabody LLP, Gas Company Tower, 555 West Fifth Street 46th Floor, Los Angeles, CA 90013.

Synopsis: The agreement would authorize MOL and Hanjin to charter space on their respective vessels in connection with the carriage of cargo between China, Korea, Vietnam, Singapore, Sri Lanka, Egypt, the United Arab Emirates, Spain, Morocco, and the U.S. East Coast.

Agreement No.: 012167.

Title: KL/PIL Space Charter and Sailing Agreement.

Parties: Kawasaki Kisen Kaisha, Ltd. and Pacific International Lines (PTE) Ltd.

Filing Party: Robert B. Yoshitomi, Esq., Nixon Peabody LLP, Gas Company Tower, 555 West Fifth Street 46th Floor, Los Angeles, CA 90013.

Synopsis: The agreement authorizes K Line and PIL to charter space on their respective vessels, coordinate their sailings, and cooperate in the carriage of cargo between China and the U.S. West Coast.

By Order of the Federal Maritime Commission.

Dated: April 20, 2012.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2012–9986 Filed 4–24–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder

(OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

Caicos Caribbean Lines, Inc. (NVO & OFF), 9999 NW 89th Avenue, Bay 20, Medley, FL 33178, Officer: Joanne Tyson, President/Secretary/Treasurer (Qualifying Individual), *Application Type:* Add OFF Service.

Chartwell Navigation Inc. (NVO), 20 Heather Lane, Belle Mead, NJ 08502, *Officers:* Kenneth T. Carr, President/Treasurer/Secretary (Qualifying Individual), *Application Type:* New NVO License.

Choiceone Logistics, Inc. (NVO & OFF), 10025 NW 116th Way, #17, Medley, FL 33178, *Officers:* Trina M. Gomez, Pres./VP/Treas./Sec. (Qualifying Individual), *Application Type:* New NVO & OFF License.

Concord Express, Inc. (NVO), 1031 W. Manchester Blvd., #C, Inglewood, CA 90301, *Officers:* Philip Chin, Secretary (Qualifying Individual), *Application Type:* QI Change.

Onsite Global Logistics LLC (OFF), 9816 Whithorn Drive, Suite B, Houston, TX 77095, *Officer:* Herbert R. Hogg, Operating Manager (Qualifying Individual), *Application Type:* New OFF License.

Toyo Logistics America, Inc. (NVO), 20675 S. Western Avenue, #208, Torrance, CA 90501, *Officers:* Kyoko V. Thomas, General Manager (Qualifying Individual), Koshi Hidaka, President, *Application Type:* QI Change.

USA Tomcargo, Corp. (NVO), 6907 NW 82nd Avenue, Miami, FL 33166, *Officers:* Hector A. Parra, President (Qualifying Individual), Lya A. Parra, Secretary, *Application Type:* New NVO License.

Yuexin Global Logistics (USA) Co., Ltd. (NVO & OFF), 805 W. Duarte Road, Suite 107, Arcadia, CA 91007, *Officer:* Allen Tran, President/Secretary/Treasurer (Qualifying Individual), *Application Type:* New NVO & OFF License.

Dated: April 20, 2012.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2012–9989 Filed 4–24–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License No.	Name/address	Date reissued
013552N	Boston Shipping Enterprise, Inc., 506 Decatur Street, Brooklyn, NY 11233	February 23, 2012.
014169N	Expedited Transportation Services, Inc., 505 Plantation Park Drive, Suite B, Loganville, GA 30052.	March 14, 2012.
020849N	Master Freight America Corp., 8925 NW 26th Street, Miami, FL 33172	March 14, 2012.
021797F	Four Points Ocean Inc., 1460 Route 9 North, Suite 303, Woodbridge, NJ 07095	March 1, 2012.
022238F	Grimes Supply Chain Services, Inc., 600 North Ellis Road, Jacksonville, FL 32254	March 31, 2012.

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012–9988 Filed 4–24–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 003129F.
Name: Traffic Care International Corp.
Address: 9550 Flair Drive, Suite 509, El Monte, CA 91731.
Date Revoked: March 21, 2012.
Reason: Voluntarily surrendered license.

License Number: 019289N.
Name: Aramex International Courier, Ltd., dba Aramex.
Address: 182–25 150th Avenue, Springfield Gardens, NY 11413.
Date Revoked: April 13, 2012.
Reason: Voluntarily surrendered license.

License Number: 020597N.
Name: Ferrara International Worldwide Inc.
Address: 1319 North Broad Street, Hillside, NJ 07205.
Date Revoked: February 16, 2012.
Reason: Failed to maintain a valid bond.

License Number: 021797N.
Name: Four Points Ocean Inc.
Address: 1460 Route 9, Suite 303, Woodridge, NJ 07095.
Date Revoked: March 1, 2012.
Reason: Failed to maintain a valid bond.

License Number: 022539F.
Name: Preferred Movers International, LLC.
Address: 3201 Ambrose Avenue, Nashville, TN 37207.
Date Revoked: April 5, 2012.
Reason: Voluntarily surrendered license.

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012–9987 Filed 4–24–12; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0061; Docket 2012–0076; Sequence 9]

Federal Acquisition Regulation; Information Collection; Transportation Requirements

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 an extension of a previously approved information collection requirement concerning Transportation Requirements.

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 25, 2012.

ADDRESSES: Submit comments identified by Information Collection 9000–0061, Transportation Requirements, 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 9000–0061, Transportation Requirements''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0061, Transportation Requirements'' on your attached document.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0061, Transportation Requirements.

Instructions: Please submit comments only and cite Information Collection 9000–0061, Transportation Requirements, in all correspondence related to this collection. 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. Curtis E. Glover, Sr., Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA (202) 501–1448 or via email at *curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Part 47 contains policies and procedures for applying transportation and traffic management considerations in the acquisition of supplies. The FAR part also contains policies and procedures when acquiring transportation or transportation-related services. Generally, contracts involving transportation require information regarding the nature of the supplies, method of shipment, place and time of shipment, applicable charges, marking of shipments, shipping documents and other related items. Contractors are required to provide the information in accordance with the following FAR Part 47 clauses: 52.247–29 through 52.247–44, 52.247–48, 52.247–52, 52.247–57 and 52.247–64. The information is used to ensure that: (1) acquisitions are made on the basis most advantageous to the Government and; (2) supplies arrive in good order and condition, and on time at the required place.

B. Annual Reporting Burden

Respondents: 65,000.
Responses Per Respondent: 22.
Annual Responses: 1,430,000.
Hours Per Response: .05.
Total Burden Hours: 71,500.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0061, Transportation Requirements, in all correspondence.

Dated:

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–9829 Filed 4–24–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Toxicology Program (NTP) Board of Scientific Counselors

AGENCY: National Toxicology Program (NTP), National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health, HHS.

ACTION: Meeting announcement and request for comments.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a meeting of the NTP Board of Scientific Counselors (BSC). The BSC is a federally chartered, external advisory group composed of scientists from the public and private sectors that provides primary scientific oversight to the NTP and evaluates the scientific merit of the NTP's intramural and collaborative programs.

DATES: The BSC meeting will be held on June 21 and 22, 2012. The deadline for submission of written comments is June 7, 2012, and for pre-registration to attend the meeting, including registering to present oral comments, is June 14, 2012. Individuals with disabilities who need accommodation to participate in this event should contact Dr. Lori White at voice telephone: 919–541–9834 or email: *whiteld@niehs.nih.gov.* TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least 5 business days in advance of the event.

ADDRESSES: The BSC meeting will be held in the Rodbell Auditorium, Rall Building at the NIEHS, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709. Public comments on all agenda topics and any other correspondence should be submitted to Dr. Lori White, Designated Federal Officer for the BSC, Office of Liaison, Policy and Review, Division of NTP, NIEHS, P.O. Box 12233, K2–03, Research Triangle Park, NC 27709; telephone: 919–541–9834; fax: 919–541–0295; *whiteld@niehs.nih.gov.* Courier address: NIEHS, 530 Davis Drive, Room K2136, Morrisville, NC 27560.

FOR FURTHER INFORMATION CONTACT: Dr. Lori White (telephone: 919–541–9834 or *whiteld@niehs.nih.gov*).

SUPPLEMENTARY INFORMATION:

Preliminary Agenda and Other Meeting Information

The BSC will provide input to the NTP on programmatic activities and issues. A preliminary agenda, roster of BSC members, background materials, public comments, and any additional information, when available, will be posted on the BSC meeting Web site (*http://ntp.niehs.nih.gov/go/165*) or may be requested in hardcopy from the Designated Federal Officer for the BSC (see **ADDRESSES** above). Following the meeting, summary minutes will be prepared and made available on the BSC meeting Web site.

Attendance and Registration

The meeting is scheduled for June 21 and 22, 2012, beginning at 8:30 a.m. EDT and continuing to approximately 4:30 p.m. on June 21 and until

adjournment on June 22. This meeting is open to the public with attendance limited only by the space available. Individuals who plan to attend are encouraged to register online at the BSC meeting Web site (*http://ntp.niehs.nih.gov/go/165*) by June 14, 2012, to facilitate planning for the meeting. Registered attendees are encouraged to access this Web site to stay abreast of the most current information regarding the meeting. The NTP is making plans to videocast the meeting through the Internet at *http://www.niehs.nih.gov/news/video/live.*

Request for Comments

Written comments submitted in response to this notice should be received by June 7, 2012. Comments will be posted on the BSC meeting Web site and persons submitting them will be identified by their name and affiliation and/or sponsoring organization, if applicable. Persons submitting written comments should include their name, affiliation (if applicable), phone, email, and sponsoring organization (if any) with the document.

Time will be allotted during the meeting for the public to present oral comments to the BSC on the agenda topics. In addition to in-person oral comments at the meeting at the NIEHS, public comments can be presented by teleconference line. There will be 50 lines for this call; availability will be on a first-come, first-served basis. The available lines will be open from 8:30 a.m. until adjournment, although public comments will be received only during the formal public comment periods, which are indicated on the preliminary agenda. Each organization is allowed one time slot per agenda topic. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes at the discretion of the BSC chair. Persons wishing to present oral comments are encouraged to pre-register on the NTP meeting Web site, indicate whether they will present comments in-person or via the teleconference line, and list the topic(s) on which they plan to comment. The access number for the teleconference line will be provided to registrants by email prior to the meeting. Registration for oral comments will also be available on both meeting days, although time allowed for presentation by these registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register at the meeting.

Persons registering to make oral comments are asked to send a copy of their statement or PowerPoint slides to the Designated Federal Officer for the BSC (see **ADDRESSES** above) by June 14, 2012. Written statements can supplement and may expand upon the oral presentation. If registering on-site and reading from written text, please bring 40 copies of the statement for distribution to the BSC and NTP staff and to supplement the record.

Background Information on the NTP BSC

The BSC is a technical advisory body comprised of scientists from the public and private sectors that provides primary scientific oversight to the NTP. Specifically, the BSC advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purpose of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology, neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. Members serve overlapping terms of up to four years. The BSC usually meets biannually.

Dated: April 11, 2012.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2012–9913 Filed 4–24–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Written Comments on Draft: National Action Plan To Prevent Healthcare-Associated Infections: Roadmap to Elimination

AGENCY: Department of Health and Human Services, Office of the Assistant Secretary for Health, Office of Healthcare Quality.

ACTION: Notice.

SUMMARY: The Office of Healthcare Quality is soliciting public comment on the revised draft *National Action Plan to Prevent Healthcare-Associated Infections: Roadmap to Elimination.*

DATES: Comments on the revised draft *National Action Plan to Prevent Healthcare-Associated Infections: Roadmap to Elimination* should be received no later than 5 p.m. on June 25, 2012. This document reflects a significant update and expansion from the initial version issued in 2009, ''HHS Action Plan to Prevent Healthcare-Associated Infections.'' It includes new sections specific to infection reduction in ambulatory surgical centers and end-stage renal disease facilities, as well as a new section on increasing influenza vaccination of health care personnel. The *Action Plan* reflects the work of many offices across the Department of Health and Human Services, Department of Defense, and Department of Veterans Affairs. The plan also reflects input from national experts and stakeholder organizations.

ADDRESSES: The revised draft *National Action Plan to Prevent Healthcare-Associated Infections: Roadmap to Elimination* can be found at *http://www.hhs.gov/ash/initiatives/hai/actionplan/index.html*. Comments are preferred electronically and may be addressed to *OHQ@hhs.gov*. Written responses should be addressed to the Department of Health and Human Services, Office of Healthcare Quality, 200 Independence Ave, SW., Room 711G, Washington, DC 20201, Attention: Draft National HAI AP.

FOR FURTHER INFORMATION CONTACT: Daniel Gallardo, (202) 690–2470 or *OHQ@hhs.gov.*

SUPPLEMENTARY INFORMATION

I. Background

Healthcare-associated infections, or HAIs, are a serious public health issue; at any given time, about 1 in every 20 patients has an infection related to their hospital care, which cost the U.S. healthcare system billions of dollars each year. For these reasons, the prevention and reduction of healthcare-associated infections is a top priority for the Department of Health and Human Services (HHS). Multiple Operating and Staff Divisions within HHS have been working to reduce the incidence and prevalence of healthcare-associated infections for decades. To further efforts, the HHS Steering Committee for the Prevention of Healthcare-Associated Infections was established in July 2008 and charged with developing a comprehensive strategy to progress toward the elimination of healthcare-associated infections.

In 2009, the Steering Committee issued the initial version of the ''HHS Action Plan to Prevent Healthcare-Associated Infections.'' The initial strategy (Phase One) focused on the prevention of infections in the acute care hospital setting and includes: a prioritized research agenda; an integrated information systems and technology strategy; policy options for linking payment incentives or

disincentives to quality of care and enhancing regulatory oversight of hospitals; and a national messaging plan to raise awareness of HAIs among the hospitals and family caregivers. The Action Plan also delineates specific measures and five-year goals to focus efforts and track national progress in reducing the most prevalent infections. In addition, the plan intended to enhance collaboration with non-government stakeholders and partners at the national, regional, state, and local levels to strengthen coordination and impact of efforts.

Recognizing the need to coordinate prevention efforts across healthcare facilities, HHS began to transition into the second phase (Phase Two) of the Action Plan in late 2009. Phase Two expands efforts outside of the acute care setting into outpatient facilities (e.g., ambulatory surgical centers, end-stage renal disease facilities). The healthcare and public health communities are increasingly challenged to identify, respond to, and prevent healthcare-associated infections across the continuum of settings where healthcare is delivered. The public health model's population-based perspective can be deployed to enhance healthcare-associated infection prevention, particularly given the shifts in healthcare delivery from the acute care (Phase One) to ambulatory (Phase Two) and other settings.

Moreover, healthcare personnel can acquire and transmit influenza from patients or transmit influenza to patients and other health care personnel. Results of several studies indicate that higher vaccination coverage among health care personnel is associated with lower incidence of nosocomial influenza, influenza-like illness, or mortality during influenza season. In addition, the proportion of healthcare-associated cases among hospitalized patients decreases as well, suggesting that increased staff vaccination can contribute to the decline in the number of healthcare-associated influenza cases.

The Steering Committee drafted two strategies or modules that address healthcare-associated infection prevention in ambulatory surgical centers and end-stage renal disease facilities. An additional module addresses influenza vaccination of health care personnel. Similar to its Phase One efforts, Phase Two healthcare-associated infection reduction strategies expect to be executed through research and guideline development, implementation of national quality improvement initiatives at the provider level, and creation of payment policies that promote infection control and reduction in healthcare facilities.

To assist the Steering Committee in obtaining broad input in the development of the three draft modules, HHS, through this request for information (RFI), is seeking comments from stakeholders and the general public on the revised draft *National Action Plan to Prevent Healthcare-Associated Infections: Roadmap to Elimination.* The revised draft can be found at *http://www.hhs.gov/ash/initiatives/hai/actionplan/index.html.*

II. Information Request

The Office of Healthcare Quality, on behalf of the HHS Steering Committee for the Prevention of Healthcare-Associated Infections, requests input on the revised draft *National Action Plan to Prevent Healthcare-Associated Infections: Roadmap to Elimination.*

III. Potential Responders

HHS invites input from a broad range of individuals and organizations that have interests in preventing and reducing healthcare-associated infections. Some examples of these organizations include, but are not limited to the following:

—General public
—Healthcare, professional, and educational organizations/societies
—Caregivers or health system providers (e.g., physicians, physician assistants, nurses, infection preventionists)
—State and local public health agencies
—Public health organizations
—Foundations
—Medicaid- and Medicare-related organizations
—Insurers and business groups
—Collaboratives and consortia.

When responding, please self-identify with any of the above or other categories (include all that apply) and your name. Anonymous submissions will not be considered. The submission of written materials in response to the RFI should not exceed 10 pages, not including appendices and supplemental documents. Responders may submit other forms of electronic materials to demonstrate or exhibit concepts of their written responses, however, we request that comments are identified by Chapter, Section, and page number so they may be addressed accordingly. All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment.

Dated: April 19, 2012.

Don Wright,

Deputy Assistant Secretary for Health.

[FR Doc. 2012–9868 Filed 4–24–12; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Scientific Information Request on Medical Devices To Treat Otitis Media With Effusion

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for Scientific Information Submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from manufacturers of otitis media with effusion medical devices, such as tympanostomy tubes and autoinflation devices. Scientific information is being solicited to inform our Comparative Effectiveness Review of Otitis Media with Effusion (OME) Treatments, which is currently being conducted by the Evidence-based Practice Centers for the AHRQ Effective Health Care Program. Access to published and unpublished pertinent scientific information on this device will improve the quality of this comparative effectiveness review. AHRQ is requesting this scientific information and conducting this comparative effectiveness review pursuant to Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173.

DATES: Submission Deadline on or before May 25, 2012.

ADDRESSES:

Online submissions: http://effectivehealthcare.AHRQ.gov/index.cfm/submit-scientific-information-packets/. Please select the study for which you are submitting information from the list of current studies and complete the form to upload your documents.

Email submissions: ehcsrc@ohsu.edu (please do not send zipped files—they are automatically deleted for security reasons).

Print submissions: Robin Paynter, Oregon Health and Science University, Oregon Evidence-based Practice Center, 3181 SW Sam Jackson Park Road, Mail Code: BICC, Portland, OR 97239–3098.

FOR FURTHER INFORMATION CONTACT: Robin Paynter, Research Librarian, Telephone: 503–494–0147 or Email: *ehcsrc@ohsu.edu.*

SUPPLEMENTARY INFORMATION: In accordance with Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173, the Agency for Healthcare Research and Quality has commissioned the Effective Health Care (EHC) Program Evidence-based Practice Centers to complete a comparative effectiveness review of the evidence for otitis media with effusion treatments.

The EHC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by systematically requesting information (e.g., details of studies conducted) from medical device industry stakeholders through public information requests, including via the **Federal Register** and direct postal and/or online solicitations. We are looking for studies that report on treatments for otitis media with effusion, including those that describe adverse events, as specified in the key questions detailed below. The entire research protocol, including the key questions, is also available online at: *http://www.effectivehealthcare.AHRQ.gov/index.cfm/search-for-guides-reviews-and-reports/?pageaction=displayproduct&productid=1013#5070.*

This notice is a request for industry stakeholders to submit the following:

- A current product label, if applicable (preferably an electronic PDF file).
- Information identifying published randomized controlled trials and observational studies relevant to the clinical outcomes. Please provide both a list of citations and reprints if possible.
- Information identifying unpublished randomized controlled trials and observational studies relevant to the clinical outcomes. If possible, please provide a summary that includes the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to withdrawn/follow-up/analyzed, and effectiveness/efficacy and safety results.
- Registered ClinicalTrials.gov studies. Please provide a list including the ClinicalTrials.gov identifier, condition, and intervention.

Your contribution is very beneficial to this program. AHRQ is not requesting and will not consider marketing material, health economics information, or information on other indications. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter. In addition to your scientific information please submit an index document outlining the relevant information in each file along with a statement regarding whether or not the submission comprises all of the complete information available.

Please Note: The contents of all submissions, regardless of format, will be available to the public upon request unless prohibited by law.

The draft of this review will be posted on AHRQ's EHC program Web site and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *http://effectivehealthcare.AHRQ.gov/index.cfm/join-the-email-list1/.*

The Key Questions (KQs)

KQ 1: What is the comparative effectiveness of the following treatment options (active treatments and watchful waiting) in affecting clinical outcomes or health care utilization in patients with OME? Clinical outcomes include changes in: OME signs (middle ear fluid) and symptoms (fullness in ear, difficulty in hearing), objective hearing thresholds, episodes of Acute Otitis Media (AOM), and vestibular function such as balance and coordination. Treatment options include:

a. Tympanostomy tubes
b. Adenoidectomy with or without myringotomy
c. Myringotomy
d. Oral or topical nasal steroids
e. Autoinflation
f. Complementary and alternative medical procedures
g. Watchful waiting
h. Variations in surgical technique or procedure

KQ 2: What is the comparative effectiveness of the different treatment options listed in KQ 1 (active treatments and watchful waiting) in improving functional and health-related quality-of-life outcomes in patients with OME? Outcomes include: Hearing, speech and language development, auditory processing, academic achievement, attention and behavioral outcomes, health-related quality of life, and patient and parent satisfaction with care.

KQ 3: What are the differences in harms or tolerability among the different treatment options?

KQ 4: What are the comparative benefits and harms of treatment options in subgroups of patients with OME? Subgroups include:

a. Patients of different age groups
b. Patients of different racial/ethnic backgrounds
c. Patients in different socioeconomic status groups
d. Patients with comorbidities such as craniofacial abnormalities (e.g., cleft palate), Down syndrome, and existing speech, language, and hearing problems
e. Patients with a medical history of AOM or OME (with and without clinical hearing loss)

KQ 5: Is the comparative effectiveness of treatment options affected by the following: Health insurance coverage, physician specialty, type of facility of the treatment provider, geographic location, continuity of care, or prior inoculation with the pneumococcal vaccine?

Dated: April 12, 2012.

Carolyn M. Clancy,

AHRQ, Director.

[FR Doc. 2012–9818 Filed 4–24–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Scientific Information Request on Local Therapies for the Treatment of Stage I Non-Small Cell Lung Cancer and Endobronchial Obstruction Due to Advanced Lung Tumors

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for Scientific Information Submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from manufacturers of Conventional Two-Dimensional External Beam Radiotherapy (2D–EBRT), 3-dimensional conformal radiation therapy (3D–CRT), Intensity-modulated radiation therapy (IMRT), Stereotactic body radiation therapy (SBRT), Proton beam radiotherapy (PBR), Brachytherapy, Radiofrequency ablation, Endobronchial debridement and stents, and Nd-YAG Laser Therapy medical devices. Scientific information is being solicited to inform our Comparative Effectiveness Review of Local Therapies for the Treatment of Stage I Non-Small Cell Lung Cancer and Endobronchial Obstruction Due to Advanced Lung Tumors, which is currently being conducted by the Evidence-based Practice Centers for the AHRQ Effective Health Care Program. Access to published and unpublished pertinent scientific information on this device will improve the quality of this

comparative effectiveness review. AHRQ is requesting this scientific information and conducting this comparative effectiveness review pursuant to Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173.

DATES: Submission Deadline on or before May 25, 2012.

ADDRESSES:

Online submissions: http://effectivehealthcare.AHRQ.gov/index.cfm/submit-scientific-information-packets/. Please select the study for which you are submitting information from the list of current studies and complete the form to upload your documents.

Email submissions: ehcsrc@ohsu.edu (please do not send zipped files—they are automatically deleted for security reasons).

Print submissions: Robin Paynter, Oregon Health and Science University, Oregon Evidence-based Practice Center, 3181 SW Sam Jackson Park Road, Mail Code: BICC, Portland, OR 97239–3098.

FOR FURTHER INFORMATION CONTACT: Robin Paynter, Research Librarian, Telephone: 503–494–0147 or Email: *ehcsrc@ohsu.edu*.

SUPPLEMENTARY INFORMATION: In accordance with Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173, the Agency for Healthcare Research and Quality has commissioned the Effective Health Care (EHC) Program Evidence-based Practice Centers to complete a comparative effectiveness review of the evidence for local therapies for the treatment of stage I non-small cell lung cancer and endobronchial obstruction due to advanced lung tumors.

The EHC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by systematically requesting information (e.g., details of studies conducted) from medical device industry stakeholders through public information requests, including via the **Federal Register** and direct postal and/or online solicitations. We are looking for studies that report on local therapies for the treatment of stage I non-small cell lung cancer and endobronchial obstruction due to advanced lung tumors, including those that describe adverse events, as specified in the key questions detailed below. The entire research protocol, including the key questions, is also available online at: *http://www.effectivehealthcare.AHRQ.gov/index.cfm/search-for-guidesreviews-and-reports/?pageaction=displayproduct&productid=965*.

This notice is a request for industry stakeholders to submit the following:

- A current product label, if applicable (preferably an electronic PDF file).
- Information identifying published randomized controlled trials and observational studies relevant to the clinical outcomes. Please provide both a list of citations and reprints if possible.
- Information identifying unpublished randomized controlled trials and observational studies relevant to the clinical outcomes. If possible, please provide a summary that includes the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to withdrawn/follow-up/analyzed, and effectiveness/efficacy and safety results.
- Registered ClinicalTrials.gov studies. Please provide a list including the ClinicalTrials.gov identifier, condition, and intervention.

Your contribution is very beneficial to this program. AHRQ is not requesting and will not consider marketing material, health economics information, or information on other indications. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter. In addition to your scientific information please submit an index document outlining the relevant information in each file along with a statement regarding whether or not the submission comprises all of the complete information available.

Please Note: The contents of all submissions, regardless of format, will be available to the public upon request unless prohibited by law.

The draft of this review will be posted on AHRQ's EHC program Web site and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *http://effectivehealthcare.AHRQ.gov/index.cfm/join-the-email-list1/*.

The Key Questions

Question 1

What are the comparative benefits and harms of local nonsurgical therapies for documented (clinical or biopsy) stage I (T1NOMO, T2NOMO) Non-Small Cell Lung Cancer (NSCLC) in adult patients (age 18 years or older) who are not surgical candidates because of the presence of contraindications to major surgery, for example, cardiac insufficiency, poor pulmonary function, presence of severe intercurrent illness, or poor performance status?

Question 2

What are the comparative benefits and harms of local nonsurgical therapies for documented (clinical or biopsy) stage I (T1NOMO, T2NOMO) NSCLC in adult patients (age 18 years or older) whose tumor is deemed operable but decline surgery?

Question 3

1. What are the comparative short- and long-term benefits and harms of local therapies given with palliative or curative intent to patients With stage IIIa NSCLC with endoluminal obstruction of the trachea, main stem, or lobar bronchi and recurrent or persistent thoracic symptoms such as hemoptysis, cough, dyspnea, and post-obstructive pneumonitis?
2. What are the comparative short- and long-term benefits and harms of local palliative therapies in patients with advanced stage (IIIb or IV) NSCLC with endoluminal obstruction of the trachea, main stem, or lobar bronchi and recurrent or persistent thoracic symptoms such as hemoptysis, cough, dyspnea, and post-obstructive pneumonitis?

Dated: April 12, 2012.

Carolyn M. Clancy,

AHRQ, Director.

[FR Doc. 2012–9817 Filed 4–24–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Scientific Information Request on Chronic Venous Ulcers Treatments

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for Scientific Information Submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from manufacturers of chronic venous ulcer treatment medical devices. Scientific information is being solicited to inform our Chronic Venous Ulcers: A Comparative Effectiveness Review of Treatment Modalities report, which is currently being conducted by the Evidence-based Practice Centers for the AHRQ Effective Health Care Program. Access to published and unpublished

pertinent scientific information on this device will improve the quality of this comparative effectiveness review. AHRQ is requesting this scientific information and conducting this comparative effectiveness review pursuant to Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173.

DATES: Submission Deadline on or before May 25, 2012.

ADDRESSES:

Online submissions: http://effectivehealthcare.AHRQ.gov/index.cfm/submit-scientific-information-packets/. Please select the study for which you are submitting information from the list of current studies and complete the form to upload your documents.

Email submissions: ehcsrc@ohsu.edu (please do not send zipped files—they are automatically deleted for security reasons).

Print submissions: Robin Paynter, Oregon Health and Science University, Oregon Evidence-based Practice Center, 3181 SW Sam Jackson Park Road, Mail Code: BICC, Portland, OR 97239–3098.

FOR FURTHER INFORMATION CONTACT: Robin Paynter, Research Librarian, Telephone: 503–494–0147 or Email: *ehcsrc@ohsu.edu.*

SUPPLEMENTARY INFORMATION: In accordance with Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173, the Agency for Healthcare Research and Quality has commissioned the Effective Health Care (EHC) Program Evidence-based Practice Centers to complete a comparative effectiveness review of the evidence for chronic venous ulcer treatment modalities.

The EHC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by systematically requesting information (e.g., details of studies conducted) from medical device industry stakeholders through public information requests, including via the **Federal Register** and direct postal and/or online solicitations. We are looking for studies that report on chronic venous ulcer treatments, including those that describe adverse events, as specified in the key questions detailed below. The entire research protocol, including the key questions, is also available online at: *http://www.effectivehealthcare.AHRQ.gov/index.cfm/search-for-guides-reviews-and-reports/?productid=995&pageaction=displayproduct#4886*

This notice is a request for industry stakeholders to submit the following:

- A current product label, if applicable (preferably an electronic PDF file).
- Information identifying published randomized controlled trials and observational studies relevant to the clinical outcomes. Please provide both a list of citations and reprints if possible.
- Information identifying unpublished randomized controlled trials and observational studies relevant to the clinical outcomes. If possible, please provide a summary that includes the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to withdrawn/follow-up/analyzed, and effectiveness/efficacy and safety results.
- Registered ClinicalTrials.gov studies. Please provide a list including the ClinicalTrials.gov identifier, condition, and intervention.

Your contribution is very beneficial to this program. AHRQ is not requesting and will not consider marketing material, health economics information, or information on other indications. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter. In addition to your scientific information please submit an index document outlining the relevant information in each file along with a statement regarding whether or not the submission comprises all of the complete information available.

Please Note: The contents of all submissions, regardless of format, will be available to the public upon request unless prohibited by law.

The draft of this review will be posted on AHRQ's EHC program Web site and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *http://effectivehealthcare.AHRQ.gov/index.cfm/join-the-email-list1/.*

The Key Questions

Question 1

For patients with chronic venous leg ulcers, what are the benefits and harms of using dressings that regulate wound moisture with or without active chemical, enzymatic, biologic, or antimicrobial components in conjunction with compression systems when compared with using solely compression systems?

Question 2

a. For patients with chronic venous leg ulcers that do not have clinical signs of cellulitis that are being treated with compression systems, what are the benefits and harms of using systemic antibiotics when compared with using solely compression systems?

b. For patients with chronic venous leg ulcers that do not have clinical signs of cellulitis that are being treated with dressings that regulate wound moisture with or without active chemical, enzymatic, biologic, or antimicrobial components, what are the benefits and harms of using systemic antibiotics when compared with using dressings alone?

Question 3

a. For patients with chronic venous leg ulcers, what are the benefits and harms of surgical procedures aimed at the underlying venous abnormalities when compared with using solely compression systems?

b. For patients with chronic venous leg ulcers, what are the comparative benefits and harms of different surgical procedures for a given type of venous reflux and obstruction?

Dated: April 12, 2012.

Carolyn M. Clancy,

AHRQ, Director.

[FR Doc. 2012–9820 Filed 4–24–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Secondary Review

The meeting announced below concerns Grants for Injury Control Research Centers, Funding Opportunity Announcement (FOA) CE12–001, secondary review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned SEP:

Time and Date: 1 p.m.–3 p.m., May 31, 2012 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the secondary review and discussion

of competitive applications following initial review of applications received in response to ''FOA CE12–001, Grants for Injury Control Research Centers (R49).''

Contact Person for More Information: Christine Morrison, Ph.D., Director, Extramural Research Program Office, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE., Mailstop F63, Atlanta, Georgia 30341–3724, Telephone (770) 488–4233.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 18, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–9935 Filed 4–24–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (BSC, NCEH/ATSDR)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates: 8:30 a.m.–4:30 p.m., May 17, 2012. 8:30 a.m.–12:15 p.m., May 18, 2012.

Place: CDC, 4770 Buford Highway, Atlanta, Georgia 30341.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The Secretary, Department of Health and Human Services (HHS) and by delegation, the Director, CDC and Administrator, NCEH/ATSDR, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to: (1) Conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist states and their political subdivisions in the prevention of infectious diseases and other preventable conditions and in the promotion of health and well being; and (3) train state and local personnel in health work. The BSC, NCEH/ATSDR provides advice and guidance to the Secretary, HHS; the Director, CDC and Administrator, ATSDR; and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and priorities in fulfillment of the agency's mission to protect and promote people's health. The board provides advice and guidance that will assist NCEH/ATSDR in ensuring scientific quality, timeliness, utility, and dissemination of results. The board also provides guidance to help NCEH/ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

Matters to be Discussed: The agenda items for the BSC Meeting on May 17–18, 2012 will include NCEH/ATSDR Office of the Director updates: ATSDR and NCEH Reorganization; update on the Nutritional Biomarker Report: Transfat analysis; ATSDR Science Symposium recommendations; presentation on Environmental Health Exposure Investigations; update on the Advisory Committee on Childhood Lead Poisoning Prevention; and updates by the BSC Federal Experts.

Agenda items are subject to change as priorities dictate.

Supplementary Information: The public comment period is scheduled on Thursday, May 17, 2012 from 3 p.m. until 3:15 p.m., and Friday, May 18, 2012 from 10:45 a.m. until 11 a.m.

Contact Person for More Information: Sandra Malcom, Committee Management Specialist, NCEH/ATSDR, 4770 Buford Highway, Mail Stop F–61, Chamblee, Georgia 30345; telephone (770) 488–0575, Fax: (770) 488–3377; email: *smalcom@cdc.gov.* The deadline for notification of attendance is May 11, 2012.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 18, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–9925 Filed 4–24–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Conducting Operational Research to Measure or Mitigate Morbidity and Mortality of Populations Affected by Humanitarian Emergencies, Funding Opportunity Announcement (FOA) GH12–007, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

DATES: *Time and Date:* 1 p.m.–4 p.m., June 20, 2012 (Closed).

PLACE: Teleconference.

STATUS: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

MATTERS TO BE DISCUSSED: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Conducting Operational Research to Measure or Mitigate Morbidity and Mortality of Populations Affected by Humanitarian Emergencies, FOA GH12–007.''

CONTACT PERSON FOR MORE INFORMATION: Diana Bartlett, Scientific Review Officer, Office of the Associate Director for Science, Office of Science Quality, CDC, 1600 Clifton Road NE., Mailstop D–72, Atlanta, Georgia 30033, Telephone (404) 639–4938.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 25, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–9924 Filed 4–24–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0827]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Revisions to Labeling Requirements for Blood and Blood Components, Including Source Plasma

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 25, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–New and title ''Revisions to Labeling Requirements for Blood and Blood Components, Including Source Plasma.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: ≤Ila S. Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7726, *Ila.Mizrachi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Revisions to Labeling Requirements for Blood and Blood Components, Including Source Plasma—(OMB Control Number 0910–NEW)

FDA is finalizing the labeling requirements for blood or blood components intended for use in transfusion or for further manufacture under the provisions of the Public Health Service Act (PHS Act) (42 U.S.C. 262–264), and the drugs, devices, and general administrative provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321, 331, 351–353, 355, 360, 360j, 371, and 374). Under these provisions of the PHS Act and the FD&C Act, we have the authority to issue and enforce regulations designed to ensure that biological products are safe, pure, potent, and properly labeled, and to prevent the introduction, transmission, and spread of communicable disease.

Under this rulemaking, FDA is consolidating the regulations related to labeling blood and blood components. Regulations for labeling of blood and blood components will be consolidated into § 606.121 (Container label) (21 CFR 606.121) and § 606.122 (Circular of information) (21 CFR 606.122). This notice solicits comments on the information collection associated with § 606.121(c)(11), which requires that if the product is intended for further manufacturing use, a statement listing the results of all the tests for communicable disease agents required under § 610.40 (21 CFR 610.40) for which the donation has been tested and found negative must be on the container label; except that the label for Source Plasma is not required to list the negative results of serological syphilis testing under § 610.40(i) and 21 CFR 640.65(b). In addition, this notice also solicits comments on the information collection associated with § 606.121(e)(2)(i), which requires that the product labels of certain red blood cells must include the type of additive solution with which the product was prepared.

The Agency believes the rule amendments and the information collection provisions under § 606.121(c)(11) and (e)(2)(i) in the final rule are part of usual and customary business practice and do not create any new burden for respondent.

The collection of information requirements under §§ 606.121 and 606.122 are approved under OMB control number 0910–0116 and those in 21 CFR 640.70 have been approved under OMB control number 0910–0338. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities.

In the **Federal Register** of December 30, 2011 (76 FR 82300), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

Dated: April 19, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–9894 Filed 4–24–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

The 15th Annual Food and Drug Administration—Orange County Regulatory Affairs Educational Conference in Irvine, CA; ''Sustainable Regulatory Practices''

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of conference.

The Food and Drug Administration (FDA) is announcing the following conference: The 15th Annual Educational Conference cosponsored with the Orange County Regulatory Affairs Discussion Group (OCRA). The conference is intended to provide the drug, device, biologics, and dietary supplement industries with an opportunity to interact with FDA reviewers and compliance officers from the Centers and District Offices, as well as other industry experts. The main focus of this interactive conference will be product approval, compliance, and risk management in the three medical product areas. Industry speakers, interactive Q & A, and workshop sessions will also be included to assure open exchange and dialogue on the relevant regulatory issues.

Date and Time: The conference will be held on June 6 and 7, 2012, from 7:30 a.m. to 5 p.m.

Location: The conference will be held at the Irvine Marriott, 18000 Von Karman Ave., Irvine, CA 92612.

Contact: Linda Hartley, Food and Drug Administration, 19701 Fairchild, Irvine, CA 92612, 949–608–4413, Fax: 949–608–4417, or OCRA, Attention to Detail, 5319 University Dr., suite 641, Irvine, CA 92612, 949–387–9046, Fax: 949–266–8461, Web site: *www.ocra-dg.org.* (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**).

Registration and Meeting Information: See OCRA Web site, *www.ocra-dg.org.* Contact Attention to Detail, 949–387–9046.

Before May 8, 2012, registration fees are as follows: $675 for members, $725 for non-members and $475 for FDA/Government/Students.[1] After May 8, 2012, fees will be $725 for members, $775 for non-members, and $475 for

[1] OCRA Student Rate applies to those individuals enrolled full time in a Regulatory or Quality related academic program at an accredited institution. Proof of enrollment is required.

FDA/Government/Students.[2] There will also be a 1-day rate of $425 for OCRA members and $475 for non-members.

The registration fee will cover actual expenses, including refreshments, lunch, materials, parking, and speaker expenses.

If you need special accommodations due to a disability, please contact Linda Hartley (see *Contact*) at least 10 days before the conference.

Dated: April 20, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–9968 Filed 4–24–12; 8:45 am]

BILLING CODE 4160–01–P

[2] See footnote 1.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0489]

Draft Guidance for Industry: Safety of Nanomaterials in Cosmetic Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Guidance for Industry: Safety of Nanomaterials in Cosmetic Products.'' The draft guidance, when finalized, will represent FDA's current thinking on the safety assessment of nanomaterials in cosmetic products. This guidance is intended to assist industry in identifying the potential safety issues of nanomaterials in cosmetic products and developing a framework for evaluating them.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by July 24, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Cosmetics and Colors, Center for Food Safety and Applied Nutrition (HFS–100), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kapal Dewan, Center for Food Safety and Applied Nutrition (HFS–125), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1130.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of the draft guidance entitled ''Guidance for Industry: Safety of Nanomaterials in Cosmetic Products.'' The draft guidance is intended to assist industry in identifying the potential safety issues of nanomaterials in cosmetic products and developing a framework for evaluating these issues.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on the safety of nanomaterials in cosmetic products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/CosmeticGuidances* or *http://www.regulations.gov.* Always access an FDA guidance document by using FDA's Web site listed previously to find the most current version of the guidance.

Dated: April 17, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–9934 Filed 4–24–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0490]

Draft Guidance for Industry: Assessing the Effects of Significant Manufacturing Process Changes, Including Emerging Technologies, on the Safety and Regulatory Status of Food Ingredients and Food Contact Substances, Including Food Ingredients That Are Color Additives; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Guidance for Industry: Assessing the Effects of Significant Manufacturing Process Changes, Including Emerging Technologies, on the Safety and Regulatory Status of Food Ingredients and Food Contact Substances, Including Food Ingredients That Are Color Additives.'' The draft guidance, when finalized, will explain FDA's current thinking on the factors to be considered when determining whether changes in manufacturing process, including the intentional reduction in particle size to the nanoscale, for a food substance already in the market affects the safety and regulatory status of the food substance, and whether a new regulatory submission to FDA is warranted.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either written or electronic comments on the draft guidance by July 24, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance entitled ''Guidance for Industry: Assessing the Effects of Significant Manufacturing Process Changes, Including Emerging Technologies, on the Safety and Regulatory Status of Food Ingredients and Food Contact Substances, Including Food Ingredients That Are Color Additives'' to the Office of Food Additive Safety (HFS–200),

Center for Food Safety and Applied Nutrition (CFSAN), Food and Drug Administration, 5100 Paint Branch Pkwy, College Park, MD 20740, 240–402–1200. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Annette M. McCarthy, Center for Food and Applied Nutrition (HFS–205), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1057, FAX 301–436–2972, email: *Annette.McCarthy@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Assessing the Effects of Significant Manufacturing Process Changes, Including Emerging Technologies, on the Safety and Regulatory Status of Food Ingredients and Food Contact Substances, Including Food Ingredients That Are Color Additives.'' This draft guidance, when finalized, will represent FDA's current thinking on the factors to be considered when determining whether changes in manufacturing process, including the intentional reduction in particle size to the nanoscale, for a food substance already in the market affects the safety and regulatory status of the food substance, and whether a new regulatory submission is warranted.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in §§ 170.101, 170.106, 171.1 (21 CFR 171.1) have been approved under OMB control number 0910–0495; the collections of information in §§ 70.25, 71.1, 170.35, and 171.1 have been approved under OMB control number 0910–0016; the collections of information in § 170.39 have been approved under OMB control number 0910–0298; and the collections of information in proposed § 170.36 [1] have been approved under OMB control number 0910–0342.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.regulations.gov* or *http://www.fda.gov/FoodGuidances.* Always access an FDA guidance document by using FDA's Web site listed previously to find the most current version of the guidance.

Dated: April 17, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–9936 Filed 4–24–12; 8:45 am]

BILLING CODE 4160–01–P

[1] In April 1997, FDA proposed a voluntary procedure (proposed § 170.36) whereby manufacturers would notify FDA about a view that a particular use (or uses) of a substance is not subject to the statutory premarket approval requirements based on a determination that such use is generally recognized as safe (GRAS) (62 FR 18938, April 17, 1997). FDA invited interested persons who determine that a use of a substance is GRAS to notify FDA of those determinations, under the framework of the 1997 proposed rule, during the interim between the proposed and final rules (62 FR 18938 at 18954). FDA received OMB approval for submissions received under the framework of the 1997 proposed rule.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0370]

AstraZeneca Pharmaceuticals LP; Withdrawal of Approval of a New Drug Application for IRESSA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new drug application (NDA) for IRESSA (gefitinib) Tablets held by AstraZeneca Pharmaceuticals LP (AstraZeneca), 1800 Concord Pike, P.O. Box 8355, Wilmington, DE 19803–8355. AstraZeneca has voluntarily requested that approval of this application be withdrawn, thereby waiving its opportunity for a hearing.

DATES: Effective April 25, 2012.

FOR FURTHER INFORMATION CONTACT: Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6250, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: FDA approved IRESSA (gefitinib) Tablets on May 2, 2003, under the Agency's accelerated approval regulations, 21 CFR part 314, subpart H. IRESSA is indicated as monotherapy after failure of both platinum-based and docetaxel chemotherapies for the continued treatment of patients with locally advanced or metastatic non-small cell lung cancer who are benefiting or have benefited from IRESSA. On August 26, 2010, FDA requested that AstraZeneca voluntarily withdraw IRESSA (gefitinib) Tablets from the market, because the postmarketing studies required as a condition of approval under subpart H failed to verify and confirm clinical benefit. In a letter dated February 1, 2011, AstraZeneca requested that FDA withdraw approval of NDA 21–399 for IRESSA (gefitinib) Tablets, which AstraZeneca characterized as a business decision, effective September 30, 2011. In that letter, AstraZeneca waived any opportunity for a hearing otherwise provided under §§ 314.150 and 314.530. The letter also stated that approximately 250 patients then receiving IRESSA treatment through the Iressa Access Program would continue treatment under an expanded access program, but no new patients would be added to the protocol. In FDA's letter of February 4, 2011, responding to AstraZeneca's

February 1, 2011, letter, the Agency acknowledged AstraZeneca's agreement to permit FDA to withdraw approval of IRESSA under § 314.150(d) and waive its opportunity for a hearing.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(e)) and § 314.150(d), and under authority delegated by the Commissioner to the Director, Center for Drug Evaluation and Research, approval of NDA 21–399, and all amendments and supplements thereto, is withdrawn (see DATES). Distribution of this product in interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the FD&C Act (21 U.S.C. 355(a) and 331(d)).

Dated: April 5, 2012.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 2012–9944 Filed 4–24–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0376]

Sanofi-aventis, U.S., LLC; Withdrawal of Approval of a New Drug Application for OFORTA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new drug application (NDA) for OFORTA (fludarabine phosphate) Tablets held by sanofi-aventis, U.S., LLC (sanofi-aventis), 55 Corporate Dr., Bridgewater, NJ 08807–0977. Sanofi-aventis has voluntarily requested that approval of this application be withdrawn, thereby waiving its opportunity for a hearing.

DATES: Effective December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6250, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: FDA approved OFORTA (fludarabine phosphate) Tablets on December 18, 2008, under the Agency's accelerated approval regulations, 21 CFR part 314, subpart H. OFORTA is approved for use as a single agent for the treatment of adult patients with B-cell chronic lymphocytic leukemia whose disease has not responded to or has progressed during or after treatment with at least one standard alkylating agent-containing regimen. On February 10, 2011, FDA requested that sanofi-aventis voluntarily withdraw OFORTA (fludarabine phosphate) Tablets from the market, because the postmarketing study required as a condition of approval under subpart H had not been completed and clinical benefit had not been verified. In a letter dated June 24, 2011, sanofi-aventis requested that FDA withdraw approval of NDA 22–273 for OFORTA (fludarabine phosphate) Tablets under § 314.150(d), noting the lack of commercial demand for OFORTA and significant challenges to completing the postmarketing study. In that letter, sanofi-aventis also waived its opportunity for a hearing, otherwise provided under §§ 314.150 and 314.530. In a letter dated July 8, 2011, the Agency acknowledged sanofi-aventis' agreement to permit FDA to withdraw approval of OFORTA under § 314.150(d) and waive its opportunity for a hearing. The Agency noted that the required postmarketing study had not been completed and clinical benefit had not been verified.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(e)) and § 314.150(d), and under authority delegated by the Commissioner to the Director, Center for Drug Evaluation and Research, approval of NDA 22–273, and all amendments and supplements thereto, is withdrawn (see **DATES**). Distribution of this product in interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the FD&C Act (21 U.S.C. 355(a) and 331(d)).

Dated: April 5, 2012.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 2012–9943 Filed 4–24–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory General Medical Sciences 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 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 Advisory General Medical Sciences Council.

Date: May 24–25, 2012.

Closed: May 24, 2012, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Open: May 25, 2012, 8:30 a.m. to Adjournment.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, and other business of the Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Ann A. Hagan, Ph.D., Associate Director for Extramural Activities, NIGMS, NIH, DHHS, 45 Center Drive, Room 2AN24H, MSC 6200, Bethesda, MD 20892, (301) 594–4499, *hagana@nigms.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, 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.nigms.nih.gov/About/Council/* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry

Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 17, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9880 Filed 4–24–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

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/or contract Proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: May 14–15, 2012.

Closed: May 14, 2012, 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Room B2C03, Bethesda, MD 20892.

Open: May 15, 2012, 9 a.m. to 3 p.m.

Agenda: Discussions will include the renewal of the five-year strategic plan and new priorities including emerging technologies such as distance learning and mHealth.

Place: National Institutes of Health, Lawton L. Chiles International House, Bethesda, MD 20892.

Contact Person: Robert Eiss, Public Health Advisor, Fogarty International Center, National Institutes of Health, 31 Center Drive, Room B2c02, Bethesda, MD 20892, (301) 496–1415, *EISSR@MAIL.NIH.GOV.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

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: *www.nih.gov/fic/about/advisory.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health HHS)

Dated:

April 16, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9882 Filed 4–24–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Healthcare Delivery Methodologies Member Applications.

Date: May 7, 2012.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jacinta Bronte-Tinkew, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164, MSC 7770, Bethesda, MD 20892, (301) 806–0009, *brontetinkewjm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Drugs, Alcohol and Learning.

Date: May 16–17, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Michael Selmanoff, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892, 301–435–1119, *mselmanoff@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 16, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9914 Filed 4–24–12; 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 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: May 24–25, 2012.

Open: May 24, 2012, 8 a.m. to 2:15 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, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Closed: May 24, 2012, 2:15 p.m. to 4:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Closed: May 24, 2012, 4:15 p.m. to 4:45 p.m.

Agenda: To review and evaluate the Division of Intramural Research Board of Scientific Counselors' Reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Closed: May 25, 2012, 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, 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: April 17, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9910 Filed 4–24–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Investigations on Primary Immunodeficiency Diseases.

Date: May 14, 2012.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Scott Jakes, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, 301–495–1506, *jakesse@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Asthma, inflammation, and airway smooth muscle applications.

Date: May 15, 2012.

Time: 12:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Everett E Sinnett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1016, *sinnett@nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Bioengineering, Technology and Surgical Sciences Study Section.

Date: May 21–22, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Khalid Masood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2392, *masoodk@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 18, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9908 Filed 4–24–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

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 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 Advisory Council on Alcohol Abuse and Alcoholism.

Date: June 6–7, 2012.

Closed: June 6, 2012, 5 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Open: June 7, 2012, 8:45 a.m. to 2 p.m.

Agenda: Presentations and other business of the council.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Abraham P. Bautista, Ph.D., Executive Secretary, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2085, Rockville, MD 20852, 301–443–9737, *bautista@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://www.niaaa.nih.gov/Pages/default.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: April 13, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9906 Filed 4–24–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Aging.

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 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 Advisory Council on Aging.

Date: May 22–23, 2012.

Closed: May 22, 2012, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Open: May 23, 2012, 8 a.m. to 1:15 p.m.

Agenda: Call to order and reports from the Director; discussion of future meeting dates; consideration of minutes from the last meeting, reports from the Task Force on Minority Aging Research, the Working Group on Program; council speaker; and Program Highlights.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robin Barr, Ph.D., Director, National Institute on Aging, Office of Extramural Activities, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9322, *barrr@nia.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

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: *www.nih.gov/nia/naca/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 17, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9881 Filed 4–24–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye 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 meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Clinical Trials.

Date: April 27, 2012.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott at Metro Center, 775 12th Street NW, Washington, DC 20005.

Contact Person: Anne E. Schaffner, Ph.D., Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, 301–451–2020, *aes@nei.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. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: April 17, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9878 Filed 4–24–12; 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: Neurological Sciences Training Initial Review Group; NST–1 Subcommittee.

Date: June 4–5, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Best Western Tuscan Inn, 425 North Point Street, San Francisco, CA 94133.

Contact Person: Raul A. Saavedra, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, *saavedrr@ninds.nih.gov.*

(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: April 18, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9874 Filed 4–24–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Health and Well-Being Across Time.

Date: May 17, 2012.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place:

National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jeannette L. Johnson, Ph.D., Scientific Review Officer, National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *JOHNSONJ9@NIA.NIH.GOV.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Drug Development for Alzheimer's Disease.

Date: May 24, 2012.

Time: 11:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander Parsadanian, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *PARSADANIANA@NIA.NIH.GOV.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Organelle Lifespan Mechanism III.

Date: June 19, 2012.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bita Nakhai, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 17, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9877 Filed 4–24–12; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, 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; Sudden Cardiac Death in the Young.

Date: May 16, 2012.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, 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 7185, 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: April 17, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9875 Filed 4–24–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2012–0016]

President's National Security Telecommunications Advisory Committee

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Committee Management; Notice of Partially Closed Federal Advisory Committee Meeting.

SUMMARY: The President's National Security Telecommunications Advisory Committee (NSTAC) will meet on Tuesday, May 15, 2012, in Washington DC. The meeting will be partially closed to the public.

DATES: The NSTAC will meet in closed session on Tuesday, May 15, 2012, from 9:45 a.m. to 12 p.m. and in closed session on Tuesday, May 15, 2012, from 1:45 p.m. to 5:10 p.m.

ADDRESSES: The public portion of the meeting will be held at the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue NW., Atrium Hall, Washington DC. All visitors attending the open sessions must pre-register. Please provide your name, telephone number, and email address by 5 p.m. on Wednesday May 9, 2012, to Helen Jackson at 703–235–4957 or to *nstac@dhs.gov*. The closed portion of the meeting will be held at the Eisenhower Executive Office Building at 725 17th Street NW., Washington DC.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact *nstac@dhs.gov* or Helen Jackson at 703–235–4957 as soon as possible.

We are inviting public comment on the issues to be considered by the committee as listed in the

''**SUPPLEMENTARY INFORMATION**'' section below. Associated briefing materials that will be discussed at the meeting will be available at *www.ncs.gov/nstac* for review as of May 4, 2012. Comments must be submitted in writing no later than May 11, 2012, and must be identified by DHS–2012–0016 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: nstac@dhs.gov*. Include the docket number in the subject line of the message.
- *Fax:* 703–235–4941, Attn: Helen Jackson.
- *Mail:* Deputy Manager, National Communications System, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane, Mail Stop 0615, Arlington, VA 20598–0615.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the NSTAC, go to *http://www.regulations.gov*.

A public comment period will be held during the open portion of the meeting on Tuesday, May 15, 2012, from 3:25 p.m. to 3:55 p.m., and speakers are requested to limit their comments to 3 minutes. Speakers will be accommodated in order of registration. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact Helen Jackson at 703–235–4957 to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Allen F. Woodhouse, NSTAC Alternate Designated Federal Officer, Department of Homeland Security, telephone (703) 235–4214.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The NSTAC advises the President on matters related to national security and emergency preparedness telecommunications policy.

Agenda: The committee will meet in open session to receive a briefing on the Federal Government's current technology priorities, including initiatives to further implement the 25Point Implementation Plan to reform Federal Information Technology Management, such as progress made towards implementing the Government's Cloud First Policy. Additionally, the NSTAC will receive a briefing on the Department of Commerce's current initiatives with respect to the National Public Safety Broadband Network. The NSTAC Members will then deliberate and vote on their Report to the President on Cloud Computing. The members will also discuss and vote on the National Public Safety Broadband Network Subcommittee's Scoping Recommendations Report. Lastly, the NSTAC will hear from the Executive Office of the President regarding potential new taskings for future examination and receive feedback regarding NSTAC open recommendations. Both reports to be deliberated and discussed will be available for review at *www.ncs.gov/nstac* as of May 4, 2012.

The committee will meet in a closed session to hear a classified briefing regarding supply chain threats and activities. Additionally, the members will discuss with senior government officials incentives for public-private collaboration and the adoption of interoperable, standards-based products for enterprise-level cybersecurity.

Basis for Closure: In accordance with the Government in the Sunshine Act, 5 U.S.C. 552b(c), two meeting agenda items are determined to require closure as the disclosure of the information would not be in the public interest.

The first of these agenda items relates to issues and concerns surrounding the threats and risks posed by supply chain management within the telecommunications sector. The briefing provided will discuss threats and vulnerabilities in addressing all aspects of the telecommunications supply chain. In examining these risks, the NSTAC will address sector vulnerabilities and how the Government can best plan to mitigate these vulnerabilities without impeding commerce. Disclosure of these vulnerabilities would provide a road map to criminals who wish to increase threats to the telecommunication sector's supply chain system and exacerbate or exploit vulnerabilities that Government and the private sector are currently working to reduce. Therefore, this portion of the meeting is required to be closed pursuant to 5 U.S.C. 552b(c)(1)(A)(B) and(9)(B).

The second agenda item will address cybersecurity public-private collaboration and adoption of interoperable standards-based products for enterprise-level cybersecurity. Government officials will share data with NSTAC members on initiatives, assessments, and future policy requirements for cybersecurity across public and private networks. The data to be shared includes information on cyber risk assessments, identified network vulnerabilities and potential plans to address those vulnerabilities and is not public information. Disclosure of this information to the public would provide criminals with the means to exploit cyber and physical weaknesses that might inhibit response, recovery, and reconstitution from a degraded network. Additionally, disclosure of this information may provide incentive to increase attacks on networks in areas deemed to be vulnerable. Since this would undermine the ability of the United States to continue ongoing work with private sector partners to mitigate network vulnerabilities and obtain advice from NSTAC, this portion of the meeting is required to be closed pursuant to 5 U.S.C. 552b(c)(9)(B).

In accordance with 5 U.S.C. 552b(c)(9)(B) and 552b(c)(1)(A)(B), these portions of this meeting will be closed to the public.

Dated: April 19, 2012.

Allen F. Woodhouse,

Alternate Designated Federal Officer for the NSTAC.

[FR Doc. 2012–9979 Filed 4–24–12; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2012–0359]

Great Lakes Pilotage Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Great Lakes Pilotage Advisory Committee (GLPAC) will meet on June 7, 2012, in Washington, District of Columbia. The meeting will be open to the public.

DATE: GLPAC will meet on Thursday, June 7, 2012, from 9 a.m. to 4 p.m. Please note the meeting may close early if the committee completes its business. Written material and requests to make oral presentations should reach us on or before June 1, 2012.

ADDRESSES: The meeting will be held at Coast Guard Headquarters, 2100 2nd Street Southwest, Washington, District of Columbia 20593, in conference room 51309. All visitors to Coast Guard Headquarters will have to pre-register to

be admitted to the building. Please provide your name, telephone number and organization by close of business on June 1, 2012, to the contact person listed in **FOR FURTHER INFORMATION CONTACT**: below. Additionally, all visitors to Coast Guard Headquarters must produce valid photo identification for access to the facility.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed in **FOR FURTHER INFORMATION CONTACT**: below as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below. Comments must be submitted in writing no later than June 1, 2012, and must be identified by [USCG–2012–0359] and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Same as mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Docket: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov*, and use ''USCG–2012–0359'' as your search term.

A public comment period of up to one hour will be held during the meeting on June 7th, 2012, after the committee completes its work on the agenda given under **SUPPLEMENTARY INFORMATION**. Speakers are requested to limit their comments to 5 minutes. Please note that the public comment period may end before the hour allotted, following the last call for comments. Contact the individual listed below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Mr. David Dean, GLPAC Assistant Designated Federal Officer (ADFO), Commandant (CG–5522), U.S. Coast Guard Headquarters, 2100 Second Street SW Stop 7580, Washington, DC 20593–7580; telephone 202–372–1533, fax 202–372–1909, or email at *David.J.Dean@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. App. (Pub. L. 92–463). GLPAC was established under the authority of 46 U.S.C. 9307, and makes recommendations to the Secretary of Homeland Security and the Coast Guard on matters relating to Great Lakes pilotage, including review of proposed Great Lakes pilotage regulations and policies.

GLPAC expects to meet twice per year but may also meet at other times at the call of the Secretary. Further information about GLPAC is available by searching on ''Great Lakes Pilotage Advisory Committee'' at *http://www.faca.gov*.

Agenda

The GLPAC will meet to review, discuss and formulate recommendations on the following issues:

Relocating the Great Lakes Pilotage Division physical office from Washington, DC to Cleveland, OH.

Comprehensive study of Great Lakes pilotage operations including detailed analysis of the existing bridge hour standard for pilotage operations, the seasonal pilotage work hour standard of 1000/1800 hours for designated/undesignated waters, the efficacy of the current billing scheme and alternatives, the standard for return on investment for pilotage operations, the use of a multi-year average of vessel traffic levels for annual projections of traffic, and a review of appropriate pilot compensation.

Audits for the 2014 Appendix A rulemaking which establishes the rates that pilots can charge industry for their services.

Memorandum of Arrangements between the U.S. and Canada concerning definitions and procedures for pilotage in the shared waters of the Great Lakes.

Establishing a permanent split of St. Lawrence River pilotage assignments through a change point at Iroquois Lock.

This will be followed by a public comment period of up to one hour. Speakers are requested to limit their comments to 5 minutes.

More detailed information and materials relating to these issues appear in the docket, *http://www.regulations.gov*. Use ''USCG–2012–0359'' as your search term.

Dated: April 18, 2012.

D. A. Goward,

Director Marine Transportation Systems, U.S. Coast Guard.

[FR Doc. 2012–9889 Filed 4–24–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Submission of Information Collection Under the Paperwork Reduction Act; Reinstatement

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The National Indian Gaming Commission (''NIGC'' or ''Commission''), in accordance with the Paperwork Reduction Act, is seeking reinstatement of approval from the Office of Management and Budget for collection of information for the following information collection activities: (1) Compliance and enforcement under the Indian Gaming Regulatory Act (IGRA) ; (2) approval of Class II background Investigation tribal licenses; (3) management contract regulations; (4) National Environmental Policy Act procedures; (5) annual fees payable by Indian gaming operations; (6) issuance of certificates of self regulation to tribes for Class II gaming; (7) minimum internal control standards; and (8) facility license review. These information collections have expired.

DATES: Submit comments on or before May 25, 2012.

ADDRESSES: Comments can be mailed directly to the Office of Information and Regulatory Affairs, OMB, Attn: Desk Officer for the National Indian Gaming Commission, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For further information, including copies of the proposed collection of information and supporting documentation, contact Michael Hoenig, at (202) 632–7003; fax (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Request for Comments

You are invited to comment on the following items to the Desk Office at

OMB at the citation in the **ADDRESSES** section.

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption 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 collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and become a matter of public record. We will not request nor sponsor a collection of information, and you need not respond to such a request, if there is no valid Office of Management and Budget Control Number.

II. Data

Title: Compliance and Enforcement.

OMB Control Number: 3141–0001.

Background: IGRA governs the regulation of gaming on Indian lands. Although IGRA places primary responsibility with the tribes for regulating their gaming activity, § 2706(b) directs the NIGC to monitor Class II gaming conducted on Indian lands on a continuing basis. IGRA authorizes the NIGC to access and inspect all papers, books and records relating to gross revenues of Class II gaming conducted on Indian lands and any other matters necessary to carry out the duties of the Commission. IGRA also requires tribes to provide NIGC with annual independent audits of gaming, including contracts in excess of $25,000.00. 25 U.S.C. 2710(b)(2)(c), (d); 25 U.S.C. 2710(d)(1)(A)(ii). In accordance with these statutory responsibilities, NIGC regulations, 25 CFR 571.7, requires Indian gaming operations to keep permanent financial records. NIGC regulations, 25 CFR 571.12 and 571.13, require tribes to annually submit an independent audit of their gaming operations to NIGC. The NIGC uses this information to fulfill its statutory responsibilities under IGRA. Additionally, IGRA, 25 U.S.C. 2713, authorizes the NIGC Chair to issue notices of violation, civil fine assessments, and closure orders for violations of the Act or the Commission's regulations. This authority is implemented through 25 CFR part 575. The full Commission reviews these matters on appeal under 25 CFR part 577.

Brief Description of Collection: This collection is mandatory and allows the NIGC to conduct its statutory duty to regulate Indian gaming. No additional burden is imposed by the requirements to maintain customary business records and to allow NIGC personnel access to those records.

Respondents: Indian tribal gaming operations.

Estimated Number of Respondents: 422.

Estimated Annual Responses: 1,395.

Estimated Time per Response: The range of time can vary from no additional burden hours to 50 burden hours for one item.

Frequency of Response: Varies.

Estimated Total Annual Burden on Respondents: 6,752.

Title: Approval of Class II and Class III Ordinances, Background Investigations and Gaming Licenses.

OMB Control Number: 3141–0003.

Background: The Act sets standards for the regulation of gaming, including requirements for approval or disapproval of tribal gaming ordinances. IGRA, § 2705(a)(3), requires the NIGC Chair to review all class II and class III tribal gaming ordinances.

In accordance with this provision, NIGC regulations, 25 CFR 522.2, require tribes to submit to the NIGC: (1) A copy of the gaming ordinance to be approved, including a copy of the authorizing resolution by which it was enacted by the tribal government and a request for approval of the ordinance or resolution; (2) a description of procedures the tribe will employ in conducting background investigations on key employees or primary management officials; (3) a description of procedures the tribe will use to issue licenses to primary management officials and key employees; (4) copies of all gaming regulations; (5) a copy of any applicable tribal-state compact; (6) a description of dispute resolution procedures for disputes arising between the gaming public and the tribe or management contractor; (7) identification of the law enforcement agency that will take fingerprints and a description of the procedures for conducting criminal history checks; and (8) designation of an agent for service of process.

Under NIGC regulations, 25 CFR 522.3, tribes must submit any amendment to the ordinance or resolution for approval by the NIGC Chair. In this instance, the tribe must provide a copy of the authorizing resolution. The NIGC will use the information collected to approve or disapprove the ordinance or amendment.

Section 2710 of the Act requires tribes to conduct background investigations on key employees and primary management officials involved in class II and class III gaming. NIGC regulations, 25 CFR 522.4(b)(4), require a tribe's ordinance to provide that the tribe will perform background investigations and issue licenses for key employees and primary management officials according to requirements that are at least as stringent as those in NIGC regulations, 25 CFR parts 556 and 558. 25 CFR parts 556 and 558 require tribes to perform each investigation using information such as name, address, previous employment records, previous relationships with either Indian tribes or the gaming industry, licensing relating to those relationships, any convictions, and any other information a tribe feels is relevant to the employment of the individuals being investigated. 25 CFR 556.4. Tribes are then required to submit to the NIGC a copy of the completed employment applications and investigative reports and licensing eligibility determinations on key employees or primary management officials before issuing gaming licenses to those persons. 25 CFR 556.5. The NIGC uses this information to review the eligibility and suitability determinations tribes make and advises them if it disagrees with any particular determination.

Brief Description of Collection: This collection is mandatory and allows the NIGC to carry out its statutory duties and gives the respondents standards for compliance.

Respondents: Indian tribal gaming operations.

Estimated Number of Respondents: 282.

Estimated Annual Responses: 112,677.

Estimated Time per Response: The range of time can vary from .5 burden hours to 80 burden hours for one item.

Frequency of Response: Varies.

Estimated Total Annual Burden Hours on Respondents: 36,973 hours.

Title: Management Contract Regulations.

OMB Control Number: 3141–0004.

Background: Subject to the approval of the NIGC Chair, an Indian tribe may enter into a gaming management contract for the operation and management of tribal gaming activity. 25 U.S.C. 2710(e) and 2711. In approving a management contract, the Chair shall require and obtain the following: Name, address, and other

pertinent background information on each person or entity having a financial interest in, or management responsibility for such contract, and in the case of a corporation those individuals who serve on the board of directors of such corporation and certain stockholders; a description of previous experience that each person has had with other Indian gaming contracts or with the gaming industry including any gaming licenses which the person holds; and a complete financial statement of each person listed. 25 CFR 533.3; 25 CFR 537.1(b).

Under NIGC regulations, 25 CFR part 533, the Chair requires the submission of the contract to contain the following: original signatures; any collateral agreements to the contract; a tribal ordinance or resolution authorizing the submission and supporting documentation; a three-year business plan which sets forth the parties' goals, objectives, budgets, financial plans, related matters, income statements, sources and use of funds statements for the previous three years; and, for any contract exceeding five years or which includes a management fee of more than 30 percent, justification that the capital investment required and income projections for the gaming operation require the longer duration or the additional fee.

Under NIGC regulations, 25 CFR part 535, the Chair may approve a modification to a management contract or an assignment of that management contract based on information similar to that required under part 533. Part 535 also specifies that the Chair may void a previous management contract approval and allows the parties the opportunity to submit information relevant to that determination.

25 CFR part 537 specifies the requirements for submission of background information in amplification of the statutory requirement for obtaining information on persons and entities having a direct financial interest in or management responsibility for a management contract. Finally, 25 CFR part 539 permits appeals to the Commission from a decision of the Chair to disapprove a management contract and allows the Indian tribe and the management company an opportunity to provide information relevant to that appeal. The NIGC will use the information collected to either approve or disapprove the contract or, in the case of an appeal, to grant or deny the appeal.

Brief Description of Collection: This collection is mandatory, and the benefit to the respondents is the approval of Indian gaming management contracts.

Respondents: Tribal governing bodies and management contractors.

Estimated Number of Respondents: 183 (submission of contracts, contract amendments, and background investigation submissions).

Estimated Time per Response: The range of time can vary from no added burden hours to 50 burden hours for one item.

Frequency of Response: Usually no more than once a year.

Estimated Total Annual Hourly Burden to Respondents: Up to 3,890.

Title: NEPA Procedures.

OMB Control Number: 3141–0006.

Background: NEPA requires federal agencies to analyze proposed major federal actions that significantly affect the quality of the human environment. The NIGC has identified one type of action it undertakes that requires review under NEPA—approving third-party management contracts for the operation of gaming activity under IGRA, 25 U.S.C. 2711. Depending on the nature of the subject contract and other circumstances, approval of such management contracts may be categorically excluded from NEPA, it may require the preparation of an Environmental Assessment (''EA''), or it may require the preparation of an Environmental Impact Statement (''EIS''). In any case, the proponents of a management contract will be expected to submit information to the NIGC and assist in the development of the required NEPA documentation.

Brief Description of Collection: This collection is mandatory under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, et seq., and White House Council on Environmental Quality regulations, 40 CFR 1500–1508.

Respondents: Tribal governing bodies, management companies, and environmental consultants.

Estimated Number of Respondents: 6 per year.

Estimated Time per Response: The range of time can vary from 1,300 to 4,500 hours per response. This variation depends on whether the response is an EA or EIS.

Frequency of Response: Annually.

Estimated Total Annual Burden on Respondents: 12,300 (6 EAs × 1,300 hours) + 1 EIS at 4,500 hours for EIS.

Title: Annual Fees Payable by Indian Gaming Operations.

OMB Control Number: 3141–0007.

Background: IGRA requires the NIGC to set an annual funding rate. The annual funding rate is the primary mechanism for NIGC funding under 25 U.S.C. 2717, and NIGC regulations, 25 CFR part 514 implements the requirement. Fees are computed on the basis of the assessable gross revenues of each gaming operation using rates set by the NIGC. The total of all fees assessed annually cannot exceed 0.08 percent of gross gaming revenue. Under its implementing regulation for the fee payment program, 25 C.F.R. part 514, the NIGC relies on a quarterly statement of gross gaming revenues provided by each gaming operation that is subject to the fee requirement. When the Office of Management and Budget last approved the collection of information for annual fees, the NIGC required quarterly submissions of fees and worksheets. Although the Commission later changed part 514 to require biannual submissions of fees and fee worksheets, the Agency has published a final rule in the **Federal Register** restoring the submission requirements to quarterly. That rule goes into effect on October 1, 2012, and the implementation date for quarterly submissions is January 1, 2013. The final rule can be found at 77 FR 5178 and on the NIGC's web site. The required information is needed for the NIGC to both set and adjust fee rates and to support the computation of fees paid by each gaming operation.

Brief Description of Collection: This collection is mandatory and allows the NIGC to both set and adjust fee rates and to support the computation of fees paid by each gaming operation.

Respondents: Indian tribal gaming operations.

Estimated Number of Respondents: 446.

Estimated Annual Responses: 892.

Estimated Time per Response: 2 hours.

Estimated Annual Burden Hours per Respondent: 4.

Frequency of Response: Twice per year.

Estimated Total Annual Burden on Respondents: 1,784 hours.

Title: Issuance of Certificates of Self Regulation to Tribe for Class II Gaming, 25 CFR part 518.

OMB Control Number: 3141–0008.

Background: IGRA allows any Indian tribe that has conducted class II gaming for at least three years to petition the NIGC for a certificate of self-regulation for its class II gaming operations. The NIGC will issue the certificate if it determines from available information that the tribe has conducted its gaming activity in a manner which has resulted in an effective and honest accounting of all revenues, a reputation for safe, fair, and honest operation of the gaming activity, and an enterprise free of evidence of criminal or dishonest activity. The tribe must also have adopted and implement proper accounting, licensing, and enforcement

systems and conducted the gaming operation on a fiscally or economically sound basis. The implementing regulation at 25 CFR part 518 requires a tribe interested in receiving the certificate to file a petition with the NIGC describing, generally, the tribe's gaming operations, its regulatory process, its uses of net gaming revenue, and its accounting and recordkeeping systems for the gaming operation. The tribe must also provide copies of various documents in support of the petition. Submission of the petition and supporting documentation is voluntary. The NIGC will use the information submitted by the respondent tribe in determining whether to issue the certificate of self-regulation.

Those tribes who have been issued a certificate of self-regulation are required to submit annually a report to the NIGC. Such report shall set forth information to establish that the tribe has continuously met the eligibility requirements of 25 CFR 518.2 and the approval requirements of 25 CFR 518.4 and shall include a report with supporting documentation which explains how tribal gaming revenues were used in accordance with the requirements of IGRA, 25 U.S.C. 2710(b)(2)(B).

Brief Description of Collection: This collection is voluntary for those tribes petitioning for a certificate of self-regulation and mandatory for those tribes who hold a certificate of self-regulation according to statutory regulations, and the benefit to the respondents is a reduction of the amount of fees assessed on class II gaming revenue by the NIGC.

Respondents: Tribal governments; tribes who hold certificates of self-regulation; petition submission is voluntary; annual report submission is mandatory.

Estimated Number of Voluntary Respondents: 0.

Estimated Time per Voluntary Response: 0.

Frequency of Response: At will.

Estimated Total Annual Hourly Burden to Voluntary Respondents: 0.

Number of Mandatory Respondents: 2.

Estimated Time per Mandatory Response: 50.

Frequency of Mandatory Response: Annual.

Estimated Total Annual Hourly Burden to Mandatory Respondents: 100.

Title: Minimum Internal Control Standards.

OMB Control Number: 3141–0009.

Background: IGRA governs the regulation of gaming on Indian lands. Although the IGRA places primary responsibility with the tribes for regulating Class II gaming, Section 2706(b) of IGRA directs the NIGC to monitor Class II gaming conducted on Indian lands on a continuing basis. IGRA authorizes the NIGC to access and inspect all papers, books and records relating to gross revenues of Class II gaming conducted on Indian lands and any other matters necessary to carry out the duties of the Commission. In accordance with these statutory responsibilities, NIGC regulations require tribal gaming regulatory authorities to establish and implement tribal internal control standards that provide a level of control that equals or exceeds those set out in part 543, establishing internal control standards. NIGC regulations, 25 CFR 543.3 require each affected gaming operation to develop and implement an internal control system that, at a minimum, complies with the tribal internal control standards established by the tribal gaming regulatory authority. Section 543.3(f) requires tribes with gaming operations to engage a certified public accountant (CPA) to perform an agreed-upon-procedures report to confirm compliance with the standards contained therein. The CPA is then required to report its findings to the tribe, tribal gaming regulatory authority, and management.

Brief Description of Collection: This collection is mandatory according to statutory regulations, and allows the NIGC to confirm tribal compliance with the standards contained in the Agreed-Upon-Procedures report.

Respondents: Tribal governing bodies.

Estimated Number of Respondents: 422.

Estimated Time per Response: 0.5 hours.

Frequency of Response: Annually.

Estimated Total Annual Hourly Burden to Respondents: 211 hours.

Title: Facility License Standards.

OMB Control Number: 3141–0012.

Background: IGRA states that ''a separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II [and class III] gaming is conducted.'' 25 U.S.C. 2710(b)(1) and (d)(1)(A)(iii). Further, IGRA requires ''the construction and maintenance of the gaming facilities, and the operation of that gaming is conducted in a manner which adequately protects the environment and public health and safety.'' 25 U.S.C. 2710(b)(2)(E).

NIGC regulations, part 559 requires that a tribe submit a notice to the NIGC that it is considering issuing a facility license, including applicable Indian lands information, at least 120 days before a new class II and/or class III gaming facility is opened. The amount of Indian lands information depends, in part, on whether the Bureau of Indian Affairs maintains the necessary records. The Indian lands information will continue to be utilized by the NIGC to ensure that its records are complete for internal purposes, such as assessing the NIGC's jurisdiction to regulate the gaming on the parcel, as well as responding to inquiries from government agencies and Congress as to the statuses of lands where Indian gaming is proposed or occurring.

Part 559 also requires that tribes submit copies of each newly issued or renewed facility license to the NIGC within 30 days of issuance, as well as notices of facility closures. This information will enable the NIGC to maintain accurate, up-to-date records of the Indian gaming facilities that are operating on Indian lands in the United States at any given point in time. Currently, facility licenses must be renewed every three years. With each new facility license, the Tribe must submit an attestation that it has identified and enforces environment and public health and safety laws and that the tribe is in compliance with those laws. Part 559 also requires tribes to submit a document listing all environmental and public safety laws, resolutions, codes, policies and standards applicable to its gaming facility. If the submitted laws, resolutions, etc. do not change, the tribe need only certify that fact when submitting a renewed facility license. Finally, the NIGC Chair has the discretion to request environmental and public health and safety documentation on occasions when there is an identified, substantial concern. Through these submissions, the NIGC can ensure that the tribes have determined that the construction, maintenance, and operation of their gaming facilities are conducted in a manner that adequately protects the environment and the public health and safety.

This information collection serves two purposes: (i) To receive up-to-date information from tribes regarding the number of licensed Indian gaming facilities and the Indian lands status of the site of each gaming facility; and (ii) to obtain certifications from the tribes that the construction, maintenance, and operation of the gaming facilities are conducted in a manner that adequately protects the environment and the public health and safety.

Brief Description of Collection: This collection is mandatory and enables the NIGC to conduct its statutory duty to regulate Indian gaming by ensuring that

tribal gaming facilities are properly licensed by the tribes.

Respondents: Indian tribal gaming operations.

Estimated Number of Respondents: 565.

Estimated Annual Responses: 75.

Estimated Time per Response: The range of time can vary from 2 burden hours to 10 burden hours for one item.

Frequency of Response: Varies.

Estimated Total Annual Burden on Respondents: $13,125.

Paxton Myers,

Chief of Staff.

[FR Doc. 2012–9922 Filed 4–24–12; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–MWR–INDU–0312–8330; 6065–4000–409]

Final White-tailed Deer Management Plan/Environmental Impact Statement for Indiana Dunes National Lakeshore

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability.

SUMMARY: The National Park Service announces the availability of the Final White-tailed Deer Management Plan/Environmental Impact Statement, Indiana Dunes National Lakeshore, Indiana.

DATES: The Final White-tailed Deer Management Plan/Environmental Impact Statement (Plan/EIS) will remain available for public review for 30 days following the publishing of the notice of availability in the **Federal Register** by the Environmental Protection Agency.

ADDRESSES: The Plan/EIS is available via the Internet through the NPS Planning, Environment, and Public Comment Web site (*http://parkplanning.nps.gov/INDU*); click on the link for the Plan/EIS. You may also obtain a copy of the Plan/EIS by sending a request to Randy Knutson, Wildlife Biologist, Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304; telephone 219–395–1550. A copy may also be picked-up in person at the National Lakeshore's headquarters at the address listed above.

FOR FURTHER INFORMATION CONTACT: Superintendent Constantine Dillon, Indiana Dunes National Lakeshore, at the address above or by telephone at 219–395–1699.

SUPPLEMENTARY INFORMATION: This Plan/EIS describes four alternatives for the management of deer at the National Lakeshore. Action is needed at this time to ensure that the local deer population does not become a dominant force that negatively influences ecosystem components within the National Lakeshore, such as sensitive vegetation or other wildlife. Impacts to these National Lakeshore resources would compromise its purpose to preserve the exceptional biodiversity found within its boundaries. The National Lakeshore staff currently implements resource management actions to protect other resources but no specific deer management plan exists.

Under Alternative A (no action), current deer management actions (including limited fencing, limited use of repellents, and inventorying and monitoring efforts) would continue; no new deer management actions would be taken. Alternative B would include all actions described under Alternative A, but would also incorporate non-lethal actions to possibly reduce deer numbers in the lakeshore. The additional actions would include the construction of additional small- and new large-scale exclosures, more extensive use of repellents in areas where fenced exclosures would not be appropriate or feasible, and phasing in reproductive control of does when there is a federally approved fertility control agent for application to free-ranging populations that provides multi-year (three to five years) efficacy for does. Alternative C would include all actions described under Alternative A, but would also incorporate a direct reduction of the deer herd size through sharpshooting and capture/euthanasia, where appropriate. Alternative D (the preferred alternative) would also include all the actions described under Alternative A, but would incorporate a combination of specific lethal and non-lethal actions from Alternatives B and C. These actions would include the reduction of the deer herd through sharpshooting, in combination with capture/euthanasia and phasing in reproductive control of does (as described in alternative B) for longer-term maintenance of lower herd numbers when there is a federally approved fertility control agent for application to free-ranging populations that provides multi-year (three to five years) efficacy for does.

The potential environmental consequences of the alternatives are addressed for vegetation, soils and water quality, white-tailed deer, other wildlife and wildlife habitat, sensitive and rare species, archeological resources, cultural landscapes, visitor use and experience, social values, visitor and employee health and safety, soundscapes, socioeconomic conditions, and National Lakeshore management and operations.

Dated: March 26, 2012.

Michael T. Reynolds,

Regional Director, Midwest Region.

[FR Doc. 2012–9972 Filed 4–24–12; 8:45 am]

BILLING CODE 4310–FH–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2012–0011]

Outer Continental Shelf (OCS) Renewable Energy Program Leasing for Marine Hydrokinetic Technology Testing Offshore Florida

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of the Availability of an Environmental Assessment.

SUMMARY: Bureau of Ocean Energy Management (BOEM) has prepared an environmental assessment (EA) considering the reasonably foreseeable environmental impacts and socioeconomic effects of issuing a lease in Official Protraction Diagram NG 17–06, Blocks 7003, 7053, and 7054, offshore Florida. The proposed lease would authorize technology testing activities, including the installation, operation, relocation, and decommissioning of technology testing facilities. The purpose of this notice is to inform the public of the availability of the EA for review and to solicit public comments on the EA.

Pursuant to 36 CFR 800.4(d)(1), which is a section in the regulations implementing section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, BOEM has made a finding of ''no historic properties affected'' for this proposed project. The finding and supporting documentation have been submitted to the Florida State Historic Preservation Officer and the Advisory Council on Historic Preservation and are included in the EA for public inspection.

BOEM will conduct a public information session at the following location and time to explain the proposed activities and provide additional opportunities for public input on the EA: Broward County Main Library, 100 S Andrews Ave., Fort Lauderdale, Florida 33301–7528, Wednesday, May 9, 2012, 2 p.m.

The EA and information on the public session can be found online at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Florida.aspx.*

Authority: This Notice of the Availability (NOA) of an EA is published pursuant to 43 CFR 46.305.

FOR FURTHER INFORMATION CONTACT: Michelle Morin, BOEM Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170–4817, (703) 787–1340 or *michelle.morin@boem.gov.*

SUPPLEMENTARY INFORMATION: On May 24, 2011, BOEM published a Notice of Intent (NOI) to prepare an EA, which requested public comments on alternatives to be considered in the EA as well as identification of important environmental issues associated with data collection and technology testing activities (76 FR 30184). BOEM considered these public comments in drafting the alternatives and assessing the reasonably foreseeable environmental impacts associated with each. Comments received in response to the NOI can be viewed at: *http://www.regulations.gov* by searching for Docket ID BOEM–2011–0012.

BOEM is seeking public input on the EA, including comments on the completeness and adequacy of the environmental analysis, and on the measures and operating conditions in the EA designed to reduce or eliminate potential environmental impacts. BOEM will consider public comments on the EA in determining whether to issue a Finding of No Significant Impact (FONSI), or to conduct additional NEPA analysis.

Comments

Federal, state, and local government agencies, tribal governments, and other interested parties are requested to submit their written comments on the EA in one of the following ways:

1. *Electronically: http://www.regulations.gov.* In the entry entitled ''Enter Keyword or ID,'' enter BOEM–2012–0011, then click ''search.'' Follow the instructions to submit public comments and view supporting and related materials available for this document.

2. In written form, delivered by hand or by mail, enclosed in an envelope labeled ''Comments on OCS Renewable Energy Program Leasing for Marine Hydrokinetic Technology Testing Offshore Florida EA'' to: Program Manager, Office of Renewable Energy Programs, Bureau of Ocean Energy Management, 381 Elden Street, HM 1328, Herndon, Virginia 20170–4817.

Comments must be received or postmarked no later than May 25, 2012. All written comments received or postmarked during the comment period will be made available to the public.

Dated: April 20, 2012.

Walter D. Cruickshank,

Deputy Director, Bureau of Ocean Energy Management.

[FR Doc. 2012–9983 Filed 4–24–12; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection; Renewal of a Currently Approved Information Collection

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal and request for comments.

SUMMARY: The Bureau of Reclamation intends to seek an extension of the information collection, with minor revisions, for the Recreation Use Data Report, OMB Control Number 1006–0002. As part of its continuing effort to reduce paperwork and respondent burdens, Reclamation invites other Federal agencies, State, local, or tribal governments that manage recreation sites at Reclamation projects; concessionaires and not-for-profit organizations who operate concessions on Reclamation lands; and the public, to comment on this information collection.

DATES: Submit written comments on this notice by June 25, 2012.

ADDRESSES: Send written comments to the Bureau of Reclamation, Attention: Jerome Jackson (84–53000), P.O. Box 25007, Denver, CO 80225–0007, or directed via email to *jljackson@usbr.gov.* Please reference OMB No. 1006–0002 in your comments.

You may request copies of the proposed revised application form by writing to the above address or by contacting Jerome Jackson via email at *jljackson@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Jerome Jackson at (303) 445–2712.

SUPPLEMENTARY INFORMATION:

I. Abstract

Reclamation collects agency-wide recreation and concession information to fulfill congressional reporting requirements pursuant to current public laws, including the Land and Water Conservation Fund Act (Pub. L. 88–578), the Federal Water Project Recreation Act (Pub. L. 89–72), and the Federal Lands Recreation Enhancement Act (Pub. L. 108–477). In addition, collected information will permit relevant program assessments of resources managed by Reclamation, its recreation managing partners, and/or concessionaires for the purpose of contributing to the implementation of Reclamation's mission. More specifically, the collected information enables Reclamation to (1) Evaluate the effectiveness of program management based on existing recreation and concessionaire resources and facilities, and (2) validate the efficiency of resources for public use within partner managed recreation resources, located on Reclamation project lands in the 17 Western States.

II. Data

OMB Control Number: 1006–0002.

Title: Recreation Use Data Report.

Form Numbers: 7–2534—Part 1, Managing Partners; 7–2535—Part 2, Concessionaires.

Frequency: Annually.

Respondents: State, local, or tribal governments; agencies who manage Reclamation's recreation resources and facilities; and commercial concessions, subconcessionaires, and nonprofit organizations located on Reclamation lands with associated recreation services.

Estimated Total Number of Respondents: 270.

Estimated Number of Responses per Respondent: 1.

Estimated Total Number of Annual Responses: 270.

Estimated Total Annual Burden on Respondents: 136 hours.

Estimate of Burden for Each Form:

Form No.	Burden estimate per form (in minutes)	Annual number of respondents	Annual burden on respondents (in hours)
7–2534 (Part 1, Managing Partners)	30	155	78
7–2535 (Part 2, Concessionaires)	30	115	58
Total Burden Hours			136

III. Request for Comments

We invite your comments on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

We will summarize all comments received regarding this notice. We will publish that summary in the **Federal Register** when the information collection request is submitted to OMB for review and approval.

IV. 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: April 18, 2012.

Roseann Gonzales,

Director, Policy and Administration, Denver Office.

[FR Doc. 2012–9921 Filed 4–24–12; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection Activities; Renewal of a Currently Approved Information Collection

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal and request for comments.

SUMMARY: The Bureau of Reclamation intends to submit a request for renewal of an existing approved information collection to the Office of Management and Budget (OMB): Diversions, Return Flow, and Consumptive Use of Colorado River Water in the Lower Colorado River Basin (OMB Control Number 1006–0015).

DATES: Send written comments by *June 25, 2012.*

ADDRESSES: To obtain copies of the information collection forms or to submit comments on this information collection, contact Maria Germain (LC–4410), P.O. Box 61470, Boulder City, NV 89006, or to *mgermain@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Margot Selig, Supervisory Contract and Repayment Specialist, Water Administration Group, Boulder Canyon Operations Office, Bureau of Reclamation, (702) 293–8192.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Reclamation (Reclamation) delivers Colorado River water to water users for diversion and beneficial consumptive use in the States of Arizona, California, and Nevada. The Consolidated Decree of the United States Supreme Court in the case of *Arizona* v. *California, et al.,* entered March 27, 2006, (547 U.S. 150 (2006)) requires the Secretary of the Interior to prepare and maintain complete, detailed, and accurate records of diversions of water, return flow, and consumptive use and make these records available at least annually. This information is needed to ensure that a State or a water user within a State does not exceed its authorized use of Colorado River water. Water users are obligated by provisions in their water delivery contracts to provide Reclamation information on diversions and return flows. Reclamation determines the consumptive use by subtracting return flow from diversions or by other engineering means. Without the information collected, Reclamation could not comply with the order of the United States Supreme Court to prepare and maintain detailed and accurate records of diversions, return flow, and consumptive use.

II. Data

OMB Control Number: 1006–0015.

Title: Diversions, Return Flow, and Consumptive Use of Colorado River Water in the Lower Colorado River Basin.

Description of respondents: The respondents will include the Lower Basin States (Arizona, California, and Nevada), local and tribal entities, water districts, and individuals that use Colorado River water.

Frequency: Monthly, annually, or otherwise as determined by the Secretary of the Interior.

Estimated total number of respondents: 54.

Estimated number of responses per respondent: 1 annually and/or 12 monthly.

Estimated total number of annual responses: 292.

Estimated total annual burden hours: 48.7 hours (rounded).

Estimated burden for each form: 10 minutes.

Form No.	Estimated number of respondents	Total responses per year	*Estimated annual burden hours per form
LC–72	1	12	2.0
LC–72A	1	1	0.2
LC–72B	24	24	4.0
Custom Forms	28	255	42.5
Total	54	292	48.7

* Burden hours are rounded up.

III. Request for Comments

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) the accuracy of our burden estimate for the proposed collection of information;

(c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on respondents, including the use of

automated collection techniques or other forms of information technology.

We will summarize all comments received regarding this notice. We will publish that summary in the **Federal Register** when the information collection request is submitted to OMB for review and approval.

IV. Public Disclosure

Before including your address, telephone 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: April 18, 2012.

Steven C. Hvinden,

Chief, Boulder Canyon Operations Office, Lower Colorado Region Bureau of Reclamation.

[FR Doc. 2012–9917 Filed 4–24–12; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request regarding the certification of a State or Tribe for noncoal reclamation has been forwarded to the Office of Management and Budget (OMB) for renewed approval. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by May 25, 2012, in order to be assured of consideration.

ADDRESSES: Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via email at *OIRA_Docket@omb.eop.gov,* or by facsimile to (202) 395–5806. Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203—SIB, Washington, DC 20240, by telefax to (202) 219–3276, or by email to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact John Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov.* You may also review this information collection request by going to *http://www.reginfo.gov* (Information Collection Review, Currently Under Review, Agency is Department of the Interior, DOI–OSMRE).

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval of the collection of information for 30 CFR Part 875—Noncoal Reclamation. OSM is requesting a 3-year term of approval for this information collection activity.

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. Responses are required to obtain a benefit. The OMB control number for this collection of information is listed in 30 CFR 875.10, which is 1029–0103.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on February 1, 2012 (77 FR 5049). OSM received one comment, but it did not accurately reflect 30 CFR Part 875, nor was it germane to this information collection. Therefore, we have not changed the collection in response to the comment.

This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR Part 875—Noncoal Reclamation.

OMB Control Number: 1029–0103.

Summary: This part establishes procedures and requirements for State and Indian tribes to conduct noncoal reclamation using abandoned mine land funding. The information is needed to assure compliance with the Surface Mining Control and Reclamation Act of 1977.

Bureau Form Numbers: None.

Frequency of Collection: Once.

Description of Respondents: State governments and Indian Tribes.

Total Annual Responses: 1.

Total Annual Burden Hours: 10.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the places listed under ADDRESSES. Please refer to control number 1029–0103 in all correspondence.

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: April 18, 2012.

Andrew F. DeVito,

Chief, Division of Regulatory Support.

[FR Doc. 2012–9845 Filed 4–24–12; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for its maintenance of state programs and procedures for substituting Federal enforcement of state programs and withdrawing approval of state programs, has been forwarded to the Office of Management and Budget (OMB) for review and approval. The information collection request describes the nature of the information collection and its expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by May 25, 2012, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, by telefax to (202) 395–5806 or by email to *OIRA_Docket@omb.eop.gov.* Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203–SIB, Washington, DC 20240, by telefax to (202) 219–3276, or by email to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov.* You may also review this information collection request on the Internet by going to *http://www.reginfo.gov* (Information Collection Review, Currently Under Review, Agency is Department of the Interior, DOI–OSMRE).

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted the request to OMB to renew its approval for the collection of information found at 30 CFR Part 733. OSM is requesting a 3-year term of approval for this information collection activity.

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 number for this collection of information is 1029–0025, and may be found in OSM's regulations at 30 CFR Part 733.10. Individuals are required to respond to obtain a benefit.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection was published on January 25, 2012 (77 FR 3793). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR Part 733—Maintenance of State Programs and Procedures for Substituting Federal Enforcement of State Programs and Withdrawing Approval of State Programs.

OMB Control Number: 1029–0025.

Summary: This part provides that any interested person may request the Director of OSM to evaluate a State program by setting forth in the request a concise statement of facts that the person believes establishes the need for the evaluation.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Any interested person (individuals, businesses, institutions, organizations).

Total Annual Responses: 1.

Total Annual Burden Hours: 50.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the places listed under Addresses. Please refer to control number 1029–0025 in all correspondence.

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: April 18, 2012.

Andrew F. DeVito,

Chief, Division of Regulatory Support.

[FR Doc. 2012–9843 Filed 4–24–12; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–775]

Certain Wireless Communication Devices and Systems, Components Thereof, and Products Containing Same; Notice of Commission Determination Not To Review Initial Determination Terminating Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 24) of the presiding administrative law judge (''ALJ'') terminating the investigation based upon withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 8, 2011 based on a complaint filed by Linex Technologies, Inc. of Palm Beach Gardens, Florida (''Linex''). 76 FR 33364 (June 8, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless communication devices and systems, components thereof, and products containing the same by reason of infringement of certain claims of United States Patent Nos. 6,757,322 and RE42,219. The notice of investigation named the following entities as respondents: Hewlett-Packard Company of Palo Alto, California; Apple Inc. of Cupertino, California; Aruba Networks, Inc. of Sunnyvale, California; Meru Networks of Sunnyvale, California; and Ruckus Wireless of Sunnyvale, California.

On April 2, 2012, Linex filed an unopposed motion to terminate the investigation in its entirety based upon withdrawal of the complaint. No responses to the motion were filed.

On April 3, 2012, the ALJ issued the subject ID (Order No. 24) terminating the investigation. None of the parties petitioned for review of the ID. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

By order of the Commission.

Issued: April 19, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–9890 Filed 4–24–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–NEW]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Applications for Special Deputations

ACTION: 60-day notice of information collection under review:

The Department of Justice (DOJ), U.S. Marshals Service, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 25, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Nicole Feuerstein, U.S. Marshals Service, CS–3, 10th Fl., 2604 Jefferson Davis Hwy, Alexandria, VA 22301 (Phone: 202–307–5168).

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Applications for Special Deputation.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* USM–3A and USM–3C. U.S. Marshals Service.

(4) *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: Federal government and State/local government. Form USM–3A Application for Special Deputation/Sponsoring Federal Agency Information; Form USM–3C Group Special Deputation Request. The collection of information for these forms is authorized by 28 U.S.C. 562. The USMS is authorized to deputize selected persons to perform the functions of a Special Deputy U.S. Marshal whenever the law enforcement needs of the USMS so require and as designated by the Associate Attorney General pursuant to 28 CFR 0.19(a)(3). USMS Special Deputation files serve as a centralized record of the special deputations granted by the USMS to assist in tracking, controlling and monitoring the Special Deputation Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 6,000 respondents will complete a 15 minute form (Form USM–3A) and 5,500 respondents will complete a 10 minute form (Form USM–3C).

(6) *An estimate of the total public burden (in hours) associated with the collection:* There is an estimated 2417 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–9832 Filed 4–24–12; 8:45 am]

BILLING CODE 4410–04–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–NEW]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Jurors Information Form

ACTION: 60-Day notice of information collection under review.

The Department of Justice (DOJ), U.S. Marshals Service, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 25, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Nicole Feuerstein, U.S. Marshals Service, CS–3, 10th Fl., 2604 Jefferson Davis Hwy, Alexandria, VA 22301 (Phone: 202–307–5168).

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the 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:* New collection.

(2) *Title of the Form/Collection:* Sequestered Juror Information Form

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* USM–523A. U.S. Marshals Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Households/Individuals. Form USM–523A Sequestered Juror Information Form. The authority for collecting the information on this form is 28 U.S.C. 509, 510 and 561 et seq. The United States Marshals Service is responsible for ensuring the security of federal courthouses, courtrooms, and federal jurist. This information assists Marshals Service personnel in the planning of, and response to, potential security needs of the court and jurors during the course of proceedings.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 14 respondents will complete a 4-minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There is an estimated 1 annual total burden hour associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–9833 Filed 4–24–12; 8:45 am]

BILLING CODE 4410–04–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Resource Conservation And Recovery Act and the Emergency Planning and Community Right-to-Know Act

Notice is hereby given that on April 11, 2012, a proposed revised Consent Decree in *United States* v. *Clean Harbors of Braintree, Inc.,* No. 11–11440, was lodged with the United States District Court for the District of Massachusetts. The United States filed this action, on August 12, 2011, under the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6901, *et seq.,* and the Emergency Planning and Community Right-to-Know Act (''EPCRA''), 42 U.S.C. 11001, *et seq.* The Complaint alleged that Clean Harbors of Braintree, Inc. (''Clean Harbors'') violated various provisions of RCRA and EPCRA, as well as their implementing permits and regulations, at the hazardous waste treatment, storage, and disposal facility operated by Clean Harbors at 1 Hill Avenue in Braintree, Massachusetts. At the time the United States filed the action, it also lodged the original Consent Decree, which resolved the civil claims of the United States for the violations alleged in the Complaint through the date of lodging of the Consent Decree. Under the original Consent Decree, Clean Harbors agreed to certain injunctive relief, to pay a penalty in the amount of $650,000, and to implement a Supplemental Environmental Project, at a cost of at least $1,062,500, involving the planting of trees in low-income or minority areas located in the City of Boston (''Boston Tree SEP''). After consideration of public comment received concerning the original Consent Decree, the United States and Clean Harbors have withdrawn the original Consent Decree and have entered into the revised Consent Decree. The revised Consent Decree adjusts downward the number of trees planted under the Boston Tree SEP, and now includes an additional Supplemental Environmental Project involving the acquisition of an aerial ladder fire truck for the Town of Braintree. Under the revised Consent Decree, Clean Harbors will expend at least $612,500 on the Boston Tree SEP. Clean Harbors will also acquire, or cause to be acquired, an aerial ladder fire truck for the Town of Braintree. The Town of Braintree may contribute toward a portion of the cost of the truck, but Clean Harbors's contribution must be at least $450,000 and Clean Harbors will be responsible for acquisition of the fire truck regardless of whether or not the Town of Braintree contributes any monies toward the fire truck.

For a period of thirty days from the date of this publication, the Department of Justice will receive and consider comments relating to the revised Consent Decree. All comments must be received by the Department of Justice within this thirty-day period. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcommentees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044, and should refer to *United States* v. *Clean Harbors of Braintree, Inc.,* No. 11–11440 (D. Mass.) and D.J. Ref. No. 90–7–1–09439. A copy of any comments should be sent to Donald G. Frankel, Senior Counsel, Department of Justice, Environmental Enforcement Section, One Gateway Center, Suite 616, Newton, MA 02458, or emailed to *donald.frankel@usdoj.gov.*

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. In requesting a copy of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of $9.50 (25 cents per page reproduction cost) payable to the U.S. Treasury (if the request is by fax or email, forward a check to the Consent Decree library at the address stated above).

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–9892 Filed 4–24–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Senior Community Service Employment Program (SCSEP) Performance Measurement System

AGENCY: Department of Labor, Employment and Training Administration, Division of National Programs, Tools, and Technical Assistance.

ACTION: Notice of OMB approval of information collection requirements.

SUMMARY: The Paperwork Reduction Act (PRA) requires this notice to set forth the effectiveness of information collection requirements contained in 20 CFR part 641, related to the Senior Community Service Employment Program (SCSEP); Final Rule, Additional Indicator on Volunteer Work. See 77 FR 4654.

DATES: On March 27, 2012, the Office of Management and Budget (OMB) approved under the PRA the Department of Labor's information collection request for requirements in 20 CFR part 641. The current expiration date for OMB authorization for this information collection is March 31, 2015.

ADDRESSES: Written comments regarding the burden-hour estimates or other aspects of the information collection requirements contained in 20 CFR part 641 may be submitted to: Ann Maize, Division of National Programs, Tools, and Technical Assistance, Room S–4203, 200 Constitution Avenue NW., Washington DC 20210.

FOR FURTHER INFORMATION CONTACT: Kimberly Vitelli, Chief, Division of National Programs, Tools, and Technical Assistance, Employment and Training Administration, U.S. Department of Labor, Room S–4203, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–3639 (this is not a toll-free number).

Questions of interpretation and/or enforcement of regulations referenced in this notice may be directed to: Michael S. Jones, Acting Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, Room N–5641, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–3700 (this is not a toll-free number).

This notice is available through the printed **Federal Register** and electronically via the *http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR* web site.

Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TDD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) has approved under the PRA information collection requirements contained in recently revised final regulations under the Older Americans Act (OAA) published by the Department of Labor in the **Federal Register** on January 31, 2012. See 77 FR 4654. The purpose of the Final Rule was to implement an additional indicator for volunteer work in the SCSEP. Specifically, this rule amended existing regulations regarding Performance Accountability for title V of the OAA and corresponding definitions. These regulations also provided administrative and programmatic guidance and requirements for the implementation of the SCSEP.

The preamble to the new regulations stated an effective date of March 1, 2012; however, OMB had not yet provided a PRA-required approval for the revised information collection requirements contained in the revised SCSEP rules at the time of their publication. 44 U.S.C. 3507(a)(2). An agency may not conduct an information collection unless it has a currently valid OMB approval; therefore, in accordance with the PRA, the effective date of the information collection requirements in the revised regulations was delayed until OMB approved them under the PRA. 44 U.S.C. 3506(c)(1)(B)(iii)(V). On March 27, 2012, OMB approved the Department's information collection request under Control Number 1215–0040, thus giving effect to the requirements, as announced and published in the **Federal Register** on January 31, 2012, under the PRA. The current expiration date for OMB authorization for this information collection is March 31, 2015.

Dated: Signed in Washington, DC on this 18th day, April 2012.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2012–9830 Filed 4–24–12; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Sunshine Act Meeting; National Museum and Library Services Board

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of the forthcoming meeting of the National Museum and Library Services Board. This notice also describes the function of the Board. Notice of the meeting is required under the Sunshine in Government Act.

TIME AND DATE: Saturday, April 28, 2012 from 8:30 a.m. until 3:30 p.m.

AGENDA: Twenty-Fifth Meeting of the National Museum and Library Service Board Meeting:

8:30 a.m.–10:30 a.m. Jury Meeting to consider the National Medals for Museum Services.

8:30 a.m.–10:30 a.m. Jury Meeting to consider the National Medals for Library Services.

(Closed to the Public)

10:30 p.m.–12:15 p.m. Executive Session and Jury Recommendations.

(Closed to the Public)

12:45 p.m.–3:30 p.m. Twenty-Fifth National Museum and Library Services Board Meeting:

I. Welcome

II. Approval of Minutes

III. Financial Update

IV. Legislative Update

V. Program Updates

VI. Board Program

VII. Adjournment

(Open to the Public)

PLACE: The meetings will be held in the Doty Library Board Room at the Minneapolis Central Library, 300 Nicollet Mall, Minneapolis, MN 55401.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Events and Board Liaison, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4676.

SUPPLEMENTARY INFORMATION: The National Museum and Library Services Board is established under the Museum and Library Services Act, 20 U.S.C. Section 9101 *et seq.* The Board advises the Director of the Institute on general policies with respect to the duties, powers, and authority of the Institute relating to museum, library, and information services.

The Jury Meetings to consideration the National Medal for Museum and Library Services from 8:30 a.m. until 10:30 a.m. and the Executive Session/Jury Recommendations from 10:30 a.m. until 12:15 p.m. on Saturday, April 28, 2012, will be closed pursuant to subsections (c)(4) and (c)(9) of section 552b of Title 5, United States Code because the Board will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; and information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. The meeting from 12:45 p.m. until 3:30 p.m. on Saturday, April 28, 2012 is open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1800 M Street NW., 9th Fl., Washington, DC 20036. Telephone: (202) 653–4676; TDD (202) 653–4614 at least seven (7) days prior to the meeting date.

Dated: April 18, 2012.

Nancy Weiss,

General Counsel.

[FR Doc. 2012–9883 Filed 4–24–12; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0094; EA–11–254]

In the Matter of ABSG Consulting Inc. Confirmatory Order (Effective Immediately)

I

ABSG Consulting Inc. (ABSG) is an independently owned and operated risk, safety, and integrity management company serving various industries in the United States and overseas; some of which are regulated by the U.S. Nuclear Regulatory Commission (NRC). ABSG's main office is located in Houston, TX.

This Confirmatory Order (referenced as CO, Confirmatory Order or Order) is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on March 12, 2012, in Arlington VA.

II

On October 5, 2011, the NRC's Office of Investigations (OI) issued its report of investigation (OI Report No. 1–2010–050). Based upon evidence developed during its investigation, the NRC identified an apparent violation of Title 10 of the Code of Federal Regulations (10 CFR) 50.7, ''Employee protection,'' involving a former ABSG employee who was terminated, in part, for participating in a Commission proceeding before the NRC Atomic Safety and Licensing Board Panel prior to his employment with ABSG.

By letter dated January 17, 2012, the NRC identified to ABSG the apparent violation of 10 CFR 50.7 and offered ABSG the opportunity to provide a response in writing, attend a pre-decisional enforcement conference, or to request alternative dispute resolution (ADR) in which a neutral mediator with no decision-making authority would facilitate discussions between the NRC and ABSG, and if possible, assist the NRC and the parties in reaching an agreement on resolving the concerns. ABSG chose to participate in ADR in an effort to resolve this matter.

On March 12, 2012, the NRC and ABSG met at ABSG's facility in Arlington, Virginia in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

The NRC acknowledges that ABSG on its own initiative undertook several actions. These actions included:

1. Issuance of a letter to the manager involved with the termination of the employment of the individual reiterating ABSG's commitment to its non-retaliation policies;

2. Directing ABSG's HR Manager of Employee Relations to draft an expanded anti-retaliation policy for inclusion in the Company's Policies and Benefits Guide; and

3. Directing ABSG's Director of Compliance to draft an expanded anti-retaliation policy for inclusion in the Company's Code of Ethics.

During the ADR mediation session, an agreement in principle was reached in which ABSG agreed to take the following additional actions:

1. The President of ABSG shall issue a communication in writing to those employees involved in its U.S. Nuclear Utilities Market Sector informing them of the Company's policy and their right and avenues for raising nuclear safety concerns without fear of retaliation. This communication shall also be provided to all new hire employees within thirty days of their assumption of duties. All employees to whom this communication is given shall confirm their receipt in writing.

2. ABSG shall hire an outside consultant with expertise in NRC employee protection regulations to develop anti-retaliation training for all ABSG U.S. Nuclear Utilities Market Sector employees which shall include those items identified in 10 CFR 50.7, ''Employee protection.'' Training shall:

a. Inform managers that it is the position of the NRC that ABSG is subject to 10 CFR 50.7.

b. Define key terms and include examples of discriminatory practices that address all categories of protected activities listed in 10 CFR 50.7.

c. Inform employees of their rights and avenues for raising nuclear safety concerns (including to the NRC) without fear of retaliation.

3. The anti-retaliation training, developed in paragraph 2 above, shall be conducted by an outside consultant with expertise in NRC employee protection regulations.

a. The training shall be provided every two years commencing within two months after development.

b. The training, after its first offering may be provided by ABSG training staff.

c. Training records shall be retained consistent with applicable ABSG record retention policies.

4. ABSG shall establish a process to conduct a secondary review of all proposed adverse actions (including written reprimand or above, but excluding reductions-in-force and other ordinary layoffs) for any of its U.S. Nuclear Utilities Market Sector employees who have engaged in protected activities to ensure that these actions comport with applicable employee-protection requirements and assess and mitigate the potential for any chilling effect on such protected activities.

a. ABSG shall establish requirements for this process in an ABSG procedure that shall become effective thereafter.

b. This review shall be conducted by management personnel, including legal and/or human resources.

5. ABSG shall publish, as part of its on-line newsletter, an article concerning the protections afforded by 10 CFR 50.7.

On April 17, 2012, ABSG consented to the NRC issuing this Confirmatory Order with the commitments, as described in Section IV below. ABSG further agreed in its April 17, 2012, letter that this Order is to be effective upon issuance and that it has waived its right to a hearing.

The NRC has concluded that its concerns can be resolved through effective implementation of ABSG's commitments. I find that ABSG's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that ABSG's commitments be confirmed by this Order. Based on the above and ABSG's consent, this Order is immediately effective upon issuance. Accordingly, the staff is exercising its enforcement discretion and will not issue a Notice of Violation or civil penalty in this matter.

IV

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, *it is hereby ordered, effective immediately, that:*

1. By no later than three months after issuance of the Confirmatory Order, the President of ABSG shall issue a communication in writing to those employees involved in its U.S. Nuclear Utilities Market Sector informing them of the Company's policy and their right

and avenues for raising nuclear safety concerns without fear of retaliation. A copy of this communication shall be provided to the NRC shortly after issuance. This communication shall also be provided to all new hire employees within thirty days of their assumption of duties. All employees to whom this communication is given shall confirm their receipt in writing.

2. Within one year of the date of the Confirmatory Order, ABSG shall hire an outside consultant with expertise in NRC employee protection regulations to develop anti-retaliation training for all ABSG U.S. Nuclear Utilities Market Sector employees which shall include those items identified in 10 CFR 50.7, ''Employee protection.'' Training shall:

a. Inform managers that it is the position of the NRC that ABSG is subject to 10 CFR 50.7.

b. Define key terms and include examples of discriminatory practices that address all categories of protected activities listed in 10 CFR 50.7.

c. Inform employees of their rights and avenues for raising nuclear safety concerns (including to the NRC) without fear of retaliation.

3. The anti-retaliation training, developed in paragraph 2 above, shall be conducted by an outside consultant with expertise in NRC employee protection regulations.

a. The training shall be provided every two years commencing within two months after development.

b. The training, after its first offering may be provided by ABSG training staff.

c. Training records shall be retained consistent with applicable ABSG record retention policies and made available to the NRC upon request.

4. ABSG shall establish a process to conduct a secondary review of all proposed adverse actions (including written reprimand or above, but excluding reductions-in-force and other ordinary layoffs) for any of its U.S. Nuclear Utilities Market Sector employees who have engaged in protected activities to ensure these actions comport with applicable employee-protection requirements and assess and mitigate the potential for any chilling effect on such protected activities.

a. Within 3 months after issuance of this Confirmatory Order, ABSG shall establish requirements for this process in an ABSG procedure that shall become effective thereafter.

b. This review shall be conducted by management personnel, including legal and/or human resources.

5. Within 6 months of the issuance of the Confirmatory Order, ABSG shall publish, as part of its on-line newsletter, an article concerning the protections afforded by 10 CFR 50.7 and provide a copy to the NRC shortly after publication.

V

In accordance with 10 CFR 2.202, any person adversely affected by this Confirmatory Order, other than ABSG, may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in the NRC's adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at (301) 415–1677, to request: (1) A digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by

contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email at *MSHD.Resource@nrc.gov*, or by a toll-free call at 1 (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person (other than ABSG) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above, shall be final 20 days from the date this Confirmatory Order is published in the **Federal Register**, without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

For the Nuclear Regulatory Commission.

Dated at Rockville, MD, this 17 day of April 2012.

Roy P. Zimmerman,

Director, Office of Enforcement.

[FR Doc. 2012–10002 Filed 4–24–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS), Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on May 9, 2012, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b (c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, May 9, 2012—12 p.m. Until 1 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Antonio Dias (Telephone 301–415–6805 or Email: *Antonio.Dias@nrc.gov*) five days prior to the meeting, if possible, so that arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64126–64127).

Information regarding changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the DFO if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240–888–9835) to be escorted to the meeting room.

Dated: April 18, 2012.

Cayetano Santos,

Chief, Reactor Safety Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–9992 Filed 4–24–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS), Meeting of the ACRS Subcommittee on Thermal Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on May 8–9, 2012, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance, with the exception of portions that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, May 8, 2012—8:30 a.m. Until 5:00 p.m.; Wednesday, May 9, 8:30 a.m. Until 5:00 p.m.

The Subcommittee will review the staff's Safety Evaluation Report (SER) associated with WCAP–16793–NP, Revision 2, ''Evaluation of Long-Term Cooling Considering Particulate, Fibrous and Chemical Debris in the Recirculating Fluid,'' and the status of the resolution of Generic Safety Issue (GSI) 191, ''Assessment of Debris Accumulation on PWR Sump Performance.'' The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Westinghouse, STP Nuclear Operating Company, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Antonio Dias (Telephone 301–415–6805 or Email: *Antonio.Dias@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64126–64127).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: April 19, 2012.

Cayetano Santos,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–10008 Filed 4–24–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS), Meeting of the ACRS Subcommittee on Reliability and PRA; Notice of Meeting

The ACRS Subcommittee on Reliability and PRA will hold a meeting on May 8, 2012, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance, with the exception of portions that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, May 8, 2012—8:30 a.m. Until 3:30 p.m.

The Subcommittee will review and discuss the Office of Nuclear Regulatory Research (RES) White Paper on Independent Analysis and Validation of the Institute of Nuclear Power Operations (INPO) Nuclear Safety Culture Survey. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Derek Widmayer (Telephone 301–415–7366 or Email: *Derek.Widmayer@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64126–64127).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: April 19, 2012.

Antonio Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–9995 Filed 4–24–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0158]

Constraint on Releases of Airborne Radioactive Materials to the Environment for Licensees Other Than Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to Regulatory Guide (RG) 4.20, ''Constraint on Releases of Airborne Radioactive Materials to the Environment for Licensees other than Power Reactors.'' This RG provides guidance on methods acceptable to the NRC's staff for meeting the constraint on airborne emissions of radioactive material to the environment.

ADDRESSES: Please refer to Docket ID NRC–2010–0158 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 the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2010–0158. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Revision 1 of RG 4.20 is available in ADAMS under Accession No. ML110120299. The regulatory analysis may be found in ADAMS under Accession No. ML110120351.
- *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.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Mekonen Bayssie, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–251–7489; email: *Mekonen.Bayssie@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 1 of RG 4.20 was issued with a temporary identification as Draft Regulatory Guide (DG)–4018. This RG provides guidance on methods acceptable to the NRC staff for meeting the constraint on airborne emissions of radioactive material to the environment as described in Title 10 of the Code of Federal Regulations (10 CFR) 20.1101(d). In 1996, the NRC added a constraint to 10 CFR part 20, ''Standards for Protection Against Radiation,'' to remove dual regulation by the NRC and the U.S. Environmental Protection Agency and to provide an ''ample margin of safety'' to members of the public from airborne emissions of radioactive material to the environment.

In 10 CFR 20.1101(d), the NRC states the following:

> To implement the ALARA (as low as is reasonably achievable) requirements of § 20.1101(b), and notwithstanding the requirements in § 20.1301 of this part, a constraint on air emissions of radioactive material to the environment, excluding radon-222 and its daughters, shall be established by licensees other than those subject to § 50.34a, such that the individual member of the public likely to receive the highest dose will not be expected to receive a total effective dose equivalent in excess of 10 mrem [millirem] (0.1 mSv [millisievert]) per year from these emissions. If a licensee subject to this requirement exceeds this dose constraint, the licensee shall report the exceedance as provided in § 20.2203 and promptly take appropriate corrective action to ensure against recurrence.

The NRC staff examines licensee programs to determine whether they comply with the requirements in 10 CFR part 20. This guide addresses only a part of a licensee's overall radiation protection program. Specifically, it addresses methods that licensees can use to demonstrate that they meet the constraint on airborne emissions of radioactive material to the environment. In addition to controlling doses from airborne emissions of radioactive material to the environment, licensees must implement a radiation protection program that controls liquid effluents and dose rates in unrestricted areas.

II. Further Information

On April 20, 2010 (75 FR 20645), DG–4018 was published in the **Federal Register** and it was reopened for a 60-day public comment period on June 25, 2010 (75 FR 36445). The public comment period closed on August 23, 2010. The **Federal Register** notice (FRN) dated June 25, 2010 (75 FR 36445), inadvertently cited the ADAMS accession number for the original FRN noticing the issuance of DG–4018 (75 FR 20645; ADAMS Accession No. ML092600090) in place of the ADAMS accession number for DG–4018 (ADAMS Accession No. ML092590180). However, the original FRN noticing the issuance of DG–4018 (75 FR 20645; ADAMS Accession No. ML092600090) cited the correct ADAMS accession number for DG–4018.

Dated at Rockville, Maryland, this 17th day of April, 2012.

For the Nuclear Regulatory Commission.

Mark Orr,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2012–9998 Filed 4–24–12; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 17a–11; SEC File. No. 270–94; OMB Control No. 3235–0085.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17a–11 (17 CFR 240.17a–11) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the

Office of Management and Budget for extension and approval.

In response to an operational crisis in the securities industry between 1967 and 1970, the Commission adopted Rule 17a–11 (17 CFR 240.17a–11) under the Exchange Act on July 11, 1971. The Rule requires broker-dealers that are experiencing financial or operational difficulties to provide notice to the Commission, the broker-dealer's designated examining authority (''DEA''), and the Commodity Futures Trading Commission (''CFTC'') if the broker-dealer is registered with the CFTC as a futures commission merchant. Rule 17a–11 is an integral part of the Commission's financial responsibility program which enables the Commission, a broker-dealer's DEA, and the CFTC to increase surveillance of a broker-dealer experiencing difficulties and to obtain any additional information necessary to gauge the broker-dealer's financial or operational condition.

Rule 17a–11 also requires over-the-counter (''OTC'') derivatives dealers and broker-dealers that are permitted to compute net capital pursuant to Appendix E to Exchange Act Rule 15c3–1 to notify the Commission when their tentative net capital drops below certain levels. OTC derivatives dealers must also provide notice to the Commission of backtesting exceptions identified pursuant to Appendix F of Rule 15c3–1 (17 CFR 15c3–1f).

Compliance with the Rule is mandatory. The Commission will generally not publish or make available to any person notices or reports received pursuant to Rule 17a–11. The Commission believes that information obtained under Rule 17a–11 relates to a condition report prepared for the use of the Commission, other federal governmental authorities, and securities industry self-regulatory organizations responsible for the regulation or supervision of financial institutions.

Only broker-dealers whose capital declines below certain specified levels or who are otherwise experiencing financial or operational problems have a reporting burden under Rule 17a–11. In 2011, the Commission received approximately 465 notices under this Rule, including one notice from an OTC derivatives dealer permitted to compute net capital pursuant to Appendix E to Exchange Act Rule 15c3–1.

Each broker-dealer reporting pursuant to Rule 17a–11 will spend approximately one hour preparing and transmitting the notice required by the rule. Accordingly, the total estimated annualized burden under Rule 17a–11 is 465 hours.

Written comments are invited on: (a) 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; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a current 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.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 19, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–9938 Filed 4–24–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Extension of Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17a–6; OMB Control No. 3235–0489; SEC File No. 270–433.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–6 (17 CFR 240.17a–6) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) permits national securities exchanges, national securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board (''MSRB'') (collectively, ''SROs'') to destroy or convert to microfilm or other recording media records maintained under Rule 17a–1, if they have filed a record destruction plan with the Commission and the Commission has declared such plan effective.

There are currently 26 SROs: 15 national securities exchanges, 1 national securities association, the MSRB, and 9 registered clearing agencies. Of the 26 SROs, 2 SRO respondents have filed a record destruction plan with the Commission. The staff calculates that the preparation and filing of a new record destruction plan should take 160 hours. Further, any existing SRO record destruction plans may require revision, over time, in response to, for example, changes in document retention technology, which the Commission estimates will take much less than the 160 hours estimated for a new plan. Thus, the total annual compliance burden is estimated to be 60 hours per year. The approximate cost per hour is $305, resulting in a total cost of compliance for these respondents of $18,300 per year (30 hours @ $305 per hour).

Written comments are invited on: (a) 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; (b) the accuracy of the Commission 's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Comments should be directed to Thomas Bayer, Director/Chief Information Officer, Securities and

Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to *PRA_Mailbox@sec.gov.*

Dated: April 19, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–9937 Filed 4–24–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66829; File No. SR–FINRA–2012–020]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change Relating to Post-Trade Transparency for Agency Pass-Through Mortgage-Backed Securities Traded TBA

April 18, 2012.

I. Introduction

On March 1, 2012, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to post-trade transparency for Agency Pass-Through Mortgage-Backed Securities (''MBS'') traded ''to be announced'' or ''TBA.'' The proposed rule change was published for comment in the **Federal Register** on March 16, 2012.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

FINRA utilizes the Trade Reporting and Compliance Engine (''TRACE'') to collect from its members and publicly disseminate information on secondary over-the-counter transactions in corporate debt securities and Agency Debt Securities and certain primary market transactions.[4] FINRA also utilizes TRACE to collect information on transactions in Asset-Backed Securities, but FINRA currently does not disseminate such information publicly.[5] Agency Pass-Through Mortgage-Backed Securities traded TBA (''MBS TBA'') are a specific type of Asset-Backed Security.[6] FINRA has proposed to amend its rules to reduce the reporting timeframe for and to provide for public dissemination of MBS TBA transactions, and to make certain other changes.

Good Delivery and Not Good Delivery MBS TBA Transactions

FINRA has proposed to amend the definition of TBA set forth in Rule 6710(u) to identify two subsets of MBS TBA transactions: MBS TBA transactions ''for good delivery'' (''MBS TBA Good Delivery'') and MBS TBA transactions ''not for good delivery'' (''MBS TBA Not Good Delivery''). MBS TBA Good Delivery meet certain market standards and conventions, known generally as ''good delivery guidelines;'' MBS TBA Not Good Delivery do not meet those guidelines.[7] Most newly issued MBS TBA are MBS TBA Good Delivery, and are composed primarily of standard loans such as 15- and 30-year fixed-rate single-family loans.[8] Newly issued MBS TBA Not Good Delivery, on the other hand, include primarily non-standard loans, such as interest-only mortgages, project/construction loans, and certain non-conforming mortgages on single family residences.[9] According to FINRA, MBS TBA Good Delivery are the most liquid and account for the vast majority of MBS TBA transactions.[10]

Reduction of Reporting Period

FINRA also has proposed to amend Rule 6730 to reduce the period for reporting MBS TBA transactions to TRACE. The reduction would occur in two stages for both MBS TBA Good Delivery and MBS TBA Not Good Delivery transactions, but the reduced reporting period for each type of MBS TBA transaction would be different.

With respect to MBS TBA Good Delivery transactions, first, for a pilot program of approximately 180 days duration, FINRA has proposed to reduce the reporting period from no later than the close of the TRACE system on the date of execution to no later than 45 minutes from the Time of Execution.[11] Second, after approximately 180 days, the pilot program would expire and the reporting period would be reduced from no later than 45 minutes from the Time of Execution to no later than 15 minutes from the Time of Execution.[12]

With respect to MBS TBA Not Good Delivery transactions, first, for a pilot program of approximately 180 days duration, FINRA has proposed to reduce the reporting period from no later than the close of the TRACE system on the date of execution to no later than two hours from the Time of Execution.[13] Second, after approximately 180 days, the pilot program would expire and the reporting period would be reduced from no later than two hours from the Time of Execution to no later than one hour from the Time of Execution.[14]

Dissemination of MBS TBA Transaction Information

FINRA Rule 6750(b)(4) currently provides that transactions in Asset-Backed Securities are not subject to dissemination. The proposal would amend Rule 6750(b)(4) to provide for dissemination of information on MBS TBA transactions immediately upon receipt of the transaction report. Specifically, FINRA has proposed to amend Rule 6750(b)(4) to provide that FINRA will not disseminate information on a transaction in an Asset-Backed Security, except an MBS TBA transaction. As a result of this proposed change and the reduced reporting periods that FINRA has proposed for MBS TBA transactions, information on MBS TBA Good Delivery and MBS TBA Not Good Delivery transactions would be disseminated within 45 minutes and two hours, respectively, of the Time of Execution during the pilot period. After the pilot period expires, information on MBS TBA Good Delivery and MBS TBA Not Good Delivery transactions would be disseminated within 15 minutes and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66577 (March 12, 2012), 77 FR 15827 (March 16, 2012) (''Notice'').

[4] *See* Securities Exchange Act Release No. 60726 (September 28, 2009), 74 FR 50991 (October 2, 2009) (approving SR–FINRA–2009–010).

[5] *See* Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262 (March 1, 2010) (approving SR–FINRA–2009–065). The term ''Asset Backed Security'' is defined in FINRA Rule 6710(m).

[6] *See* FINRA Rules 6710(m), (u), and (v).

[7] *See* Notice, 77 FR at 15827–28.

[8] *See* Notice, 77 FR at 15828.

[9] *See* Notice, 77 FR at 15828 n.7.

[10] *See* Notice, 77 FR at 15828, 15830.

[11] *See* proposed Rule 6730(a)(3)(D)(i)b. Exceptions for transactions that are executed within 45 minutes of the close of the TRACE system and for transactions executed when it is closed are set forth in subparts a., c., and d. of proposed Rule 6730(a)(3)(D)(i). The term ''Time of Execution'' is defined in Rule 6710(d).

[12] *See* proposed Rule 6730(a)(3)(D)(ii), which incorporates by reference Rule 6730(a)(1). Rule 6730(a)(1) requires that transactions in TRACE-Eligible Securities be reported within 15 minutes of the Time of Execution, and also provides exceptions for transactions in TRACE-Eligible Securities that are executed shortly before the TRACE system closes and when it is closed.

[13] *See* proposed Rule 6730(a)(3)(E)(i)b. Exceptions for transactions that are executed within two hours of the close of the TRACE system and for transactions executed when it is closed are set forth in subparts a., c., and d. of proposed Rule 6730(a)(3)(E)(i).

[14] *See* proposed Rule 6730(a)(3)(E)(ii)b. Exceptions for transactions that are executed within one hour of the close of the TRACE system and for transactions executed when it is closed are set forth in subparts a., c., and d. of proposed Rule 6730(a)(3)(E)(ii).

one hour, respectively, of the Time of Execution.

Dissemination Caps

FINRA has proposed dissemination caps for MBS TBA Good Delivery and MBS TBA Not Good Delivery transactions, which would prevent the display of the actual size (volume) of a transaction over a certain par value in the disseminated TRACE data.[15] With respect to MBS TBA Good Delivery transactions, FINRA would set a dissemination cap of $25 million. Accordingly, MBS TBA Good Delivery transactions exceeding $25 million would be displayed in TRACE as ''$25MM+.'' With respect to MBS TBA Not Good Delivery transactions, FINRA would set a dissemination cap of $10 million. Accordingly, MBS TBA Not Good Delivery transactions exceeding $10 million would be displayed in TRACE as ''$10MM+.''

Data and Fees

FINRA would amend Rule 7730 to make available the disseminated TRACE data for transactions in MBS TBA, and to establish fees for such data. Specifically, FINRA has proposed to amend Rule 7730(c) to establish a real-time market data set for disseminated Asset-Backed Security transaction information (''ABS Data Set'') and to amend Rule 7730(d) to establish a historic data set for such information (''Historic ABS Data Set'').[16] The provisions of Rule 7730 that currently apply to the two existing real-time market and historic data sets (for corporate bonds and Agency Debt Securities), including the fees for receipt of such data, would be amended to include the ABS Data Set and Historic ABS Data Set.

Other Rule Changes

FINRA has proposed to delete provisions regarding an expired pilot program, and to make other minor administrative, technical, or clarifying changes in Rules 6730 and 7730.

Regulatory Notice

FINRA has indicated that it would announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval, and that the effective date be no later than 180 days following publication of that *Regulatory Notice.*

III. Discussion and Commission Findings

After carefully reviewing the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[18] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

In approving the original TRACE rules, the Commission stated that price transparency plays a fundamental role in promoting fairness and efficiency of U.S. capital markets.[19] To further the goal of increasing price transparency in the debt markets in general and the MBS TBA market in particular, the Commission now believes that it is reasonable and consistent with the Act for FINRA to extend post-trade price transparency to transactions in MBS TBA in the manner set forth in the proposal.

As discussed above, FINRA uses TRACE to collect information on transactions in Asset-Backed Securities, including MBS TBA transactions, but to date, FINRA has not disseminated such information publicly.[20] FINRA's proposal, however, would make MBS TBA transaction information publicly available for the first time, both in near-real time (subject to certain reporting delays, as detailed above) and on a historic basis. By increasing public availability of information about MBS TBA transactions, the proposal may encourage greater participation in the market, which could contribute to deeper liquidity and increased competition. In addition, the proposal appears reasonably designed to reduce the potential for manipulation and promote just and equitable principles of trade by allowing market participants to make more accurate assessments of, and enhancing their ability to negotiate fair and competitive prices in, the MBS TBA market.

Moreover, the Commission believes that the proposed reduction in reporting times for MBS TBA transactions is an important corollary to the expansion of post-trade transparency for such transactions. Timelier reporting should be more conducive to the dissemination of meaningful (and close-to-real time) market data for MBS TBA transactions than FINRA's current reporting regime for MBS TBA transactions.[21] The Commission believes that reducing the reporting period as set forth in the proposal would result in important trade information reaching the market more quickly, thus contributing to enhanced price transparency for the MBS TBA asset class.

Firms covered by these new reporting requirements for MBS TBA transactions could incur certain compliance burdens. However, the Commission believes that any such burdens are justified by the overall benefits of increasing transparency in the MBS market. The Commission notes that FINRA has proposed to shorten the reporting period for MBS TBA transactions in stages. The Commission believes that this approach is reasonably designed to ease the compliance burdens on those affected by the proposal without significantly compromising FINRA's ability to disseminate more timely market data for MBS TBA transactions.

The Commission recognizes that the dissemination caps FINRA has proposed would, to a certain extent, limit the transparency provided by FINRA's proposal.[22] However, the Commission notes that dissemination caps are already in place for transactions in other

[15] *See* Notice, 77 FR at 15830. There are currently two dissemination caps already in place. For TRACE-Eligible Securities that are rated Investment Grade, there is a $5 million dissemination cap, and the size of transactions in excess of $5 million is displayed as ''$5MM+.'' *See id.* For TRACE-Eligible Securities that are rated Non-Investment Grade, there is a $1 million dissemination cap, and the size of a transaction in excess of $1 million is displayed as ''$1MM+.'' *See id.* The terms Investment Grade and Non-Investment Grade are defined in Rule 6710(h) and Rule 6710(i), respectively.

[16] The Historic ABS Data Set would include all MBS TBA transactions effected as of or after May 16, 2011, and, among other things, would include uncapped volume information. *See* Notice, 77 FR at 15831. However, like the other historic TRACE data, data for MBS TBA transactions to be included in the Historic ABS Data Set would be released subject to a delay of approximately 18 months from the date of the transaction. *See id.*

[17] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78o–3(b)(6).

[19] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131, 8136 (January 29, 2001).

[20] *See supra* note 5.

[21] The Commission notes further that the 15-minute reporting requirement applicable to MBS TBA Good Delivery after the pilot period is the same reporting requirement applicable to corporate bonds and Agency Debt Securities, *i.e.,* other TRACE-Eligible Securities for which market data are already publicly disseminated. *See* Rule 6730(a)(1).

[22] The Commission notes that, as calculated by FINRA, the dissemination caps would have limited the display of actual size for approximately 84% of total volume traded in MBS TBA Good Delivery and 85% of total volume traded in MBS TBA Not Good Delivery during the period May 16, 2011 through January 4, 2012. *See* Notice, 77 FR at 15830 and n.26.

TRACE-Eligible Securities.[23] Moreover, public dissemination of MBS TBA transaction information has heretofore not existed in the MBS TBA market. The dissemination caps allow FINRA to implement post-trade price transparency in that market incrementally. FINRA has represented that it will continue to review the volume of and liquidity in the MBS TBA market and, if warranted in the future, may recommend that the dissemination caps be set at higher levels in order to provide additional transparency.

Lastly, the Commission finds that FINRA's proposed fees for MBS TBA market and historic transaction data are consistent with Section 15A(b)(5) of the Act, which requires, among other things, that FINRA rules provide 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 association operates or controls. These fees are similar to those that currently apply to corporate debt securities and Agency Debt Securities.[24]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–FINRA–2012–020) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9840 Filed 4–24–12; 8:45 am]

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[23] *See supra* note 15.

[24] *See* FINRA Rule 7730.

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66833; File No. SR–NYSEArca–2012–32]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31 To Specify How the Immediate-or-Cancel Time-in-Force Instructions Are Applicable to an MPL Order

April 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 10, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.31 to specify how the immediate-or-cancel (''IOC'') time-in-force instructions are applicable to an MPL Order. The text of the proposed rule change is available at the Exchange, *www.nyse.com,* and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.31 to specify how the IOC time-in-force instructions are applicable to an MPL Order.

Background

An MPL Order is a type of Working Order that has conditional or undisplayed price and/or size. As set forth in NYSE Arca Equities Rule 7.31(h)(5), an MPL Order is a Passive Liquidity Order that is priced at the midpoint of the PBBO and does not trade through a Protected Quotation. An MPL Order has a minimum order entry size of one share and Users may specify a minimum executable size for an MPL Order, which must be no less than one share. If an MPL Order has a specified minimum executable size, it will execute against an incoming order that meets the minimum executable size and is priced at or better than the midpoint of the PBBO. If the leaves quantity becomes less than the minimum size, the minimum executable size restriction will no longer be enforced on executions.

If the market is locked or crossed, the MPL Order will wait for the market to unlock or uncross before becoming eligible to trade again. MPL Orders are ranked in time priority for the purposes of execution as long as the midpoint is within the limit range of the order. MPL Orders always execute at the midpoint and do not receive price improvement. MPL Orders are valid for any session, but do not participate in auctions. Unlike Passive Liquidity Orders, MPL Orders are not exclusive to lead market makers (''LMM'') for securities for which the Exchange is the primary market. Users that choose not to trade with MPL Orders may mark incoming limit orders with a ''No Midpoint Execution'' designator and such limit orders will ignore MPL Orders. MPL Orders do not route out of the Exchange to other market centers.

NYSE Arca Equities Rule 7.31 sets forth the time-in-force conditions that are available for orders entered at the Exchange. One such time-in-force condition is the IOC condition, which provides that a market or limit order that is marked IOC is to be executed in whole or in part as soon as such order is received, and the portion not so executed is to be treated as cancelled.

Proposed Rule Change

The Exchange proposes to add NYSE Arca Equities Rule 7.31(h)(6) to specify how the IOC time-in-force conditions are applicable to an MPL Order (an ''MPL–IOC Order''). Because it is an MPL Order, the proposed MPL–IOC Order follows the same execution and priority rules of an MPL Order, including that it would be a Passive Liquidity Order that is priced at the midpoint of the PBBO, does not trade through Protected Quotations, always executes at the midpoint, does not receive price improvement, does not route to other market centers, is not limited to LMMs for securities listed on the Exchange, and will not trade with incoming limit orders with a ''No Midpoint Execution'' designator.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

Because of the IOC attributes, certain elements of the MPL Order, by their terms, are not applicable to the proposed MPL–IOC Order. First, because an IOC order cancels if it does not immediately execute, Users will not be able to specify a minimum executable size for the proposed MPL–IOC Order. Along those lines, because an IOC order cancels if not immediately executed, the related aspect of the MPL Order concerning the leaves quantity of an MPL Order are also inapplicable. Second, if a proposed MPL–IOC order cannot immediately execute because the market is either locked or crossed, unlike an MPL Order, an MPL–IOC Order would cancel in such a situation. The Exchange proposes to identify these differences in proposed NYSE Arca Equities Rule 7.31(h)(6). In addition, because by definition, an IOC order executes upon arrival, a proposed MPL–IOC order would not execute against incoming interest, but against resting interest.

The Exchange proposes one further distinction for the MPL–IOC Order. As noted above, the minimum share size for an MPL Order is one share. The Exchange proposes to require that an MPL–IOC Order have a minimum entry size of one round lot. The Exchange believes that this additional requirement will reduce the use of this order type by market participants that are seeking to discover hidden interest at the Exchange without any market risk.

Because of the technology changes necessary to implement the proposed change, the Exchange will announce the implementation date of the MPL–IOC Order by Trader Update.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[4] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change promotes just and equitable principles of trade because it would enable market participants to use the existing IOC time-in-force conditions with MPL Orders. The proposed rule change will also provide transparency in the Exchange rules of how the IOC time-in-force conditions will apply with MPL Orders and which aspects of the MPL Orders will be inapplicable. The Exchange further believes that the proposed rule change will perfect the mechanism of a free and open market because it adds additional flexibility in the use of the IOC time-in-force instructions with existing order types at the Exchange, thereby providing more flexibility to ETP Holders. Finally, the Exchange believes that the proposed requirement that an MPL–IOC order have a minimum entry size of one round lot will protect investors and the public interest because it will reduce the potential for market participants to use the MPL–IOC Order to probe the market for hidden interest without any significant risk.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2012–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–32. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSEArca–2012–32 and should be submitted on or before May 16, 2012.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–9969 Filed 4–24–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66834; File Nos. SR–EDGA–2012–08; SR–EDGX–2012–07; SR–ISE–2012–21]

Self-Regulatory Organizations; EDGA Exchange, Inc.; EDGX Exchange, Inc.; International Securities Exchange, LLC; Order Granting Approval of Proposed Rule Change Relating to a Corporate Transaction in Which SIX Swiss Exchange AG Will Transfer Its Interest in ISE Holdings, Inc. to a Newly Formed Swiss Corporation, Eurex Global Derivatives AG

April 19, 2012.

I. Introduction

On March 8, 2012, each of EDGA Exchange, Inc (''EDGA''), EDGX Exchange, Inc. (''EDGX''), International Securities Exchange, LLC (''ISE'' and, with EDGA and EDGX, the ''Exchanges''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] proposed rule changes regarding a corporate transaction (''Transaction'') in which SIX Swiss Exchange AG (''SIX'') will transfer its 50% indirect ownership interest of International Securities Holdings, Inc. (''ISE Holdings'') to a newly formed Swiss corporation, Eurex Global Derivatives AG (''EGD''), which will become a wholly-owned subsidiary of Deutsche Börse AG (''Deutsche Börse''), granting Deutsche Börse a 100% indirect ownership interest in ISE Holdings which, in turn, wholly owns ISE and holds a 31.54% indirect interest in each of EDGA and EDGX. The proposed rule changes were published for comment in the **Federal Register** on March 15, 2012.[4] The Commission received no comment letters on the proposed rule changes.

The Commission has reviewed carefully the proposed rule changes and finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b) of the Act,[6] which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. Section 6(b) of the Act[7] also requires that the rules of the exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

II. Discussion

The Exchanges have submitted their proposed rule changes to (i) effect the Transaction in accordance with their respective corporate governance documents, (ii) amend and restate the Amended and Restated Trust Agreement (''Trust''), (iii) file the form of EGD Corporate Resolution (''Resolution''), (iv) file the form of Agreement and Consent by and between EGD and Eurex Zürich AG (''Eurex Zürich'') (''Agreement and Consent'') and (v) amend and restate the Amended and Restated Bylaws of ISE Holdings (''Bylaws'').

A. Corporate Structure

On December 17, 2007, ISE Holdings, the direct parent of ISE (and subsequent indirect parent of EDGA and EDGX), became a direct wholly-owned subsidiary of U.S. Exchange Holdings, Inc. (''U.S. Exchange Holdings''), which, in turn, is a wholly-owned subsidiary of Eurex Frankfurt AG (''Eurex Frankfurt'', and, with Deutsche Börse, the ''German Upstream Owners'').[8] Eurex Frankfurt is a wholly-owned subsidiary of Eurex Zürich[9] which, in turn, is currently jointly owned by Deutsche Börse and SIX. SIX is owned by SIX Group AG (''SIX Group'').

On December 23, 2008, ISE merged the ISE Stock Exchange, LLC, with and into Maple Merger Sub, LLC, a wholly-owned subsidiary of Direct Edge Holdings LLC (''Direct Edge'').[10] As part of the same transaction, ISE Holdings purchased a 31.54% equity interest in Direct Edge.

On May 7, 2009, Direct Edge's direct subsidiaries, EDGA and EDGX, each filed a Form 1 Application with the Commission, to own and operate registered national securities exchanges.[11] On March 12, 2010, the Commission granted the Form 1 exchange registration applications of the EDGA and EDGX.[12]

On June 7, 2011, Deutsche Börse, SIX Group, and SIX signed a definitive agreement for the Transaction, which would give Deutsche Börse a 100% indirect ownership interest in the currently jointly-owned Eurex Zürich. Deutsche Börse currently has a 50% direct ownership interest in Eurex Zürich. After the Transaction closes, Deutsche Börse would also have a 100% direct ownership interest in EGD, which would have a 50% direct ownership interest in Eurex Zürich.[13] Accordingly, SIX and SIX Group would no longer have an indirect ownership interest in the Exchanges.

Section 19(b) of the Act and Rule 19b–4 thereunder require a self-regulatory organization (''SRO'') to file proposed rule changes with the Commission. Although the Upstream Owners are not SROs, the Resolution, the Trust and the Bylaws, along with other corporate documents, are rules of an exchange[14] if they are stated

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 66567 (March 9, 2012), 77 FR 15413 (March 15, 2012) (SR–EDGA–2012–08) (''EDGA Notice''); 66565 (March 9, 2012), 77 FR 15422 (March 15, 2012) (SR–EDGX–2012–07) (''EDGX Notice''); 66566 (March 9, 2012), 77 FR 15417 (March 15, 2012) (SR–ISE–2012–21) (''ISE Notice'' and, with the EDGA Notice and EDGX Notice, the ''Notices'').

[5] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

[7] *Id.*

[8] See Securities and Exchange Act Release No. 56955 (December 13, 2007); 72 FR 71979 (December 19, 2007) (SR–ISE–2007–101).

[9] Eurex Zürich and EGD, with the German Upstream Owners, are collectively referred to herein as the ''non-U.S. Upstream Owners'' and, with ISE Holdings, the ''Upstream Owners''.

[10] *See* Securities and Exchange Act Release No. 59135 (December 22, 2008); 73 FR 79954 (December 30, 2008) (SR–ISE–2008–85).

[11] *See* Securities and Exchange Act Release No. 60651 (September 11, 2009); 74 FR 47827 (September 17, 2009) (File Nos. 10–193 and 10–194).

[12] *See* Securities and Exchange Act Release No. 61698 (March 12, 2010); 75 FR 13151 (March 18, 2010) (approving File Nos. 10–194 and 10–196).

[13] ISE Holdings would continue to be the sole member of ISE.

[14] *See* Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27). If EGD decides to change its Resolutions or governing documents, as applicable, EGD must

policies, practices, or interpretations, as defined in Rule 19b–4 under the Act, of the exchange, and must be filed with the Commission pursuant to Section 19(b)(4) of the Act and Rule 19b–4 thereunder. Accordingly, the Exchanges filed the Trust, Resolution, Agreement and Consent and Bylaws with the Commission.[15]

B. EGD

Following the Transaction, Deutsche Börse will have a 100% direct ownership interest in EGD, which will have a 50% direct ownership interest in Eurex Zürich which, in turn, has a 100% indirect ownership interest in ISE Holdings. Eurex Frankfurt and Deutsche Börse are stock corporations organized under the laws of the Federal Republic of Germany. Eurex Zürich is a stock corporation organized under the laws of the Swiss Confederation.

EGD, as a 50% owner of Eurex Zürich, and thus a ''non-U.S. Upstream Owner,'' would adopt the Resolution to incorporate provisions regarding ownership, jurisdiction, books and records, and other issues related to its control of the Exchanges, with respect to itself, as well as to its board members, officers, employees, and agents (as applicable). The form of Resolution is substantially similar to the resolutions previously (the ''Previous Resolutions'') adopted by each of the non-U.S. Upstream Owners other than EGD.[16]

The Resolution is designed to maintain the independence of each Exchange's self-regulatory functions, enable each Exchange to operate in a manner that complies with the U.S. federal securities laws, including the objectives and requirements of Sections 6(b) and 19(g) of the Act,[17] and facilitate the ability of each Exchange and the Commission to fulfill their respective regulatory and oversight obligations under the Act.

For example, the Amended and Restated Certificate of Incorporation of ISE Holdings (''Holdings Certificate'') currently provides that no person, either alone or together with its related persons, may own, directly or indirectly, more than 40% (or 20%, if the person is a member as such term is defined in Section 3(a)(3)(A) of the Act of any of the Exchanges (each such member, an ''EDGA Member'', ''EDGX Member'' or ''ISE Member'')) of ISE Holdings capital stock that has the right by its terms to vote in the election of the board of directors of ISE Holdings (the ''Holdings Board'') or on other matters (other than matters affecting the rights, preferences, or privileges of the said capital stock) (''ISE Ownership Limit''). The Holdings Certificate also provides that no person, either alone or together with its related persons, may, directly or indirectly, vote or cause the voting of more than 20% of the ISE Holdings capital stock that has the right by its terms to vote in the election of the Holdings Board or on other matters (other than matters affecting the rights, preferences, or privileges of the said capital stock) (''ISE Voting Limit'').[18]

The Fifth Amended and Restated Operating Agreement of Direct Edge (''DE Operating Agreement'') contains similar ownership and voting limitations. The DE Operating Agreement currently provides that no person, either alone or together with its related persons, may own, directly or indirectly, Units representing in the aggregate a Percentage Interest of more than 40% (or 20%, if the person is an Exchange Member)[19] (''DE Ownership Limit'' and, with the ISE Ownership Limit, the ''Ownership Limits''). The DE Operating Agreement also provides that no person, either alone or together with its related persons, may, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, vote or cause voting of Units or give any consent or proxy with respect to Units representing a Percentage Interest of more than 20% (the ''DE Voting Limit'' and, with the ISE Voting Limit, the ''Voting Limit'').[20]

To facilitate compliance with the Ownership Limit and Voting Limit, the Resolution provides that EGD shall take reasonable steps necessary to cause ISE Holdings to be in compliance with the ISE Ownership Limit and ISE Voting Limit and Direct Edge to be in compliance with the DE Ownership Limit and DE Voting Limit.[21] Further, the Resolution would require EGD to notify the board of directors of the Exchanges and the Trust (as described below) if any person, either alone or together with its related persons, acquires 20%, 33 $\frac{1}{3}$%, 45%, 50%, or 66 $\frac{2}{3}$ or more of the shares of stock then-outstanding shares of stock of EGD.[22]

The Commission finds the provisions in the Resolution, requiring EGD to take reasonable steps necessary to cause ISE Holdings and Direct Edge to be in compliance with their respective Ownership Limits and Voting Limits, consistent with the Act. These provisions should minimize the potential that a person could improperly interfere with, or restrict the ability of, the Commission or the Exchanges to effectively carry out their regulatory oversight responsibilities under the Act. Further, the provisions in the Resolution requiring notification to the board of directors of the Exchanges and the Trust upon acquisition of certain ownership percentage of EGD should help facilitate the ability of the Exchanges to comply with their responsibilities under the Act.

The Resolution also provides that EGD will comply with the U.S. federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and the

submit the change to the board of directors of the Exchanges, and if the same must be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act and the rules thereunder, such change shall not be effective until filed with or filed with and approved by the Commission, as applicable. *See* Resolution 11. In addition, if ISE Holdings decides to change the Bylaws, ISE Holdings must submit such change to the board of directors of the Exchanges, and if any or all of such board of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act and the rules thereunder, such change shall not be effective until filed with or filed with and approved by the Commission, as applicable. *See* Bylaws, Article X, Section 10.1.

[15] *See* proposed Second Amended and Restated Trust Agreement among ISE Holdings, U.S. Exchange Holdings, Inc., Wilmington Trust Company, Sharon Brown-Hruska, Robert Schwartz and Heinz Zimmermann attached as Exhibit A to the Notices; Form of Eurex Global Derivatives AG Corporate Resolution, attached as Exhibit B to the Notices; Agreement and Consent, attached as Exhibit C to the Notices; and proposed Second Amended and Restated Bylaws of International Securities Holdings, Inc. attached as Exhibit D to the Notices, which exhibits are available on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*) and at the Commission's Public Reference Room.

[16] The form of Resolution differs from the Previous Resolutions in that the Resolution would explicitly reference EDGA and EDGX, and the FINMA procedure would allow EGD to provide information relating to the activities of the Exchanges to the Commission through Eurex Zürich, which would provide such information to FINMA, whereas the Previous Resolutions incorporated EDGA and EDGX by reference, and the FINMA procedure allows SIX, SIX Group, and Eurex Zürich to provide information relating to the activities of the Exchanges to the Commission directly through FINMA. *See supra* note 12.

[17] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

[18] Holdings Certificate, Article FOURTH, Section III. The Commission previously approved Ownership Limit and Voting Limit. *See* Securities Exchange Act Release No. 53705 (April 21, 2006) 71 FR 25260 (April 28, 2006) (SR–ISE–2006–04) (reorganization of International Securities Exchange, Inc. into a holding company structure).

[19] ''Exchange Member'', ''Percentage Interest'' and ''Units'' have the respective meanings set forth in the DE Operating Agreement.

[20] DE Holdings Operating Agreement Section 12.1(a). The Commission previously approved the DE Ownership Limit and DE Voting Limit. *See* Securities Exchange Act Release No. 61698 (March 12, 2010) 75 FR 13151 (March 18, 2010) (File Nos. 10–104 and 10–106) (order approving applications of EDGA and EDGX for registration as national securities exchanges).

[21] Resolution 4.

[22] *Id.*

Exchanges.[23] Also, each board member, officer, and employee of the EGD, in discharging his or her responsibilities, shall comply with the U.S. federal securities laws and the rules and regulations thereunder, cooperate with the Commission, and cooperate with each Exchange.[24] In discharging his or her responsibilities as a board member of EGD, each such member must, to the fullest extent permitted by applicable law, take into consideration the effect that the actions of the EGD would have on the ability of the Exchanges to carry out their respective responsibilities under the Act.[25] In addition, EGD, its board members, officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of the Exchanges.[26]

Further, EGD (along with their respective board members, officers, and employees) agrees to keep confidential, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of the Exchanges, including, but not limited to, confidential information regarding disciplinary matters, trading data, trading practices, and audit information, contained in the books and records of the Exchanges and not use such information for any commercial [27] purposes.[28] In addition, books and records of EGD related to the activities of the Exchanges will at all times be made available for inspection and copying by the Commission and the Exchanges, subject, where necessitated by Swiss law, to certain procedures.[29] Moreover, for so long as EGD directly or indirectly controls the Exchanges, the books, records, officers, directors (or equivalent), and employees of EGD shall be deemed to be the books, records, officers, directors, and employees of the Exchanges.[30]

To the extent involved in the activities of the Exchanges, EGD, its board members, officers, and employees irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for purposes of any action arising out of, or relating to, the activities of the Exchanges.[31]

Moreover, EGD acknowledges that it is responsible for referring possible violations of the Act, the rules and regulations thereunder, and rules of EDGA, EDGX and ISE to EDGA, EDGX and ISE, respectively. In addition, EGD represents that it will become a party to an agreement among Deutsche Börse, Eurex Frankfurt, Eurex Zürich, SIX, SIX Group, U.S. Exchange Holdings, ISE Holdings and each of the Exchanges to provide adequate funding for the Exchanges' regulatory responsibilities.[32]

The Resolution also requires that any change to the Resolution (including any action by EGD that would have the effect of changing the Resolutions), be submitted to the board of directors of each Exchange. If such change must be filed with, or filed with and approved by, the Commission under Section 19 of the Act [33] and the rules thereunder, then such change shall not be effective until filed with, or filed with and approved by, the Commission.[34] This requirement to submit changes to the board of directors of each Exchange continues for so long as EGD, directly or indirectly, controls the Exchanges.

Finally, the Resolution also provides that, where necessitated by Swiss law, EGD will provide information related to the activities of the Exchanges, including books and records of EGD related to the activities of the Exchanges, to the Commission promptly through Eurex Zürich, which will, in turn, provide such information to the Swiss Financial Market Supervisory Authority (''FINMA''). Moreover, oral exchanges between EGD and the Commission related to the activities of the Exchanges will include the participation of Eurex Zürich and the FINMA, through its oversight of Eurex Zürich as a regulated legal entity, where necessitated by Swiss law.[35]

Swiss law designed to protect Swiss sovereignty raises concerns about the ability of the EGD to provide the Commission with direct access to information, including books and records, related to the activities of the Exchanges.[36] In order not to run afoul of Swiss law and to facilitate the Transaction, the Commission and the FINMA have developed a procedure (''Procedure'') under which the FINMA undertakes to serve as a conduit for unfiltered delivery of books and records of EGD related to the activities of the Exchanges.[37]

Pursuant to the Procedure, where necessitated by Swiss law, if the Commission or the staff makes a request to EGD for information related to the activities of the Exchanges, including books and records related to the activities of the Exchanges, the FINMA shall deliver to the Commission or the staff, without delay, any responsive information provided to the FINMA by EGD through Eurex Zürich. Written requests for information, including book and records, related to the activities of the Exchanges shall be made by the Commission or the staff directly to EGD, and the FINMA will be copied on any such requests. Moreover, a FINMA staff member shall participate in any oral exchanges between the Commission, EGD and Eurex Zürich.[38] Notwithstanding this Procedure, EGD would remain fully responsible for meeting all of its obligations as an owner of the Exchanges.

The Commission finds that these provisions of the Resolutions are consistent with the Act. These provisions are intended to assist the Exchanges in fulfilling their respective self-regulatory obligations and in administering and complying with the requirements of the Act.

The Commission notes that while the Resolution does not provide that books and records of EGD related to the

[23] Resolution 1.

[24] Resolutions 7(a) and 8(a). The Resolutions also provide that EGD will take reasonable steps necessary to cause each person who becomes a board member of the non-U.S. Upstream Owner after consummation of the Transaction to agree in writing to certain matters included in the Resolutions. *See* Resolution 7.

[25] Resolution 7(f).

[26] Resolution 5, 7(d), and 8(d).

[27] The Commission believes that any non-regulatory use of such information would be for a commercial purpose.

[28] Resolutions 6, 7(e), and 8(e).

[29] Resolution 3. *See infra* note 38 and accompanying text.

[30] *Id.*

[31] Resolutions 2, 7(b), and 8(b).

[32] *See* EDGA Notice, 77 FR at 15414; EDGX Notice, 77 FR at 15422–15423; ISE Notice, 77 FR at 15418. Following the consummation of the Transaction, SIX and SIX Group will no longer be parties to such agreement.

[33] 15 U.S.C. 78s.

[34] Resolution 11.

[35] Resolution 1, 3(b), 6, 7(a), 7(e), 8(a), 8(e), and 9. The transmission of information between EGD and Eurex Zürich is provided for in the Agreement and Consent.

[36] *See* Art. 271 of Swiss penal code, ''Prohibited acts for a foreign state,'' which states, in part: ''Whoever, without being authorized, performs acts for a foreign state on Swiss territory that are reserved to an authority or an official, whoever performs such acts for a foreign party or another foreign organization, whoever aids and abets such acts, shall be punished with imprisonment and, in serious cases, sentenced to the penitentiary.''

[37] Application of the Procedure would be limited to issues arising in the context of the Transaction and the Commission's oversight of the Exchanges. Information-sharing and cooperation between the Commission and the FINMA in securities enforcement matters will continue to be governed by the letters of cooperation between the Commission and the FINMA.

[38] The Procedure is designed to ensure that the delivery of books and records to the Commission is not delayed. Therefore, the Commission's requests for books and records would be sent directly to EGD and would not be subject to filtering or substantive review by the FINMA. In addition, the FINMA has agreed to pass to the Commission without delay and without substantive review materials provided by EGD through Eurex Zürich that are responsive to the Commission's requests for information. The same Procedure would continue to apply with respect to information from Eurex Zürich.

activities of the Exchanges will be maintained within the U.S., such books and records are deemed to be the books and records of the Exchanges, and EGD has committed in the Resolution to make available, at all times, such books and records for inspection and copying by the Commission and the Exchanges.[39]

Moreover, if EGD fails to make its books and records available to the Commission, the Commission could bring an action under, among other provisions, Section 17 of the Act[40] and Rule 17a–1(b) thereunder[41] against the Exchanges pursuant to Section 19(h) of the Act.[42] The Commission believes that EGD's representations and commitments, together with the Trustees' and the Commission's authority, will allow the Exchanges to meet their respective obligations under Section 17 of the Act and the rules thereunder.

The Commission also notes that, for EGD, FINMA will serve as a conduit for the delivery of information related to the activities of the Exchanges. The Commission's usual practice is to have direct access to books and records related to the activities of a U.S. securities exchange. However, subject to the condition that EGD will promptly deliver such information to the Commission via the Procedure, coupled with the fact that under the Exchanges' rules all trading records of the Exchanges are required to be maintained in the U.S.,[43] the Commission believes that the provisions of the Resolutions related to the Commission's access to books and records through the FINMA should not result in a level of access materially different from that agreed to by other entities that control U.S. securities exchanges.

Finally, the Commission notes that under Section 20(a) of the Act,[44] any person with a controlling interest in the Exchanges shall be jointly and severally liable with and to the same extent that the Exchange is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Act[45] creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, Section 21C of the Act[46] authorizes the Commission to enter a cease-and-desist order against any person who has been ''a cause of'' a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation. These provisions are applicable to the dealings of EGD with the Exchanges.

C. Trust

The Exchanges propose to amend certain provisions of the Trust in connection with the Transaction. The Trust serves four general purposes: (i) To accept, hold and dispose of Trust Shares[47] on the terms and subject to the conditions set forth therein, (ii) to determine whether a Material Compliance Event[48] has occurred or is continuing; (iii) to determine whether the occurrence and continuation of a Material Compliance Event requires the exercise of the Call Option;[49] and (iv) to transfer Deposited Shares from the Trust to the Trust Beneficiary[50] as provided in Section 4.2(h) therein.

The Exchanges propose to update the recitals of the Trust, remove references to SIX and SIX Group from the definition of ''Affected Affiliate'' in Section 1.1 of the Trust, add a reference to EGD in the definition of ''Affected Affiliate'' in Section 1.1 of the Trust, remove SIX's address from the notice provisions in Section 8.8 of the Trust, and add EGD's address to the notice provisions in Section 8.8 of the Trust. The Exchange also proposes to correct several typographical errors in the Trust.

As discussed above, Section 19(b) of the Act and Rule 19b–4 thereunder require an SRO to file a proposed rule change with the Commission. Although the Trust is not an SRO, certain provisions of the Trust Agreement are rules of an exchange if they are stated policies, practice, or interpretations, as defined in Rule 19b–4 under the Act,[51] and must therefore be filed with the Commission pursuant to Section 19(b)(4) of the Act[52] and Rule 19b–4 thereunder. Accordingly, the Exchange has filed the Trust Agreement with the Commission.

The Commission finds that the amendments to the Trust's provisions are consistent with the Act and that they are designed to facilitate the Exchanges' ability to comply with the requirements of the Act.

D. Waiver of the ISE Holdings Ownership and Voting Limits

The Holdings Board may waive the ISE Ownership Limit and ISE Voting Limit in an amendment to the Bylaws if, in connection with the adoption of such amendment, the board of directors in its sole discretion adopts a resolution stating that it is the determination of the board of directors that such amendment:

- Will not impair the ability of ISE Holdings and any of the Exchanges, or facility thereof, to carry out their respective responsibilities under the Act and the rules and regulations thereunder;
- is otherwise in the best interest of ISE Holdings, its stockholders and the Exchanges;
- will not impair the Commission's ability to enforce the Act;
- for so long as ISE Holdings directly or indirectly controls the Exchanges, neither such person nor any of its related persons is an ISE Member, EDGA Member or EDGX Member; and
- neither such person nor any of its related persons is subject to any ''statutory disqualification'' (as such term is defined in Section 3(a)(39) of the Act).[53]

Such amendment shall not be effective unless it has been filed with and approved by the Commission under Section 19(b) of the Act.[54]

Acting pursuant to this waiver provision, the Holdings Board has approved the amendment to the Bylaws

[39] *See supra* note 29.

[40] 15 U.S.C. 78q.

[41] 17 CFR 240.17a–1(b).

[42] 15 U.S.C. 78s(h).

[43] *See* Amended and Restated Bylaws of EDGA, Inc., Article XI, Section 4; Amended and Restated Bylaws of EDGX, Inc., Article XI, Section 4; and ISE Second Amended and Restated Limited Liability Company Agreement, Article IV, Section 4.1.

[44] 15 U.S.C. 78t(a).

[45] 15 U.S.C. 78t(e).

[46] 15 U.S.C. 78u–3.

[47] Under the Trust, the term ''Trust Shares'' means either Excess Shares or Deposited Shares, or both, as the case may be. The term ''Excess Shares'' means that a Person obtained an ownership or voting interest in ISE Holdings in excess of certain ownership and voting restrictions pursuant to Article FOURTH of the Amended and Restated Certificate of Incorporation of ISE Holdings (the ''Certificate''), through, for example, ownership of one of the non-U.S. Upstream Owners or U.S. Exchange Holdings, without obtaining the approval of the Commission. The term ''Deposited Shares'' means shares that are transferred to the Trust pursuant to the Trust's exercise of the Call Option.

[48] Under the Trust, the term ''Material Compliance Event'' means, with respect to a non-U.S. Upstream Owner, any state of facts, development, event, circumstance, condition, occurrence or effect that results in the failure of any of the non-U.S. Upstream Owners to adhere to their respective commitments under the Previous Resolutions or the Resolution any material respect.

[49] Under the Trust, the term ''Call Option'' means the option granted by the Trust Beneficiary to the Trust to call the Voting Shares as set forth in Section 4.2 therein.

[50] Under the Trust, the term ''Trust Beneficiary'' means U.S. Exchange Holdings.

[51] 17 CFR 240.19b–4.

[52] 15 U.S.C. 78s(b).

[53] *See* Amended and Restated Certificate of Incorporation of ISE Holdings, Article FOURTH, Section III, and Amended and Restated Bylaws of ISE Holdings, Article XI.

[54] 15 U.S.C. 78s(b).

in order to permit EGD to indirectly own 50% of the outstanding common stock of ISE Holdings as of and after consummation of the Transaction. In adopting such amendment, the Holdings Board made the necessary determinations and approved the submission of the proposed rule change to the Commission. Specifically, each Exchange represented that it will continue to operate and regulate its respective market and members exactly as it has done prior to the Transaction.[55] In addition, each Exchange stated that Transaction will not impair the ability of ISE Holdings, such Exchange, or any facility thereof, to carry out their respective functions and responsibilities under the Exchange Act and will not impair the ability of the Commission to enforce the Exchange Act.

The Exchanges also stated that the Holdings Board determined that ownership of ISE Holdings by EGD is in the best interests of ISE Holdings, its shareholders, and the Exchanges. In addition, neither EGD, nor any of its related persons, is (1) an ISE Member; (2) an EDGA Member; (3) an EDGX Member; or (4) subject to any ''statutory disqualification.'' [56]

In light of these representations and findings, the Commission believes it is consistent with the Act to allow EGD to indirectly own 50% of the outstanding common stock of ISE Holdings. EGD has also included in the Resolution certain provisions designed to maintain the independence of the Exchanges' self-regulatory functions from EGD and Deutsche Börse.[57] Accordingly, the Commission believes that the indirect ownership of ISE Holdings by EGD will not impair the ability of the Commission or any of the Exchanges to discharge their respective responsibilities under the Act.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[58]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [59] that the proposed rule changes (SR–EDGA–2012–08, SR–EDGX–2012–07, SR–ISE 2012–21) are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[60]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–9929 Filed 4–24–12; 8:45 am]

BILLING CODE 8011–01–P

[55] *See* EDGA Notice at 15416; ISE Notice at 15420; EDGX Notice at 15425.

[56] *See* EDGA Notice at 15416; ISE Notice at 15421; EDGX Notice at 15425.

[57] *See supra* notes 23–31 and accompanying text.

[58] The Commission's approval of the proposed rule change based on the Exchanges' representations that the Resolution will be signed by the board of directors of EGD before or at the closing of the Transaction.

[59] 15 U.S.C. 78s(b)(2).

[60] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13063 and #13064]

Texas Disaster #TX–00387

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Texas dated 04/17/2012.

Incident: Multiple Tornadoes, Hail and Severe Weather.

Incident Period: 04/03/2012.

Effective Date: 04/17/2012.

Physical Loan Application Deadline Date: 06/18/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 01/17/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Dallas, Kaufman, Tarrant.

Contiguous Counties:

Texas: Collin, Denton, Ellis, Henderson, Hunt, Johnson, Parker, Rockwall, Van Zandt, Wise.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.750
Homeowners Without Credit Available Elsewhere	1.875
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13063C and for economic injury is 130640.

The State which received an EIDL Declaration # is Texas.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: April 17, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–9940 Filed 4–24–12; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2011–0084]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/Department of Labor (DOL))—Match Number 1003

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a renewal of an existing computer matching program due to expire on May 31, 2012.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with DOL. Also published today in a separate notice in the **Federal Register**, you will find an announcement of a new computer matching program (Match #1015).

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869 or writing

to the Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, SSA, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, SSA, as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and by adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when matching records in a system of records with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify beneficiaries and applicants that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Daniel F. Callahan,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Notice of Computer Matching Program, SSA With the Department of Labor (DOL)

A. Participating Agencies

SSA and DOL.

B. Purpose of the Matching Program

The purpose of this matching program is to establish the terms, conditions, and responsibilities under which DOL will disclose DOL administered Part C Black Lung (BL) benefit data to us. We will use the match results to verify that recipients of Part C BL benefits are receiving the correct amount of Social Security disability benefits, as required by the Social Security Act (Act).

C. Authority for Conducting the Matching Program

The legal authority for this agreement is section 224(h)(1) of the Act, 42 U.S.C. 424a(h)(1). The authority requires any Federal agency to provide us with information in its possession which we may require for making a timely determination of the amount of reduction required under section 224 of the Act.

D. Categories of Records and Persons Covered by the Matching Program

We will match the Master Beneficiary Record, SSA/OEEAS 60–0090, which contains all data pertinent to the payment of our beneficiaries, with an extract from DOL's Office of Workers' Compensation Programs, BL Benefit Payments file, DOL/ESA–30. DOL published an appropriate routine use to permit the disclosures necessary to conduct this match.

E. Inclusive Dates of the Matching Program

The effective date of this matching program is May 21, 2012, if the following notice periods have lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after notice of the matching program sent to Congress and OMB. The matching program will continue for 18 months from the effective date and, if both agencies meet certain conditions, we may extend it for an additional 12 months thereafter.

[FR Doc. 2012–9951 Filed 4–24–12; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2011–0083]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/Department of Labor (DOL))—Match Number 1015

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new computer matching program that we will conduct with DOL. Also published today in a separate notice in the **Federal Register** you will find an announcement of a renewal of an existing computer matching program (Match #1003).

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869 or writing to the Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, SSA, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, SSA, as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub.L.) 100–503)), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and by adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when matching records in a system of records with

other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify beneficiaries and applicants that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Daniel F. Callahan,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Notice of Computer Matching Program, SSA With the Department of Labor (DOL)

A. Participating Agencies

SSA and DOL.

B. Purpose of the Matching Program

The purpose of this matching program is to establish the terms, conditions, and responsibilities under which DOL will disclose DOL administered Part B Black Lung (BL) benefit data to us. We will use the match results to verify that recipients of Part B BL benefits are receiving the correct amount of Supplemental Security Income (SSI) payments, as required by the Social Security Act (Act).

C. Authority for Conducting the Matching Program

The legal authority for this agreement is section 1631(f) of the Social Security Act (Act), 42 U.S.C. 1383(f). This legal authority requires any Federal agency to provide SSA with information in its possession that SSA may require determining eligibility for, or the proper amount of, SSI payments.

D. Categories of Records and Persons Covered by the Matching Program

We will match the Supplemental Security Income Record and Special Veterans' Benefits Systems, SSA System No. 60–0103, which contains all data pertinent to payments made to SSI recipients, with an extract from DOL's Office of Workers' Compensation Programs, BL Benefit Payments file, DOL/ESA–30. DOL published an appropriate routine use to permit the disclosures necessary to conduct this match.

E. Inclusive Dates of the Matching Program

The effective date of this matching program is May 21, 2012; if the following notice periods have lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after we send notice of the matching program sent to Congress and OMB. The matching program will continue for 18 months from the effective date, and if both agencies meet certain conditions, we may extend it for an additional 12 months thereafter.

[FR Doc. 2012–9952 Filed 4–24–12; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7813]

Advisory Committee on International Communications and Information Policy; Notice of Committee Renewal

The Department of State renewed the Charter of the Advisory Committee on International Communications and Information Policy (ACICIP) for a period of two years.

The Committee serves the Department of State in a solely advisory capacity regarding current issues and concerns affecting international communications and information policy. ACICIP members are private sector communications and information technology policy specialists from U.S. telecommunications companies, trade associations, policy institutions, and academia. For further information, please call Joseph Burton, Executive Secretary, Advisory Committee on International Communications and Information Policy, Office of Communications and Information Policy, Economic and Business Affairs Bureau, U.S. Department of State at (202) 647–5231.

Dated: March 29, 2012.

Joseph Burton,

Designated Federal Officer, U.S. Department of State.

[FR Doc. 2012–10000 Filed 4–24–12; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 7857]

Advisory Committee International Postal and Delivery Services

AGENCY: Department of State.

ACTION: Notice; FACA Committee meeting announcement.

SUMMARY: As required by the Federal Advisory Committee Act, Public Law 92–463, the Department of State gives notice of a meeting of the Advisory Committee on International Postal and Delivery Services. This Committee has been formed in fulfillment of the provisions of the 2006 Postal Accountability and Enhancement Act (Pub. L. 109–435) and in accordance with the Federal Advisory Committee Act.

Date and Time: The meeting will be held on Tuesday, May 15, 2012, from 1 to 5 p.m.

Location: The Elliott School of International Affairs, 7th Floor State Room, 1957 E St. NW., Washington, DC 20052.

Public input: Any member of the public interested in providing public input to the meeting should contact Ms. Jocelyn Jezierny, whose contact information is listed under *for further information* section of this notice. Each individual providing oral input is requested to limit his or her comments to five minutes. Requests to be added to the speaker list must be received in writing (letter, email or fax) prior to the close of business on May 8, 2012; written comments from members of the public for distribution at this meeting must reach Ms. Jezierny by letter, email or fax by this same date. A member of the public requesting reasonable accommodation should make the request to Ms. Jezierny by that same date.

Meeting agenda: The agenda of the meeting will include a review of the major proposals and issues to be considered by the September-October UPU Congress in Doha, Qatar, and other subjects related to international postal and delivery services of interest to Advisory Committee members and the public.

For further information, please contact Ms. Jocelyn Jezierny of the Office of Global Systems (IO/GS), Bureau of International Organization Affairs, U.S. Department of State, at (202) 647–7935 or by email at *JeziernyJG@state.gov.mailto:*

Dated: April 18, 2012.

Robert Downes,

Senior Foreign Service Officer, Department of State.

[FR Doc. 2012–9999 Filed 4–24–12; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF STATE

[Public Notice 7856]

Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization Office

Pursuant to the authority vested in me as Deputy Secretary of State, including by section 7086(b)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Pub. L. 112–74, Div. I), the Delegation of Authority in the President's Memorandum of July 21, 2010, and Department of State Delegation of Authority No. 245–1, I hereby determine and certify that the Palestinians have not, since the date of enactment of that Act, obtained in the UN or any specialized agency thereof the same standing as member states or full membership as a state outside an agreement negotiated between Israel and the Palestinians, and waive the provisions of section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204, Title X.

This waiver shall be effective for a period of six months.

This determination shall be reported to the Congress promptly and published in the **Federal Register**.

Dated: April 9, 2012.

William J. Burns,

Deputy Secretary of State.

[FR Doc. 2012–9932 Filed 4–24–12; 8:45 am]

BILLING CODE 4710–31–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of United States-Colombia Trade Promotion Agreement Tariff-Rate Quota for Imports of Sugar

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: USTR is providing notice that the tariff-rate quota for sugar established by the United States-Colombia Trade Promotion Agreement will be administered using certificates of quota eligibility.

DATES: *Effective Date:* May 15, 2012.

ADDRESSES: Inquiries may be mailed or delivered to Ann Heilman-Dahl, Director of Agriculture Affairs, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Ann Heilman-Dahl, Office of Agriculture Affairs, telephone: (202) 395–6127 or facsimile: (202) 395–4579.

SUPPLEMENTARY INFORMATION: On November 22, 2006, the United States entered into the United States-Colombia Trade Promotion Agreement (the ''Agreement'') and, on June 28, 2007, the Parties to the Agreement signed a protocol amending the Agreement. Congress approved the Agreement as amended in section 101(a) of the United States-Colombia Trade Promotion Agreement Implementation Act (the ''Implementation Act'') (Pub. L. 112–42, 125 Stat. 462) (19 U.S.C. 3805 note). The President is authorized under section 201(d) of the Implementation Act to take such action as may be necessary in implementing the tariff-rate quotas set forth in Appendix I to the General Notes to the Schedule of the United States to Annex 2.3 of the Agreement to ensure the orderly marketing of commodities in the United States. Under a tariff-rate quota, the United States applies one tariff rate, known as the ''in-quota tariff rate,'' to imports of a product up to a particular amount, known as the ''in-quota quantity,'' and a different, higher tariff rate, known as the ''over-quota tariff rate,'' to imports of the product in excess of that amount.) Appendix I of the Agreement establishes a tariff-rate quota for imports of sugar from Colombia.

USTR is providing notice that the United States, consistent with Note 9(a) of Appendix I, is administering the duty-free quantities of sugar established under the Agreement through a certificate system substantially similar to that described in 15 CFR 2011.102(c) (2006). Consistent with 15 CFR 2011.102(c), no sugar that is the product of Colombia may be permitted entry under the in-quota tariff-rate established for imports of sugar from Colombia unless at the time of entry the person entering such sugar presents to the appropriate customs official a valid and properly executed certificate of quota eligibility for such sugar. The Secretary of Agriculture will issue such certificates of quota eligibility to the Government of Colombia. These certificates, when duly executed and issued by the certifying authority of Colombia, will authorize entry into the United States at the in-quota tariff-rate established under the Agreement.

The Office of Management and Budget (OMB) has approved the information collection requirements related to this notice in accordance with 44 U.S.C Chapter 25, and OMB control number 0551–0014 has been assigned with corresponding clearance effective through May 31, 2013.

Ronald Kirk,

United States Trade Representative.

[FR Doc. 2012–9964 Filed 4–24–12; 8:45 am]

BILLING CODE 3190–W2–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for Wednesday, May 16, 2012, starting at 9 a.m. Pacific Daylight Time. Arrange for oral presentations by May 9, 2012.

ADDRESSES: FAA—Northwest Mountain Region, Fred Isaac conference room, 1601 Lind Ave. SW., Renton, WA 98057.

FOR FURTHER INFORMATION CONTACT: Ralen Gao, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267–3168, Fax (202) 267–5075, or email at *ralen.gao@faa.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held May 16, 2012.

The agenda for the meeting is as follows:

- Opening Remarks, Review Agenda and Minutes.
- FAA Report.
- Executive Committee Report.
- Transport Canada Report.
- EASA Report.
- Avionics Harmonization Working Group Report.
- Materials Flammability Working Group Report.
- Aging Airplanes Working Group Report.
- Flight Controls Harmonization Working Group Report.
- Action Item Review.

Attendance is open to the public, but will be limited to the availability of

meeting room space. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than May 9, 2012. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

For persons participating by telephone, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by email or phone for the teleconference call-in number and passcode. Anyone calling from outside the Renton, WA, metropolitan area will be responsible for paying long-distance charges.

The public must make arrangements by May 9, 2012, to present oral statements at the meeting. Written statements may be presented to the ARAC at any time by providing 25 copies to the person listed in the **FOR FURTHER INFORMATION CONTACT** section or by providing copies at the meeting. Copies of the documents to be presented to ARAC may be made available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

If you need assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on April 19, 2012.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. 2012–9954 Filed 4–24–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for the use of non-domestic 45′ and 55′ Pre-stressed Spun Concrete Transmission and Distribution Power Poles in the Territory of Guam for synchronization of the existing system.

DATES: The effective date of the waiver is April 26, 2012.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, or via email at *gerald.yakowenko@dot.gov.* For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366–4928, or via email at *michael.harkins@dot.gov.* Office hours for the FHWA are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.gpo.gov.*

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate to use non-domestic 45′ and 55′ Pre-stressed Spun Concrete Transmission and Distribution Power Poles in the Territory of Guam.

In accordance with Division A, section 123 of the ''Consolidated Appropriations Act, 2010'' (Pub. L. 111–117), the FHWA published a notice of intent to issue a waiver on its Web site for 45′ and 55′ Pre-stressed Spun Concrete Transmission and Distribution Power Poles in the Territory of Guam (*http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=66*) on March 12. The FHWA received one comment in response to the publication. The comment supports approval of the waiver request. During the 15-day comment period, the FHWA conducted additional nationwide review to locate potential domestic manufacturers of 45′ and 55′ Pre-stressed Spun Concrete Transmission and Distribution Power Poles in the Territory of Guam. Based on all the information available to the agency, the FHWA concludes that there are no domestic manufacturers of 45′ and 55′ Pre-stressed Spun Concrete Transmission and Distribution Power Poles.

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), the FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA's Web site via the link provided to the Territory of Guam waiver page noted above.

(Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410)

Issued on: April 13, 2012.

Gregory G. Nadeau,

Deputy Administrator.

[FR Doc. 2012–9872 Filed 4–24–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Safety Advisory 2012–02; Restricted Speed

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Safety Advisory.

SUMMARY: FRA is issuing Safety Advisory 2012–02 to remind railroads and their employees of the importance of compliance with relevant railroad operating rules when trains and locomotives are to be operated at restricted speed. This safety advisory contains a preliminary discussion of recent train accidents involving a failure to operate at restricted speed and makes recommendations to railroads to ensure employee compliance with the requirements of restricted speed operating rules.

FOR FURTHER INFORMATION CONTACT: Douglas H. Taylor, Staff Director, Operating Practices Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493–6255; or Joseph St. Peter, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493–6047.

SUPPLEMENTARY INFORMATION:

Background

The overall safety of railroad operations has improved in recent years. However, a series of accidents has highlighted the need for railroads to review, reemphasize, and adhere to railroad operating rules and procedures governing the requirements of restricted

speed, particularly those involving wayside signals requiring the operation of trains at restricted speed. Railroad operating rules governing restricted speed require that train crews be prepared to stop within one-half their range of vision. During the previous 12 months, the railroad industry has experienced six rear end collisions that resulted in four employee fatalities, eight employee injuries, and more than $6 million in FRA-reportable railroad property damage. It appears these six incidents may have occurred because the train crews did not properly identify and comply with block and interlocking signal indications that required operation of their trains at restricted speed.

NTSB Recommendations

On January 12, 2012, in response to five of the six aforementioned rear end collisions, the National Transportation Safety Board (NTSB) issued two safety recommendations.[1] NTSB Safety Recommendations R–11–6 and R–11–7 contain descriptions of the events surrounding those five collisions, and recommend that FRA:

- Through appropriate and expeditious means, such as issuing and posting advisory bulletins on [FRA's Web site], advise all railroads of the occurrences of the following five recent rear end collisions of freight trains in which crewmembers failed to operate their trains at the required restricted speed: (1) Red Oak, IA, on April 17, 2011; (2) Low Moor, VA, on May 21, 2011; (3) Mineral Springs, NC, on May 24, 2011; (4) DeWitt, NY, on July 6, 2011; and (5) DeKalb, IN, on August 19, 2011. (R–11–6).
- Through appropriate and expeditious means, inform [FRA's] inspectors of the details of these accidents to ensure railroads' compliance with restricted speed requirements. (R–11–7).

Publication of this safety advisory is among the ongoing efforts FRA has undertaken to address these NTSB recommendations and to improve railroad safety generally.

Recent Incidents

The following is a brief summary of the circumstances surrounding each of the recent rear end collisions that appeared to involve a failure to comply with the requirements of restricted speed operating rules. Information regarding these incidents is based on FRA's preliminary investigations and findings to date. The probable causes and contributing factors, if any, have not yet been established. Therefore, nothing in this safety advisory is intended to attribute a cause to these incidents, or place responsibility for these incidents on the acts or omissions of any person or entity.

1. On April 17, 2011, at approximately 7 a.m., an eastbound BNSF Railway coal train collided with the rear of a stopped maintenance-of-way train at a recorded speed of 22 mph in Red Oak, Iowa. The two crewmembers of the striking coal train were fatally injured. Just prior to the collision, the coal train had passed an intermediate automatic block signal displaying a red aspect. This signal was affixed with a qualifying appurtenance (grade marker), meaning the signal indication required the train to proceed at restricted speed (without being first required to stop). As the coal train descended a slight grade, it impacted the rear of the standing maintenance-of-way train. Several cars were derailed and there was a subsequent fire on the lead locomotive of the striking train. Event recorder data indicates that no manipulation of the striking locomotive's controls occurred prior to the collision.

2. On May 21, 2011, at approximately 11:40 a.m., an eastbound CSX Transportation, Inc. (CSX) road switcher collided with the rear of a standing grain train at Low Moor, Virginia. The switcher was traveling at a recorded speed of 13 mph at the time of the collision. FRA's preliminary investigation indicates that the train had passed an intermediate automatic block signal indicating that the train was to proceed at restricted speed. However, the train crew was not prepared to stop their train within one-half the range of vision of the standing train. The collision resulted in the derailment of the lead engine of the road switcher, and the rear car of the grain train.

3. On May 24, 2011, at approximately 3:45 a.m., a northbound CSX intermodal train collided with the rear of a standing aggregate (rock) train near Mineral Springs, North Carolina. The incident resulted in fatal injuries to the two crewmembers on board the striking intermodal train. The intermodal train was following the rock train, and had passed a dark (non-illuminated) intermediate automatic block signal. Under CSX operating rules, a dark signal is to be treated as an imperfectly displayed signal and regarded as the most restrictive indication that could be conveyed by that signal. Thus, in this case, the crew should have proceeded at restricted speed. However, after passing the signal, the train crew did not operate their train prepared to stop within one-half their range of vision, and subsequently struck the rear of the standing rock train at a recorded speed of 47 mph.

4. On July 6, 2011, at approximately 12:20 p.m., an eastbound CSX merchandise train collided with the rear of a standing intermodal train in DeWitt, New York. Several train cars derailed, and both crewmembers of the striking train were seriously injured when they jumped from the locomotive at a speed of approximately 30 mph immediately prior to the collision. FRA's preliminary investigation indicates alleged confusion on the part of the crew of the striking train with regard to the aspect and indication displayed by the last interlocking signal they had passed immediately preceding the collision. The preliminary investigation also indicates that the signal was conveying the proper indication for the condition of the block, i.e., ''Restricting'' (red over steady yellow aspect). The results of the signal download support this conclusion. Both employees involved in this incident had operated daily over this territory and should have been familiar with the signal aspects.

5. On August 19, 2011, at approximately 5:45 a.m., a westbound Norfolk Southern Railway ballast train collided with the rear of a standing grain train at a speed of 20 mph in DeKalb, Indiana. The accident resulted in the derailment of two locomotives and 10 cars of the striking train, and blocked a major east/west National Railroad Passenger Corporation (Amtrak) passenger train route. The striking train had passed a controlled signal that conveyed an ''Approach'' indication at a speed of 45 mph and subsequently an intermediate automatic block signal conveying a ''Restricting'' indication immediately preceding the accident at a speed of 50 mph. Prior to the collision, the crew of the striking train made an emergency brake application and slowed the train to approximately 20 mph at impact.

6. On January 6, 2012, at approximately 2:26 p.m., a westbound CSX merchandise train collided with the rear of a standing ethanol train near Westville, Indiana. The collision resulted in the derailment of both locomotives of the striking train and cars from both trains. Subsequently, an intermodal train operating in the same (westbound) direction on the adjacent main track encountered the accident and collided with derailed equipment. The ethanol train was standing at a controlled signal indicating ''Stop,'' waiting for the signal to clear. Prior to impact, the initial striking train (the merchandise train) had just passed an intermediate automatic block signal that conveyed a ''Restricting'' indication and entered the occupied block in excess of 40 mph. The collision resulted in a debris field that blocked the adjacent main track. The westbound intermodal train, operating on the adjacent main track on a ''Clear'' signal indication, approached the accident site unaware of the impending collision. The crew of the intermodal train saw the wreckage and initiated an emergency application of the train's brakes before their train struck the derailed equipment. This incident resulted in serious injuries to employees and significant damage to property, but fortunately no fatalities.

Historically, the railroad industry has reported the cause of these type of rear end collisions as ''automatic block or interlocking signal displaying other than a stop indication—failure to comply'', as the above facts indicate noncompliance with automatic block or interlocking signals that conveyed indications requiring the striking trains to proceed

[1] Available online at NTSB's Web site: *http://www.ntsb.gov/doclib/recletters/2011/R-11-006-007.pdf.*

at restricted speed. However, main track rear end collisions are seldom the result of a single factor or cause. Preliminary investigations of the above-described collisions have established that they likely resulted from a combination of unrelated factors, some of which include: employee fatigue; distraction due to the improper use of cell phones; work-related discussions in the cab of the controlling locomotive; alleged confusion over signal indications; and, what FRA refers to as ''self dispatching.'' Self-dispatching is the operation of a train based on assumptions about the locations of other trains. These assumptions are sometimes developed through overheard radio conversations among other train crewmembers.

Operating employees must work together as a team, because they work in an environment which is often without on-site managerial oversight. Both the locomotive engineer and conductor of a train are equally responsible for safe operation of their train and compliance with railroad operating rules. Indeed, both the engineer and conductor, and any other crewmembers present in the controlling locomotive of a train, must remain vigilant and must assist each other in the safe operation of the train. As the above accidents indicate, even slight lapses in situational awareness, particularly when operating trains on ''Approach'' and ''Restricting'' signal indications can lead to tragedy. An environment must be created and maintained in the locomotive control compartment where the crew exclusively focuses on properly controlling the train in compliance with the operating rules.

A railroad's safety culture must support employees' undisturbed attention to the tasks at hand without the distraction of electronic devices or the loss of situational awareness due to fatigue. All train crewmembers must maintain this enhanced level of awareness. Initial investigations of the accidents described above indicate that the crewmembers involved were properly trained, experienced, and were qualified on the territory over which they operated. However, in every case, it appears that there was a lack of attentiveness to the signal indications being conveyed prior to the collisions. This discussion is not intended to place blame or assign responsibility to individuals or railroad companies, but simply to point out that a culture of operating rules compliance must be everyone's job. Peer support for the railroad employees who perform each task in the prescribed manner helps individuals maintain responsibility for their own safety.

Recommended Railroad Action: In light of the above discussion, FRA recommends that railroads:

1. Review with operating employees the circumstances of the six rear end collisions identified above.

2. Discuss the requirements of restricted speed and related operational tests at future instructional classes (and also as part of ad hoc coaching and briefings) for operating employees, with a focus on the railroad's absolute speed limit for such operations, as well as requirements that ensure the ability to stop in one-half the range of vision. Special emphasis should be placed on situations in which the range of vision is limited (e.g., curves).

3. Evaluate quarterly and 6-month reviews of operational testing data as required by Title 49 Code of Federal Regulations (CFR) section 217.9, and, as appropriate, increase the level of operational testing with regard to the operation of trains on main tracks at restricted speed. A representative number of operational tests should be conducted on trains following other trains into an occupied block, particularly in high-density corridors. Operational tests should also include a review of locomotive event recorder data to verify compliance with restricted speed requirements.

4. Reinforce the importance of communication between crewmembers located in the controlling locomotive, particularly during safety critical periods when multiple tasks are occurring, including such activities as copying mandatory directives; closely approaching or passing fixed signals that require trains to operate at restricted speed; approaching locations where trains' movement authority is being restricted; and during radio conversations with other employees or job briefings about work to be done at an upcoming location.

5. Review with operating employees the requirements of subpart C of 49 CFR part 220, and reinforce that the improper use of electronic devices during safety critical periods often leads to a loss of situational awareness and resultant dangers.

FRA encourages railroad industry members to take actions that are consistent with the preceding recommendations and to take other actions to help ensure the safety of the Nation's railroad employees. FRA may modify this Safety Advisory 2012–02, issue additional safety advisories, or take other appropriate actions it deems necessary to ensure the highest level of safety on the Nation's railroads, including pursuing other corrective measures under its rail safety authority.

Issued in Washington, DC, on April 20, 2012.

Robert C. Lauby,

Acting Associate Administrator for Railroad Safety/Chief Safety Officer.

[FR Doc. 2012–9948 Filed 4–24–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0176; Notice 2]

Mitsubishi Motors North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petition.

SUMMARY: Mitsubishi Motors North America, Inc. (Mitsubishi) [1] has determined that an unknown number of replacement seat belts that it imported do not include the installation, usage and maintenance instructions required by paragraphs S4.1(k) and S4.1(l) of Federal Motor Vehicle Safety Standard (FMVSS) No. 209, *Seat Belt Assemblies.* Mitsubishi filed an appropriate report dated October 25, 2010, 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, Mitsubishi 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 January 7, 2011 in the **Federal Register** (76 FR 1210). No comments were received. To view the petition, and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/*. Then follow the online search instructions to locate docket number ''NHTSA–2010–0176.''

For further information on this decision contact Ms. Claudia Covell, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone

[1] Mitsubishi Motors North America, Inc. (Mitsubishi), is organized under the laws of the state of California. Mitsubishi manufactures and imports motor vehicles and replacement equipment.

(202) 366–5293, facsimile (202) 366–7002.

Equipment involved: Mitsubishi explained that an unknown number of nonconforming seat belt assemblies were sold by Mitsubishi to its authorized dealers in the United States for resale and replacement purposes.

Noncompliance: Mitsubishi described the noncompliance as the failure to provide installation, use and maintenance instructions with the seat belt assemblies as required in FMVSS No. 209 S4.1(k) and S4.1(l).

Summary of Mitsubishi's Analysis and Arguments

Mitsubishi argues that this noncompliance is inconsequential to motor vehicle safety for the following reasons:

(1) The service seat belt assemblies in question are only made available to Mitsubishi authorized dealerships for their use or subsequence resale. The Mitsubishi parts ordering system used by Mitsubishi dealers clearly identifies the correct service seat belt components for any given model/model year/seat position combination and the parts are unique to each seat belt and designed to assemble properly only in their intended application.

(2) When ordering Mitsubishi replacement seat belt parts, the dealer must refer to the Mitsubishi parts catalog to identify the ordering part number with the information on the specific vehicle model type, location and model year. Each replacement seat belt assembly is packaged individually with a specific part number label to ensure shipping the correct parts. Dealers routinely confirm that the part received matches their order to validate that the correct parts were received.

(3) Installation instructions for seat belts are readily available in the Mitsubishi workshop manuals. Technicians at Mitsubishi dealerships that replace seat belts have access to the installation instruction information in the workshop manual. Installers other than Mitsubishi dealership technicians also have seat belt installation information available in the workshop manuals and are available on the Mitsubishi Service Web site (*www.mitsubishitechinfo.com*). As a result, the seat belt parts can be successfully installed with the information already available even though installation instructions were not accompanied in the replacement seat belt assemblies.

(4) Instructions for proper use and maintenance are described in the owner's manual which is installed in each vehicle. Therefore, incorrect usage and maintenance by the vehicle owner is highly unlikely.

Mitsubishi is also not aware of any customer or field reports of replacement seat belt assemblies being incorrectly installed in the subject applications as a result of the absence of the installation instructions in the service part. Mitsubishi also is not aware of any reports requesting the installation instructions, which Mitsubishi believes is indicative of the availability of this information from the other sources mentioned above.

Finally, Mitsubishi has taken action to ensure that all replacement seat belt assemblies are packaged with the required installation instructions and has corrected all the replacement seat belt assemblies in the inventory for shipment to dealers.[2]

In summation, Mitsubishi believes that the described noncompliance of its replacement seat belt assemblies 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 Decision

Requirement Background: To help ensure proper selection, installation, usage, and maintenance of seat belt assemblies, paragraph S4.1(k) of FMVSS No. 209 requires that installation, usage, and maintenance instructions be provided with seat belt assemblies, other than those installed by an automobile manufacturer.

NHTSA's Analysis of Mitsubishi's Reasoning: First, we note that the subject seat belt assemblies are only made available to Mitsubishi authorized dealerships for their use or subsequent resale. Because the parts ordering process used by Mitsubishi authorized dealerships clearly identifies the correct service part required by model year, model, and seating position, NHTSA believes that there is little likelihood that an inappropriate seat belt assembly will be provided for a specific seating position within a Mitsubishi vehicle.

Second, we note that technicians at Mitsubishi dealerships have access to the seat belt assembly installation instruction information in Mitsubishi Shop Manuals. In addition, installers other than Mitsubishi dealership technicians can access the installation instructions from Mitsubishi service manuals, Mitsubishi dealers or from aftermarket service information compilers. We also believe that Mitsubishi is correct in stating that the seat belt assemblies are designed to be installed properly only in their intended application. Thus, we conclude that sufficient safeguards are in place to prevent the installation of an improper seat belt assembly.

NHTSA recognizes the importance of having installation instructions available to installers as well as use and maintenance instructions available to consumers. The risk created by this noncompliance is that someone who purchased an assembly is unable to obtain the necessary installation information resulting in an incorrectly installed seat belt assembly. However, because the seat belt assemblies are designed to be installed properly only in their intended application and the installation information is widely available to the public, it appears that there is little likelihood that installers will not be able to access the installation instructions. Furthermore, we note that Mitsubishi has stated that they are not aware of any customer field reports of service seat belt assemblies being incorrectly installed in the subject applications, nor aware of any reports requesting installation instructions. These findings suggest that it is unlikely that seat belts have been improperly installed.

In addition, although 49 CFR Part 571.209 paragraph S4.1(k) requires certain instructions specified in SAE Recommended Practice J800c be included in seat belt replacement instructions, that requirement applies to seat belts intended to be installed in seating positions where seat belts do not already exist. The subject seat belt assemblies are only intended to be used for replacement of original equipment seat belts; therefore, the instructions do not apply to the subject seat belt assemblies.[3]

With respect to seat belt usage and inspection instructions, we note that this information is available in the Owner Handbooks that are included with each new vehicle and apply to the replacement seat belt assemblies installed in these vehicles. Thus, with respect to usage and maintenance instructions, it appears that Mitsubishi has met the intent of S4.1(l) of FMVSS No. 209 for the subject vehicles using alternate methods for notification.

[2] Subsequent to filing the subject petition Mitsubishi notified NHTSA that the noncompliance was corrected on Mitsubishi Motors Corporation sourced parts on August 27, 2010 and Mitsubishi Motors North America Manufacturing Division sourced parts on November 2, 2010.

[3] *Subaru of America, Inc.; Grant of Application for Decision of Inconsequential Non-Compliance* (65 FR 67472).

NHTSA has granted similar petitions for noncompliance with seat belt assembly installation and usage instruction standards. Refer to Hyundai Motor Company (74 FR 9125, March 2, 209); Ford Motor Company (73 FR 11462, March 3, 2008); Mazda North America Operations (73 FR 11464, March 3, 2008); Ford Motor Company (73 FR 63051, October 22, 2008); Subaru of America, Inc. (65 FR 67471, November 9, 2000); Bombardier Motor Corporation of America, Inc. (65 FR 60238, October 10, 2000); TRW, Inc. (58 FR 7171, February 4, 1993); and Chrysler Corporation, (57 FR 45865, October 5, 1992). In all of these cases, the petitioners demonstrated that the noncompliant seat belt assemblies were properly installed, and due to their respective replacement parts ordering systems, improper replacement seat belt assembly selection and installation would not be likely to occur. Decision: In consideration of the foregoing, NHTSA has decided that Mitsubishi has met its burden of persuasion that the FMVSS No. 209 noncompliance in the replacement seat belts identified in Mitsubishi's Noncompliance Information Report is inconsequential to motor vehicle safety. Accordingly, Mitsubishi's petition is granted and the petitioner 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 replacement seat belt assemblies that Mitsubishi no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8).

Issued on: April 18, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–9946 Filed 4–24–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0053]

Visual-Manual NHTSA Driver Distraction Guidelines for In-Vehicle Electronic Devices

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Proposed Federal guidelines; extension of comment period.

SUMMARY: On February 24, 2012, NHTSA published proposed voluntary NHTSA Driver Distraction Guidelines for in-vehicle electronic devices. The agency provided a 60-day comment period. We received a petition from the Alliance of Automobile Manufacturers requesting an extension of the comment period. The petitioner argued that additional time was needed to review information that was not placed in the docket when the proposed NHTSA Guidelines were published. After considering the petition, we are extending the comment period by 24 days, from April 24, 2012, to May 18, 2012.

DATES: The comment period for the proposed NHTSA Guidelines published February 24, 2012, at 77 FR 11200, is extended. You should submit your comments early enough to ensure that the docket receives them not later than May 18, 2012.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document 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:* 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. 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) or you may visit *http://DocketInfo.dot.gov.*

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building 4th Floor, Room W41–318, Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

Docket: For access to the Docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the Docket.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Dr. W. Riley Garrott, Vehicle Research and Test Center, telephone: (937) 666–3312, facsimile: (937) 666–3590. You may send mail to this person at: The National Highway Traffic Safety Administration, Vehicle Research and Test Center, P.O. Box B–37, East Liberty, OH 43319.

SUPPLEMENTARY INFORMATION: On February 24, 2012, NHTSA published in the **Federal Register** a notice proposing voluntary NHTSA Driver Distraction Guidelines for in-vehicle electronic devices (77 FR 11200). The proposed NHTSA Guidelines are meant to promote safety by discouraging the introduction of excessively distracting devices in vehicles. These NHTSA Guidelines, which are voluntary, apply to communications, entertainment, information gathering, and navigation devices or functions that are not required to operate the vehicle safely and that are operated by the driver through visual-manual means (meaning

the driver looking at a device, manipulating a device-related control with the driver's hand, and watching for visual feedback). We provided a 60-day comment period.

In a petition dated March 9, 2012,[1] the Alliance of Automobile Manufacturers (Alliance) requested that certain information, including several research reports referenced in the notice, be placed in the docket. The Alliance also requested that a public workshop be held to provide an opportunity for all interested parties to gain a better understanding of the technical details supporting the proposed Guidelines and to share advanced technical information in an effective manner in order to help the agency as it reviews comments and works to finalize the Guidelines. The Alliance requested an extension of the comment period by at least an additional 60 days from the date that all the supporting research and data were submitted into the public docket or from the date of any technical workshop, whichever was later.

On March 23, 2012, NHTSA held a public workshop at its Vehicle Research and Test Center in East Liberty, Ohio, to provide interested parties with an opportunity to discuss issues relevant to the technical aspects of the proposed NHTSA Guidelines. The workshop included brief NHTSA presentations outlining the content and basis of the proposed Guidelines and presentations from attendees. The presentations and written comments from the workshop were placed in the docket on April 9, 2012.[2] The four research reports cited in the proposed Guidelines but not initially included in the docket are expected to be available in the docket in late April or early May 2012.[3]

After considering the petition from the Alliance, we have decided to extend the comment period by 24 days. We wish to facilitate the efforts of the petitioner and other interested persons to provide complete comments. We believe that a 24-day extension will ensure that interested persons have sufficient time to analyze the relevant research reports and information presented at the technical workshop. The workshop was held on March 23, and the presentations and written comments from the workshop were placed in the docket on April 9. With the extension considered, all interested persons will have had approximately six weeks to review the information presented at the workshop before the end of the comment period. Additionally, all four reports referenced in the proposed Guidelines and noted in the Alliance's petition are expected to be available in the docket in late April or early May 2012. Given the agency's schedule for placing these reports in the docket, we expect that all interested persons will, with the extension considered, have had approximately one and a half to three and a half weeks to review these reports before the end of the comment period. This range of time reflects the fact that the reports will be individually placed in the docket as they are finalized so that interested persons can have access to them as soon as possible. Additionally, to the extent possible, we will consider comments that Docket Management receives after the close of the comment period.

The Alliance did not provide any detailed information showing why a longer extension, such as its suggestion of 60 days from the docketing of the research reports or date of the public workshop, would be necessary.

Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Comments may be submitted to the docket electronically by logging onto the docket Management System Web site at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

You may also submit two copies of your comments, including the attachments, to docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://www.bts.gov/programs/statistical_policy_and_research/data_quality_guidelines/.*

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building 4th Floor, Room W41–318, Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The

[1] Alliance Petition, Docket No. NHTSA–2010–0053–0015.

[2] Docket No. NHTSA–2010–0053–0045. Additional information regarding the classification of the police-reported crash data in Table 1 of the February 24, 2012 notice was also placed in the Docket on April 9, 2012. Docket No. NHTSA–2010–0053–0046.

[3] The titles of the four reports are: An Examination of the Definition of ''Task'' and Use of ''Tax Taxonomies'' Based on Interviews with Experts; Summary of Radio Tuning Effects on Visual and Driving Performance Measures—Simulator and Test Track Studies; Driver Eye Glance Behavior During Visual-Manual Secondary Task Performance: Occlusion Method Versus Simulated Driving; and Explanatory Material about the Definition of a Task Used in NHTSA's Driver Distraction Guidelines, and Task Examples.

hours of the docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov.* Follow the online instructions for accessing the docket.

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 check the docket for new material.

Issued on: April 19, 2012.

John Maddox,

Associate Administrator for Vehicle Safety Research.

[FR Doc. 2012–9953 Filed 4–20–12; 4:15 pm]

BILLING CODE 4910–59–P

UNITED STATES INSTITUTE OF PEACE

Call for Proposals for a Micro Support Program on International Conflict Resolution and Peacebuilding For Immediate Release

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: Micro Support Program on International Conflict Resolution and Peacebuilding. The United States Institute of Peace (USIP) requests proposals to develop and manage a new micro support initiative for projects undertaken at institutions of higher learning and public libraries in the United States. The program will require the contractor to design and implement a formal competition, review and recommend projects for funding, and provide financial and report management oversight.

Deadline: Friday, May 11, 2012 at 3 p.m. EDT.

DATES: Response Deadline: Friday, May 11, 2012 at 3 p.m. EDT

April 16, 2012—Issue Request for Proposals

May 11, 2012—RFP submissions due by 3 p.m.

May 14–25, 2012—Review submissions and selection of successful organization

May 29, 2012—Announce results of selection process.

ADDRESSES: United States Institute of Peace, 2301 Constitution Avenue NW., Washington, DC 20037, (202) 429–3842 (phone), (202) 833–1018 (fax), (202) 457–1719 (TTY), Email: *grants@usip.org.*

FOR FURTHER INFORMATION CONTACT: The Grant Program • Micro Support Program, Phone (202) 429–3842, Email: *grants@usip.org.*

Dated: April 17, 2012.

Michael Graham,

Senior Vice President for Management.

[FR Doc. 2012–9822 Filed 4–24–12; 8:45 am]

BILLING CODE 6820–AR–P

FEDERAL REGISTER

Vol. 77 Wednesday,

No. 80 April 25, 2012

Part II

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of State Implementation Plans; City of Albuquerque-Bernalillo County, NM; InterState Transport Affecting Visibility and Regional Haze Rule Requirements for Mandatory Class I Areas; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2008–0702; FRL 9662–7]

Approval and Promulgation of State Implementation Plans; City of Albuquerque-Bernalillo County, NM; InterState Transport Affecting Visibility and Regional Haze Rule Requirements for Mandatory Class I Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the State Implementation Plan (SIP) for the City of Albuquerque-Bernalillo County, New Mexico submitted by the Governor of New Mexico on July 28, 2011 addressing the regional haze requirements for the mandatory Class I areas under 40 CFR 51.309. The EPA is proposing to find that these revisions and associated rules meet the requirements of the Clean Air Act (CAA) and comply with the provisions of 40 CFR 51.309, thereby meeting requirements for reasonable progress for the 16 Class I areas covered by the Grand Canyon Visibility Transport Commission Report for approval of the plan through 2018. We are proposing to approve SIP submissions offered as companion rules to the Section 309 regional haze plan, specifically, rules for the Sulfur Dioxide Emissions Inventory Requirements and the Western Backstop Trading Program, submitted on December 26, 2003, September 10, 2008, and May 24, 2011, and rules for Open Burning, submitted on December 26, 2003 and July 28, 2011. We are also proposing to approve a portion of the SIP revision submitted by the City of Albuquerque-Bernalillo County, New Mexico on July 30, 2007, for the purpose of addressing the ''good neighbor'' provisions of the CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS.

DATES: Comments must be received on or before May 25, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2008–0702, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: R6air_bchaze@epa.gov*
- *Mail:* Mr. Michael Feldman, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Michael Feldman, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.
- *Fax:* Mr. Michael Feldman, Air Planning Section (6PD–L), at fax number 214–665–7263.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2008–0702. Our policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to us without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment due to technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at our Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The City of Albuquerque-Bernalillo County submittal is also available for public inspection during official business hours, by appointment, at 1 Civic Plaza, Room 3047, Albuquerque, NM 87102.

FOR FURTHER INFORMATION CONTACT: Michael Feldman, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–9793; fax number 214–665–7263; email address *feldman.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

i. The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

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

iii. The initials *SIP* mean or refer to State Implementation Plan.

iv. The initials *RH* and *RHR* mean or refer to Regional Haze and Regional Haze Rule.

v. The initials *BC* and the words *Albuquerque* and *Bernalillo County* mean the City of Albuquerque-Bernalillo County, New Mexico.

vi. The initials *AQCB* mean or refer to the Albuquerque/Bernalillo County Air Quality Control Board.

vii. The initials *BART* mean or refer to Best Available Retrofit Technology.

viii. The initials *OC* mean or refer to organic carbon.

ix. The initials *EC* mean or refer to elemental carbon.

x. The initials *VOC* mean or refer to volatile organic compounds.

xi. The initials *EGUs* mean or refer to Electric Generating Units.

xii. The initials NO_X mean or refer to nitrogen oxides.

xiii. The initials SO_2 mean or refer to sulfur dioxide.

xiv. The initials PM_{10} mean or refer to particulate matter with an aerodynamic diameter of less than 10 micrometers.

xv. The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic of less than 2.5 micrometers.

xvi. The initial *RPGs* mean or refer to reasonable progress goals.

xvii. The initials *RPOs* mean or refer to regional planning organizations.

xviii. The initials *WRAP* mean or refer to the Western Regional Air Partnership.

xix. The initials *GCVTC* mea or refer to the Grand Canyon Visibility Transport Commission.

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I. Overview of Proposed Action

A. Regional Haze

As explained in further detail below, 40 CFR 51.309 presents certain Western States within the Grand Canyon Visibility Transport Commission the option of fulfilling the regional haze rule (RHR) requirements for 16 Class I areas under the provisions of that section, rather than under 40 CFR 51.308. Three States—Wyoming, Utah, and New Mexico—have elected to submit a SIP under 40 CFR 51.309. The Albuquerque/Bernalillo County Air Quality Control Board (AQCB) is the federally delegated air quality authority for the City of Albuquerque and Bernalillo County, New Mexico (BC). The AQCB is authorized to administer and enforce the CAA and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards. The AQCB has submitted a Section 309 regional haze SIP for its geographic area of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4). This SIP submittal is a necessary component of the regional haze plan for the entire State of New Mexico and is also necessary to ensure the requirements of section 110(a)(2)(D) of the CAA are satisfied for the entire State of New Mexico. The AQCB submitted its RH SIP to the EPA on July 28, 2011.[1] Our review of the BC RH SIP is supported by the review of companion rules discussed and relied upon in the BC RH SIP; these rules were submitted in multiple SIP revisions. These submittals request approval of: 20.11.46 NMAC, *Sulfur Dioxide Emission Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program* and 20.11.21 NMAC, *Open Burning.*

The EPA is proposing to approve the BC RH SIP, that was submitted to satisfy the requirements of 40 CFR 51.309, and the related submittals that help address discrete requirements of Section 309. Among these requirements, Section 309 calls for plans to include a market trading program, conventionally known as the 309 backstop-trading program; this program will not be effective until the EPA has finalized action on all section 309 SIPs. Section 51.309 does not require the participation of a certain

[1] The contents of the July 28, 2011 submittal may be examined in the docket that has been established for this rulemaking.

number of States to validate its effectiveness. Utah submitted its 309 SIP to the EPA on May 26, 2011, Wyoming submitted its 309 SIP to the EPA on January 12, 2011, and the State of New Mexico submitted its 309 SIP to the EPA on June 28, 2011 (received July 5, 2011). The EPA intends to propose action on Wyoming, Utah and New Mexico's 309 SIPs in separate actions. Once the EPA takes final action approving the necessary components of the 309 backstop-trading program to operate in all of the jurisdictions electing to submit 309 SIPs, the program will become effective.

To help address the requirements for a 309 backstop-trading program, Albuquerque-Bernalillo County submitted 20.11.46 NMAC, *Sulfur Dioxide Emission Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program,* with initial adoption on December 26, 2003, and later revisions submitted on September 10, 2008, and May 24, 2011. We are proposing to approve 20.11.46 NMAC as received in these submittals. We are also proposing to approve 20.11.21 NMAC, *Open Burning* (submitted after initial adoption on December 26, 2003, with revisions submitted on July 28, 2011). Further details and analyses on these companion regulations are provided in the Technical Support Document in the docket for this rulemaking. These rules are also discussed at later points in this notice when they are relevant to our analysis of the BC RH SIP submittal.

As previously Stated, the EPA is proposing to approve a City of Albuquerque-Bernalillo County SIP revision submitted on July 28, 2011 that addresses the regional haze requirements for the mandatory Class I areas under 40 CFR 51.309. The EPA is proposing to find that the SIP meets the requirements of 40 CFR 51.309. We are proposing to approve all parts of the RH SIP. We further note that the July 28, 2011 submittal we are proposing to act on builds and relies on earlier RH SIPs submitted on December 26, 2003, and September 10, 2008.

B. InterState Transport and Visibility

We are also proposing to approve a portion of the SIP revision submitted to us by the City of Albuquerque-Bernalillo County, New Mexico on July 30, 2007, for the purpose of addressing the ''good neighbor'' provisions of the CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS.[2] Section 110(a)(2)(D)(i)(II) of the Act requires that States have a SIP, or submit a SIP revision, containing provisions ''prohibiting any source or other type of emission activity within the State from emitting any air pollutant in amounts which will * * * interfere with measures required to be included in the applicable implementation plan for any other State under part C [of the CAA] * * * to protect visibility.'' Because of the impacts on visibility from the interState transport of pollutants, we interpret the ''good neighbor'' provisions of section 110 of the Act described above as requiring States to include in their SIPs either measures to prohibit emissions that would interfere with the reasonable progress goals set to protect Class I areas in other States, or a demonstration that emissions from BC sources and activities will not have the prohibited impacts on other States' existing SIPs.

The AQCB Stated in its submittal that it is not possible to assess whether there is any interference with the measures in the applicable SIP for another State designed to protect visibility for the 8-hour ozone and $PM_{2.5}$ NAAQS until AQCB submits and the EPA approves BC's RH SIP. In developing their Regional Haze SIP, BC and potentially impacted States collaborated through the WRAP. Each State developed its Regional Haze Plans and RPGs based on the WRAP modeling and technical analysis. The WRAP modeling was based in part on the emissions reductions each State and BC intended to achieve by 2018.

We are proposing to approve the BC RH SIP and find that it demonstrates that sources within the City of Albuquerque/Bernalillo County do not cause or contribute to visibility impairment at Class I areas outside of the City and Bernalillo County. We also propose to find that the BC RH SIP appropriately includes participation in a SO_2 emission milestone and backstop trading program with the States of New Mexico, Wyoming and Utah. We also propose to find that the BC RH SIP contains those measures included in the WRAP modeling and relied upon by New Mexico and other States in developing their visibility programs. On the basis of these findings, we are also proposing to approve the City of Albuquerque-Bernalillo County InterState Transport SIP submittal that addresses the visibility requirement of section 110(a)(2)(D)(i)(II) that emissions from sources within the City of Albuquerque and Bernalillo County do not interfere with measures of other States to protect visibility.

II. What is the background for our proposed actions?

A. Regional Haze

RH is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles ($PM_{2.5}$) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (e.g., SO_2, nitrogen oxides (NO_X), and in some cases, ammonia (NH_3) and volatile organic compounds (VOCs)). Fine particle precursors can react in the atmosphere to form $PM_{2.5}$. $PM_{2.5}$ impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ also can cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range[3] in many Class I areas (i.e., national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. 64 FR 35714, 35715 (July 1, 1999). In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. *Id.*

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas[4] which impairment

[2] This SIP revision is viewable in EPA docket EPA–R06–OAR–2007–1119, which was established for our prior approval of a portion of the SIP revision on November 8, 2010. 75 FR 68447.

[3] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[4] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. *See* CAA section 162(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. *See* 44 FR 69122, November 30, 1979. The extent of a

results from man-made air pollution.'' CAA § 169A(a)(1). The terms ''impairment of visibility'' and ''visibility impairment'' are defined in the Act to include a reduction in visual range and atmospheric discoloration. *Id.* section 169A(g)(6). In 1980, we promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* ''reasonably attributable visibility impairment'' (RAVI). 45 FR 80084 (December 2, 1980). These regulations represented the first phase in addressing visibility impairment. We deferred action on RH that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment improved.

Congress added section 169B to the CAA in 1990 to address RH issues, and we promulgated regulations addressing RH in 1999. 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P. The Regional Haze Rule (RHR) revised the existing visibility regulations to integrate into the regulations provisions addressing RH impairment and established a comprehensive visibility protection program for Class I areas. The requirements for RH, found at 40 CFR 51.308 and 51.309, are included in our visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the RH requirements are summarized in section III. The requirement to submit a RH SIP applies to all 50 States, the District of Columbia and the Virgin Islands.[5] States were required to submit the first implementation plan addressing RH visibility impairment no later than December 17, 2007. 40 CFR 51.308(b).

B. Roles of Agencies in Addressing Regional Haze

Successful implementation of the RH program will require long-term regional coordination among States, tribal governments and various federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to address effectively the problem of visibility impairment in Class I areas, States need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to RH can originate from sources located across broad geographic areas, we have encouraged the States and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address RH and related issues. The RPOs first evaluated technical information to better understand how their States and tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of particulate matter (PM) and other pollutants leading to RH.

The Western Regional Air Partnership (WRAP) RPO is a collaborative effort of State governments, tribal governments, and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the western United States. WRAP member State governments include: Alaska, Arizona, California, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. The AQCB staff participated in meetings with the State of New Mexico staff to coordinate its efforts with the State of New Mexico in developing its separate 309 SIP.

C. Development of the Requirements for 40 CFR 51.309

The EPA's RHR provides two paths to address regional haze. One is 40 CFR 51.308, requiring States to perform individual point source BART determinations and evaluate the need for other control strategies. These strategies must be shown to make ''reasonable progress'' in improving visibility in Class I areas inside the State and in neighboring jurisdictions. The other path for addressing regional haze is through 40 CFR 51.309 (section 309), and is an option for nine States termed the ''Transport Region States'' which include: Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming, and the 211 Tribes located within those States.

Section 309 requires participating States to adopt regional haze strategies that are based on recommendations from the Grand Canyon Visibility Transport Commission (GCVTC) for protecting the 16 Class I areas in the Colorado Plateau area.[6] The EPA established the GCVTC on November 13, 1991. The purpose of the GCVTC was to assess information about the adverse impacts on visibility in and around 16 Class I areas on the Colorado Plateau region and to provide policy recommendations to the EPA to address such impacts. Section 169B of the CAA called for the GCVTC to evaluate visibility research as well as other available information pertaining to adverse impacts on visibility from potential or projected growth in emissions from sources located in the region. It was determined that all transport region States impacted or could potentially impact the Class I areas on the Colorado Plateau. The GCVTC submitted a report to the EPA in 1996 with its policy recommendations. Provisions of the 1996 GCVTC report include: Strategies for addressing smoke emissions from wildland fires and agricultural burning; provisions to prevent pollution by encouraging renewable energy development; and provisions to manage clean air corridors, mobile sources, and wind-blown dust, among other things. The EPA codified these recommendations as part of the 1999 RHR.

The EPA determined that the GCVTC strategies would provide for reasonable progress in mitigating regional haze if supplemented by an annex containing quantitative emission reduction milestones and provisions for a trading program or other alternative measure (64 FR 35749 and 35756). Thus, the 1999 RHR required that western States submit an annex to the GCVTC report with quantitative milestones and detailed guidelines in order to establish the GCVTC recommendations as an alternative approach to fulfilling the section 308 requirements for compliance with the RHR. In September 2000, the WRAP, which is the successor organization to the GCVTC, submitted to the EPA an annex to the GCVTC. The annex contained SO_2 emission

mandatory Class I area includes subsequent changes in boundaries, such as park expansions. CAA section 162(a). Although States and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager'' (FLM). *See* CAA section 302(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[5] Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the entire State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

[6] The Colorado Plateau is a high, semi-arid tableland in southeast Utah, northern Arizona, northwest New Mexico, and western Colorado. The 16 mandatory Class I areas are as follows: Grand Canyon National Park, Mount Baldy Wilderness, Petrified Forest National Park, Sycamore Canyon Wilderness, Black Canyon of the Gunnison National Park Wilderness, Flat Tops Wilderness, Maroon Bells Wilderness, Mesa Verde National Park, Weminuche Wilderness, West Elk Wilderness, San Pedro Parks Wilderness, Arches National Park, Bryce Canyon National Park, Canyonlands National Park, Capital Reef National Park, and Zion National Park.

reduction milestones and the detailed provisions of a backstop trading program to be implemented automatically if voluntary measures failed to achieve the milestones. The EPA codified the annex on June 5, 2003 as 40 CFR 51.309(h). 68 FR 33764.

Five western States submitted implementation plans under the section 309 alternative program in 2003. The EPA was challenged by the Center for Energy and Economic Development (CEED) on the validity of the annex provisions. In *CEED* v. *EPA,* the D.C. Circuit vacated the EPA's approval of the WRAP annex (*Center for Energy and Economic Development* v. *EPA,* No. 03–1222 (D.C. Cir. Feb. 18, 2005)). In response to the court's decision, the EPA vacated the annex requirements adopted as 40 CR 51.309(h), but left in place the stationary source requirements in 40 CFR 51.309(d)(4). 71 FR 60612. The requirements under 40 CFR 51.309(d)(4) contain general requirements pertaining to stationary sources and market trading, and allow States to adopt alternatives to the point source application of BART.

D. The 1997 NAAQS for Ozone and $PM_{2.5}$ and CAA 110(a)(2)(D)(i)

On July 18, 1997, we promulgated new NAAQS for 8-hour ozone and for $PM_{2.5}$. 62 FR 38652. Section 110(a)(1) of the CAA requires States to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as we may prescribe. Section 110(a)(2) of the CAA lists the elements that such new SIPs must address, including section 110(a)(2)(D)(i), which pertains to the interState transport of certain emissions. Thus, States were required to submit SIPs that satisfy the applicable requirements under sections 110(a)(1) and (2), including the requirements of section 110(a)(2)(D)(i), by July 2000. States, including the City of Albuquerque/Bernalillo County, did not meet the statutory July 2000 deadline for submission of these SIPs. Accordingly, on April 25, 2005, the EPA made findings of failure to submit, notifying all States, including the City of Albuquerque/Bernalillo County, of their failure to make the required SIP submission to address interState transport under section 110(a)(2)(D)(i). 70 FR 21147.

On August 15, 2006, we issued our ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2006 Guidance). We developed the 2006 Guidance to make recommendations to States for making submissions to meet the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone standards and the 1997 $PM_{2.5}$ standards.

As identified in the 2006 Guidance, the ''good neighbor'' provisions in section 110(a)(2)(D)(i) of the CAA require each State to submit a SIP that prohibits emissions that adversely affect another State in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interState transport. The SIP must prevent sources in the State from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other States; (2) interfere with maintenance of the NAAQS in other States; (3) interfere with provisions to prevent significant deterioration of air quality in other States; or (4) interfere with efforts to protect visibility in other States. In this action, we only address the fourth element regarding visibility.

The 2006 Guidance Stated that States may make a simple SIP submission confirming that it is not possible at that time to assess whether there is any interference with measures in the applicable SIP for another State designed to ''protect visibility'' for the 8-hour ozone and $PM_{2.5}$ NAAQS until RH SIPs are submitted and approved. RH SIPs were required to be submitted by December 17, 2007. *See* 74 FR 2392 (January 15, 2009).

The EPA received a SIP revision adopted by AQCB on September 12, 2007 to address the interState transport provisions of CAA 110(a)(2)(D)(i) for the 1997 ozone and $PM_{2.5}$ NAAQS. For the reasons discussed in section V of this proposed rulemaking, we propose to find the AQCB adequately demonstrated that it is improbable that emissions from within the City of Albuquerque and Bernalillo County cause or contribute to visibility impairment at any Class I area. Therefore, we are proposing to approve the portion of the City of Albuquerque-Bernalillo County InterState Transport SIP submittal that addresses the requirement that emissions from the City of Albuquerque/Bernalillo County sources not interfere with measures required in the SIP of any other State to protect visibility. *See* CAA section 110(a)(2)(D)(i)(II).

III. What are the requirements for RH SIPs submitted under 40 CFR 51.309?

The following is a summary and basic explanation of the regulations covered under the RHR. See 40 CFR 51.309 for a complete listing of the regulations under which this SIP was evaluated.

A. The CAA and the Regional Haze Rule

RH SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and our implementing regulations require States to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific RH SIP requirements are discussed in further detail below.

B. Projection of Visibility Improvement

For each of the 16 Class I areas located on the Colorado Plateau, the RH 309 SIP must include a projection of the improvement in visibility expressed in deciviews. 40 CFR 51.309(d)(2). The plan needs to show the projected visibility improvement for the best and worst 20 percent days through the year 2018, based on the application of all section 309 control strategies.

C. Clean Air Corridors

Pursuant to 40 CFR 51.309(d)(3), the RH 309 SIP must identify Clean Air Corridors (CACs). CACs are geographic areas located within transport region States that contribute to the best visibility days (least impaired) in the 16 Class I areas of the Colorado Plateau. (A map of the CAC can be found in section B.1 of the BC RH SIP.) The CAC as described in the 1996 GCVTC report covers nearly all of Nevada, large portions of Oregon, Idaho, and Utah, and encompasses several Indian nations. In order to meet the RHR requirements for CACs, States must adopt a comprehensive emissions tracking program for all visibility impairing pollutants within the CAC. Based on the emissions tracking, States must identify overall emissions growth or specific areas of emissions growth in and outside of the CAC that could be significant enough to result in visibility impairment at one or more of the 16 Class I areas. If there is visibility impairment in the CAC, States must conduct an analysis of the potential impact in the 16 Class I areas and determine if additional emission control measures are needed and how these measures would be implemented. States must also indicate in their SIP if any other CACs exist, and if others are found, provide necessary measures to

protect against future degradation of visibility in the 16 Class I areas.

D. Stationary Source Reductions

1. SO_2 Emission Reductions

Section 169A of the CAA directs States to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address their visibility impacts. Specifically, section 169A(b)(2)(A) of the CAA requires States to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' (BART) as determined by the State.[7] Under the RHR, States are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, States also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

Section 309 provides an alternative method of satisfying the section 308 SO_2 BART requirements with emission milestones and a backstop trading program (40 CFR 51.309(d)(4)). Under this approach, a RH 309 SIP must establish declining SO_2 emission milestones for each year of the program through 2018. The milestones must be consistent with the GCTVC's goal of 50 to 70 percent reduction in SO_2 emissions by 2040. If the milestones are exceeded in any year, the backstop trading program is triggered.

Pursuant to 40 CFR 51.309(d)(4)(ii)–(iv), States must include requirements in the SIP that allow States to determine whether the milestone has been exceeded. These requirements include documentation of the baseline emission calculation, monitoring, recordkeeping, and reporting (MRR) of SO_2 emissions, and provisions for conducting an annual evaluation to determine whether the milestone has been exceeded. 40 CFR 309(d)(4)(v) also contains requirements for implementing the backstop trading program in the event that the milestone is exceeded and the program is triggered.

The WRAP, in conjunction with the EPA, developed a model for a backstop trading program. In order to ensure consistency between States, States opting to participate in the 309 program need to adopt rules that are substantively equivalent to the model rules for the backstop trading program to meet the requirements of 40 CFR 51.309(d)(4). The trading program must also be implemented no later than 15 months after the end of the first year that the milestone is exceeded, require that sources hold allowances to cover their emissions, and provide a framework, including financial penalties, to ensure that the 2018 milestone is met.

2. Provisions for Stationary Source Emissions of Nitrogen Oxides (NO_X) and Particulate Matter (PM)

Pursuant to 40 CFR 51.309(d)(4)(vii), a section 309 SIP must contain any necessary long term strategies and BART requirements for PM and NO_X. Any such BART provisions may be submitted pursuant to 40 CFR 51.308(e). We promulgated regulations addressing RH in 1999, 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P.[8] These regulations require all States to submit implementation plans that, among other measures, contain either emission limits representing BART for certain sources constructed between 1962 and 1977, or alternative measures that provide for greater reasonable progress than BART. 40 CFR 51.308(e). The discussion below specifically applies to regional haze plans that opt to require BART on sources subject to the BART requirements, rather than satisfying the requirements for alternative measures that would be evaluated under 40 CFR 51.308(e)(2).

On July 6, 2005, the EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist States in determining which of their sources should be subject to the BART requirements and the appropriate emission limits for each applicable source. The BART Guidelines are not mandatory for all sources; in making a BART determination for a fossil fuel-fired electric generating plant (EGU) with a total generating capacity in excess of 750 megawatts, a State must use the approach set forth in the BART Guidelines. A State is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

The process of establishing BART emission limitations can be logically broken down into three steps: First, States identify those sources which meet the definition of ''BART-eligible source'' set forth in 40 CFR 51.301;[9] second, States determine whether such sources ''emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area'' (a source which fits this description is ''subject to BART,'') and; third, for each source subject to BART, States then identify the appropriate type and the level of control for reducing emissions.

Under the BART Guidelines, States may select an exemption threshold value for their BART modeling, below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The State must document this exemption threshold value in the SIP and State the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review, or would become what is termed a ''subject-to-BART'' source. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the State should not be higher than 0.5 deciview. See also 40 CFR part 51, Appendix Y, section III.A.1.

In their SIPs, States must identify subject to BART sources and document their BART control determination analyses. The term ''subject to BART source'' used in the BART Guidelines means the collection of individual emission units at a facility that together comprises the subject-to-BART source. In making BART determinations, section 169A(g)(2) of the CAA requires that States consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be

[7] The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7).

[8] In *American Corn Growers Ass'n* v. *EPA,* 291 F.3d 1 (D.C. Cir. 2002), the U.S Court of Appeals for the District of Columbia Circuit issued a ruling vacating and remanding the BART provisions of the regional haze rule. In 2005, we issued BART guidelines to address the court's ruling in that case. *See* 70 FR 39104 (July 6, 2005).

[9] BART-eligible sources are those sources that have the potential to emit 250 tons or more of a visibility-impairing air pollutant, were put in place between August 7, 1962 and August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories.

anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor.

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a State has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of the EPA approval of the regional haze SIP. CAA section 169(g)(4)); 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source. *See* CAA section 110(a).

E. Mobile Sources

Under 40 CFR 51.309(d)(5), the RH 309 SIP must provide inventories of on-road and non-road mobile source emissions of VOCs, NO_X, SO_2, $PM_{2.5}$, elemental carbon, and organic carbon for the years 2003, 2008, 2013, and 2018. The inventories must show a continuous decline in total mobile source emissions of each of the above pollutants. If the inventories show a continuous decline in total mobile source emissions of each of these pollutants over the period 2003–2018, a State is not required to take further action in their SIP. If the inventories do not show a continuous decline in mobile source emissions of one or more of these pollutants over the period 2003–2018, a State must submit a SIP that contains measures that will achieve a continuous decline.

The RH 309 SIP must also contain any long-term strategies necessary to reduce emissions of SO_2 from non-road mobile sources, consistent with the goal of reasonable progress. In assessing the need for such long-term strategies, the State may consider emissions reductions achieved or anticipated from any new federal standards for sulfur in non-road diesel fuel. Section 309 SIPs must provide an update on any additional mobile source strategies implemented within the State related to the GCVTC 1996 recommendations on mobile sources.

F. Programs Related to Fire

For States submitting a section 309 SIP, the RHR contains requirements for programs related to fire (40 CFR 51.309(d)(6)). The plan must show that the State's smoke management program and all federal or private programs for prescribed fire in the State have a mechanism in place for evaluating and addressing the degree of visibility impairment from smoke in their planning and application of burning. The plan must also ensure that its prescribed fire smoke management programs have at least the following seven elements: (1) Actions to minimize emissions, (2) evaluation of smoke dispersion, (3) alternatives to fire, (4) public notification, (5) air quality monitoring, (6) surveillance and enforcement, and (7) program evaluation (40 CFR 51.309(d)(6)(i)). The plan must be able to track Statewide emissions of VOC, NO_X, EC, OC, and fine particulate emissions from prescribed burning within the State.

Other requirements States must meet in their 309 plan related to fire include the adoption of a Statewide process for gathering post-burn activity information to support emissions inventory and tracking systems. The plan must identify existing administrative barriers to the use of non-burning alternatives and adopt a process for continuing to identify and remove administrative barriers where feasible. The SIP must include an enhanced smoke management program that considers visibility effects in addition to health objectives and is based on the criteria of efficiency, economics, law, emission reduction opportunities, land management objectives, and reduction of visibility impairment. Finally, the plan must establish annual emission goals to minimize emission increases from fire.

G. Paved and Unpaved Road Dust

Section 309 requires States to submit a SIP that assesses the impact of dust emissions on regional haze in the 16 Class I areas on the Colorado Plateau and to include a projection of visibility conditions through 2018 for the least and most impaired days (40 CFR 51.309(d)(7)). If dust emissions are determined to be a significant contributor to visibility impairment, the plan must include emissions management strategies to address their impact.

H. Pollution Prevention

The requirements under pollution prevention only require the RH 309 SIP to provide an assessment of the energy programs as outlined in 40 CFR 51.309(d)(8) and does not require a State to adopt any specific energy-related strategies or regulations for regional haze. In order to meet the requirements related to pollution prevention, the State's plan must include an initial summary of all pollution prevention programs currently in place, an inventory of all renewable energy generation capacity and production in use or planned as of the year 2002, the total energy generation capacity and production for the State, and the percent of the total that is renewable energy.

The State's plan must include a discussion of programs that provide incentives for efforts that go beyond compliance and/or achieve early compliance with air-pollution related requirements and programs to preserve and expand energy conservation efforts. The State must identify specific areas where renewable energy has the potential to supply power where it is now lacking and where renewable energy is most cost-effective. The RH 309 plan must include projections of the short- and long-term emissions reductions, visibility improvements, cost savings, and secondary benefits associated with the renewable energy goals, energy efficiency, and pollution prevention activities. The plan must also provide its anticipated contribution toward the GCVTC renewable energy goals for 2005 and 2015. The GCVTC goals are that renewable energy will comprise 10 percent of the regional power needs by 2005 and 20 percent by 2015.

I. Additional Recommendations

Section 309 requires States to determine if any of the other recommendations in the 1996 GCVTC report not codified by the EPA as part of section 309 should be implemented in their RH SIP (40 CFR 51.309(d)(9)). The States are not required in their RH 309 SIPs to adopt any control measures unless the State determines they are appropriate and can be practicably included as enforceable measures to remedy regional haze in the 16 Class I areas. Any measures adopted would need to be enforceable like the other 309 required measures. States must also submit a report to the EPA and the public in 2013 and 2018, showing there has been an evaluation of the additional recommendations and the progress toward developing and implementing any such recommendations.

J. Periodic Implementation Plan Revisions

The RHR requires States to submit progress reports in the form of SIP revisions in 2013 and 2018 (40 CFR 51.309(d)(10)). The SIP revisions must comply with the procedural requirements of 40 CFR 51.102 for public hearings and 40 CFR 51.103 for submission of plans. The assessment in the progress report must include an evaluation of Class I areas located within the State and Class I areas

outside the State that are affected by emissions from the State. The EPA views these SIP revisions as a periodic check on progress, rather than a thorough revision of regional strategies. The State should focus on significant shortcomings of the original SIP from sources that were not fully accounted for or anticipated when the SIP was initially developed. The specifics of what each progress report must contain can be found at 40 CFR 51.509(d)(10)(i)(A)–(G).

At the same time that the State submits its progress reports to the EPA, it must also take an action based on the outcome of this assessment. If the assessment shows that the SIP requires no substantive revision, the State must submit to the EPA a ''negative declaration'' Statement saying that no further SIP revisions are necessary at this time. If the assessment shows that the SIP is or may be inadequate due to emissions from outside the State, the State must notify the EPA and other regional planning States and work with them to develop additional strategies. If the assessment shows that the SIP is or may be inadequate due to emissions from another country, the State must include appropriate notification to the EPA in its SIP revision. In the event the assessment shows that the SIP is or may be inadequate due to emissions from within the State, the State shall develop additional strategies to address the deficiencies and revise the SIP within one year from the due date of the progress report.

K. InterState Coordination

In complying with the requirements of 40 CFR 51.309(d)(11), States may include emission reductions strategies that are based on coordinated implementation with other States. The SIP must include documentation of the technical and policy basis for the individual State apportionment (or the procedures for apportionment throughout the trans-boundary region), the contribution addressed by the State's plan, how it coordinates with other State plans, and compliance with any other appropriate implementation plan approvability criteria. States may rely on the relevant technical, policy, and other analyses developed by a regional entity, such as the WRAP in providing such documentation.

L. Additional Class I Areas

To comply with the requirements of 40 CFR 51.309(g), RH 309 SIPs must demonstrate reasonable progress for mandatory Class I Federal areas other than the 16 Class I areas covered by the GCVTC. States must submit an implementation plan that demonstrates the expected visibility conditions for the most and least impaired days at the additional Class I areas based on emission projections from the long-term strategies in the implementation plan. The implementation plan must contain provisions establishing reasonable progress goals and additional measures necessary to demonstrate reasonable progress for the additional Federal Class I areas. The RH 309 SIP must address regional haze in each additional Class I area located within the State and in each additional Class I area located outside the State which may be affected by emissions from within the State. 40 CFR 309(g) requires that these provisions comply with 40 CFR 51.308(d)(1) through (4), the general requirements of which are described below.

1. Determination of Reasonable Progress Goals

Pursuant to 40 CFR 51.308(d)(1), for each mandatory Class I area located within the State, the regional haze SIPs must establish goals (expressed in deciviews, dv) that provide for reasonable progress towards achieving natural visibility conditions. The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of RH SIPs from the States that establish two reasonable progress goals (RPGs) (*i.e.,* two distinct goals, one for the ''best'' and one for the ''worst'' days) for every Class I area for each (approximately) 10-year implementation period. *See* 70 FR 3915; *see also* 64 FR 35714. The RHR does not mandate specific milestones or rates of progress, but instead calls for States to establish goals that provide for ''reasonable progress'' toward achieving natural (*i.e.,* ''background'') visibility conditions. In setting RPGs, States must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period. *Id.*

States have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in our RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in our Reasonable Progress Guidance.[10] In setting the RPGs, States must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to hereafter as the ''Uniform Rate of Progress (URP)'' and the emission reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress, which States are to use for analytical comparison to the amount of progress they expect to achieve. If the State establishes a RPG that provides for a slower rate of improvement in visibility than the URP, the State must demonstrate that the URP is not reasonable based on the factors above and that the RPG is reasonable. Regional haze SIPs must provide an assessment of the number of years it would take to attain natural visibility at the rate of progress selected by the State as reasonable. In setting RPGs, each State with one or more Class I areas (''Class I State'') must also consult with potentially ''contributing States,'' *i.e.,* other nearby States with emission sources that may be affecting visibility impairment at the Class I State's areas. 40 CFR 51.308(d)(1)(iv).

2. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview (dv) as the principal metric for measuring visibility. *See* 70 FR 39104. This visibility metric expresses uniform changes in the degree of haze in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility is sometimes expressed in terms of the visual range, which is the greatest distance, in kilometers or miles, at which a dark object can just be distinguished against the sky. The deciview is a useful measure for tracking progress in improving visibility, because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility of one deciview.[11]

[10] *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,* June 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1).

[11] The preamble to the RHR provides additional details about the deciview. 64 FR 35714, 35725 (July 1, 1999).

The deciview is used in expressing Reasonable Progress Goals (RPGs) (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, States must calculate the degree of existing visibility impairment at each Class I area at the time of each RH SIP submittal and periodically review progress every five years midway through each 10-year implementation period. To do this, section 51.308(d)(2) of the RHR requires States to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, States must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. We have provided guidance to States regarding how to calculate baseline, natural and current visibility conditions.[12]

For the first RH SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, States are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

3. Long-Term Strategy (LTS)

Consistent with the requirement in section 169A(b) of the CAA that States include in their regional haze SIP a 10 to 15 year strategy for making reasonable progress, Section 51.308(d)(3) of the RHR requires that States include a LTS in their RH SIPs. The LTS is the compilation of all control measures a State will use during the implementation period of the specific SIP submittal to meet any applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the State. 40 CFR 51.308(d)(3).

When a State's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another State, the RHR requires the impacted State to coordinate with the contributing States in order to develop coordinated emissions management strategies. 40 CFR 51.308(d)(3)(i). Also, a State with a Class I area impacted by emissions from another State must consult with such contributing State, (id.) and must also demonstrate that it has included in its SIP all measures necessary to obtain its share of emission reductions needed to meet the reasonable progress goals for the Class I area. *Id.* at (d)(3)(ii). In such cases, the contributing State must demonstrate that it has included, in its SIP, all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interState consultation, but additional consultations between States may be required to sufficiently address interState visibility issues. This is especially true where two States belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, States must describe how each of the following seven factors listed below are taken into account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the State for these purposes; (6) enforceability of emissions limitations and control measures; (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. 40 CFR 51.308(d)(3)(v). Pursuant to 40 CFR 51.309(g)(2)(i), the State may build upon and take credit for the strategies implemented to meet the requirements under paragraph (d) of 40 CFR 51.309.

4. Monitoring Strategy and Other SIP Requirements

Section 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of RH visibility impairment that is representative of all mandatory Class I Federal areas within the State. The strategy must be coordinated with the monitoring strategy required in section 51.305 for RAVI. Compliance with this requirement may be met through ''participation'' in the Interagency Monitoring of Protected Visual Environments (IMPROVE) network, *i.e.,* review and use of monitoring data from the network. The monitoring strategy is due with the first RH SIP, and it must be reviewed every five (5) years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a State with mandatory Class I areas to determine the contribution of emissions from within the State to RH visibility impairment at Class I areas both within and outside the State;
- Procedures for using monitoring data and other information in a State with no mandatory Class I areas to determine the contribution of emissions from within the State to RH visibility impairment at Class I areas in other States;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the State, and where possible, in electronic format;
- Developing a Statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates

[12] *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003, EPA–454/B–03–005, *available* at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf,* (hereinafter referred to as ''our 2003 Natural Visibility Guidance''); and *Guidance for Tracking Progress Under the Regional Haze Rule,* (EPA–454/B–03–004, September 2003, *available* at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf,* (hereinafter referred to as our ''2003 Tracking Progress Guidance'').

of future projected emissions. A State must also make a commitment to update the inventory periodically; and

• Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of section 51.308(d) with the exception of BART. The requirement to evaluate sources for BART applies only to the first RH SIP. Facilities subject to BART must continue to comply with the BART provisions of section 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

IV. What are the additional requirements for alternative programs under the RHR?

States opting to submit an alternative program, such as the backstop trading program under section 309, must also meet requirements under 40 CFR 51.308(e)(2) and (e)(3). These requirements for alternative programs relate to the ''Better-Than-BART'' test and fundamental elements of any alternative program that establishes a cap on emissions.

A. ''Better-Than-BART'' Demonstration

In order to demonstrate that the alternative program achieves greater reasonable progress than source-specific BART, States must provide a demonstration in their SIP that meets the requirements in 40 CFR 51.308(e)(2)(i)–(v). States submitting section 309 SIPs or other alternative programs are required to list all BART-eligible sources and categories covered by the alternative program. States are then required to determine which BART-eligible sources are ''subject to BART.'' The SIP must provide an analysis of the best system of continuous emission control technology available and the associated reductions for each source subject to BART covered by the alternative program, or what is termed a ''BART benchmark.'' Where the alternative program, such as the 309 backstop trading program, has been designed to meet requirements other than BART, States may use simplifying assumptions in establishing a BART benchmark. These assumptions can provide the baseline to show that the alternative program achieves greater reasonable progress than BART (71 FR 60619). Under this approach, States should use the presumptive limits for EGUs in the BART Guidelines to establish the BART benchmark used in the comparison, unless the State determines that such presumptions are not appropriate for particular EGUs (70 FR 60619).

The RH SIP, and any RH 309 SIP that establishes a 309 backstop trading program, must provide an analysis of the projected emissions reductions achievable through the trading program or other alternative measure and a determination that the trading program or other alternative measure achieves greater reasonable progress than would be achieved through the installation and operation of BART (40 CFR 308(e)(2)(C)(iii)). Section 308(e)(2) requires that all emission reductions for the alternative program take place by 2018, as well as that the emission reductions resulting from the alternative program are surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP. Pursuant to 40 CFR 51.309(e)(2)(E)(v), States have the option of including a provision that the emissions trading program or other alternative measure may include a geographic enhancement to the program to address the requirement under 40 CFR 51.302(c) related to BART, for reasonably attributable visibility impairment from the pollutants covered under the emissions trading program or other alternative measure.

States must also address the distribution of emissions under the BART alternative as part of the ''better-than-BART'' demonstration (40 CFR 51.308(e)(3)). If a State can show that with the alternative program the distribution of emissions is not substantially different than under BART and the alternative program results in greater emission reductions, then the alternative measure may be deemed to achieve greater reasonable progress. If the distribution of emissions is significantly different, the State must conduct dispersion modeling to determine differences in visibility between BART and the alternative program for each impacted Class I area for the worst and best 20 percent of days. The modeling must show that visibility does not decline at any Class I area and that visibility overall is greater than what would be achieved with BART.

B. Elements Required for All Alternative Programs That Have an Emissions Cap

Under 40 CFR 51.308(e)(2)(vi)(A)–(L), the EPA established fundamental requirements for trading or alternative programs that have an emissions cap and require sources to hold allowances that they can sell, buy, or trade, as in the section 309 backstop trading program. These requirements are discussed in detail below.

1. Applicability

The alternative program must have applicability provisions that define the sources subject to the program. In the case of a program covering sources in multiple States, the States must demonstrate that the applicability provisions in each State cover essentially the same size facilities and, if source categories are specified, cover the same source categories.

2. Allowances

Allowances are a key feature of a cap and trade program. An allowance is a limited authorization for a source to emit a specified amount of a pollutant, as defined by the specific trading program, during a specified period. Allowances are fully marketable commodities. Once allocated, allowances may be bought, sold, traded, or banked for use in future years. The EPA has not included in the rule detailed requirements on how States and tribes can allocate allowances. A State or tribe can determine how to allocate allowances as long as the allocation of the tonnage value of allowances does not exceed the total number of tons of emissions capped by the budget. The trading program must include allowance provisions ensuring that the total value of allowances issued each year under the program will not exceed the emissions cap on total annual emissions from the sources in the program.

3. Monitoring, Recordkeeping, and Reporting

Monitoring, recordkeeping, and reporting (MRR) of a source's emissions are integral parts of any cap and trade program. Consistent and accurate measurement of emissions ensures fungibility of allowances by validating that each allowance actually represents its specified tonnage value of emissions and that one ton of reported emissions from one source is equivalent to one ton of reported emissions at another source. The MRR provisions must require that boilers, combustion turbines, and cement kilns in the alternative program that are allowed to sell or transfer allowances comply with the requirements of 40 CFR part 75. The MRR provisions must require that other sources in the program allowed to sell or transfer allowances provide

emissions information with the same precision, reliability, accessibility, and timeliness as information required by 40 CFR part 75.

4. Tracking System

An accurate and efficient tracking system is critical to the functioning of an emissions trading market. The tracking system must also be transparent, allowing all interested parties access to the information contained in the accounting system. Thus, alternative programs must have requirements for a tracking system that is publicly available in a secure, centralized database to track in a consistent manner all allowances and emissions in the program.

5. Account Representative

Each source owner or operator covered by the alternative program must designate an individual account representative who is authorized to represent the owner or operator in all matters pertaining to the trading program and who is responsible for the data reported for that source. The account representative will be responsible for, among other things, permitting, compliance, and allowance related actions.

6. Allowance Transfer

SIPs must contain provisions detailing a uniform process for transferring allowances among all sources covered by the program and other possible participants. The provisions must provide procedures for sources to request an allowance transfer, for the request and transfer to be recorded in the allowance tracking system, for notification to the source that the transfer has occurred, and for notification to the public of each transfer and request.

7. Compliance Provisions

Cap and trade programs must include compliance provisions that prohibit a source from emitting more emissions than the total tonnage value of allowances the source holds for that year. A cap and trade program must also contain the specific methods and procedures for determining compliance on an annual basis.

8. Penalty Provisions

In order to provide sources with a strong incentive to comply with the requirement to hold sufficient allowances for their emissions on an annual basis and to establish an immediate minimum economic consequence for non-compliance, the program must include a system for mandatory allowance deductions. SIPs must contain a provision that if a source has excess emissions in a given year, allowances allocated for the subsequent year will be deducted from the source's account in an amount at least equal to three times the excess emissions.

9. Banking of Allowances

The banking of allowances occurs when allowances that have not been used for compliance are set aside for use in a later compliance period. Alternative programs can include provisions for banked allowances, so long as the SIP clearly identifies how unused allowances may be used in future years and whether there are any restrictions on the use of any such banked allowances.

10. Program Assessment

The alternative program must include provisions for periodic assessment of the program. Such periodic assessments are a way to retrospectively assess the performance of the trading program in meeting the goals of the regional haze program and determining whether the trading program needs any adjustments or changes. At a minimum, the program evaluation must be conducted every five years to coincide with the periodic report describing progress towards the reasonable progress goals required under 40 CFR 51.308(g) and must be submitted to the EPA.

V. Our Analysis of the City of Albuquerque/Bernalillo County Submittal

The following summarizes the reasons why we are proposing that the AQCB's July 28, 2011 submittal (with the submitted companion rules of 20.11.46 NMAC and 20.11.21 NMAC) meets the requirements of 40 CFR 51.309 and the Clean Air Act.

A. Projection of Visibility Improvement

Pursuant to 40 CFR 51.309(d)(2), the BC RH 309 SIP provides a comparison of the monitored 2000–2004 baseline visibility conditions in deciviews (dv) for the 20 percent best and 20 percent worst days to the projected visibility improvement for 2018 for the Class I areas on the Colorado Plateau. Table 1 shows the baseline monitoring data and projected visibility improvement for 2018 from the WRAP photochemical modeling (for details on the WRAP emission inventories and photochemical modeling, refer to the WRAP Technical Support Document [13] and our review of the technical products developed by the WRAP for the States in the western region, in support of their RH SIPs [14]). The projected visibility improvement for the 2018 Base Case (referred to as the Base18b emission inventory and modeled projections) reflects growth plus all controls ''on the books'' as of December 2004. The projected visibility improvement for the Preliminary Reasonable Progress Case (referred to as the PRP18b emission inventory and modeled projections) reflects refined growth estimates, all controls ''on the books'' as of 2007, and includes presumptive or known SO_2 BART controls. The modeling results show projected visibility improvement for the 20 percent worst days in 2018 and no degradation in visibility conditions on the 20 percent best days at all 16 Class I areas on the Colorado Plateau. We are proposing to determine the RH 309 SIP submittal satisfies the requirements of 40 CFR 51.309(d)(2).

TABLE 1—BASELINE AND 2018 VISIBILITY AT THE COLORADO PLATEAU CLASS I AREAS

Class I area	State	20 percent worst visibility days			20 percent best visibility days		
		2000–2004 Baseline Monitoring Data (dv)	2018 Base Case (dv)	2018 Preliminary Reasonable Progress Case (dv)	2000–2004 Baseline Monitoring Data (dv)	2018 Base Case (dv)	2018 Preliminary Reasonable Progress Case (dv)
Grand Canyon National Park	AZ	11.7	11.4	11.3	2.2	2.2	2.1
Mount Baldy Wilderness	AZ	11.9	11.5	11.4	3.0	2.9	2.8

[13] WRAP Regional Technical Support Document for the Requirements of § 309 of the Regional Haze Rule (64 FR 35714–July 1, 1999) revised May 7, 2008.

[14] Our review of the technical products developed by the WRAP is available as Technical Support Document for Technical Products Prepared by the Western Regional Air Partnership (WRAP) in Support of Western Regional Haze Plans, February 28, 2011.

TABLE 1—BASELINE AND 2018 VISIBILITY AT THE COLORADO PLATEAU CLASS I AREAS—Continued

Class I area	State	20 percent worst visibility days			20 percent best visibility days		
		2000–2004 Baseline Monitoring Data (dv)	2018 Base Case (dv)	2018 Preliminary Reasonable Progress Case (dv)	2000–2004 Baseline Monitoring Data (dv)	2018 Base Case (dv)	2018 Preliminary Reasonable Progress Case (dv)
Petrified Forest National Park	AZ	13.2	12.9	12.9	5.0	4.9	4.8
Sycamore Canyon Wilderness	AZ	15.3	15.1	15.1	5.6	5.6	5.6
Black Canyon of the Gunnison National Park Wilderness.	CO	10.3	10.1	9.9	3.1	2.9	2.9
Flat Tops Wilderness	CO	9.6	9.2	9.0	0.7	0.6	0.5
Maroon Bells Wilderness	CO	9.6	9.2	9.0	0.7	0.6	0.5
Mesa Verde National Park	CO	13.0	12.8	12.6	4.3	4.1	4.0
Weminuche Wilderness	CO	10.3	10.1	9.9	3.1	2.9	2.9
West Elk Wilderness	CO	9.6	9.2	9.0	0.7	0.6	0.5
San Pedro Parks Wilderness	NM	10.2	10.0	9.8	1.5	1.3	1.2
Arches National Park	UT	11.2	11.0	10.9	3.8	3.6	3.5
Bryce Canyon National Park	UT	11.6	11.3	11.2	2.8	2.7	2.6
Canyonlands National Park	UT	11.2	11.0	10.9	3.8	3.6	3.5
Capitol Reef National Park	UT	10.9	10.6	10.5	4.1	4.0	3.9
Zion National Park	UT	13.2	13.0	13.0	5.0	4.7	4.7

B. Clean Air Corridors

1. Comprehensive Emissions Tracking Program

Pursuant to 40 CFR 51.309(d)(3), BC's RH SIP submittal provides for the implementation of strategies regarding clean-air corridors. We propose to find the SIP's treatment of clean-air corridors satisfies the requirements of 40 CFR 309(d)(3), and its subsections, as discussed in the next several paragraphs.

The WRAP developed a comprehensive emissions tracking system to assist the States in tracking emissions within portions of Oregon, Idaho, Nevada and Utah that have been identified as part of the CAC. The emission tracking is to ensure that visibility does not degrade on the least-impaired days in any of the 16 Class I areas of the Colorado Plateau. For a complete description of the emission tracking system and the process by which the annual emission trends will be summarized in order to identify any significant emissions growth that could lead to visibility degradation in the 16 Class I areas, see *Analysis of the Clean Air Corridor (CAC)* in the Appendix B–SIP of the BC RH SIP. The SIP submittal and all appendices can be found in the docket for this notice. Since no portion of the CAC lies within New Mexico, this emissions tracking system does not include tracking of emissions from AQCB. We are proposing to determine the RH 309 SIP submittal has met the requirements of 40 CFR 51.309(d)(3).

2. Identification of CACs

Pursuant to 40 CFR 51.309(d)(3)(i), BC has provided in its RH 309 SIP submittal the geographic boundaries of the CAC (a map of the CAC can be found as Figure 3 in Section B of the BC RH SIP). The WRAP identified the CAC using studies conducted by the Meteorological Subcommittee of the GCVTC and then updated the CAC based on an assessment described in the *WRAP Policy on Clean Air Corridors* and related technical analysis conducted by the WRAP. Appendix B–SIP of the AQCB RH SIP summarizes this assessment and contains additional technical analysis associated with the identification of the CAC. We are proposing to determine the RH 309 SIP submittal satisfies the 51.309(d)(3)(i) requirement.

3. Patterns of Growth Within and Outside of the CAC

Pursuant to 40 CFR 51.309(d)(3)(ii)–(iii), BC in its RH 309 SIP submittal has determined, based on the *WRAP Policy Paper on Clean Air Corridors* and technical analysis conducted by the WRAP,[15] that inside and outside the CAC there is no significant emissions growth occurring at this time that is causing visibility impairment in the 16 Class I areas of the Colorado Plateau. The WRAP will summarize annual emission trends within and outside of the CAC and will assess whether any significant future emissions growth is occurring that could result in visibility impairment in any of the 16 Class I areas. We are proposing to determine that 40 CFR 51.309(d)(3)(ii)–(iii) is met.

[15] WRAP Regional Technical Support Document for the Requirements of § 309 of the Regional Haze Rule (64 FR 35714—July 1, 1999) revised May 7, 2008.

4. Actions if Impairment Inside or Outside the Clean Air Corridor Occurs

The BC RH 309 SIP submittal describes how BC, in coordination with the State of New Mexico, other transport region States, and tribes, will review the annual summary of emission trends within the CAC and determine whether any significant emissions growth has occurred. If BC identifies significant emissions growth, it, in coordination with the State of New Mexico, other transport region States, and tribes, will seek WRAP assistance in conducting an analysis of the effects of this emissions growth. Pursuant to 40 CFR 51.309(d)(3)(iv), if this analysis finds that the emissions growth is causing visibility impairment in the 16 Class I areas, BC, in coordination with the State of New Mexico, other transport region States, and tribes, will evaluate the need for additional emission reduction measures and identify an implementation schedule for such measures. BC will report on the need for additional reduction measures to the EPA in accordance with the periodic progress reports required under 40 CFR 51.309(d)(10)(i). We are proposing to determine the RH 309 SIP submittal satisfies the strategy requirement of 40 CFR 309(d)(3)(iv).

5. Other CACs

Pursuant to 40 CFR 51.309(d)(3)(v), BC in its RH 309 SIP submittal has concluded that one other CAC for the Grand Canyon National Park can be identified at this time. BC's conclusion appears to derive from the *WRAP Regional Technical Support Document,* which cites to an alternative analysis of

CACs for the Grand Canyon.[16] This alternative analysis is not relied upon by the WRAP, however, to identify a CAC. The CAC identified by the WRAP pursuant to 40 CFR 51.309(d)(3)(i), is mostly a subset of the boundaries of the additional CAC for the Grand Canyon identified by BC (Appendix B–SIP, figure 26 and 27). The *WRAP TSD* notes that: ''Other than the various options for selection of a clean air corridor for Grand Canyon National Park, shown above, no other corridors have been identified. If the growth of visibility-impairing emissions, in the corridor identified, remain protective of Grand Canyon National Park, then it should be protective of the other Colorado Plateau Class I areas. Localized emissions near the Class I areas within the Clean Air Corridor, however, may have more effect on those Class I areas. Similarly, disproportionate emissions growth in the southern portion of the corridor may have more effect on Grand Canyon National Park.''

BC identified an additional CAC for the Grand Canyon National Park, but determined no additional measures are required at this time to protect against future degradation of air quality in any of the 16 Class I areas. The WRAP TSD and WRAP *Policy Paper on Clean Air Corridors* concluded that identification of the one CAC and evaluation of patterns of growth within and outside this CAC are sufficient to determine that no significant emissions growth is occurring at this time and that emission growth is not causing visibility impairment in the 16 Class I areas of the Colorado Plateau. We are proposing to approve BC's determination under 40 CFR 51.309(d)(3)(v).

C. Stationary Source Reductions

1. Provisions for Stationary Source Emissions of SO_2

As required by 40 CFR 51.309(d)(4)(i), BC in its RH 309 SIP submittal sets forth milestone SO_2 numbers for each year of the program until 2018.[17] Table 2 shows the milestone numbers and how compliance with the annual milestones will be determined (Table 3 of the BC RH 309 SIP).

TABLE 2—SO_2 EMISSIONS MILESTONES

Year	Regional sulfur dioxide milestone (tons per year (tpy)	Annual SO_2 emissions used to determine compliance with the annual milestones
2008	269,083 tons SO_2	Average of 2006, 2007 and 2008.
2009	234,903 tons SO_2	Average of 2007, 2008 and 2009.
2010	200,722 tons SO_2	Average of 2008, 2009 and 2010.
2011	200,722 tons SO_2	Average of 2009, 2010 and 2011.
2012	200,722 tons SO_2	Average of 2010, 2011 and 2012.
2013	185,795 tons SO_2	Average of 2011, 2012 and 2013.
2014	170,868 tons SO_2	Average of 2012, 2013 and 2014.
2015	155,940 tons SO_2	Average of 2013, 2014 and 2015.
2016	155,940 tons SO_2	Average of 2014, 2015 and 2016.
2017	155,940 tons SO_2	Average of 2015, 2016 and 2017.
2018	141,849 tons SO_2	Year 2018 only.
2019 forward, until replaced by an approved SIP.	141,849 tons SO_2	Annual; no multiyear averaging.

SO_2 emissions from sources in 1990 totaled 358,364 tpy and the 2018 milestone is 141,849 tpy (see *Demonstration that the* SO_2 *Milestones Provide Greater Reasonable Progress than BART,* Section N of the BC RH SIP). The difference is a 60 percent reduction in SO_2 emissions from 1990 to 2018. Thus, the AQCB has concluded that the emission reductions are on target to achieve the GCVTC goal of a 50 to 70 percent reduction of SO_2 emissions by 2040. We are proposing to determine the RH 309 submittal meets the requirements of 40 CFR 51.309(d)(4)(i).

2. Documentation of Emissions Calculation Methods for SO_2

Pursuant to 40 CFR 51.309(d)(4)(ii), the SIP includes documentation of the specific methodology used to calculate SO_2 emissions during the 2006 base year for each emitting unit included in the program. This requirement is addressed in Section N of the SIP, while 20.11.46 NMAC provides details on the methodology.

Pursuant to 40 CFR 51.309(d)(4)(ii), AQCB will document any change to the specific methodology used to calculate emissions at any emitting unit for any year after the base year. Until the program has been triggered and source compliance is required, AQCB will submit an annual emissions report that documents prior year emissions for AQCB sources covered by the 309 program to all participating States by September 30 of each year. AQCB will adjust actual emission inventories for sources that change the method of monitoring or calculating their emissions to be comparable to the emission monitoring or calculation method used to calculate the 2006 base year inventory. The EPA is proposing to determine the SIP submittal satisfies the requirements of 40 CFR 309(d)(4)(ii).

3. Monitoring, Recordkeeping, and Reporting of SO_2 Emissions

In order to meet the emission reporting requirements of 40 CFR 51.309(d)(4)(iii), the RH 309 SIP submittal includes provisions requiring the monitoring, recordkeeping, and reporting of actual stationary source SO_2 emissions within the City of Albuquerque/Bernalillo County to determine if the milestone has been exceeded. 20.11.46 NMAC, *Sulfur Dioxide Emissions Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program,* requires sources to report their emissions annually. Specifically, 20.11.46.9 NMAC defines the emission inventory and reporting requirements for tracking compliance with the regional sulfur dioxide milestones until the western backstop sulfur dioxide trading program has been fully implemented and emission tracking has occurred under 20.11.46.16 NMAC (See section V.E.3 of

[16] Green, M.C.; Pitchford, M.L.; and Ashbaugh, L.L. Identification of Candidate Clean Air Corridors for the Colorado Plateau. *J. Air & Waste Manage. Assoc. 1996. 46(5),* 446.

[17] The milestone numbers reflect the participation of Wyoming, Utah, and New Mexico (including the City of Albuquerque-Bernalillo County) in the 309 backstop trading program.

this notice for a further detail on emission inventory requirements under 20.11.46.16 NMAC). We are proposing to approve 20.11.46 NMAC and determine that the 309 SIP submittal satisfies the requirements of 40 CFR 51.309(d)(4)(iii).

4. Criteria and Procedures for a Market Trading Program

As Stated above, until the backstop trading program has been triggered and source compliance is required, the BC RH 309 SIP submittal provides that BC shall submit an annual emissions report for sources within the City of Albuquerque/Bernalillo County to all participating States by September 30 of each year. The report shall document actual sulfur dioxide emissions during the previous calendar year for all sources subject to the Section 309 program. The WRAP will compile reports from all participating States into a draft regional emission report for SO_2 by December 31 of each year. This report will include actual regional sulfur dioxide emissions, adjustments to account for changes in monitoring/calculation methods or enforcement/settlement agreements, and adjusted average emissions for the last three years for comparison to the regional milestone. As required by 40 CFR 51.309(d)(4)(iv), based on this compilation of reports from all States participating in the 309 program, States will determine if the milestone has been exceeded and will include a determination in a final regional emissions report that is submitted to the EPA. This final report and determination will be submitted to the EPA by the end of March, 15 months following the milestone year. We are proposing to determine the RH 309 SIP meets the requirements of 40 CFR 51.309(d)(4)(iv).

5. Market Trading Program

Per 40 CFR 51.309(d)(4)(v), the RH 309 SIP submittal provides that if the 309 backstop trading program is triggered, the regional emissions report will contain a common trigger date. In the absence of a common trigger date, the default date will be March 31 of the applicable year, but no later than 15 months after the end of the milestone year where the milestone was exceeded. The BC RH 309 SIP submittal requires that sources comply, as soon as practicable, with the requirement to hold allowances covering their emissions. Because the backstop trading program does not allow allocations to exceed the milestone, the program is sufficient to achieve the milestones adopted pursuant to 40 CFR 51.309(d)(4)(i) as discussed above. The backstop trading program is also consistent with the elements for such programs outlined in 40 CFR 51.308(e)(2)(vi). The analysis found in Section V.E. of this notice shows that the backstop trading program is consistent with the elements for trading programs outlined in 40 CFR 51.308(e)(2)(vi), as required by Section 309. See 40 CFR 51.309(d)(4)(v). We are proposing to determine the RH 309 SIP submittal meets the requirements of 40 CFR 309(d)(4)(v). We are also proposing to approve 20.11.46 NMAC, which includes the rules that govern the program. A review of 20.11.46 NMAC and revisions to the rule can be found in the TSD.

6. Provisions for the 2018 Milestone

Pursuant to 40 CFR 51.309(d)(4)(vi)(A), the RH 309 SIP submittal has provisions to ensure that until a revised implementation plan is submitted in accordance with 40 CFR 51.308(f) and approved by the EPA, emissions from covered stationary sources in any year beginning in 2018 do not exceed the 2018 milestone. In order to meet this requirement, BC has included special provisions for what will be required as part of their 2013 SIP revision required under 40 CFR 51.309(d)(10). The RH 309 SIP submittal provides that the 2013 SIP revision required by 40 CFR 51.309(d)(10) will contain either the provisions of a program designed to achieve reasonable progress for stationary sources of SO_2 beyond 2018 or a commitment to submit a SIP revision containing the provisions of such a program no later than December 31, 2016. (Section C, Part D of the BC RH SIP). We are proposing to determine the RH 309 SIP submittal satisfies the requirements of 40 CFR 51.309(d)(4)(vi)(A).

7. Special Penalty Provision for 2018

Pursuant to 40 CFR 51.309(d)(4)(vi)(B), the BC RH SIP submittal includes special penalty provisions to ensure that the 2018 milestone is met. If the backstop trading is triggered and the program will not start until after the year 2018, a special penalty shall be assessed to sources that exceed the 2018 milestone (Section A.5 of the BC RH SIP, and Section 20.11.46.20 NMAC, which we are proposing to approve). BC shall seek at least the minimum financial penalty of $5,000 per ton of SO_2 emissions in excess of a source's allowance limitation. Any source may resolve its excess emissions violation by agreeing to a streamlined settlement approach where the source pays a penalty of $5,000 per ton or partial ton of excess emissions and the source makes the payment within 90 calendar days after the issuance of a notice of violation. Any source that does not resolve its excess emissions violation in accordance with the streamlined settlement approach will be subject to formal enforcement action, in which the AQCB shall seek a financial penalty for the excess emissions based on New Mexico's statutory maximum civil penalties. The special penalty provisions for 2018 will apply for each year after 2018 until BC determines that the 2018 milestone has been met. BC will evaluate the amount of the minimum monetary penalty during each five-year SIP review and the penalty will be adjusted to ensure that penalties per ton substantially exceed the expected cost of allowances, and thus provide the appropriate deterrent effect. The EPA is proposing to determine the RH SIP submittal satisfies the special penalties provisions requirement at 40 CFR 51.309(d)(4)(vi)(B), and proposed approval of 20.11.46.20 NMAC is included in our proposal to approve 20.11.46 NMAC.

D. ''Better-Than-BART'' Demonstration

As discussed in Section IV.A of this preamble, if a State adopts an alternative program designed to replace ''source-by-source'' BART controls, the State must be able to demonstrate that the alternative program achieves greater reasonable progress than would be achieved by BART. In Section N of the BC RH SIP, *Demonstration that the SO_2 Milestones Provide for Greater Reasonable Progress than BART* (''better- than-BART'' demonstration), BC has included a demonstration of how the 309 program achieves greater reasonable progress than BART for SO_2. Below is a discussion of how the 309 backstop trading program achieves greater reasonable progress than BART. Wyoming, Utah, and the State of New Mexico have also submitted SIPs with the same better than BART demonstration as BC and thus are relying on a consistent demonstration across the States.

1. List of BART-Eligible Sources

Pursuant to 40 CFR 51.308(e)(2)(i)(A), BC's RH 309 SIP submittal offers a ''better-than-BART'' demonstration that lists the BART-eligible sources covered by the program in the section 309 States (see Table 3 below). BART eligible sources are identified as those sources that fall within one of the 26 specific source categories, were built between 1962 and 1977 and have potential emissions of 250 tons per year of any

visibility impairing air pollutant. (40 CFR 51.301). The WRAP identified three potential BART-eligible sources in BC. These were: PNM Reeves Generating Station, GCC Rio Grande Inc, and Cobisa Person Power Project. AQCB assessed whether these facilities were existing stationary facilities as defined at 40 CFR 51.301 and determined all three sources were determined to be not BART-eligible. These facilities did not meet the definition for BART eligibility, because PNM Reeves and GCC Rio Grande were not in existence and operation during the requisite time period, and the other facility did not have emission units in the 26 source categories for BART. We are proposing to determine that BC has satisfied 40 CFR 51.308(e)(2)(i)(A) and agree that there are no BART eligible sources in BC.

2. Subject to BART Determination

Pursuant to 40 CFR 51.308(e)(2)(i)(B), the section 309 States conducted individual source modeling on the BART-eligible sources within their States to determine which sources in their State causes or contributes to visibility impairment and are thus subject to BART. Having no BART-eligible sources, no modeling was required for sources in Bernalillo County, and no BC sources were determined to be subject to BART.

The State of New Mexico, and Utah relied on modeling by the WRAP to identify sources subject to BART. Based on the list of identified sources, the WRAP performed the initial BART modeling for the State of New Mexico and Utah. The procedures used are outlined in the WRAP Regional Modeling Center (RMC) BART Modeling Protocol.[18] The State of Wyoming performed separate modeling to identify sources subject to BART.[19] The States established a threshold of 0.5 deciviews for determining if a single source causes or contributes to visibility impairment. If the modeling shows that a source has a 0.5 deciview impact at any Class I area, that source causes or contributes to visibility impairment and is subject to BART. Table 3 shows the BART-eligible sources covered by the 309 backstop program and whether they are subject to BART. We are proposing to determine that the RH 309 SIP submittal satisfies 40 CFR 51.308(e)(2)(i)(B).

TABLE 3—SUBJECT TO BART STATUS FOR SECTION 309 BART-ELIGIBLE SOURCES

State	Company	Facility	Subject to BART?
New Mexico	Frontier	Empire Abo	No.
New Mexico	Xcel Energy	SWPS Cunningham Station	No.
New Mexico	Duke Energy	Artesia Gas Plant	No.
New Mexico	Duke Energy	Linam Ranch Gas Plant	No.
New Mexico	Dynegy	Saunders	No.
New Mexico	Giant Refining	San Juan Refinery	No.
New Mexico	Giant Refining	Ciniza Refinery	No.
New Mexico	Xcel Energy	SWPS Maddox Station	No.
New Mexico	Marathon	Indian Basin Gas Plant	No.
New Mexico	Public Service of New Mexico	San Juan Generating Station	Yes.
New Mexico		Rio Grande Station	No.
New Mexico	Western Gas Resources	San Juan River Gas Plant	No.
Utah	Pacificorp	Hunter	Yes.
Utah	Pacificorp	Huntington	Yes.
Wyoming	Basin Electric	Laramie River	Yes.
Wyoming	Black Hills Power & Light	Neil Simpson I	No.
Wyoming	Dyno Nobel	Dyno Nobel	No.
Wyoming	FMC Corp	Green River Soda Ash Plant	Yes.
Wyoming	FMC Corp	Granger River Soda Ash Plant	No.
Wyoming	General Chemical	Green River Soda Ash Plant	Yes.
Wyoming	P4 Production	Rock Springs Coking Plant	No.
Wyoming	Pacificorp	Dave Johnston	Yes.
Wyoming	Pacificorp	Jim Bridger	Yes.
Wyoming	Pacificorp	Naughton	Yes.
Wyoming	Pacificorp	Wyodak	Yes.
Wyoming	Sinclair Oil Corp	Sinclair Refinery	No.
Wyoming	Sinclair Refinery	Casper	No.

3. Best System of Continuous Emission Control Technology

As required by 40 CFR 51.308(e)(2)(i)(C), each State is to determine what BART would be for each subject to BART source covered by the 309 backstop trading program. In the ''better-than-BART'' demonstration, all subject to BART electric generating units (EGUs) were assumed to be operating at the presumptive SO_2 emission rate provided in the BART Guidelines (0.15 lb/MMBtu). The 309 program also includes non-EGU subject to BART units. The non-EGU subject to BART units are four boilers located at two trona plants in Wyoming. Wyoming made a determination of what BART would be for these non-EGU units. One trona plant recently installed pollution control projects achieving a 63 percent reduction in SO_2 from its two boilers. The State of Wyoming determined this control level would serve as a BART benchmark for all trona boilers. Thus, a 63 percent reduction in emissions from these sources was included as the BART benchmark in calculating emission reductions assuming application of BART at these sources. Emission

[18] CALMET/CALPUFF Protocol for BART Exemption Screening Analysis for Class I Areas in the Western United States, Western Regional Air Partnership (WRAP); Gail Tonnesen, Zion Wang; Ralph Morris, Abby Hoats and Yiqin Jia, August 15, 2006. Available at: *http://pah.cert.ucr.edu/aqm/308/bart/WRAP_RMC_BART_Protocol_Aug15_2006.pdf.*

[19] BART Air Modeling Protocol, Individual Source Visibility Assessments for BART Control Analyses, State of Wyoming, Department of Environmental Quality, Air Quality Division, Cheyenne, WY September 2006.

reductions or the BART benchmark for all subject to BART sources covered by the 309 program was calculated to be 48,807 tons of SO_2. We are proposing to determine the furnished analysis meets the requirements of 40 CFR 51.308(e)(2)(i)(C).

4. Projected Emissions Reductions

As required by 40 CFR 51.308(e)(2)(i)(D), the RH 309 SIP submittal has provided the expected emission reductions that would result from the 309 backstop trading program. The ''better-than-BART'' demonstration projects that 2018 baseline emissions would be 190,656 tpy of SO_2 for the sources covered by the 309 program in the participating States. The reductions achieved by the program are 48,807 tpy of SO_2, resulting in remaining emissions of 141,849 tpy of SO_2 in 2018. We are proposing to determine the analysis furnished to satisfy 40 CFR 51.308(e)(2)(i)(D) is acceptable.

5. Evidence That the Trading Program Achieves Greater Reasonable Progress Than BART

We are proposing to approve the RH 309 SIP submittal's determination that the SO_2 backstop trading program achieves greater reasonable progress than would be achieved through the installation of and operation of BART at all the sources subject to BART in the participating States, as required by 40 CFR 51.308(e)(2)(i)(E). As the RH 309 SIP submittal explains, the program ensures sources beyond BART sources are included. The backstop trading program includes all stationary sources with emissions greater than 100 tpy of SO_2 and thus encompasses 63 non-subject to BART sources. BART applied on a source-by-source basis would not affect these sources, and there would be no limitation on their future operations under their existing permit conditions, or allowable emissions. The milestones will cap these sources at actual emissions, which are less than current allowable emissions.

As the RH 309 SIP submittal also explains, the program also provides for a cap on new source growth. Future impairment is prevented by capping emissions growth from sources covered by the program and from entirely new sources in the region. BART applied on a source-specific basis would have no impact on future growth. The backstop trading program also provides a mass-based cap that has inherent advantages over applying BART to each individual source. The baseline emission projections and assumed reductions due to the assumption of BART-level emission rates on all sources subject to BART are all based on actual emissions, using 2006 as the baseline. If the BART process were applied on a source-by-source basis to individual sources, emission limitations would typically be established as an emission rate (lbs/hr or lbs/MMBtu) that would account for variations in the sulfur content of fuel and alternative operating scenarios, or allowable emissions. A mass-based cap that is based on actual emissions is more stringent because it does not allow a source to consistently use this difference between current actual and allowable emissions.

6. All Emission Reductions Must Take Place During the First Planning Period

The first planning period ends in 2018. As discussed in the preamble above, the reductions from the 309 program will occur by 2018. We are therefore proposing to determine the submitted plan satisfies the requirement of 40 CFR 51.309(e)(2)(iii).

7. Detailed Description of the Alternative Program

The detailed description of the backstop trading program is provided in Section C—*Emission Reductions for Stationary Sources* of the BC RH SIP and the rules that govern it are found at 20.11.46 NMAC, which we are proposing to approve. We propose to determine the detailed description requirement in 40 CFR 51.309(e)(2)(iii) is met. The details of the backstop trading program are discussed in section V.E of this notice.

8. Surplus Reductions

We propose to approve the determination in the RH 309 SIP submittal that all emission reductions resulting from the emissions trading program are surplus as of the baseline date of the SIP, as required by 40 CFR 51.208(e)(2)(iv).

9. Geographic Distribution of Emissions

The BC RH 309 SIP submittal includes a summary of modeling conducted by the WRAP in 2000 to compare the visibility improvement expected from BART to the backstop trading program for the Class I areas on the Colorado Plateau. A summary of the modeling results can be found in Section N of the BC RH SIP, which refers to data from modeling included in Tables 2 and 3 of Attachment C to the Annex.[20] [21] This modeling was conducted during the development of the Annex to examine if the geographic distribution of emissions under the trading program would be substantially different and disproportionately impact any Class I area due to a geographic concentration of emissions. The modeled visibility improvement for the best and worst days at the Class I areas for the 309 program is similar to improvement anticipated from the BART scenario (within 0.1 dv) on the worst and best visibility days, thus—if we assume participation and milestones consistent with the model—demonstrating that the distribution of emissions between the BART scenario and the 309 trading program are not substantially different. We note this modeling demonstration included nine States, many of which are not participating in the backstop trading program. We believe this modeling demonstration adds support to our proposed determination discussed above in this section that the RH 309 SIP submittal appropriately shows the trading program will achieve greater reasonable progress than would be achieved through the installation and operation of BART, as required by 40 CFR 51.308(e)(2)(i)(E).

E. Requirements for Alternative Programs With an Emissions Cap

Since the 309 trading program is a backstop trading program, the provisions outlined below will only apply if the milestone is exceeded and the program is triggered. We are proposing to approve 20.11.46 NMAC, which provides enforceable rules that govern the triggering and administration of the program. The analysis that follows shows that the backstop trading program is consistent with the elements for trading programs outlined in 40 CFR 51.308(e)(2)(vi), as required by Section 309. See 40 CFR 51.309(d)(4)(v).

1. Applicability Provisions

Pursuant to 40 CFR 51.308(e)(2)(vi)(A), the backstop trading program has the same applicability requirements in all States opting to participate in the program. 20.11.46.11 NMAC, which we are proposing to approve, contains the applicability provisions, which indicates that the backstop trading program generally applies to all stationary sources that

[20] Voluntary Emissions Reduction Program for Major Industrial Sources of Sulfur Dioxide in Nine Western States and A Backstop Market Trading Program, an Annex to the Report of the Grand Canyon Visibility Transport Commission (September 2000) at C–15 and 16.

[21] WRAP conducted modeling of the degree of visibility improvement that would occur on average and for the 20% best and worst visibility days. The WRAP used the transfer coefficients developed as part of the Integrated Assessment System (IAS) and used by the Grand Canyon Visibility Transport Commission. As noted in the Annex, this modeling has limitations which must be considered when interpreting the results.

emit 100 tons per year or more of SO_2 in the program trigger year. We are proposing to approve the 20.11.46.11 NMAC as meeting the requirements of 40 CFR 51.308(e)(2)(vi)(A).

2. Allowance Provisions

Part C.C1 of the AQCB RH SIP and 20.11.46.14 NMAC, which we propose to approve, contain the allowance allocation provisions as required by 40 CFR 51.308(e)(2)(vi)(B). The rule requires sources to open a compliance account in order to track allowances and contains other requirements associated with those accounts. These SIP provisions also contain the provisions on how BC will allocate allowances and States that the total number of allowances distributed cannot exceed the milestone for any given year. We are proposing to approve the submitted 20.11.46.14 NMAC as meeting 40 CFR 51.308(e)(2)(vi)(B).

3. Monitoring and Recordkeeping Provisions

As required by 40 CFR 51.308(e)(2)(vi)(C)–(E), the submitted rule 20.11.46.16.A.1 NMAC provides that sources subject to 40 CFR part 75 under a separate requirement from the backstop trading program shall meet the requirements contained in part 75 with respect to monitoring, recording and reporting SO_2 emissions. If a unit is not subject to 40 CFR part 75 under a requirement separate from the trading program, BC requires that a source use one of the following monitoring methods: (1) A continuous emission monitoring system (CEMS) for SO_2 and flow that complies with all applicable monitoring provisions in 40 CFR part 75; (2) if the unit is a gas- or oil-fired combustion device, the monitoring methodology in Appendix D to 40 CFR part 75, or, if applicable, the low mass emissions provisions (with respect to SO_2 mass emissions only) of section 75.19(c) of 40 CFR part 75; (3) one of the optional protocols, if applicable, in 20.11.46.21 NMAC or 20.11.46.22 NMAC; or (4) a petition for site-specific monitoring that the source submits for approval by AQCB and the EPA in accordance with Paragraph (5) Subsection O of 20.11.46.16 NMAC. All the above sources are required to comply with the reporting and recordkeeping requirements in 40 CFR part 75.

Although most sources covered by the backstop trading program will be able to meet the monitoring requirements Stated above, there are some emission units that are either not physically able to install the needed equipment or do not emit enough sulfur dioxide to justify the expense of installing these systems. As discussed in part C5.3 of the AQCB RH SIP, the trading program allows these emission units to continue to use their pre-trigger monitoring methodology, but does not allow the source to transfer any allocation to that unit to another source. The program requires that the allowances associated with emission units that continue to use their pre-trigger monitoring methodology be placed in a special reserve compliance account, while allowances for other emission units are placed in a regular compliance account. Sources may not trade allowances out of a special reserve compliance account, even for use by emission units at the same source, but can use the allowances to show compliance for that particular unit.

Subsection A of 20.11.46.16 NMAC allows sources with any of the following emission units to apply to establish a special reserve compliance account: (1) Any smelting operation where all of the emissions from the operation are not ducted to a stack; (2) any flare, except to the extent such flares are used as a fuel gas combustion device at a petroleum refinery; or (3) any other type of unit without add-on sulfur dioxide control equipment, if the unit belongs to one of the following source categories: cement kilns, pulp and paper recovery furnaces, lime kilns, or glass manufacturing. Pursuant to the submitted 20.11.46.16 NMAC, sources with a special reserve compliance account are required to submit to BC an annual emissions Statement and sources are required to maintain operating records sufficient to estimate annual emissions consistent with the baseline emission inventory submitted in 1998. We are proposing to approve the submitted 20.11.46.16 NMAC and find the submitted trading program is consistent with the monitoring, recordkeeping and reporting requirements in 40 CFR 51.308(e)(2)(vi)(C) through (E).

4. Tracking System

As required by 40 CFR 51.308(e)(2)(vi)(F), section C2 of the submitted RH 309 SIP provides the overarching specifications for an Emissions and Allowance Tracking System (EATS). According to the BC RH SIP submittal, the EATS must provide that all necessary information regarding emissions, allowances, and transactions is publicly available in a secure, centralized database. The EATS must ensure that each allowance is uniquely identified, allow for frequent updates, and include enforceable procedures for recording data. If the program is triggered, AQCB will work with the State of New Mexico, other States, and tribes participating in the trading program to implement this system. More detailed specifications for the EATS are provided in the *WEB Emission and Allowance Tracking System (EATS) Analysis*.[22] BC assumes responsibility for ensuring that all the EATS provisions are completed as described in its SIP.

In addition, BC will work with the State of New Mexico and the other participating States to designate one tracking system administrator (TSA). The submitted RH 309 SIP provides that the TSA shall be designated as expeditiously as possible, but no later than six months after the program trigger date. BC will enter into a binding contract with the TSA that shall require the TSA to perform all TSA functions described in the SIP and in 20.11.46 NMAC, such as transferring and recording allowances. We propose to determine the submitted trading program has adequate tracking system provisions in accordance with CFR 51.308(e)(2)(vi)(F).

5. Account Representative

Pursuant to 40 CFR 51.308(e)(2)(vi)(G), the submitted RH 309 SIP relies on submitted rule 20.11.46.12 NMAC, which contains provisions for the establishment of an account representative. The SIP submittal requires each source to identify one account representative. The account representative shall submit to BC and the TSA a signed and dated certificate that contains a certification Statement verifying that the account representative has all the necessary authority to carry out the account representative responsibilities under the trading program on behalf of the owners and operators of the sources. The certification Statement also needs to indicate and that each such owner and operator shall be fully bound by the account representatives representations, actions, inactions, or submissions and by any decision or order issued to the account representative by BC regarding the trading program. We are proposing to determine the submitted rule 20.11.46.12 NMAC and the submitted SIP meet the requirements for ''authorized account representative provisions'' in 40 CFR 51.308(e)(2)(vi)(G).

[22] Western Backstop (WEB) Emissions and Allowance Tracking System (EATS) Analysis. Perrin Quarles Associates, Inc. July 18, 2003. Available at: *http://www.wrapair.org/forums/mtf/documents/eats/WEB_EATS_Final_Report_July_31.pdf.*

6. Allowance Transfers

The submitted RH 309 SIP establishes procedures pertaining to allowance transfers to meet the requirement of 40 CFR 51.308(e)(2)(vi)(H). 20.11.46.17 NMAC, a submitted rule we propose to approve, contains requirements sources must follow for allowance transfers. To transfer or retire allowances, the account representative shall submit the transfer account number(s) identifying the transferor account, the serial number of each allowance to be transferred, the transferor's account representative's name and signature, and date of submission. The allowance transfer deadline is midnight Pacific Standard Time on March 1 of each year following the end of the control period. Sources must correctly submit transfers by this time in order for a source to be able to use the allowance to demonstrate compliance. We are proposing to approve 20.11.46.17 as being consistent with the program elements required at 40 CFR 51.308(e)(2)(vi)(H).

Section C3 of the RH 309 SIP provides the procedures the TSA must follow to transfer allowances. The TSA will record an allowance transfer by moving each allowance from the transferor account to the transferee account as specified by the request from the source, if the transfer is correctly submitted and the transferor account includes each allowance identified in the transfer. Within five business days of the recording of an allowance transfer, the TSA shall notify the account representatives of both the transferor and transferee accounts, and make the transfer information publicly available on the Internet. Within five business days of receipt of an allowance transfer that fails to meet the requirements for transfer, the TSA will notify the account representatives of both accounts of the decision not to record the transfer, and the reasons for not recording the transfer. We are proposing to determine the submitted trading program is consistent with the ''allowance transfer provisions'' requirement of 40 CFR 51.308(e)(2)(vi)(H).

7. Compliance Provisions

Pursuant to 40 CFR 51.308(e)(2)(vi)(I), the trading program in the submitted RH 309 SIP provides the procedures for determining compliance and relies on submitted rule 20.11.46.19 NMAC, which we are proposing to approve. Per this submitted rule, the source must hold allowances as of the allowance transfer deadline in the source's compliance account (together with any current control year allowances held in the source's special reserve compliance account) in an amount not less than the total SO_2 emissions for the control period from the source. AQCB determines compliance by comparing allowances held by the source in their compliance account(s) with the total annual SO_2 emissions reported by the source. If the comparison of the allowances to emissions results in emissions exceeding allowances, the source's excess emissions are subject to the allowance deduction penalty in 20.11.46.19 C. NMAC (discussed in further detail below). We are proposing to determine the submitted rule 20.11.46.19 NMAC is consistent with the ''compliance provisions'' requirement of 40 CFR 51.308(e)(2)(vi)(I).

8. Penalty Provisions

The submitted rule 20.11.46.19 C. NMAC provides the penalty provisions as required by 40 CFR 51.308(e)(2)(vi)(J). Per this section, a source's allowances will be reduced by an amount equal to three times the source's tons of excess emissions if they are unable to show compliance. We are proposing to determine the submitted rule 20.11.46.19 is consistent with the ''penalty provisions'' requirement of 40 CFR 51.308(e)(2)(vi)(J).

9. Banking of Allowances

As allowed by 40 CFR 51.308(e)(2)(vi)(K), 20.11.46.18 NMAC, which we propose to approve, allows sources to use allowances from current and prior years to demonstrate compliance, with some restrictions. Sources can only use 2018 allowances to show compliance with the 2018 milestone and may not use allowances from prior years. In order to insure that the use of banked allowances does not interfere with the attainment or maintenance of reasonable progress goals, the backstop trading program includes flow-control provisions (see section C4 of the RH 309 SIP submittal). The flow control provisions are triggered if the TSA determines that the banked allowances exceed ten percent of the milestone for the next control year, and thereby ensure that too many banked emissions are not used in any one year. We are proposing to determine the submitted trading program has provisions that clarifies the restrictions on the use of banked allowances, consistent with the requirement in 40 CFR 51.308(e)(2)(vi)(K).

10. Program Assessment

Pursuant to 40 CFR 51.308(e)(2)(vi)(L), section D1 of the BC RH SIP submittal contains provisions for a 2013 assessment. For the 2013 assessment, BC will work with the State of New Mexico and other participating States to develop a projected emission inventory for SO_2 through the year 2018. BC will then evaluate the projected inventory and assess the likelihood of meeting the regional milestone for the year 2018. BC shall include this assessment as part of the 2013 progress report that must be submitted under 40 CFR 51.309(d)(10). We are proposing to determine the RH 309 SIP submittal is consistent with the program assessment provisions requirement in 40 CFR 51.308(e)(2)(vi)(L).

F. Provisions for Stationary Source NO_X and PM

Pursuant to 40 CFR 51.309(d)(4)(vii) and 40 CFR 51.309(g), BC's RH SIP submittal contains BART and long-term strategies to address NO_X and PM emissions As previously discussed, no sources in Bernalillo County satisfied the definition for BART-eligible sources at 40 CFR 51.301. An assessment of emissions control strategies for stationary source NO_X and PM, and the degree of visibility improvement that would result from implementation of the identified strategies was prepared by the WRAP. This report, *Stationary Source NO_X and PM Emissions in the WRAP Region: An Initial Assessment of Emissions, Controls, and Air Quality Impacts,* is included in Appendix H–O of the AQCB RH SIP. This report represents the initial assessment of stationary source NO_X and PM strategies for regional haze. Long-term strategies are discussed in section V. N below.

G. Mobile Sources

Pursuant to 40 CFR 51.309(d)(5)(i), BC, in collaboration with the WRAP, assembled a comprehensive Statewide inventory of mobile source emissions that was included in the RH 309 SIP submittal. The inventory included on-road and non-road mobile source emissions inventories for western States for the time period 1996 through 2018, inventorying 1996, and then projecting 2003, 2008, 2013, and 2018.[23] These inventories for New Mexico and the Albuquerque urban area are summarized in Tables 10, 10.1, 10.2, and 10.3 of the BC RH SIP. Mobile source emissions (on-road and non-road) are projected to be at their lowest level within Bernalillo County at the end of the planning period primarily

[23] Appendix 2007–C of the AQCB RH SIP, Summary and Discussion of 1996 Through 2018 Mobile Source Emissions Inventories. Technical Memo from Tom Moore to Mobile Sources Forum. November 26, 2002.; Final Report: Development of WRAP Mobile Source Emission Inventories, ENVIRON, Feb. 9, 2004.

due to on-road vehicle emission and fuel standards established by the EPA.

An emission inventory update was also done for a 2002 base year and emission projections for the years 2008, 2013, and 2018.[24] The inventory shows a continuous decline in emissions from mobile sources from VOC, NO_X, $PM_{2.5}$, elemental carbon (EC), and organic carbon (OC) emissions over the period of 2002–2018. Per 40 CFR 51.309(d)(5)(i)(A), the inventories show a decline in mobile source emissions and therefore no further action is required by the AQCB to address mobile source emissions.

Pursuant to 40 CFR 51.309(d)(5)(i)(B), Section D 1.(c) of the BC RH SIP States that BC will submit a SIP revision no later than December 31, 2013, containing any long-term strategies necessary to reduce SO_2 emissions from non-road mobile sources consistent with the goal of reasonable progress, if necessary, based on consideration of the emission reductions achieved by Federal standards. We note the available emission inventory projections show that there will be a 99 percent decrease in SO_2 emissions from non-road mobile sources for 2002–2018. The reduction will result from compliance with EPA's rule titled *Control of Emissions of Air Pollution from Non-road Diesel Engines and Fuel* (see 69 FR 38958). A 99 percent reduction in SO_2 from non-road mobile sources is consistent with the goal of reasonable progress and no other long-term strategies are necessary to address SO_2 emissions from non-road mobile sources at this time. Pursuant to 40 CFR 51.309(d)(5)(ii), BC will submit interim reports to the EPA in 2013 and 2018 on the implementation of regional and local recommendations from the GCVTC report pertaining to mobile sources. BC will include these reports as part of the reports required by 40 CFR 51.309(d)(10). We propose to determine the RH 309 SIP submittal satisfies the requirements of 51 CFR 51.309(d)(5).

H. Programs Related to Fire

Pursuant to 40 CFR 51.309(d)(6), the BC RH SIP submittal must provide for an evaluation of how its SIP meets the 51.309(d)(6) ''Programs related to fire'' requirements.

Based on our review of Section E of the BC RH SIP submittal, we propose to find that the RH SIP submittal meets the 309(d)(6) requirements as discussed in detail below. We also propose approval of revisions to the BC's Open Burning rule submitted to us on December 26, 2003 and July 28, 2011. The 2003, and the 2011 submittals revise and replace BC's Open Burning rule of 1980 that the EPA approved into the SIP. By proposing to approve the December 26, 2003, and the July 28, 2011 submittals, we are proposing to repeal BC's Open Burning rule of 1980 from the SIP.

1. Evaluation of Current Fire Programs

BC's submittal meets 51.309(d)(6)(i) as it demonstrates how its smoke management program and all federal or private programs for prescribed fire in BC have a mechanism in place for evaluating and addressing the degree of visibility impairment from smoke in their planning and application of burning. For example, Tables 11 and 12 of the BC RH SIP submittal document the relevant federal, State and local programs that address visibility. See Tables 11 and 12 for references to the State of New Mexico's Open Burning Rule (20.2.60 NMAC), and the State of New Mexico's Smoke Management Rule (20.2.65 NMAC). To address local programs, BC has adopted the Albuquerque-Bernalillo County Open Burning Regulation (20.11.21 NMAC) and submitted this to us for SIP approval and as noted previously, today we are proposing to approve it. The rule was first approved by the EPA on April 10, 1980. See 45 FR 24468. To address the Regional Haze Rule requirements, the AQCB later revised its rules in 2003 and 2011. See submittals at the EPA docket identified No. EPA–R06–OAR–2009–0648. A more detailed discussion of our proposed approval of the BC Open Burning Rule can be found in the TSD. There are two types of burns specified by the rule. PB–I burns are those burn projects expected to generate less than one ton per day of PM_{10} and PB–II burns are those burn projects expected to generate one ton per day or more of PM_{10}.

We propose to find that BC's Open Burning Rule meets the specific additional requirements of 51.309(d)(6)(i) which address: (a) Actions to minimize emissions, (b) evaluation of smoke dispersion, (c) alternatives to fire, (d) public notification, (e) air quality monitoring, (f) surveillance and enforcement, and (g) program evaluation. These are discussed below.

a. Actions To Minimize Emissions

In order to minimize emissions, Section 20.11.21.19 of BC's Open Burn Rule requires the use of emission reduction techniques (ERT) by burners. Any techniques used in conjunction with burning that reduce the actual amount of emissions produced from a planned burn project are considered emission reduction techniques. Emission reduction techniques are described in 20.11.21.19 NMAC and include reducing the area burned, mechanical treatments, chemical pre-treatments, site conversion, land use change, reduction in fuel loading, reduction in fuel consumption, minimization of emission factor, and the use of an air curtain incinerator. The rule requires land managers burning PB–II burns to use at a minimum, one emission reduction technique included in 20.11.21.19 NMAC for each planned burn project (20.11.21.15 C.(3) NMAC). PB–II burners will indicate on the required form which emission reduction techniques are being utilized for each planned burn project. We propose to find that this portion of the Open Burning rule meets this requirement.

b. Evaluation of Smoke Dispersion

To evaluate smoke dispersion, 20.11.21.15 B.(1)(b) NMAC only allows PB–I burns to be ignited during daytime hours when the ventilation index category is rated ''Good'' or better as determined by using the methodology outlined in 20.11.21.17 NMAC. To comply with this requirement, the burner must conduct visual monitoring and document the results in writing. These results include an evaluation of the smoke dispersion by recording characteristics of the smoke (e.g., color, density), including the general compass direction of dispersion, the patterns of vertical dispersion, and the duration of the smoke plume(s), and corresponding time-of-day information. For burns within 1 mile of a population, the burner must notify the population in advance and AQCB may choose to conduct instrument monitoring (20.11.21.15 B.(5) NMAC).

For PB–II burns, 20.11.21.15 C. NMAC provides the burner can ignite a planned burn project only during times when the ventilation category is ''Good'' or better[25] as determined by using the methodology outlined in 20.11.21.17 NMAC, and must notify the public at least two days prior to the burn. The burner must conduct visual monitoring and document the results in writing. The AQCB may choose to conduct instrument monitoring in addition to visual monitoring. We propose to find

[24] Detailed information on the emission inventory is contained in the ENVIRON Report *WRAP Mobile Source Emission Inventories Update,* May 2006.

[25] Ventilation category is a classification that describes the potential for smoke to ventilate away from its source. The classification (Excellent, Very Good, Good, Fair, Poor) is determined by multiplying the mixing height in feet by the transport winds in knots, thus providing the ventilation category in knot-feet. The ventilation category can be found in the National Weather Service's Fire Weather Forecast, which is the State approved source for this information.

that this portion of the Open Burning rule meets this requirement.

c. Alternatives to Fire

To address the alternatives to fire requirement, 20.11.21.15 C.(2) NMAC requires that for burns exceeding 1 ton PM_{10} emissions per day, burners must consider the use of alternatives to burning. Burners must then document that the use of alternatives to burning was considered prior to the decision to utilize fire. The documentation includes citing the feasibility criterion that prevented the use of alternatives. This documentation must be included on the registration form provided by the AQCB. The alternatives to fire that must be considered are described in 20.11.21.18 NMAC. We propose to find that this portion of the Open Burning rule meets this requirement.

d. Public Notification

To meet the public notification requirements, 20.11.21.15 B.(5)(b) NMAC requires that for PB–I burns, burners must make a good faith effort to notify the populations that are located within one mile of the planned burn project. The method of notification shall be an advertisement in a newspaper of general circulation in the area where the burn will take place, or other means, as approved by the AQCB to ensure that adequate notice is provided to the affected public. The burner must conduct public notification no sooner than 30 days and no later than two days in advance of the ignition of the planned burn project. In addition, the burner will also notify the local fire authorities prior to igniting a burn and register the burn project with Albuquerque environmental health department as required by 20.11.21.15 B.(2)–(3) NMAC. The Open Burning rule at 20.11.21.15 (C) NMAC requires that for PB–II burns, burners must make a good faith effort to notify the public using an advertisement in a newspaper of general circulation in the area where the burn will take place, or other means, as approved by the AQCB to ensure that adequate notice is provided to the affected public. The burner must conduct public notification no sooner than 30 days and no later than two days in advance of the ignition of the planned burn project as required by 20.11.21.15 C.(11) NMAC. In addition, the burner will also notify the local fire authorities prior to igniting a burn and register the burn project with Albuquerque environmental health department as required by 20.11.21.15 C.(6)–(7) NMAC. We propose to find that this portion of the Open Burning rule meets this requirement.

e. Air Quality Monitoring

To address air quality monitoring, NMAC sections 20.11.21.15 B.(1)(b)(ii), B.(5)(a), and C.(5) require that PB–I and PB–II burners conduct and document visual monitoring on all planned burn projects. Burners will evaluate the smoke dispersion by recording characteristics of the smoke (e.g., color, density), including the general compass direction of dispersion, the patterns of vertical dispersion, and the duration of the smoke plume(s). The use of monitoring equipment will be based on the planned burn project's proximity to a population, nonattainment area, or Class I area and will be determined on a case-by-case basis. We propose to find that this portion of the Open Burning rule meets this requirement.

f. Surveillance and Enforcement

To address surveillance and enforcement requirements, 20.11.21 NMAC requires that the permittee submit reports and burn project tracking forms to the AQCB on PB–I and PB–II burns. See 20.11.21.15 NMAC. In addition, 20.11.21.13F States that any permit issued under the rule may be revoked or suspended, if the applicant fails to comply with the permit provisions therein, and the permittee may be subject to enforcement actions. We propose to find that this portion of the Open Burning rule meets this requirement.

g. Program Evaluation

Pursuant to 40 CFR 51.309(d)(6)(i), BC has included in the RH 309 SIP submittal an evaluation of its smoke management program and all Federal, State, and private prescribed fire smoke management programs in Bernalillo County based on the potential to contribute to visibility impairment in the 16 Class I Areas of the Colorado Plateau, and how visibility protection from smoke is addressed in planning and operation. The RH SIP submittal also contains an evaluation of whether its smoke management program and these prescribed fire smoke management programs contain the following elements: Actions to minimize emissions; evaluation of smoke dispersion; alternatives to fire; public notification; air quality monitoring; surveillance and enforcement; and program evaluation. The SIP at Section E(b) and Tables 11 and 12 describe the results of these evaluations in detail. For example, BC commits to host an annual meeting with all burners and interested stakeholders to assess the adequacy of the design, impact, and implementation of the program. BC commits to review gathered data with stakeholders on an annual basis that will serve to establish annual emissions goals. It has also adopted an Open Burning regulation at 20.11.21 NMAC that serves as the foundation of the Open Burning Program, which the AQCB administers and enforces. We propose to find that the BC RH SIP submittal meets the requirement for program evaluation under 51.309(d)(6)(i).

2. Inventory and Tracking System

Pursuant to 40 CFR 51.309(d)(6)(ii), States must include in their section 309 plan a Statewide process for gathering the essential post-burn activity information to support emissions inventory and tracking systems. The BC RH SIP submittal provides for inventory and tracking measures that we propose to find meet the 309(d)(6)(ii) requirement. See Section E(c) of the BC RH SIP submittal. For example, BC's Open Burning rule at 20.11.21.15 NMAC includes requirements for PB–I and PB–II burners to report on emissions from their burns including quantitative information regarding fuel types, fuel consumption, and type of burn to maintain an adequate emission inventory. The AQCB maintains a fire emission inventory of the following pollutants: VOC, NO_X, elemental carbon, organic carbon, and fine particulate for fire sources within Bernalillo County. 20.11.21.15.B(4) NMAC requires applicants for PB–I burns to complete and submit to the AQCB a burn project tracking form within two weeks after completion of the burn activity. 20.11.21.15.C(9) NMAC requires applicants for PB–II burns to complete and submit to the AQCB a burn project tracking form within two weeks after completion of the burn activity. Completion of these tracking forms in conjunction with the emission quantification requirements described in 20.11.21.16 should serve as the basis for inventory and tracking of emissions in Open Burning rule. The emissions tracking system follows the WRAP Fire Tracking System Policy (See Appendix K–O of the ABQ RH SIP). BC will submit emission inventory reports to the WRAP and each year, BC will complete an emissions inventory and submit the report to the State of New Mexico, as required under 20.11.47 Emissions Inventory Requirements. We are proposing to determine the RH SIP submittal meets these requirements.

3. Identification and Removal of Administrative Barriers

We propose to find that the BC RH SIP submittal meets the requirements for 309(d)(6)(iii) that requires that States

identify existing administrative barriers to the use of non-burning alternatives and adopt a process for continuing to identify and remove administrative barriers where feasible. Section E(d) of the RH SIP submittal, describes the process the AQCB commits to undertake to address this requirement. For example, the AQCB is committed to work with key public and private entities to identify and remove administrative barriers to the use of alternatives to burning for prescribed fire on federal, State, and private lands, pursuant to 40 CFR 51.309(d)(6)(iii). The process is collaborative and provides for continuing identification and removal of administrative barriers, and considers economic, safety, technical and environmental feasibility criteria, and land management objectives. The BC RH SIP relies on *Non-burning Alternatives for Vegetation and Fuel Management, and Burning Management Alternatives on Agricultural Lands in the Western United States* (Appendix 2007–E of the BC RH SIP) developed by the WRAP for non-burning alternatives and methods to assess their applicability. Should the AQCB determine that an administrative barrier exists, the AQCB will work collaboratively with the appropriate public and private entities to evaluate the administrative barrier, identify the steps necessary to remove the administrative barrier, and initiate the removal of the administrative barrier, where it is feasible to do so. During the development of revisions to the Open Burning rule, the AQCB identified one potential administrative barrier to the use of non-burning alternatives that concerns the use of air curtain incinerators (ACIs). An ACI is a pollution control device which operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Introducing high velocity air into the combustion zone acts as a ''curtain'' and trapping the smoke and the particulate matter. Use of this control device will enhance combustion, compared with open burning, and will curb smoke and particulate emissions. This curtain also helps with maintaining a higher combustion zone temperature, thus improving the efficiency of the burn. Furthermore, ACIs reduce risk of an escaped fire and could be considered for safety reasons. Therefore, use of ACIs as an ERT is acceptable. Such a use would be available to a source through BC's regulation 20.22.7 NMAC. As BC's rules are currently structured, ACI's are not allowed (See 20.11.68 NMAC) unless a variance to such a prohibition is granted by BC under existing rules. See 20.22.7 NMAC. In addition, the granting or approval of a variance by the board does not mean automatic approval by the EPA. A source operating under a variance may be subject to federal enforcement for not meeting the SIP unless the State/local agency adopts and submits the variance to the EPA approval as a SIP revision. We suggest that BC be proactive in taking the necessary steps they need to revise their Open Burning rules to allow for ACI's in appropriate circumstances without the need to issue variances. The alternatives to fire developed by BC are described in 20.11.21.18 NMAC.

4. Enhanced Smoke Management Program

We propose to find that BC's RH SIP submittal and Open Burning rule meet the requirements for 309(d)(iv) that requires the SIP include an enhanced smoke management program, which means the smoke management program considers visibility and is based on the criteria of efficiency, economics, law, emission reduction opportunities, land management objectives, and reduction of visibility impairment. Pursuant to 40 CFR 51.309(d)(6)(iv), the smoke management programs that operate within Bernalillo County are consistent with the *WRAP Policy on Enhanced Smoke Management Programs for Visibility* (WRAP ESMP). A copy of this policy can be found in the Appendix M–O of the BC RH SIP submittal. The intent of the WRAP ESMP is to assist States to address visibility effects associated with fire in a way that is adequate for a SIP. The BC's Open Burning regulation, 20.11.21 NMAC, which became effective on December 31, 2003 and was subsequently amended and submitted for approval meets the Enhanced Smoke Management Program (ESMP) policy and the Regional Haze Rule (RHR) requirements as described above.

5. Annual Emission Goal

We propose to find that BC's RH SIP submittal meets the requirements for 309(d)(v) that requires that States adopt a process to establish annual emission goals to minimize emission increases from fire. Pursuant to 40 CFR 51.309(d)(6)(v), BC's RH SIP submittal describes how it meets this requirement. It has committed to use the policies set out by *Western Regional Air Partnership Policy on Annual Emission Goals for Fire* to minimize emission increases in fire through the use of annual emission goals. A copy of this policy can be found in Appendix N–O of the BC RH SIP. BC will use a collaborative mechanism for setting annual emission goals and developing a process for tracking their attainment on a yearly basis. In addition, BC's Open Burning rule at 20.11.21.19 NMAC relies on emission reduction techniques (ERT), where appropriate, to minimize emission increases in fire within Bernalillo County. Under that rule, BC will quantify the ERTs that are being used within Bernalillo County on a project-specific basis to reduce the total amount of emissions being generated from areas where prescribed fire is being used. As described above, the amended Open Burning regulation, 20.11.21 NMAC, requires the use of at least one ERT for all prescribed fires with emissions exceeding one ton of PM_{10} per day.

I. Paved and Unpaved Road Dust

To meet the requirements of 40 CFR 51.309(d)(7), the submitted RH 309 SIP relies on the assessment WRAP performed on the impact of dust emissions from paved and unpaved roads on the 16 Class I areas of the Colorado Plateau. The WRAP modeled and calculated the significance of road dust in terms of the impact on visibility on the worst 20 percent days. The modeled regional impact of road dust emissions ranged from 0.31 deciviews at the Black Canyon of the Gunnison National Park to 0.08 deciviews at the Weminuche Wilderness Area. For more information on the WRAP modeling and assessment of road dust impacts, see Chapter 7 of the WRAP TSD.[26] Based on the WRAP modeling, the AQCB has concluded in section F of the SIP that road dust is not a significant contributor to visibility impairment in the 16 Class I areas. We propose to agree that road dust is not a significant contributor to visibility impairment. Since AQCB has found that road dust is not a significant contributor to visibility impairment, there is no need to include road dust control strategies in the SIP pursuant to 40 CFR 51.309(d)(7). AQCB will track road dust emissions with the assistance of the WRAP and provide an update on paved and unpaved road dust emission trends, including any modeling or monitoring information regarding the impact of these emissions on visibility in the 16 Colorado Plateau Class I Areas. These updates will include a reevaluation of whether road dust is a significant contributor to visibility impairment. These updates shall be part of the periodic implementation plan

[26] WRAP Regional Technical Support Document for the Requirements of § 309 of the Regional Haze Rule (64 **Federal Register** 35714—July 1, 1999) revised May 7, 2008.

revisions pursuant to 40 CFR 51.309(d)(10). We propose to determine the submitted RH 309 SIP satisfies 40 CFR 51.309(d)(7).

We note BC has taken additional measures to address fugitive dust in *Fugitive Dust Control,* 20.11.20 NMAC,[27] in order to protect human health and air quality. The regulation requires the use of reasonably available control measures to reduce fugitive dust that adversely affects public health, welfare, safety, or impairs visibility.

J. Pollution Prevention

Under 40 CFR 51.309(d)(8), States must provide information on renewable energy and other pollution prevention efforts in the State. 40 CFR 51.309(d)(8) does not require States to adopt any new measures or regulations. We propose to find the information BC provided in the RH 309 SIP submittal adequate to meet the requirements of 40 CFR 51.309(d)(8) as discussed below.

1. Description of Existing Pollution Prevention Program

Pursuant to 40 CFR 51.309(d)(8)(i), Tables 13 through 17of the BC RH SIP submittal summarize all pollution prevention and renewable energy programs currently in place in New Mexico (as of 2003) that could affect Bernalillo County. Table 18 shows all renewable energy capacity and production in use or planned in the county as of 2002 (See Appendix O–O for Statewide capacity and production). BC also determined the total energy generation capacity and production within Bernalillo County and New Mexico.

2. Incentive Programs

Per 40 CFR 51.309(d)(8)(ii), Table 20 of the BC RH SIP submittal identifies incentive programs in the State of New Mexico that reward efforts for early compliance or to go beyond compliance by participating in the 309 regional SO_2 backstop trading program. The backstop trading program allows for early reduction credits. Sources of SO_2 subject to the trading program that reduce emissions prior to the program trigger date shall receive additional emission allowances. The source may use such allowances for compliance purposes or may sell them to other parties.

3. Programs To Preserve and Expand Energy Conservation Efforts

Per 40 CFR 51.309(d)(8)(iii), Tables 13 through 17 of the BC RH SIP submittal discuss the policies and programs within the State of New Mexico that preserve and expand energy conservation efforts and renewable energy which have a direct effect on Bernalillo County.

4. Potential for Renewable Energy

Pursuant to 40 CFR 51.309(d)(8)(iv), the RH SIP submittal contains an assessment of areas where there is the potential for renewable energy to supply power in a cost effective manner. Appendix O–O of the submitted RH SIP summarizes the potential for renewable energy development in New Mexico.

5. Projections of Renewable Energy Goals, Energy Efficiency, and Pollution Prevention Activities

Pursuant to 40 CFR 51.309(d)(8)(v), the submitted BC RH SIP submittal uses projections made by the WRAP of the short and long-term emissions reductions, visibility improvements, cost savings, and secondary benefits associated with renewable energy goals, energy efficiency, and pollution prevention activities. (A complete description of these projections can be found in Appendix O–O of the SIP). The SIP provides overall projections of visibility improvements for the 16 Class I areas (Table 2). These projections include the combined effects of all measures in this SIP, including air pollution prevention programs. Although emission reductions and visibility improvements from air pollution prevention programs are expected at some level, they were not explicitly calculated because the resolution of the regional air quality modeling system is not currently sufficient to show any significant visibility changes resulting from the marginal nitrogen oxide emission reductions expected from air pollution prevention programs.

6. Programs To Achieve GCVTC Renewable Energy Goal

Pursuant to 40 CFR 51.309(d)(8)(vi), the submitted BC RH SIP indicates that BC and the State of New Mexico will rely on current renewable energy programs as described in Tables 13 through 17 and Appendix O–O of the RH SIP submittal to demonstrate progress in achieving the renewable energy goal of the GCVTC. The GCVTC's goal is that renewable energy will comprise 10 percent of the regional power needs by 2005 and 20 percent by 2015. BC will submit progress reports in 2013 and 2018, describing Bernalillo County's share of New Mexico's contribution toward meeting the GCVTC renewable energy goals. To the extent that it is not feasible for Bernalillo County to meet its contribution to these goals, BC will identify what measures were implemented to achieve its contribution, and explain why meeting its contribution was not feasible.

K. Additional Recommendations

As part of the 1996 GCVTC report to the EPA, *Recommendations for Improving Western Vistas,* the Commission included additional recommendations that the EPA did not adopt as part of 40 CFR 51.309. Pursuant to 40 CFR 51.309(d)(9), the submitted BC RH SIP has an evaluation of the additional recommendations of the GCVTC to determine if any of these recommendations could be practicably included in the SIP. These recommendations are listed in Section H of the BC RH SIP. The BC RH SIP includes the determination that no additional measures were practicable or necessary to demonstrate reasonable progress in the SIP. Pursuant to 40 CFR 51.309(d)(9), BC will submit to the EPA a progress report in 2013 and 2018 on the progress toward developing and implementing policy or strategy options recommended in the Commission report. We propose to determine the RH 309 SIP submittal meets the requirements of 40 CFR 51.309(d)(9).

L. Periodic Implementation Plan Revisions

Pursuant to 40 CFR 51.309(d)(10)(i), section I of the BC RH SIP submittal requires BC to submit to the EPA, as a SIP revision, periodic progress reports for the years 2013 and 2018. The AQCB will assess whether current programs are achieving reasonable progress in Class I areas outside Bernalillo County that are affected by emissions from within Bernalillo County. BC will address the elements listed under 40 CFR 51.309(d)(10)(i)(A) through (G) in the progress reports.

Pursuant to 40 CFR 51.309(d)(10)(ii), the BC RH SIP submittal provides that BC will take one of the following actions based upon information contained in each periodic progress report. BC will provide a negative declaration Statement to the EPA saying that no SIP revision is needed if BC determines reasonable progress is being achieved. If the BC finds that the SIP is inadequate to ensure reasonable progress due to emissions from outside Bernalillo County, BC will notify the EPA and the contributing State(s), and initiate efforts through a regional planning process to address the emissions in question. If BC finds that the SIP is inadequate to ensure reasonable progress due to emissions from another country, BC will

[27] 20.11.20 NMAC was previously approved by EPA on April 1, 2009 (74 FR 14731).

notify the EPA and provide information on the impairment being caused by these emissions. If BC finds that the SIP is inadequate to ensure reasonable progress due to emissions from within Bernalillo County, BC will develop emission reduction strategies to address the emissions and revise the SIP no later than one year from the date that the progress report was due. We propose to determine the RH 309 SIP submittal adequately addresses the requirements of 40 CFR 51.309(d)(10) for future progress reports.

M. InterState Coordination

Pursuant to 40 CFR 51.309(d)(11), BC has participated in regional planning and coordination with New Mexico and other States by participating in the WRAP and participating in interState coordination efforts with the State of New Mexico while developing its emission reduction strategies under 40 CFR 51.309. The backstop trading program in the BC SIP submittal and companion rules involved coordination of the three States (Wyoming, Utah, and New Mexico, including BC) in its development and will continue to involve coordination of the participants once it is implemented. We propose to determine the submitted RH 309 SIP is consistent with the 40 CFR 51.309(d)(11).

N. Additional Class I Areas

The EPA is proposing to find that BC has identified the Class I areas which may be affected by emissions from within Bernalillo County, as required by 40 CFR 51.309(g), which provides a requirement for compliance with 40 CFR 51.308(d) to the extent planning is necessary for areas other than the 16 Class I areas addressed in the 309 SIP. There are no Class I areas within Bernalillo County, therefore BC is not required to identify reasonable progress goals or calculate baseline and natural visibility conditions at any Class I area. However, BC is required to address the apportionment of visibility impact from the emissions generated by sources within Bernalillo County at Class I areas outside of the county borders. There are a total of nine Class I areas within the State of New Mexico that are located close enough to BC that they may plausibly be affected by emissions from Bernalillo County (Table 4), as discussed in Section L of the BC RH SIP submittal.

TABLE 4—CLASS I AREAS NEAR BERNALILLO COUNTY

Class I area	Distance from Bernalillo County (km)
Bandelier Wilderness	83
Bosque del Apache Wilderness	144
Carlsbad Caverns National Park	387
Gila Wilderness	254
Salt Creek Wilderness	274
Wheeler Peak Wilderness and Pecos Wilderness[28]	195
White Mountain Wilderness	266
San Pedro Parks Wilderness Area[29]	106

Pursuant to 40 CFR 51.308(d)(3)(iii), the determinations in the BC RH SIP submittal relied on the technical analysis and emission inventories developed by the WRAP which is documented in the WRAP TSD and available online at the WRAP Technical Support System.[30] [31] The WRAP modeled the impacts of emissions from each State on visibility impairment at each Class I area in the West. Emissions were not analyzed on an individual county-level scale so modeling results are not available to quantify the impact of emissions from Bernalillo County on visibility. BC conducted a qualitative analysis based on modeling results for Statewide New Mexico emissions that provide information on the impact of New Mexico sources by source category and pollutant, emissions inventory data for individual counties in New Mexico, and weighted emission potential maps. This analysis is summarized in Section L of the BC RH SIP submittal. The full analysis is available as Appendix 2007–H and in the addendum to Appendix 2007–H of the BC RH SIP. BC also prepared an evaluation of emission inventory trends for 2002, 2005, and 2008 for NO_X and SO_2 emissions for Bernalillo County (Appendix 2010 B of the BC RH SIP).

The analysis in the BC RH SIP submittal identifies some inaccuracies in the emission inventories used by the WRAP to model the 2002 baseline and the 2018 future case. The 2002 and 2018 emission projections are higher than expected when compared to the reduction in SO_2 emissions observed in the actual emissions inventories for 2002, 2005 and 2008. Bernalillo County's SO_2 emissions estimated by the WRAP for 2002 are approximately 5000 TPY, whereas the actual emissions for SO_2 reported to the EPA for 2002 was only 1574.9 TPY and have decreased significantly to approximately 260 TPY reported for 2008. The 2018 emissions used by the WRAP in the photochemical modeling for BC projected an increase in emissions of approximately 9000 TPY over 2002 emissions. Regardless of the rate of population growth and increase in vehicle miles traveled within Bernalillo County, it is clear that with current low-sulfur fuel regulations such a large increase in emissions is unrealistic. We note that Statewide emissions of SO_2 in New Mexico estimated by the WRAP are not projected to increase significantly by 2018, even including the overestimation of Bernalillo County emissions. We also note that Bernalillo County emissions are primarily area and mobile emissions due to its large residential area. The county has no oil and gas development, mining or large EGUs within its boundaries. Similarly, NO_X emission estimates used in the WRAP modeling are higher than emissions reported to the EPA. Table 5 shows a comparison of emission data from Bernalillo County (Appendix 2010–B of the BC RH SIP) to emissions included in the WRAP estimates and photochemical modeling.

TABLE 5—COMPARISON OF BERNALILLO COUNTY EMISSION ESTIMATES TO WRAP

	Bernalillo County emissions (Appendix 2010–B)			WRAP emissions	
	2002	2005	2008	2002	2018
NO_X	24930.6	23231.3	13570.9	33856.36	26878.08
SO_2	1574.9	1594.9	261.1	4996.01	14073.54

[28] The IMPROVE monitoring site representing Pecos Wilderness is located near Wheeler Peak Wilderness.

[29] San Pedro Parks Wilderness Area, located in New Mexico, is one of the 16 Class I areas of the Colorado Plateau. The visibility requirements for this area are covered under the Section 309 submittal evaluated in the preceding sections.

[30] *http://vista.cira.coloState.edu/tss/.*

[31] EPA's review of the WRAP photochemical modeling is included in the docket, Technical Support Document for Technical Products Prepared by the Western Regional Air Partnership in Support of Western Regional Haze Plans.

Taking this into account and evaluating Bernalillo County's contribution of emissions to the Statewide inventory, BC concluded that it is improbable that Bernalillo County emissions have significant impacts on nearby Class I areas. Bernalillo County's contribution of emissions for NO_X and SO_2 to the New Mexico emission inventory for 2002, as estimated by the WRAP is 10% of the Statewide NO_X emissions and 9% of Statewide SO_2 emissions.

The EPA is proposing to find that BC adequately evaluated the Class I areas that may be impacted by sources of air pollution within Bernalillo County and BC adequately determined that, at this time, it is improbable that sources located within the county cause or contribute to visibility impairment in a Class I area located outside of the county. Furthermore, we propose to accept that visibility impacts at these Class I areas due to area and mobile emission sources in Bernalillo County are overestimated in the WRAP 2002 and 2018 visibility modeling. Emission trends for 2002 through 2008 indicate that emissions of NO_X and SO_2 within Bernalillo County are declining and therefore visibility impairment due to these emissions are also anticipated to decrease from their current low levels presented in Appendix 2007–H and in the addendum to Appendix 2007–H of the BC RH SIP.

At this time, the qualitative analysis of county-level emission impacts on Class I areas demonstrates that it is not necessary for BC to promulgate additional specific regulations to reduce emissions to address their effect on other Class I areas. BC will rely on current regulations for fugitive dust control, the SO_2 emission milestone and backstop trading program, open burning, motor vehicle inspection, motor vehicle emission standards and other regulations to minimize emissions that could potential impact visibility at other Class I areas, as identified in the BC RH SIP submittal. We therefore propose to find that the BC RH SIP submittal meets the requirements of 40 CFR 51.308(d)(3).

As it does not host a Class I area, BC is not required to develop a monitoring strategy for measuring, characterizing, and reporting regional haze impairment that is representative of Class I areas within the State. However, BC is required to establish procedures by which monitoring data and other information is used to determine the contribution of emissions from within Bernalillo County to regional haze impairment at Class I areas outside of the county and to document the technical basis on which it is relying to determine its apportionment of emission reductions necessary for achieving reasonable progress in each Class I area it affects, as required by 40 CFR 51.308(d)(3)(iii), (d)(4)(ii) and (iii). BC is also required to develop an emissions inventory of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area, as required by 40 CFR 51.308(d)(3)(iii) and (d)(4)(v). This inventory must include baseline year emissions, emissions for the most recent year that data is available, and estimates of future year emissions. The BC RH SIP includes emission inventories for 2002 and 2018 developed by the WRAP as well as actual emission inventories prepared by the State of New Mexico and BC to satisfy 40 CFR 51.308(d)(3)(iii) and (d)(4)(v). BC and the WRAP commit to update the inventory as well as maintain reporting, recordkeeping and other measures necessary to assess and report on visibility improvements as required by 40 CFR 51.308(d)(4)(v) and (vi). The EPA is proposing to find that BC has met the requirements of 40 CFR 51.308(d)(4) through its participation in the WRAP and coordinated efforts with the State of New Mexico. BC will rely on WRAP technical support to evaluate monitoring data and emissions growth to determine if any future emission reductions are necessary for achieving reasonable progress.

VI. Our Analysis of City of Albuquerque-Bernalillo County, New Mexico InterState Visibility Transport SIP Provisions

We are proposing to approve a portion of the SIP revision submitted by the City of Albuquerque/Bernalillo County, New Mexico on July 30, 2007, for the purpose of addressing the ''good neighbor'' provisions of the CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS. Section 110(a)(2)(D)(i)(II) of the Act requires that States have a SIP, or submit a SIP revision, containing provisions ''prohibiting any source or other type of emission activity within the State from emitting any air pollutant in amounts which will * * * interfere with measures required to be included in the applicable implementation plan for any other State under part C [of the CAA] to protect visibility.'' Because of the impacts on visibility from the interState transport of pollutants, we interpret the ''good neighbor'' provisions of section 110 of the Act described above as requiring States to include in their SIPs either measures to prohibit emissions that would interfere with the reasonable progress goals set to protect Class I areas in other States, or a demonstration that emissions from Bernalillo County sources and activities will not have the prohibited impacts on other States' existing SIPs.

The BC visibility transport SIP submittal States that it is not possible to assess whether there is any interference with the measures in the applicable SIP for another State designed to protect visibility for the 8-hour ozone and $PM_{2.5}$ NAAQS until BC submits and the EPA approves BC's RH SIP.

In developing their Regional Haze SIP, BC and potentially impacted States collaborated through the WRAP. Each State developed its Regional Haze Plans and RPGs based on the WRAP modeling and technical analysis. The WRAP modeling was based in part on the emissions reductions each State and BC intended to achieve by 2018. We are proposing to approve the BC RH SIP submittal which includes a demonstration that Bernalillo County sources do not cause or contribute to visibility impairment at Class I areas outside of Bernalillo County. We note that the BC RH SIP includes participation in a SO_2 emission milestone and backstop trading program with the States of New Mexico, Wyoming and Utah, and we propose to find that the BC measures included in the WRAP modeling and relied upon by New Mexico and other States in developing their visibility programs will occur. As previously Stated, we are also proposing to agree with BC's determination that it is improbable that sources within Bernalillo County are causing or contributing to visibility impairment at any Class I areas outside the county, which includes those of the other States. Therefore, we are proposing to approve the City of Albuquerque-Bernalillo County InterState Transport SIP submittal that addresses the visibility requirement of section 110(a)(2)(D)(i)(II) and find that the BC SIP contains adequate provisions at this time to prohibit emissions from BC sources from interfering with programs in other States to protect visibility.

VII. The EPA's Conclusions and Proposed Action

The EPA is proposing to approve a City of Albuquerque/Bernalillo County, New Mexico Implementation Plan (SIP) revision submitted on July 28, 2011 addressing the regional haze requirements for the mandatory Class I areas under 40 CFR 51.309. The EPA is proposing that this SIP revision meets the requirements of 40 CFR 51.309. We are proposing to approve all parts of the

RH SIP submittal, which adds onto and incorporates earlier regional haze documentation submitted on December 26, 2003 and September 5, 2008. We further propose to approve, as amended, the companion rules, of 20.11.46 NMAC, *Sulfur Dioxide Emission Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program* and 20.11.21 NMAC, *Open Burning.*

We are also proposing to approve a portion of the SIP revision submitted by the City of Albuquerque/Bernalillo County, New Mexico on July 30, 2007, for the purpose of addressing one of the ''good neighbor'' provisions of the CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS. This would approve the portion of the SIP that addresses the requirement that the SIP must prevent sources in the State from emitting pollutants in amounts which will interfere with measures included in the required plans of other States to protect visibility.

As discussed earlier in this notice, the 309 backstop trading program is dependent on the EPA taking final action approving all three participating States' SIP submittals. Until the EPA takes final action on all of the States' SIPs, the backstop trading program will not be effective.

VIII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility, InterState transport of pollution, Regional haze, Best available control technology.

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

Dated: April 12, 2012.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2012–9808 Filed 4–24–12; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Air Quality Implementation Plans; State of New York; Regional Haze State Implementation Plan and Federal Implementation Plan; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2012–0296, FRL–9663–9]

Approval and Promulgation of Air Quality Implementation Plans; State of New York; Regional Haze State Implementation Plan and Federal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove the revision to the State Implementation Plan (SIP) addressing regional haze submitted by the State of New York on March 15, 2010, and supplemented on August 2, 2010. New York's revised SIP reduces regional haze during the first planning period from 2008 through 2018. This revision addresses the requirements of the Clean Air Act and EPA's rules that require states to prevent any future, and remedy any existing, man-made impairment of visibility in mandatory Class I areas caused by emissions of air pollutants located over a wide geographic area (also referred to as the ''regional haze program''). EPA is proposing a Federal Implementation Plan (FIP) to address the deficiencies identified in our proposed partial disapproval of New York's regional haze SIP. In lieu of this proposed FIP, or a portion thereof, we are proposing approval of a SIP revision if the State submits such a revision in a timely way, and the revision matches the terms of our proposed FIP. EPA is also proposing approval of New York's Best Available Retrofit Technology regulation, Part 249.

DATES: *Comments:* Comments must be received on or before June 18, 2012.

Public Hearing: A public hearing, if requested, will be held at USEPA Region 2, 290 Broadway, New York, New York 10007–1866, on May 16, 2012, beginning at 9 a.m. If you wish to request a hearing and present testimony or attend the hearing, you should notify, on or before May 4, 2012, Ms. Katherine Doctor, Air Programs Branch, EPA Region 2, 290 Broadway, New York, New York 10007–1866; telephone number: (212) 637–4249; fax number (212) 637–3901; email address *doctor.katherine@epa.gov*.

Oral testimony will be limited to 5 minutes each. The hearing will be strictly limited to the subject matter of the proposal, the scope of which is discussed below. EPA will not respond to comments during the public hearing. EPA will not be providing equipment for commenters to show overhead slides or make computerized slide presentations. Any member of the public may file a written statement by the close of the comment period. Written statements (duplicate copies preferred) should be submitted to Docket ID No. EPA–R2–OAR–2012–0296, at the address listed for submitting comments. A verbatim transcript of the hearing and written statements will be made available for copying during normal working hours at the address listed for inspection for documents. If no requests for a public hearing are received by close of business on May 4, 2012, a hearing will not be held; please contact Ms. Doctor to find out if the hearing will actually be held or will be cancelled for lack of any request to speak.

ADDRESSES: Submit your comments, identified by Docket Number EPA–R02–OAR–2012–0296, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: werner.raymond@epa.gov*.
- *Fax:* 212–637–3901.
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket No. EPA–R02–OAR–2012–0296. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/air/docket.html*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that 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 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert F. Kelly, State Implementation Planning Section, Air Programs Branch, EPA Region 2, 290 Broadway, New York, New York 10007–1866. The telephone number is (212) 637–4049. Mr. Kelly can also be reached via electronic mail at *kelly.bob@epa.gov*.

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Throughout this document, wherever ''Agency,'' ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. What action is EPA proposing?

A. Proposed Actions

EPA is proposing to partially approve and partially disapprove the revision to the New York State Implementation Plan (SIP) addressing regional haze under the Clean Air Act (CAA or the Act) sections 301(a) and 110(k)(3), submitted on March 15, 2010, and supplemented on August 2, 2010.

1. EPA proposes to disapprove the following Best Available Retrofit Technology (BART) determinations:

- New York's Sulfur Dioxide (SO_2) BART determinations and emissions limits for Units 1 and 2 of Dynegy's Roseton Generating Station.
- New York's SO_2 BART determinations and emissions limits for Unit 4 of Dynegy's Danskammer Generating Station.
- New York's SO_2, Nitrogen Oxide (NO_X) and Particulate Matter (PM) emissions limits for Boiler 42 of Kodak's Eastman Business Park.

2. EPA proposes to disapprove the following facility BART determinations and emission limits because while New York has proposed permit modifications, New York has not issued final permit modifications or submitted them to EPA as a SIP revision:

- New York's SO_2, NO_X and PM BART determinations and emissions limits at the following facilities, with owners of sources [in brackets]:
  - Bowline Point Generating Station [GenOn]
  - Danskammer Generating Station [Dynegy]
  - Owens Corning Delmar Plant
  - Oswego Harbor Power [NRG]
  - Syracuse Energy Corporation [GDF Suez]
  - Kodak Park Division

3. EPA proposes to disapprove the following facility BART determinations and emission limits because New York has not submitted final permit modifications to EPA as a SIP revision. EPA has reviewed the BART determinations for these facilities and New York has issued final permit modifications. EPA would propose to approve these final permit modifications, but New York has not submitted them to EPA as SIP revisions. Therefore EPA proposes to disapprove the following and we propose a FIP to address this deficiency:

- New York's SO_2, NO_X and PM BART determinations and emissions limits for the following facilities, with owners of sources [in brackets]:
  - EF Barrett Power Station [National Grid (NG)]
  - Northport Power Station [NG]
  - 59th Street Station [Con Ed]
  - Arthur Kill Generating Station [NRG]
  - Ravenswood Generating Station [Trans Canada (TC)]
  - Ravenswood Steam Plant [Con Edison]
  - Roseton Generating Station [Dynegy]
  - Holcim (US) Inc—Catskill Plant
  - Lafarge Building Materials
  - International Paper Ticonderoga Mill
  - Lehigh Northeast Cement
  - ALCOA Massena Operations (West Plant)
  - Samuel A Carlson Generating Station [Jamestown Board of Public Utilities (BPU)]

4. EPA is proposing a Federal Implementation Plan (FIP) to address the deficiencies identified above in paragraphs 1, 2 and 3 in our proposed partial disapproval of New York's Regional Haze SIP. In lieu of this proposed FIP, or a portion thereof, we are proposing approval of a SIP revision if the State submits such a revision in a timely way, and the revision matches the terms of our proposed FIP, or relevant portion thereof. See also paragraph 6 below.

5. EPA proposes to approve the remaining aspects of New York's Regional Haze SIP revision as follows:

- New York's determination under the reasonable progress requirements found at 40 CFR 51.308(d)(1) that all measures or their equivalents found to be reasonable by the State, and agreed to by the MANE–VU [1] states, have been enacted and implemented.
- New York's Long Term Strategy, as required by the Act, will be approvable, only if New York submits all of the final permit modifications in a timely manner, and with the level of control in EPA's proposed FIP [note that EPA's FIP for these permits, if enacted, would also result in an approvable Long Term Strategy, under the FIP.]
- New York's SIP revision consisting of New York's Best Available Retrofit Technology (BART) regulation, Part 249.

6. EPA proposes in the alternative to approve the following facility BART determinations and emissions limits should New York submit final permit modifications to EPA as SIP revisions, and the revisions match the terms of our proposed FIP:

- Bowline Point Generating Station [GenOn]
- Danskammer Generating Station [Dynegy]
- Owens Corning Delmar Plant
- Osweg
- Harbor Power [NRG]
- Syracuse Energy Corporation [GDF Suez]
- Kodak Park Division
- EF Barrett Power Station [National Grid (NG)]
- Northport Power Station [NG]
- 59th Street Station [Con Ed]
- Arthur Kill Generating Station [NRG]
- Ravenswood Generating Station [TC]
- Ravenswood Steam Plant [Con Edison]
- Roseton Generating Station [Dynegy]
- Holcim (US) Inc—Catskill Plant
- Lafarge Building Materials
- International Paper Ticonderoga Mill
- Lehigh Northeast Cement

[1] MANE–VU is the Mid-Atlantic/North East Visibility Union, comprising Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, the District of Columbia, the Penobscot Nation, and the St. Regis Mohawk Tribe.

○ ALCOA Massena Operations (West Plant)

○ Samuel A Carlson Generating Station [Jamestown Board of Public Utilities (BPU)]

B. SIP and FIP Background

The CAA requires each state to develop plans to meet various air quality requirements, including protection of visibility. (CAA sections 110(a), 169A, and 169B). The plans developed by a state are referred to as SIPs. A state must submit its SIPs and SIP revisions to us for approval. Once approved, a SIP is federally enforceable, that is enforceable by EPA and citizens under the CAA. If a state fails to make a required SIP submittal or if we find that a state's required submittal is incomplete or unapprovable, then we must promulgate a FIP to fill this regulatory gap. (CAA section 110(c)(1)). As discussed elsewhere in this action, we are proposing to disapprove aspects of New York's Regional Haze SIP. We are proposing FIPs to address the deficiencies in New York's regional haze submittal, in the event New York fails to submit the required elements for this SIP revision.

C. Implication of Clean Air Interstate Rule and Cross State Air Pollution Rule

Consistent with EPA guidance and regulations, (see 70 FR 39104, 39106 (July 6, 2005)), many states relied on EPA's Clean Air Interstate Rule (CAIR) to satisfy key elements of Regional Haze SIPs. The DC Circuit, however, found CAIR to be inconsistent with the requirements of the Act and remanded the rule to the Agency. *North Carolina* v. *EPA,* 531 F.3d 896, 929–30 (D.C. Cir. 2008); modified on rehearing, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). In response to the remand of the CAIR rule, on July 6, 2011 EPA finalized the Cross-State Air Pollution Rule (CSAPR); a rule intended to reduce the interstate transport of fine particulate matter and ozone, 76 FR 48208 (Aug. 8, 2011).

Although New York was subject to CAIR, its Regional Haze SIP did not rely on CAIR to meet the requirements for BART or for attaining the in-state emissions reductions necessary to ensure reasonable progress. Instead, New York evaluated controls for its potential BART sources. New York made BART determinations for its BART-eligible sources, including Electric Generating Units (EGUs) that might have been controlled under CAIR. Similarly, its long-term strategy for attaining the Reasonable Progress Goals (RPGs) at nearby Class I areas includes controls on EGUs in New York. Therefore, the remand of CAIR has no negative effect on the amount of emission reductions New York will achieve from its Regional Haze SIP revision. This action and the accompanying Technical Support Document (TSD) explain the basis for EPA's proposed actions on New York's Regional Haze SIP revision proposal.

New York's SIP obtains the emission reductions needed with respect to the Regional Haze SIP requirements, including the recommendation of the Mid-Atlantic/Northeast Visibility Union (MANE–VU) regional planning organization.[2]

II. What is the background for EPA's proposed action?

Regional haze is visibility impairment that is produced by many sources and activities which are located across a broad geographic area and emit fine particles and their precursors (e.g., sulfur dioxide, nitrogen oxides, and in some cases, ammonia and volatile organic compounds). Fine particle precursors react in the atmosphere to form fine particulate matter ($PM_{2.5}$) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), which also impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. Visibility impairment caused by air pollution occurs virtually all the time at most national parks and wilderness areas, many of which are also established under the Act as Federal Class I areas. (CAA section 162(a)).

In the 1977 Amendments to the CAA, Congress initiated a program for protecting visibility in the nation's national parks and wilderness areas. Section 169A(a)(1) of the Act establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.'' In 1990 Congress added section 169B to the Act to address regional haze issues. On July 1, 1999 EPA promulgated the Regional Haze Rule (RHR) (64 FR 35714). The requirement to submit a Regional Haze SIP applies to New York and all 50 states, the District of Columbia and the Virgin Islands. 40 CFR 51.308(b) of the RHR required states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

On January 15, 2009, EPA issued a finding that New York failed to submit the Regional Haze SIP. 74 FR 2392 (Jan. 15, 2009). New York subsequently submitted its Regional Haze SIP on March 15, 2010. EPA's January 15, 2009 finding established a two-year deadline of January 15, 2011 for EPA to either approve New York's Regional Haze SIP, or adopt a FIP. This proposed action is intended to address the January 15, 2009 finding.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the states and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. New York, as noted above, participates in the MANE–VU RPO.

III. What are the requirements for Regional Haze SIPs?

The following is a basic explanation of the RHR. See 40 CFR 51.308 for a complete listing of the regulations under which this SIP revision was evaluated.

A. The Act and the Regional Haze Rule (RHR)

Regional Haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the Act and EPA's implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

B. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview (dv) as the principal metric for measuring visibility. This visibility metric expresses uniform changes in haziness in terms of common

[2] On June 20, 2007, MANE–VU adopted two documents which provide the technical basis for consultation among the interested parties and define the basic strategies for controlling pollutants that cause visibility impairment at Class I areas in the eastern United States. The documents, entitled ''Statement of the Mid-Atlantic/Northeast Visibility Union (MANE–VU) Concerning a Course of Action within MANE–VU toward Assuring Reasonable Progress,'' and ''Statement of the Mid-Atlantic/Northeast Visibility Union (MANE–VU) Concerning a Request for a Course of Action by States outside of MANE–VU toward Assuring Reasonable Progress'' are together known as the MANE–VU ''Ask.''

increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility is determined by measuring the visual range, which is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky. The dv is calculated from visibility measurements. Each change of 1.0 dv is an equal incremental change in visibility perceived by the human eye. For this reason, EPA believes it is a useful measure for tracking progress in improving visibility. Most people can detect a change in visibility at one dv.[3]

The dv is used in expressing RPGs (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by manmade air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, i.e., manmade sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437) and as part of the process for determining reasonable progress, the RHR requires states to calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP submittal and periodically review progress every five years midway through each 10-year planning period. To do this, the RHR requires states to determine the degree of impairment (in dv) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, the RHR requires states to develop an estimate of natural visibility conditions for the purposes of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to states regarding how to calculate baseline, natural and current visibility conditions.[4]

For the initial regional haze SIPs that were due by December 17, 2007, baseline visibility conditions were used as the starting points for assessing current visibility impairment. Baseline visibility conditions represent the degree of impairment for the 20 percent least impaired days and 20 percent most impaired days at the time the regional haze program was established. Using monitoring data for 2000 through 2004, the RHR required states to calculate the average degree of visibility impairment for each Class I area in the state, based on the average of annual values over the five year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

C. Determination of Reasonable Progress Goals (RPGs)

The submission of a series of regional haze SIPs from the states that establish RPGs for Class I areas for each (approximately) 10-year planning period is the vehicle for ensuring continuing progress towards achieving the natural visibility goal. The RHR does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural (i.e., ''background'') visibility conditions. In setting RPGs, states must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing RPGs, but are required to consider the following factors established in the Act and in EPA's RHR: (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. (See 40 CFR 51.308(d)(1)(i)(A)). States have considerable flexibility in how they take these factors into consideration, as noted in our Reasonable Progress guidance.[5] In setting the RPGs, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the ''uniform rate of progress'' or the ''glidepath'') and the emission reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. In setting RPGs, each state with one or more Class I areas (''Class I State'') must also consult with potentially ''contributing states,'' i.e., other nearby states with emission sources that may be affecting visibility impairment at the Class I State's areas. (40 CFR 51.308(d)(1)(iv)).

D. Best Available Retrofit Control Technology (BART)

Section 169A of the Act directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, the Act requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing stationary sources[6] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Control Technology (BART)'' as determined by the state. (CAA 169A(b)(2)(A)). States are directed to conduct BART determinations for such sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides equal or greater reasonable progress towards improving visibility than BART.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR Part 51 (hereinafter referred to as the ''BART Guidelines'') to assist states in

[3] The preamble to the RHR provides additional details about the deciview (64 FR 35714, 35725 (July 1, 1999)).

[4] *Guidance for Estimating Natural Visibility conditions under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance''), and *Guidance for Tracking Progress Under the Regional Haze Rule* (EPA–454/B–03–004 September 2003 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*)), (hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance'').

[5] *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,* (''EPA's Reasonable Progress Guidance''), July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1).

[6] The set of ''major stationary sources'' potentially subject to BART are listed in CAA section 169A(g)(7).

determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. The BART Guidelines require states to use the approach set forth in the BART Guidelines in making a BART applicability determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts. The BART Guidelines encourage, but do not require states to follow the BART Guidelines in making BART determinations for other types of sources.

The BART Guidelines recommend that states address all visibility impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are sulfur dioxide (SO_2), nitrogen oxides (NO_X), and particulate matter (PM). The BART Guidelines direct states to use their best judgment in determining whether volatile organic compounds (VOCs), or ammonia (NH_3) and ammonia compounds impair visibility in Class I areas.

In their SIPs, states must identify potential BART sources, described as ''BART-eligible sources'' in the RHR, and document their BART control determination analyses. In making BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) The costs of compliance, (2) the energy and non-air quality environmental impacts of compliance, (3) any existing pollution control technology in use at the source, (4) the remaining useful life of the source, and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor. (70 FR 39170, (July 6, 2005)).

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP, as required in the Act (section 169A(g)(4)) and in the RHR (40 CFR 51.308(e)(1)(iv)). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source. States have the flexibility to choose the type of control measures they will use to meet the requirements of BART.

E. Long-Term Strategy (LTS)

Consistent with the requirement in section 169A(b) of the Act that states include in their regional haze SIP a 10 to 15 year strategy for making reasonable progress, section 51.308(d)(3) of the RHR requires that states include a Long-Term Strategy (LTS) in their SIPs. The LTS is the compilation of all control measures a state will use to meet any applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the state. (40 CFR 51.308(d)(3)).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the RHR requires the impacted state to coordinate with the contributing states in order to develop coordinated emissions management strategies. (40 CFR 51.308(d)(3)(i)). In such cases, the contributing state must demonstrate that it has included in its SIP all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between states may be required to sufficiently address interstate visibility issues. This is especially true where two states belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, states must describe how each of the seven factors listed below is taken into account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address Reasonably Attributable Visibility Impairment (RAVI); (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. (40 CFR 51.308(d)(3)(v)).

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI)

As part of the RHR, EPA revised 40 CFR 51.306(c) regarding the LTS for states with Class I areas to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 51.308(b) and (c). On or before this date, the state must revise its plan to provide for review and revision of a coordinated LTS for addressing reasonably attributable and regional haze visibility impairment, and the state must submit the first such coordinated LTS with its first regional haze SIP revision. Future coordinated LTSs, and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic reviews of a state's LTS must report on both regional haze and RAVI impairment and must be submitted to EPA as a SIP revision, in accordance with 51.308.

G. Monitoring Strategy and Other Implementation Plan Requirements

If a state has a Class I Federal Area in the state, the requirements in Section 51.308(d)(4) of the RHR must be met. These requirements include a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the state and this strategy must be coordinated with the monitoring strategy required in section 51.305 for RAVI. Compliance with this requirement may be met through participation in the Interagency Monitoring of Protected Visual Environment (IMPROVE) network. The monitoring strategy is due with the first regional haze SIP, and it must be reviewed every five years. Note that Section 51.308(d)(4) contains a list of additional items the implementation plan must address.

H. Consultation With States and Federal Land Managers (FLMs)

The RHR requires that states consult with FLMs before adopting and submitting their SIPs. (40 CFR 51.308(i)). States must provide FLMs an opportunity for consultation, in person

and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

IV. What is EPA's analysis of New York's regional haze submittal?

On March 15, 2010, New York State submitted a revision to the New York SIP to address regional haze in Class I areas in nearby states as required by EPA's RHR.

A. Affected Class I Areas

New York does not contain any Class I areas, but it impacts several in nearby states based on MANE–VU's contribution analyses (as discussed in the TSD), including the Lye Brook Wilderness Area, VT, Brigantine Wildlife Refuge, NJ, Presidential Range-Dry River Wilderness Area and Great Gulf Wilderness Area, NH, Roosevelt-Campobello International Park, Acadia National Park, Moosehorn Wildlife Refuge, ME, and the Shenandoah National Park in VA. For these locations, the FLMs have identified visual impairment as an important value that must be addressed in regional haze plans. New York is responsible for developing a Regional Haze SIP that addresses visibility in these Class I areas, articulates New York's long-term emission strategy, describes the state's role in the consultation processes, and describes how its SIP meets the other requirements in EPA's regional haze regulations. However, since New York has no Class I areas within its borders, New York is not required to calculate baseline and natural visibility conditions, establish RPGs, meet monitoring or RAVI requirements as described by EPA's RHR for states that have Class I areas.

B. Long-Term Strategy/Strategies (LTS)

As described above, the Long Term Strategy (LTS) is a compilation of state-specific control measures relied on by the state to obtain its share of emission reductions to support the RPGs for the Class I areas impacted by New York. These impacted states develop the LTS for the first implementation period, which addresses the emissions reductions from Federal, state, and local controls that take effect in the baseline period starting in 2002 until 2018. New York participated in the MANE–VU RPO regional strategy development process. As a participant, New York supported a regional approach towards deciding which control measures to pursue for regional haze, which was based on technical analyses documented in the following reports: (a) Contributions to Regional Haze in the Northeast and Mid-Atlantic United States;[7] (b) Assessment of Reasonable Progress for Regional Haze in MANE–VU Class I Areas;[8] (c) Five-Factor Analysis of BART-Eligible Sources: Survey of Options for Conducting BART Determinations;[9] and (d) Assessment of Control Technology Options for BART-Eligible Sources: Steam Electric Boilers, Industrial Boilers, Cement Plants and Paper, and Pulp Facilities.[10]

The LTS was developed by New York, in coordination with MANE–VU, identifying the emissions units within New York that likely have the largest impacts currently on visibility at Class I areas, estimating emissions reductions for 2018, based on all controls required under Federal and state regulations for the 2002–2018 period (including BART), and comparing projected visibility improvement with the uniform rate of progress for the various Class I areas.

New York's LTS includes measures needed to achieve its share of emissions reductions agreed upon through the consultation process with New York and includes enforceable emissions limitations, compliance schedules, and other measures necessary to achieve the reasonable progress goals established for the Class I areas.

1. Emissions Inventory for 2018 With Federal and State Control Requirements

The emissions inventory used in the regional haze technical analyses was developed by the Mid-Atlantic Regional Air Management Association for MANE–VU with assistance from New York. The 2018 emissions inventory projected 2002 emissions to 2018, including emissions growth due to projected increases in economic activity as well as applying reductions expected from Federal and state regulations affecting the emissions of VOC and the visibility-impairing pollutants NO_X, PM_{10}, $PM_{2.5}$, and SO_2. The BART guidelines direct states to exercise judgment in deciding whether VOC and NH_3 impair visibility in their Class I area(s). Tables 1 and 2 are summaries of the 2002 baseline and 2018 estimated emissions inventories for New York. The 2018 estimated emissions include emission growth as well as emission reductions due to ongoing emission control strategies to meet RPGs and BART.

These emissions were used in the modeling that demonstrated that the Class I areas affected by emissions from New York and other states would meet the Reasonable Progress Goal set for 2018. New York adopted the emission reductions that are forecast to improve visibility to meet the goals for 2018, thus New York is projected to achieve its share of the emission reduction goal for the first implementation period, as long as its final permit modifications for BART sources are submitted to EPA in a timely fashion, and meet the emission limits described in EPA's FIP for these sources. If EPA's FIP is implemented, then the LTS would be approvable, since the EPA will have completed the implementation of BART for New York State's BART-eligible sources.

TABLE 1—MANE–VU MODELING INVENTORY SUMMARY: 2002 BASE INVENTORY FOR NEW YORK STATE—TONS PER YEAR

Sector	CO	NO_X	VOC	NH_3	SO_2	Primary PM_{10}	Primary $PM_{2.5}$
Area	356,287	98,804	502,797	67,198	113,978	356,348	85,841

[7] NESCAUM Report at *http://www.nescaum.org/documents/contributions-to-regional-haze-in-the-northeast-and-mid-atlantic--united-states/*

[8] MANE–VU Report at *http://www.otcair.org/manevu/Document.asp?fview=Reports.*

[9] NESCAUM Report at *http://www.nescaum.org/documents/bart-final-memo-06-28-07.pdf/.*

[10] NESCAUM Report at *http://www.nescaum.org/documents/bart-control-assessment.pdf/.*

TABLE 1—MANE–VU MODELING INVENTORY SUMMARY: 2002 BASE INVENTORY FOR NEW YORK STATE—TONS PER YEAR—Continued

Sector	CO	NO_X	VOC	NH_3	SO_2	Primary PM_{10}	Primary $PM_{2.5}$
Point	66,157	118,765	15,033	1,709	286,393	9,834	7,014
Nonroad	1,205,509	119,808	158,121	79	13,288	9,605	9,000
Onroad	2,942,730	313,888	179,731	14,439	10,229	7,599	5,402
Biogenic	63,436	8,313	492,483				
Totals	4,634,119	659,578	1,348,165	83,425	423,888	383,386	107,257

TABLE 2—MANE–VU MODELING INVENTORY SUMMARY: 2018 PROJECTION INVENTORY FOR NEW YORK STATE—TONS PER YEAR

Sector	CO	NO_X	VOC	NH_3	SO_2	Primary PM_{10}	Primary $PM_{2.5}$
Area	307,659	108,444	457,421	96,078	89,591	392,027	86,422
Point	101,118	55,681	13,091	2,767	118,936	17,062	13,460
Nonroad	1,474,727	72,400	104,562	103	1,686	5,830	5,349
Onroad	1,694,820	78,365	68,104	19,167	1,794	2,775	2,542
Biogenic	63,436	8,313	492,483				
Totals	3,641,760	323,203	1.135,662	118,115	263,824	417,694	107,773

As discussed further below, MANE–VU demonstrated that anthropogenic emissions of sulfates are the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the Northeast and Mid-Atlantic regions. It was also determined that the total ammonia emissions in the MANE–VU region are extremely small. In addition, since VOC emissions are aggressively controlled through the New York ozone SIP, the pollutants New York considered under BART are NO_X, PM_{10}, $PM_{2.5}$, and SO_2.

In developing the 2018 reasonable progress goal, and the 2018 projection inventory, Class I area states relied primarily upon the information and analyses developed by MANE–VU to meet the requirements of EPA's regional haze rules. Based on information from the contribution assessment and additional emission inventory analyses, MANE–VU identified the following source categories for further examination for reasonable measures:

- Coal and oil-fired EGUs
- Point and area source industrial, commercial and institutional (ICI) boilers
- Cement and Lime Kilns
- Heating oil, and
- Residential wood combustion

MANE–VU, for its member states and tribes, analyzed these potential source categories based on the four factors listed in section 169A(g)(1) of the Act and in Section III.C of this action. New York and the MANE–VU states agreed with the analysis that determined that reasonable controls existed for coal and oil-fired EGUs, industrial, commercial and institutional (ICI) boilers, cement and lime kilns, and that reducing the sulfur content of heating oil was a reasonable strategy. Additionally, MANE–VU determined that due to the lack of specific data for the wide range of residential wood boilers, it was not reasonable to set particular reductions amounts for emissions from residential wood boilers.

New York adopted controls on EGUs, boilers and cement kilns. While New York's plan does not include emission reduction regulations for residential wood boilers, New York will consider state specific wood burning provisions, which was the strategy agreed to by the MANE–VU states. ICI boiler controls were implemented as an Ozone Transport Commission (OTC) regional measure for VOC and NO_X controls that have benefits for reducing regional haze. More details on the adopted controls are described later in this section.

After identifying potential control measures and performing the four factor analysis, MANE–VU performed initial modeling that showed the visibility impacts from the implementation of the measures. The initial modeling results showed that the projected 2018 visibility on the 20% worst days at the Class I areas affected by New York's emissions was at least as good at the uniform rate of progress. Details of MANE–VU's initial modeling were later documented in the MANE–VU Modeling for RPGs report.[11] Based on the modeling results and other analysis performed by MANE–VU, the MANE–VU states developed ''Asks,'' which are ''emission management'' strategies. These strategies served as the basis for the consultation with the other states.

As part of the modeling needed to assess the emission reductions needed to meet the RPG, MANE–VU developed emissions inventories for four inventory source classifications: (1) stationary point sources, (2) area sources, (3) off-road mobile sources, and (4) on-road mobile sources. The New York State Department of Environmental Conservation also developed an inventory of biogenic emissions for the entire MANE–VU region. Stationary point emission sources are those sources that emit greater than a specified tonnage per year, depending on the pollutant, with data provided at the facility level. Area source emissions are from stationary sources whose individual emissions are relatively small, but due to the large number of these sources, the collective emissions from the source category could be significant. Off-road mobile source emissions are from equipment that can move but do not use the roadways. On-road mobile source emissions are from automobiles, trucks, and motorcycles that use the roadway system. The emissions from these sources are estimated by vehicle type and road type. Biogenic sources emissions are from natural sources like trees, crops, grasses, and natural decay of plants. Stationary point sources emission data is tracked at the facility level. For all other source

[11] MANE–VU Modeling for Reasonable Progress Goals. February 7, 2008.

types emissions are summed on the county level.

There are many Federal and state control programs being implemented that MANE–VU and New York anticipate will reduce emissions between the baseline period and 2018. Emission reductions from these control programs were projected to achieve substantial visibility improvement by 2018 in the Class I areas affected by New York's emissions. To assess emissions reductions from ongoing air pollution control programs, BART, and controls required for reasonable progress, MANE–VU states developed emissions projections for 2018. The 2018 emissions inventory in Table 2 is a projection of emissions based on the measures the states need to adopt to achieve reasonable programs. The states submit SIPs that have adopted and enforceable requirements, as well as Federal programs, such as Federal motor vehicle control programs and maximum achievable control technologies (MACT).

These measures are included in the MANE–VU modeling used to determine the amount of visibility improvement in Class I areas. MANE–VU States agreed to implement several measures at the state level. These measures are: A timely implementation of BART requirements, 90 percent or more reduction in sulfur dioxide at 167 EGU stacks identified by MANE–VU (or comparable alternative measures), and low sulfur fuel oil regulations (with limits specified for each state).

Controls from various Federal MACT regulations were also utilized in the development of the 2018 emission inventory projections. These MACTs include the industrial boiler/process heater MACT, the combustion turbine and reciprocating internal combustion engines MACTs, and the VOC 2-, 4-, 7-, and 10-year MACT standards.

EPA's industrial boiler/process heater MACT was vacated on June 8, 2007.[12] EPA proposed a new Industrial Boiler/Process Heater MACT (Industrial Boiler MACT) rule to address the vacatur on June 4, 2010 (75 FR 32006) and issued a final rule on March 21, 2011 (76 FR 15608). On May 18, 2011 EPA stayed the Industrial Boiler MACT rule. 76 FR 28662 (May 18, 2011). The stay was vacated and remanded by the court on January 9, 2012.[13] EPA published a reconsideration and proposed amendment to the Industrial Boiler MACT rule for major sources on December 23, 2011, 76 FR 80598.

The MANE–VU States, including New York, included these controls in modeling for their regional haze SIPs. EPA accepts these emission reductions in the modeling for the following reasons. In December 2011, EPA proposed a new Industrial Boiler MACT rule to address the vacatur and intends to issue a final rule, giving New York sufficient time to assure the required controls are in place prior to the end of the first planning period on July 31, 2018. In the absence of an established MACT for boilers and process heaters, the statutory language in section 112(j) of the Act specifies a schedule for the incorporation of enforceable MACT-equivalent limits into the Title V operating permits of affected sources. Should circumstances warrant the need to rely on section 112(j) of the Act for industrial boilers, compliance with case-by-case MACT limits for industrial boilers would occur no later than January 2015, which is well before the 2018 RPGs for regional haze. The RHR also provides that any resulting differences between emissions projections and actual emissions reductions that may occur will be addressed during the five-year review prior to the next regional haze SIP. In addition, the expected reductions due to the original, vacated Industrial Boiler MACT rule were relatively small compared to the State's projected total SO_2 emissions in 2018 (i.e., one to two percent of the projected 2018 SO_X, $PM_{2.5}$ and coarse particulate matter (PM_{10}) inventory), and are not likely to affect any of MANE–VU's modeling conclusions. Thus, even if there is a need to address discrepancies between the projected emissions reductions from the now vacated Industrial Boiler MACT and actual reductions achieved by the replacement MACT, we do not expect that this would be significant enough to affect the adequacy of New York's Regional Haze SIP.

The MANE–VU modeling predicts that these measures will result in emission reductions that will produce improved visibility, meeting the reasonable progress goal for the first period ending in 2018, with the following measures: BART controls on all BART-eligible facilities, 90 percent or more control at the 19 New York units from the 167 EGU units identified by MANE–VU (or comparable alternative measures), and adoption of the lower limits on sulfur in fuel oil. New York would fulfill its share of reductions needed to meet the reasonable progress goal only when it submits its outstanding finalized permits in a timely manner which meet the emission limits in EPA's proposed FIP for those BART sources.

The MANE–VU States' goal was to reduce SO_2 emissions from the largest emission units in the eastern United States by 90 percent or, if it was infeasible to achieve that level of reduction, states could identify an alternative that could include reductions from other point sources. Of the 167 units identified by MANE–VU as having the highest SO_2 emissions in the eastern United States, 19 are in New York. New York met the MANE–VU States' goal of reducing emissions from its portion of the 167 EGU stacks by 90 percent using emission reductions from 19 EGUs and other point sources in order to meet that portion of New York's contribution to meeting the reasonable progress goals.

In addition, New York is evaluating other control measures, including energy efficiency, alternative clean fuels, and other measures to reduce SO_2 and NO_X emissions from all coal-burning facilities by 2018 and new source performance standards for wood combustion. New York State developed a rulemaking and regulatory program to control outdoor wood boilers to address a category of sources that is of concern to many states, especially those in the Northeast. In addition to the above measures, a number of measures intended to reduce the emissions of VOCs and nitrogen oxides are being implemented as a part of the ozone SIPs that have been submitted to EPA.

Federal measures and other control programs relied upon by New York include EPA's NO_X SIP Call; measures adopted for New York's 1-hour and 8-hour ozone attainment demonstration SIPs, Federal 2007 heavy duty diesel engine standards for on-road trucks and busses; Federal Tier 2 tailpipe controls for on-road vehicles; Federal large spark ignition and recreational vehicle controls; and EPA's non-road diesel rules. New York also relied on emission reductions from a Federal MACT that was vacated, but, as described above, the expected reductions in SO_2 and PM resulting from both the vacated Industrial Boiler MACT and the proposed revisions to the revised Industrial Boiler MACT rule are relatively small components of the New York inventory. EPA expects the revised Industrial Boiler MACT rule to be adopted by 2018, and therefore the vacatur of the original Industrial Boiler MACT rule should not negatively affect fulfillment of the RPGs across the northeast. In addition, the RHR requires that any resulting differences between emissions projections and actual

[12] *See NRDC* v. *EPA,* 489 F.3d 1250 (D.C. Cir. 2007).

[13] *Sierra* v. *Jackson,* Civil Action No. 11–1278 (PLF) (D.C. Cir. 2012).

emissions reductions that may occur will be addressed during the five-year review prior to the next 2018 Regional Haze SIP.

2. Modeling To Support the LTS and Determine Visibility Improvement for Uniform Rate of Progress

MANE–VU performed modeling for the regional haze LTS for the states, the District of Columbia and tribal nations located in Mid-Atlantic and Northeast portions of the United States. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. MANE–VU used a modeling system described below and discussed in more detail in the TSD.

The EPA's Models-3/Community Multiscale Air Quality (CMAQ) version 4.5.1 is a photochemical grid model capable of addressing ozone, PM, visibility and acid deposition on a regional scale. CMAQ modeling of regional haze in the MANE–VU region for 2002 and 2018 was carried out on a grid of 12 x 12 kilometer (km) cells that covers the 11 MANE–VU States and the District of Columbia and states adjacent to them. This grid is nested within a larger national CMAQ modeling grid of 36 x 36 km grid cells that covers the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. Selection of a representative period of meteorology is crucial for evaluating baseline air quality conditions and projecting future changes in air quality due to changes in emissions of visibility-impairing pollutants. MANE–VU conducted an in-depth analysis that resulted in the selection of the entire year of 2002 (January 1–December 31) as the best period of meteorology available for conducting the CMAQ modeling. The MANE–VU States' modeling was developed consistent with EPA guidance.[14]

MANE–VU examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the regional haze assessment of the LTS and for use in the modeling assessment. The modeling assessment predicts future levels of emissions and visibility impairment used to support the LTS and to compare predicted, modeled visibility levels with those on the uniform rate of progress. In keeping with the objective of the CMAQ modeling platform, the air quality model performance was evaluated using graphical and statistical assessments based on measured ozone, fine particles, and acid deposition from various monitoring networks and databases for the 2002 base year. MANE–VU used a diverse set of statistical parameters from the EPA's Modeling Guidance to stress and examine the model and modeling inputs. Once MANE–VU determined the model performance to be acceptable, MANE–VU used the model to assess the 2018 RPGs using the current and future year air quality modeling predictions, and compared the RPGs to the uniform rate of progress.

In accordance with 40 CFR 51.308(d)(3), the Class I area states provided supporting documentation for all required analyses used to determine the State's LTS. The technical analyses and modeling used to develop the glide path and to support the LTS are consistent with EPA's RHR, and interim and final EPA Modeling Guidance. EPA accepts the MANE–VU technical modeling to support the LTS and determine visibility improvement for the uniform rate of progress because the modeling system was chosen and used in accordance with EPA Modeling Guidance. EPA agrees with the MANE–VU model performance procedures and results, and that the CMAQ is an appropriate tool for the regional haze assessments for the Class I areas in MANE–VU and the states' LTS and for New York's Regional Haze SIP.

3. Relative Contributions of Pollutants to Visibility Impairment

An important step toward identifying reasonable progress measures is to identify the key pollutants contributing to visibility impairment at each Class I area. To understand the relative benefit of further reducing emissions from different pollutants, MANE–VU developed emission sensitivity model runs using CMAQ to evaluate visibility and air quality impacts from various groups of emissions and pollutant scenarios in the Class I areas on the 20 percent worst visibility days.

MANE–VU's contribution assessment demonstrated that sulfate is the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the Northeast and Mid-Atlantic Region. Sulfate particles commonly account for 50 to over 80 percent of particle-related light extinction at northeastern Class I areas. For example, for the Brigantine National Wildlife Refuge Class I area, on the 20 percent worst visibility days in 2000–2004, sulfate accounted for 66 percent of the particles responsible for light extinction. After sulfate, organic carbon (OC) consistently accounts for the next largest fraction of light extinction due to particles. Organic carbon accounted for 13 percent of light extinction on the 20 percent worst visibility days for Brigantine, followed by nitrate that accounts for 9 percent of light extinction. These findings are true, in general, for Class I areas across MANE–VU.

The emissions sensitivity analyses conducted by MANE–VU predict that reductions in SO_2 emissions from EGU and non-EGU industrial point sources will result in the greatest improvements in visibility in the Class I areas in the MANE–VU region, more than any other visibility-impairing pollutant. As a result of the dominant role of sulfate in the formation of regional haze in the Northeast and Mid-Atlantic Region, MANE–VU concluded that an effective emissions management approach should rely heavily on broad-based regional SO_2 control efforts in the eastern United States for the first planning period. EPA proposes to accept this conclusion as a reasonable strategy in the eastern United States where reductions in SO_2 emissions will result in the greatest improvements in visibility.

4. Reasonable Progress Goals

Since New York does not have a Class I area, it is not required to establish RPGs. However, emissions from New York that contribute to Regional Haze have been identified as influencing the visibility impairment at a number of Class I areas in the MANE–VU States. Particularly, New Hampshire and New Jersey have notified New York of their impact on Class I areas in their states, specifically, the Lye Brook Wilderness Area and the Brigantine National Wildlife Refuge, respectively. New York, as a MANE–VU state, participated in consultations to discuss the reasonable progress goals being considered by MANE–VU States for the affected Class I area. As a result, to meet the reasonable progress goals and the long-term goal of no anthropogenic obstruction to visibility, the MANE–VU States agreed to implement the following measures, or substitute a similar quantity of emission reductions in their place: Timely implementation of BART requirements; a 90 percent reduction in SO_2 emissions from each of the EGU stacks identified by MANE–VU

[14] EPA's *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze*, located at *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf, (EPA-454/B-07-002), April 2007, and EPA document, Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,* located at *http://www.epa.gov/ttnchie1/eidocs/eiguid/index.html, EPA-454/R-05-001, August 2005, updated November 2005 (''EPA's Modeling Guidance'').*

comprising a total of 167 stacks (19 are located in New York); adoption of a low sulfur fuel oil strategy; and continued evaluation of other control measures to reduce SO_2 and NO_X emissions.

a. Application of Modeling To Demonstrate Reasonable Progress

The modeling that supported these analyses of how to demonstrate reasonable progress predicted that these emission control regulations would result in improved visibility which would meet the reasonable progress goals at MANE–VU Class I areas by 2018. At the time of MANE–VU modeling, some of the other states with sources potentially impacting visibility in the Class I areas in the MANE–VU domain had not yet made final control determinations for BART, and thus, these controls are not included in the modeling prepared by MANE–VU and used by Class I area states to determine RPGs. At that time, not all of the emission reductions from New York's BART-eligible sources were included in the modeling. Any controls resulting from those determinations will provide additional emissions reductions and resulting visibility improvement, and improve the likelihood that RPGs will be met in the Class I areas in the northeast. This modeling demonstrates that the 2018 base control scenario provides for an improvement in visibility equal to the uniform rate of progress for the Class I areas in MANE–VU for the most impaired days over the period of the implementation plan and ensures no degradation in visibility for the least impaired days over the same period.

The modeling that supported the analysis of these RPGs is consistent with EPA guidance. The Regional Haze Rules specify that a state may not adopt a RPG that represents less visibility improvement than is expected to result from other CAA requirements during the implementation period. 40 CFR 51.308(d)(1)(vi). Therefore, states subject to CAIR with Class I areas and that are in MANE–VU, took into account emission reductions anticipated from CAIR in determining their 2018 RPGs. MANE–VU approximated the impact of CAIR by reducing emissions from 167 EGUs by ninety percent. But this reduction was larger, in total tons of emissions reduced, than the reductions expected from CAIR, so MANE–VU added emissions across the modeling domain to more closely approximate the emission reductions from CAIR. These 'add back' emissions, kept the MANE–VU States' modeling from overestimating the improvement in visibility from those states that use EPA transport reduction rules as their response to MANE–VU's ''ask'' of ninety percent reductions from the 167 EGUs in the eastern United States.

As discussed in Section I of this action, EPA anticipates that the CSAPR will result in similar or better improvements in visibility than those predicted from CAIR. Because the CSAPR was recently finalized, EPA does not know at this time how it will affect any individual Class I area and cannot accurately model future conditions based on its implementation. However, by the time New York is required to undertake its five year progress review, it is likely that the impact of the CSAPR's contribution to visibility impairment in Class I areas in MANE–VU States will be assessed. The reductions at New York's 19 EGU stacks, combined with additional reductions described later in this section, exceed 90 percent and are greater than the anticipated reductions from CAIR or CSAPR. Thus it is likely New York will have contributed its share of reductions that were modeled to produce the RPGs at Class I areas impacted by New York. However, New York must still submit its finalized permits in a timely manner, at the emission limits that EPA has proposed to approve in our FIP or EPA implements the FIP in place of New York's BART limits. If, for a particular Class I area, these reductions do not provide similar or greater benefits than CAIR and meeting the RPGs at one of its Class I areas is in jeopardy, the state will be required to address this circumstance in its five year review.

The RPGs for the Class I areas in states affected by emissions from New York are based on modeled projections of future conditions that were developed using the best available information at the time the analysis was completed. While MANE–VU's emission inventory, used for modeling, included estimates of future emission growth, projections can change as additional information regarding future conditions becomes available. It would be both impractical and resource-intensive to require a state to continually adjust the RPG every time an event affecting these future projections changed. At the same time, EPA established a requirement for a five-year, midcourse review and, if necessary, correction of the states' regional haze plans. See 40 CFR 52.308(g). New York committed to the midcourse review and submitting revisions to the regional haze plan where necessary.

b. How New York's Plan Addresses Its Share of Reductions Toward Meeting the Reasonable Progress Goal

Altogether, these emission controls—a 90 percent reduction in SO_2 emissions from EGUs, emission reductions from BART-eligible sources and a low sulfur fuel oil strategy—are reasonable measures for the reduction strategy required by EPA's RHR. EPA agrees that emission reductions from these measures or their equivalent, including when New York's BART program is implemented or when EPA's FIP alternative is in place, will provide the emission reductions New York needs to meet its share of the improvements in visibility needed to meet the RPG goals to assist visibility improvement at other Class I areas affected by New York's emissions.

To address the MANE–VU ''ask'', New York needs to reduce emissions at its 19 major source stacks by 90 percent or more or find equivalent emission reductions. Based on EPA's tabulation of emission reductions from these sources, the total reduction in emissions is less than 90 percent. In addition, New York has equivalent emission reductions from two non-EGU sources beyond the planned BART controls included in MANE–VU's modeling. These two sources, Kodak and LaFarge Building Materials, were modeled in the MANE–VU's modeling with reduced emissions based on an initial BART analysis. However, their emissions will be reduced further based on the recent New York proposed BART determinations for these facilities which will result in the shutdown of portions of these facilities that were to be subject to BART. These tons of sulfur emissions beyond the non-EGU BART modeled by MANE–VU fulfill the goal of 90 percent reduction from New York's share of the 167 major source stacks.

As explained in more detail in the TSD, New York's share of the 90 percent reduction from the 167 major emission stacks in the MANE–VU modeling is 90 percent of 132,959 tons per year of sulfur emissions modeled in the 2002 base case, or 13,296 tons per year.

As shown in the TSD, EPA calculated the remaining emissions from New York's 19 major EGUs after application of BART to total 22,406 tons per year of SO_2; that is a reduction of 83 percent or 9,110 tons per year short of the 90 percent reduction target. However, this remaining tonnage is more than made up for by the reduction of 11,195 tons of SO_2 beyond the modeled BART controls at the two non-EGU facilities discussed above.

Thus, New York State's emission reductions from its 19 EGUs and the additional reductions beyond BART from the two non-EGU sources are sufficient to exceed its share of the emission reductions in the MANE–VU modeling needed to meet the 90 percent emission reduction target for the MANE–VU ''ask''.

With respect to New York's low sulfur fuel strategy, this section describes how these programs fulfill the emission reductions projected in the modeling used to demonstrate reasonable progress by the end of the first period in 2018.

According to New York's Regional Haze SIP, the MANE–VU modeling projected a reduction of 71,759 ton per year resulting from a low sulfur fuel strategy in New York. New York enacted legislation to limit sulfur in number 2 oil to 15 ppm by 2012, providing a projected SO_2 emission reduction of 54,090 tons per year. Based on this information, to meet the MANE–VU ''ask'' New York would have to obtain additional emission reductions of 17,699 tons per year. New York anticipates expanding the low sulfur fuel limits to other types of oil to meet the specifications of the MANE–VU program. However, if New York does not implement this expanded program by the time EPA takes final action on this Haze SIP, New York's emissions will be 17,699 tons greater than the emissions modeled by MANE–VU which showed achievement of the 2018 progress goal.

While New York will obtain additional emission reductions through expansion of their low sulfur fuel strategy, EPA notes that MANE–VU added back into the modeling inventory 23,100 tons per year in New York to better approximate the likely reductions from EPA's proposed transport rules. These added back emissions of 23,100 tons per year of SO_2 are more than the needed 17,699 tons per year from New York's expanded Sulfur in Fuel rule.

Therefore, while New York did not implement all of the parts of the programs included in the MANE–VU 'ask', the overall reduction of emissions in New York State will achieve all of the emission reductions in the MANE–VU set of reasonable measures, and insure that New York emission reductions will meet the amount of emission reductions needed for its contribution toward attaining the reasonable progress goal in the period ending in 2018.

In summary, New York used the MANE–VU analysis which defined the reasonable progress goals, and reasonable measures needed to achieve emission reductions to meet these goals. The reasonable measures analyses considered the cost of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts, and the remaining useful life of the existing sources subject to such requirements. This led to the MANE–VU States' agreement to use a 90 percent reduction in EGU stacks, low sulfur fuel and BART as reasonable controls, or to determine equivalent amounts of reductions to reach the goals. EPA notes that letters from states with Class I areas affected by New York's emissions (New Jersey and New Hampshire), did not ask for any additional controls beyond those specified in the MANE–VU analyses. These MANE–VU controls, plus other existing measures and the input from the MANE–VU consultations, were modeled to project the 2018 visibility levels. These projections were used in setting the 2018 Reasonable Progress Goals. For the Class I areas in MANE–VU, these projections meet the Uniform Rate of Progress, an analytical requirement in the EPA's RHR. As described above, EPA proposes to concur that New York's emission reductions will provide its share of the reductions needed to achieve the RPGs at Class I areas in the Northeast United States, if New York submits its final permits for its BART sources as SIP revisions, matching the emission limits in EPA's FIP alternatives for New York's permits.

5. Section 19–0325 of the Environmental Conservation Law—Low Sulfur Fuel Oil Strategy

The MANE–VU low sulfur fuel oil strategy includes a reduction of distillate oil to 0.05% sulfur by weight (500 parts per million (ppm)) by no later than 2012; #4 residual oil to 0.25% sulfur by weight no later than 2012; #6 residual oil to 0.3–0.5% sulfur by weight no later than 2012; and to further reduce the sulfur content of distillate oil to 15 ppm by 2016.

New York satisfied a commitment included in the Regional Haze SIP through legislation. New York amended the Environmental Conservation Law (ECL) to require a reduction in sulfur for heating oil used in New York State, which will aid in reducing sulfates that cause decreased visibility. Specifically, Bill Number S1145C amends the ECL by adding a new section 19–0325 to require that on or after July 1, 2012, all number two heating oil sold for use in residential, commercial, or industrial heating within New York State shall not have a sulfur content greater than 15 ppm. This requirement was established through state legislation rather than rulemaking and is presently in effect without a need for rule promulgation.

In addition, New York is planning to revise 6 NYCRR Subpart 225–1, Fuel Composition and Use—Sulfur Limitations to lower current distillate and residual oil sulfur-in-fuel limitations. ECL section 19–0325 establishes the limits for heating oil throughout the State beginning on July 1, 2012. New York is including these provisions, and plans to establish additional more stringent requirements in Subpart 225–1 for the remainder of fuel oils. By reducing the sulfur in the fuel oils, sulfur oxide emissions and particulate emissions will be reduced which will improve visibility and help to attain the PM 2.5 national ambient air quality standard. EPA notes that existing provisions of Subpart 225–1 are incorporated in the current SIP, and Subpart 225–1 contains provisions regarding enforcement and compliance, recordkeeping, emissions and fuel monitoring, reporting, recordkeeping, sampling and analysis.

Major SO_2 emission reductions are obtained as a result of the legislation being implemented. These reductions are occurring in 2012, well before the 2016 requirement in MANE–VU's ''ask.'' As discussed above, New York expects to achieve the remaining SO_2 reductions upon amending Subpart 225–1 to establish the additional more stringent fuel oil requirements. In the meantime, EPA proposes to determine New York's low sulfur fuel oil strategy in combination with the other planned reductions will provide the necessary reductions from New York for other Class I areas to meet their respective RPGs, as described above.

6. BART

BART is an element of New York's LTS, as well as a requirement to evaluate controls for older sources that affect Class I areas. The BART regional haze requirement consists of three steps: (a) Identification of all the BART eligible sources; (b) an assessment of whether the BART eligible sources are subject to BART; and (c) the determination of the BART controls.

a. BART-Eligible Sources in New York

The first component of a BART evaluation is to identify all the BART eligible sources. In its March 2010 SIP submittal, New York preliminarily identified twenty sources as BART eligible. Subsequently, after further review, New York determined that two sources, the Poletti Power Project (Astoria, NY) and the Port Jefferson Energy Center (Port Jefferson, NY) were not BART eligible; and New York

further determined that certain sources at Con Edison's Ravenswood Steam Plant were BART eligible. The nineteen sources in Table 3 were identified by New York either in its March 2010 Regional Haze SIP submittal or in its proposed permits and met the following criteria to be classified as BART eligible:

- One or more emissions units at the facility are within one of the 26 categories listed in the BART Guidelines (70 FR 39158–39159);
- The emission unit(s) was in existence on August 7, 1977 and begun operation after August 6, 1962;
- Potential emissions of SO_2, NO_X, and PM_{10} from subject units are 250 tons or more per year.

These criteria are from section 169A(b)(2)(A) of the Act, codified in 40 CFR Part 51, Appendix Y.

TABLE 3—BART-ELIGIBLE FACILITIES IDENTIFIED BY THE STATE OF NEW YORK

Facilities	Units	Pollutants	Location (county)	Permit I.D
National Grid EF Barrett Power Station	Boiler 2	NO_X, SO_2, PM	Nassau	1–2820–00553
National Grid Northport Power Station	Boilers 1,2,3,4	NO_X, SO_2, PM	Suffolk	1–4726–00130
Con Ed 59th Street Station	Steam Boilers 114, 115	NO_X, SO_2, PM	New York	2–6202–00032
NRG Arthur Kill GS	Boiler 30	NO_X, SO_2, PM	Richmond	2–6403–00014
TC Ravenswood LLC Ravenswood GS	Boilers 10, 20, 30	NO_X, SO_2, PM	Queens	2–6304–00024
Trans Canada/Con Ed Ravenswood Steam Plant.	Boiler 2	NO_X, SO_2, PM	Queens	2–6304–01378
GenOn (Miriant) Bowline GS	Boilers 1 and 2	NO_X, SO_2, PM	Rockland	3–3922–00003
Dynegy Danskammer GS	Boiler 4	NO_X, SO_2, PM	Orange	3–3346–00011
Dynegy Roseton GS	Boilers 1 and 2	NO_X, SO_2, PM	Orange	3–3346–00075
Holcim (US) Inc Catskill Plant	Wet Process Kiln (cement plant).	NO_X, SO_2, PM	Green	4–1926–00021
Lafarge Building Materials Ravena Plant	Wet Process Kilns 1 and 2 (cement plant).	NO_X, SO_2, PM	Albany	4–0124–00001
Owens Corning Insulating Systems, LLC—Delmar Plant.	Emission Units EU2, EU3, EU12, EU13, EU14.	NO_X, SO_2, PM	Albany	4–0122–00004
International Paper Ticonderoga Mill	Power Boiler, Recovery Boiler.	NO_X, SO_2, PM	Essex	5–1548–00008
Lehigh Northeast Cement	Process Kiln (cement plant).	NO_X, SO_2, PM	Warren	5–5205–00013
Alcoa Massena Operations West Plant	Potline, Baking Furnace, Package Boilers.	NO_X, SO_2, PM	St. Lawrence	6–4058–00003
NRG Oswego Harbor Power	Units 5, 6	NO_X, SO_2, PM	Oswego	7–3512–00030
GDF Suez Syracuse Energy Corp.	Boiler 1	NO_X, SO_2, PM	Onondaga	7–3132–00052
Eastman Kodak/Duke Energy GS Kodak Park Division.	Boilers 41, 42, 43	NO_X, SO_2, PM	Monroe	8–2614–00205
Jamestown BPU Samuel A Carlson GS	Boiler 12	NO_X, SO_2, PM	Chautauqua	9–0608–00053

The BART Guidelines recommend addressing SO_2, NO_X, and PM_{10} as visibility-impairment pollutants. The Guidelines note that states can decide whether to evaluate VOC or ammonia emissions. New York did not develop additional strategies for VOC or ammonia emissions in its SIP. EPA proposes to agree with New York's determination because of the relative uncertainty to estimate emissions and model VOC and ammonia effects on visibility, and because New York is aggressively addressing VOCs through its approved ozone SIPs. In summary, EPA agrees with New York's determination that SO_2, NO_X, PM_{10}, and $PM_{2.5}$ are the pollutants reasonably anticipated to contribute to visibility impairment to target under BART.

The second component of the BART evaluation is to identify those BART eligible sources that may reasonably be anticipated to cause or contribute to visibility impairment at any Class I area. As discussed in the BART guidelines, a state may choose to consider all BART eligible sources to be subject to BART (70 FR 39.161). The MANE–VU Board decided in June 2004 that because of the collective importance of BART sources, BART determinations should be made by the MANE–VU States for each BART eligible source. New York followed this approach by identifying each of its BART eligible sources as subject to BART, (see Table 3 above).

b. BART Evaluations for Sources Identified as BART by New York

The final component of a BART evaluation is making BART determinations for all BART subject sources. In making BART determinations, section 169A(g)(2) of the Act requires that states consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility that may reasonably be anticipated to result from the use of such technology. However, a source that implements the maximum feasible level of control for its emissions has met the BART requirements, and no further analysis is needed. Conversely, a source that limits its emissions via an enforceable permit limit no longer needs to be subject to BART review.

New York properly determined that the nineteen facilities listed in Table 3 are subject to BART review. The following summarizes New York's BART analyses and EPA's evaluation of New York's analysis for each of the nineteen BART facilities. For further details the reader is referred to the owner's BART analyses and New York's BART determinations located in the docket for this proposal at EPA's Web site at *www.regulations.gov.* References below to New York's draft Title V or draft Air Facility permit means that the State has issued the permit for public comment over a 30-day period.

BART Eligible Units That Will Cap Out of BART—One Facility

Owens Corning Insulating Systems, LLC

Owens Corning is reducing its annual combustion emissions limit to bring the five BART units'(Emission Units EU2 (DM1 Oxy Fuel Furnace), EU3 (DM1Forming/Cooling Unit), EU12 (DM2 Oxy Fuel Furnace), EU13 (DM2 Mixing Chamber), and EU14 (DM2 Smoke Stripper/Cooling Section)) cumulative potential to emit each pollutant (NO_X, SO_2, and PM) to less than 250 tons per year (tpy) by the effective date of the Title V permit, which New York expects to be by mid -2012. As a result, none of the three pollutants will exceed the BART threshold and Owens Corning will not be subject to further BART analyses. EPA proposes approval of this BART evaluation since it conforms to EPA Guidance that allows a source to cap out of BART by reducing emissions from BART eligible sources to below the BART threshold of 250 tpy. The implementation date for the cap out, emission limits, monitoring, record keeping and reporting requirements will be included in New York's final Title V permit.

BART Eligible Units That Will Permanently Shut Down—Four Facilities

Owners of BART eligible units at four of the nineteen facilities listed in Table 3 above have decided to shut down those units rather than install BART to control emissions of NO_X, SO_2, and PM. The four facilities include Lafarge Building Materials Inc, Syracuse Energy Corporation, Samuel A. Carlson Generating Station, and Holcim (US) Inc—Catskill Plant. New York will be including the compliance shutdown dates in either final State Facility permits or final Title V permits and submitting them to EPA for approval as a SIP revision by mid-2012, after the opportunity for public comment. These permit conditions become federally enforceable when the State submits the BART portions of the permits to EPA for approval as a supplement to the RH SIP. The Lafarge facility is under an existing federal consent decree and the shutdown date for the BART eligible units is therefore already federally enforceable. Therefore EPA proposes approval of the permanent shut down of the BART eligible units for the purpose of meeting BART at the four facilities discussed immediately below. Should New York not submit the final Title V permit for each applicable facility (except the Lafarge facility) in a timely manner, EPA proposes that the aforementioned BART requirements be considered as federal requirements as part of a FIP.

Lafarge Building Materials, Inc

Lafarge Building Materials Inc owns a facility that manufactures Portland cement that is located near Ravena, NY. New York determined that the two existing long wet kilns, kilns 1 and 2 (Emission Unit 0–41000; Emission sources 4KLN1 and 4KLN2, respectively), are BART eligible. In January 2010, Lafarge entered into a Consent Decree with EPA [15] which contains a compliance schedule for the Ravena Plant to either modernize the existing plant, retrofit the existing kilns with NO_X and SO_2 controls, or retire the kilns. In a letter to New York dated September 30, 2011, Lafarge informed the State of its intent to modernize the existing plant by replacing the two existing long wet kilns with a new short dry kiln and pre-heater pre-calciner tower in compliance with the consent decree. In accordance with the consent decree, kilns 1 and 2 are to be retired within 180 days after commencement of operation of the new kiln; and the latest date to start operation of the new kiln is January 1, 2015. Therefore, the latest date that kilns 1 and 2 can be in operation is June 30, 2015. Therefore, EPA is proposing to approve New York's BART determination that Lafarge's two existing long wet kilns, kilns 1 and 2, will permanently shut down in accordance with conditions set forth in the existing federally enforceable consent decree announced in January 2010. Should the existing federally enforceable consent decree be revised under agreement by all parties, New York must submit any revisions to EPA as a SIP revision for the purpose of complying with BART.

Syracuse Energy Corporation

The Syracuse Energy Corporation (SEC), located in Geddes, NY, owns and operates a coal-fired boiler (Unit 1) with a heat input greater than 250 million BTUs per hour (mm BTU/hr) that is BART eligible. In a letter to New York dated September 22, 2010, SEC stated that it would either accept NESCAUM/New York's visibility modeling results if they showed an insignificant impact or otherwise shut down the boiler by January 1, 2014, the BART compliance date established by 6 NYCRR Part 249, NY's BART regulation. New York subsequently decided that SEC's Unit 1 was BART eligible and accepted SEC's decision to permanently shut down Unit 1. The shutdown compliance schedule for Unit 1 is included in the facility's draft Title V permit. EPA expects to receive the final Title V permit from New York as a SIP revision by mid-2012. Therefore, EPA is proposing to approve New York's decision that SEC's Unit 1 will permanently shut down by January 1, 2014 and is exempt from implementing any BART controls.

Samuel A. Carlson Generating Station

The Samuel A. Carlson (SAC) Generating Station is a municipal electric power generating plant owned and operated by the Jamestown Board of Public Utilities (JBPU). The facility operates three coal fired boilers (Boilers #9, #10 and #12) with a combined output of 49 megawatts. New York has determined that Boiler 12 is BART eligible and JBPU has decided to permanently shut down Boiler 12 by January 1, 2014 in order to be exempt from the BART requirements for that unit. This shut down compliance date for Boiler 12 is included in the New York's final Title V permit. Therefore, EPA is proposing to approve New York's decision that SAC's Unit 12 will permanently shut down by January 1, 2014 and is exempt from implementing any BART controls.

Holcim (US) Inc—Catskill Plant

The Holcim (US)—Catskill Plant owns a Portland cement and quarry operation located in Catskill, NY. New York has determined that Emission Unit U–00K18, Emission Source 0KILN is BART eligible. This BART eligible source includes a wet process kiln along with a clinker cooler and finish mill air separators. The wet process kiln accounts for virtually all of the gaseous emissions (e.g., NO_X and SO_2) from the plant and the majority of the plant's PM emissions. The clinker cooler and finish mill air separators are primarily sources of PM emissions. In an email dated January 31, 2012, New York informed EPA that the owner has decided to permanently shut down the BART eligible units and will surrender their permits. New York has informed EPA that the wet process kiln has not been in operation since October 2010 and the Title V permit has expired, effective February 13, 2012. Therefore, EPA is proposing to approve New York's decision that Holcim's wet kiln and clinker cooler are now permanently shutdown.

[15] On January 21, 2010, EPA announced that the U.S. filed Clean Air Act settlements to reduce air emissions from container glass and Portland cement plants throughout the country. (Case 3:10–cv–000440JPG–CJP) This settlement includes Portland cement plants owned by Lafarge Company, including one located at Ravena, NY that has two wet kilns that New York has identified as BART-eligible.

Fourteen Facilities Will Implement BART Requirements

Con Ed—59th Street Station

This facility, owned by Consolidated Edison Company of New York (Con Ed), operates two very large boilers,[16] Boilers 114 (Emission Unit 5–90020; Emission source 00114) and 115 (Emission Unit 5–90020; Emission source 00115), as well as other boilers and a combustion turbine at its 59th Street Station in New York City. New York has determined that Boilers 114 and 115 are both BART eligible units. Boilers 114 and 115 are each fixed-tangential units with a design maximum heat input capacity of 805 mm BTU/hr. Both boilers combust (primarily) low sulfur (0.30 percent sulfur by weight) residual oil (Number 6 fuel oil), with natural gas used for ignition. New York indicates that these two boilers are used to generate steam only and do not generate electricity but follow a steam load which results in limited operation and significant unused capacity. Con Ed's BART submittal indicates that the average annual capacity for the years 2007–2009 is about 55%.

Con Ed submitted a BART determination to New York and the State agreed with the owner's recommendations that the current operations constitute BART. For control of SO_2 emissions, New York is proposing that the current use of low sulfur (0.30% by weight) No. 6 fuel oil represents BART.

For control of NO_X emissions, New York reviewed Con Ed's BART analysis that considered seven different controls (two of which are technically infeasible), including Selective Catalytic Reduction (SCR), and the State is proposing that the current use of off-stoichiometric firing with an emission limit of 0.32 lb/mm BTU (on a 30-day rolling average), when combusting either No. 6 fuel oil or natural gas, represents BART for each boiler. New York's BART analysis for NO_X concluded that each of the technically feasible control options is not cost effective (in the range of $8,717 to $31,825) because each boiler typically operates at only 55% capacity. New York also reports that Con Ed demonstrated that visibility improvement was very low (0.04 dv maximum cumulative at 7 Class I areas) when evaluating the NO_X control option (''water injection'' option) that was the closest to, but still higher than, New York's $5,500/ton cost effectiveness threshold.

For control of PM emissions, New York reviewed Con Ed's BART analysis that considered three potential add-on control technologies but Con Ed determined, and New York agreed, that these technologies do not appear to be demonstrated in practice for a utility boiler that combusts oil as the primary fuel. New York has determined that BART control of PM emissions is the continued use of current operations that includes good combustion practices and the use of low sulfur fuel, with an emission limit of 0.10 lb/mm BTU (by stack tests) representing BART for each boiler. The aforementioned BART requirements for each boiler are included in New York's draft Title V permit including requirements for monitoring, record keeping and reporting and includes a compliance date of January 1, 2014. New York finalized the draft Title V permit on March 20, 2012 and expects to submit it as a SIP revision for EPA approval by mid-2012.

Con Ed—Ravenswood Steam Plant

This facility, owned by Consolidated Edison Company of New York (Con Ed), operates one very large boiler, Boiler 2 (Emission Source ESAH2), as well as three other boilers at its Ravenswood Steam Plant in Queens County, a borough of New York City. New York has determined that Boiler 2 is a BART eligible unit. Boiler 2 is a front-wall fired unit with a design maximum heat input capacity of 424 mm BTU/hr. Boiler 2 combusts (primarily) low sulfur (0.30 percent sulfur by weight) residual oil (Number 6 fuel oil), with natural gas used for ignition. New York indicates that Boiler 2 is used to generate steam only and does not produce electricity but follows a steam load which results in limited operation and significant unused capacity. Con Ed's BART submittal indicates that the average annual capacity for the years 2007–2009 is about 21%.

Con Ed submitted a BART determination to New York and the State agreed with the owner's recommendations that the current operations constitute BART. For control of SO_2 emissions, New York is proposing that the current use of low sulfur (0.30% by weight) No. 6 fuel oil represents BART.

For control of NO_X emissions, New York reviewed Con Ed's BART analysis that considered seven control options (two of which are technically infeasible), including Selective Catalytic Reduction (SCR), and the State is proposing that the current operation with good combustion/operating practices with an emission limit of 0.32 lb/mm BTU (on a 30-day rolling average), when combusting either No. 6 fuel oil or natural gas, represents BART for Boiler 2. New York's BART analysis for NO_X concluded that each of the technically feasible control options is not cost effective because each boiler operates at a low annual capacity. New York also reports that Con Ed demonstrated that visibility improvement was very low (0.01 to 0.02 dv) when assuming a NO_X control reduction of 30%.

For control of PM emissions, New York reviewed Con Ed's BART analysis that considered three potential add-on control technologies but Con Ed determined, and New York agreed, that these technologies are not demonstrated in practice for a utility boiler that combusts oil as the primary fuel. New York has determined that BART control of PM emissions is the continued use of current operations that includes good combustion practices and the use of low sulfur fuel, with an emission limit of 0.10 lb/mm BTU representing BART for Boiler 2.

The aforementioned BART requirements for Boiler 2 are included in New York's draft Title V permit including requirements for monitoring, record keeping and reporting and includes a compliance date of January 1, 2014. New York finalized the draft Title V permit on March 20, 2012 and expects to submit it as a SIP revision for EPA approval by mid-2012.

Trans Canada (TC) Ravenswood LLC—Ravenswood Generating Station

This facility, owned by TC Ravenswood LLC, operates three very large boilers, Boilers 10 (Emission Unit U–00010; Emission Source ES10H/ES10R), 20 (Emission Unit U–00020; Emission Source ES20H/ES20R), and 30 (Emission Unit U–00030; Emission Source ES30H/ES30R), as well as combustion turbines at its Ravenswood Generating Station in Queens County, a borough of New York City. New York has determined that Boilers 10, 20 and 30 are each BART eligible units. Each unit combusts primarily natural gas but low sulfur No. 6 fuel oil is occasionally combusted in order to maintain system reliability whenever natural gas is unavailable. These units have maximum heat input rates of 4204 mm BTU/hr, 4171 mm BTU/hr, and 9370 mm BTU/hr, respectively and have a combined nominal rating of 1752 MW. For controlling air emissions, all three units are equipped with close coupled over fire air (CCOFA) systems and low NO_X burners (LNBs) for NO_X control while

[16] At 6 NYCRR Part 200—General Provisions, New York defines a very large boiler as ''a boiler with a maximum heat input capacity greater than 250 million British thermal units (BTU) per hour,'' i.e. 250 mm BTU/hr.

SO_2 emissions are limited by the use of low sulfur (0.30%) fuel oil.

TC submitted a BART determination to New York and the State agreed with the owner's recommendations. For control of SO_2 emissions, TC proposed, and New York agreed, that the current permitted condition that limits the maximum sulfur content of the fuel oil to 0.30% represents BART for each of the three BART eligible boilers.

For control of NO_X emissions, New York reviewed TC's BART analysis that considered five control options, including SCR, and the State is proposing that the current operation using natural gas as the primary fuel with an emission limit of 0.15 lb/mm BTU (on a 30-day rolling average) represents BART. TC conducted a BART analysis for the 100% oil-firing case since the owners considered this condition as the highest emission case for all haze-causing emissions. The BART control option for NO_X having the lowest emission limit (reduction from 0.24 lb/mm BTU to 0.15 lb/mm BTU) as well as being technically and economically feasible is the addition of both separated over fire air (SOFA) and selective non-catalytic reduction (SNCR). However, since the three BART units combust primarily natural gas and combust low sulfur fuel oil primarily for reliability purposes, it is unlikely that this control option would be cost effective for the few periods when only fuel oil is combusted. Therefore BART is determined to be the continued operational mode of primarily combusting natural gas. EPA's Clean Air Markets Division reports that average NO_X emissions for the five year period from 2006–2010 for natural gas firing varies from 0.06 to 0.09 lb/mm BTU for these boilers.

For control of PM emissions, New York reviewed TC's BART analysis that considered three potential add-on technologies and one operational change switching to low sulfur distillate fuel oil but TC determined, and New York agreed, that these add-on technologies and operational change are either technically or economically infeasible. New York has determined that current operations represent BART for PM on the three BART eligible boilers with an emission limit of 0.10 lb/mm BTU.

The aforementioned BART requirements for Boilers 10, 20, and 30 are included in New York's draft Title V permit including requirements for monitoring, record keeping and reporting and includes a compliance date of January 1, 2014. New York finalized the draft Title V permit on April 6, 2012 and expects to submit it as a SIP revision for EPA approval by mid-2012.

National Grid—EF Barrett Power Station

This facility, owned by National Grid Generation LLC, operates one very large boiler, Boiler 2 (Emission Unit U–00002; Emission Source ES002), as well as another boiler and several combustion turbines at its EF Barrett Power Station located in the town of Hempstead in Nassau County. New York has determined that Boiler 2 is a BART eligible unit. Boiler 2 is a tangentially fired unit rated at a maximum heat input of 1825 mm BTU/hr and has a generating capacity of 185 MW. Boiler 2 is capable of combusting natural gas or oil, though it fires natural gas almost exclusively, with low sulfur oil serving as a backup in case of gas shortages. National Grid reports that this boiler is no longer a base loaded unit but rather a load following unit which can cycle from minimum load to full load and back to minimum load daily.

National Grid submitted a BART determination to New York and the State agreed with the owner's recommendations that the current operations constitute BART. For control of SO_2 emissions, New York is proposing that the current use of low sulfur (0.37%) fuel oil represents BART. EPA requested that the State evaluate a BART option to limit the amount of fuel oil combusted but New York indicated that National Grid is unable to accept a permit condition limiting the amount of fuel oil burned, which would limit sulfur emissions, because it would detract from the operational flexibility needed to meet the requirements of The New York State Reliability Council reliability rule I–R5 (the ''minimum oil burn rule'') which promotes reliability of the electrical grid within the local New York City area.

For control of NO_X emissions, New York reviewed National Grid's BART analysis that considered the addition of SCR and SNCR controls beyond the existing control technology of separated over fire air (SOFA) that was installed in the mid-1990s. National Grid determined that SCR is economically infeasible and SNCR is economically and technically infeasible due to the load swinging operation of the boiler and projected low operating capacity factor of 25%. New York also indicated low NO_X burners were less effective than SOFA. Therefore, the State is proposing that SOFA control technology with emission limits of 0.10 lb/mm BTU when firing natural gas and 0.20 lb/mm BTU when firing low sulfur fuel oil, both on a 24-hour average, represent BART for Boiler 2.

For control of PM emissions, National Grid evaluated two control technologies and determined that both were economically infeasible. Since natural gas is the primary fuel combusted in this boiler, New York agreed with this BART analysis and is proposing that current operation (no controls), with an emission limit of 0.10 lb/mm BTU represents BART for Boiler 2. For this boiler, New York indicates that PM from ''unspeciated PM_{10}'' emissions is approximately 0.013 lb/mm BTU.

The aforementioned BART requirements for Boiler 2 are included in New York's draft Title V permit including requirements for monitoring, record keeping and reporting and includes a compliance date of January 1, 2014. New York finalized the draft Title V permit on March 27, 2012 and expects to submit it as a SIP revision for EPA approval by mid-2012.

National Grid—Northport Power Station

This facility, owned by National Grid Generation LLC, operates four very large boiler, Boilers 1 (Emission Unit U–00001; Emission Source ES001), 2 (Emission Unit U–00002; Emission Source ES003), 3 (Emission Unit U–00003; Emission Source ES005), and 4 (Emission Unit U–00004; Emission Source ES007), as well as a combustion turbine at its Northport Power Station located in the town of Northport in Suffolk County. New York has determined that Boilers 1 through 4 are BART eligible units. Each of the four BART eligible boilers are identical in design: each is a tangentially fired unit rated at a maximum heat input of 3695 mm BTU/hr and each has a generating capacity of 385 MW. Each boiler is capable of combusting natural gas or oil, although these units primarily combust natural gas with backup oil firing capability. National Grid reports that these boilers are no longer base loaded units but rather load following units which can cycle from minimum load to full load and back to minimum load daily.

National Grid submitted a BART determination to New York and the State agreed with the owner's recommendations. For control of SO_2 emissions New York is proposing that BART is the lowering of the sulfur content of fuel oil used for combustion in each boiler to 0.70% from 1.00% for Boilers 1 through 3 and from 0.75% for Boiler 4. EPA requested that the State evaluate a BART option to limit the amount of fuel oil combusted but New York indicated that National Grid is unable to accept a permit condition limiting the amount of fuel oil burned, which would limit sulfur emissions,

because it would detract from the operational flexibility needed to meet the requirements of The New York State Reliability Council reliability rule I–R5 (the ''minimum oil burn rule'') which promotes reliability of the electrical grid within the local New York City area.

For control of NO_X emissions, New York reviewed National Grid's BART analysis that considered the addition of SCR, SNCR, and SOFA controls beyond the existing control technology of close coupled over fire air (CCOFA). National Grid determined that SCR is economically infeasible and SNCR is economically and technically infeasible due to the load swinging operation of the boiler and projected low operating capacity factor of 25%. Therefore, the State is proposing that SOFA control technology with emission limits of 0.10 lb/mm BTU when firing natural gas and 0.20 lb/mm BTU when firing fuel oil, both on a 24-hour average, represent BART for each of the four BART eligible boilers.

For control of PM emissions, National Grid determined that there is no feasible or cost effective PM control technology beyond the existing electrostatic precipitator (ESP) control on each boiler since the boilers are predominantly natural gas fired with only a relatively small percentage of oil fired. New York agreed with this BART analysis and is proposing that the current ESP control with an emission limit of 0.10 lb/mm BTU represents BART for each of the four BART eligible boilers. For these boilers, New York indicates that PM from ''unspeciated PM_{10}'' emissions range from approximately 0.017 to 0.027 lb/mm BTU.

The aforementioned BART requirements for Boiler 2 are included in New York's draft Title V permit including requirements for monitoring, record keeping and reporting and includes a compliance date of January 1, 2014. New York finalized the draft Title V permit on March 27, 2012 and expects to submit it as a SIP revision for EPA approval by mid-2012.

NRG—Arthur Kill Generating Station

This facility, owned by NRG Energy and permitted to Arthur Kill Power LLC, operates two very large boilers, Boiler 20 and 30, as well as a combustion turbine and two emergency generators at its Arthur Kill Generating Station located in Richmond County in the city of New York. New York has determined that Boiler 30 (Emission Unit A–K0001; Emission Source 00030) is a BART eligible unit. Boiler 30 is a tangentially fired unit rated at a maximum heat input of 5502 mm BTU/hr and has a generating capacity of 536 MW. Boiler 30 is capable of combusting natural gas or oil, though it has combusted only natural gas for the past 10 years. New York's fuel oil regulation, Part 225, restricts the sulfur content of residual fuel oil and distillate oil to 0.30% (equivalent to about 0.33 lb/mm BTU) and 0.20%, respectively, for sources located in New York City.

NRG submitted a BART determination to New York and the State agreed with the owner's recommendations. Since NRG's original BART determination, New York has proposed Title V permit conditions that are more stringent than NRG's BART proposal in that New York's proposed Title V permit limits Boiler 30 to the combustion of natural gas and no longer allows the use of fuel oil. Therefore, with the combustion of only natural gas, New York expects that SO_2 emissions from Boiler 30 will be limited to the current emission rate of 0.0006 lb/mm BTU, and the State is proposing a BART SO_2 limit of 0.15 lb/mm BTU. EPA does not have a presumptive SO_2 BART limit for boilers that combust natural gas.

For control of NO_X emissions, New York's draft Title V permit requires the combustion of only natural gas and sets a limit of 0.15 lb/mm BTU based on a 24-hour weighted average during the ozone season (May 1 through September 30) and on a 30-day rolling average outside the ozone season. New York indicates that the current NO_X emission rate is 0.088 lb/mm BTU when Boiler 30 combusts natural gas. NRG's BART analysis did not evaluate other control technologies.

For control of PM emissions, NRG evaluated two control technologies and determined that both were economically infeasible. Since natural gas is the primary fuel combusted in this boiler, New York agreed with this BART analysis and the draft Title V permit proposes that current operation (no controls), with an emission limit of 359 tons per year (tpy) represents BART for Boiler 30. NRG's five year (2005 through 2009) look back at emissions from Boiler 30 indicates 329 tpy PM represents the maximum mass emission over a 12 month period. New York's limit of 359 tpy provides a reasonable margin of safety to NRG over actual emissions.

The aforementioned BART requirements for Boiler 30 are included in New York's draft Title V permit including requirements for monitoring, record keeping and reporting and includes a compliance date of January 1, 2014. New York finalized the draft Title V permit on March 20, 2012 and expects to submit it as a SIP revision for EPA approval by mid-2012. New York's draft permit commits NRG to combusting only natural gas which will minimize emissions of SO_2, NO_X, and PM from Boiler 30.

NRG—Oswego Harbor Power

This facility, owned by NRG Energy and permitted to Oswego Harbor Power LLC, operates two very large boilers, Boiler 5 and 6, as well as two smaller packaged boilers at its Oswego Harbor Power Station located in Oswego County. New York has determined that Boilers 5 (Emission Unit U–00005; Emission Source S0005) and 6 (Emission Unit U–00006; Emission source S0006) are BART eligible units. Boilers 5 and 6 are nearly identical in size (rated maximum heat input of 8033 and 8088 mm BTU/hr, respectively) and each is a wall-fired boiler rated at a gross generating capacity of 870 MW. Boilers 5 and 6 are capable of combusting fuel oil (sulfur content of 1.5% and 0.75%, respectively) and Boiler 6 has the capability to co-fire natural gas up to a generating capacity of 150 MW. New York indicates that both units are essentially ''peaking'' units, with actual recent operating capacity being much lower than rated capacity. Each unit had a capacity factor of 3.2% or less during the baseline period (2007–2009), and neither boiler had a capacity factor above 10% since 2001. New York and NRG took these operational characteristics into account in their BART analysis.

NRG submitted a BART determination to New York and the State agreed with the owner's recommendations. For control of SO_2 emissions, New York is proposing that Boiler 5 combust fuel oil with a sulfur content of not more than 0.75% (lowered from current sulfur limit of 1.5%) with an SO_2 emission limit of 0.80 lb/mm BTU (on a 3-hour rolling average) as representing BART. For Boiler 6, New York is proposing that the current fuel oil sulfur limit of 0.75%, with an SO_2 emission limit of 0.80 lb/mm BTU (on a 3-hour rolling average), represents BART. In addition, New York's draft Title V permit proposes that NRG shall not purchase or obtain any fuel oil for combustion, including Boilers 5 or 6, which has a sulfur content of more than 0.50%.

For control of NO_X emissions, New York reviewed NRG's BART analysis that considered seven standard and four innovative control technologies, including SCR and SNCR, and the State concluded that none of the technically feasible control options are economically feasible because each boiler operates at a low annual capacity. New York concluded that BART is the continued use of existing NO_X controls including low NO_X burners (LNB), over

fire air (OFA), and flue gas recirculation (FGR) and the State's draft Title V permit requires that NO_X emissions shall not exceed 383 tpy and 665 tpy from Boilers 5 and 6, respectively, based upon a 12 month rolling total. These NO_X emission limits were established below the threshold that would make an additional control option economically feasible and are based upon baseline emission rates 0.22 and 0.19 lb/mm BTU and annual capacity factors of approximately 5% and 10% for Boilers 5 and 6, respectively.

For control of PM emissions, New York reviewed NRG's BART analysis that considered two potential add-on control technologies but NRG determined, and New York agreed, that these two technologies are not cost effective. New York's draft Title V permit proposes that current PM control with electrostatic precipitators (ESP) with an emission limit of 0.10 lb/mm BTU for Boilers 5 and 6 represents BART. New York reports that the most recent stack tests measured total PM rates of approximately 0.03 lb/mm BTU for each boiler.

The aforementioned BART requirements for Boilers 5 and 6 are included in New York's draft Title V permit including requirements for monitoring, record keeping and reporting and includes a compliance date of January 1, 2014. New York expects to finalize the draft Title V permit and to submit it as a SIP revision for EPA approval by mid-2012. New York's draft permit commits NRG to lower emissions of SO_2, NO_X, and PM due to lower fuel sulfur limits and expected low annual capacity factors for Boilers 5 and 6.

Dynegy—Roseton Generating Station

This facility, owned by and permitted to Dynegy Northeast Generation Inc, operates two very large boilers, Boilers 1 and 2, as well as one smaller auxiliary boiler, at its Roseton Generating Station in Orange County, in the city of Newburgh. New York has determined that Boilers 1 (Emission Unit U–R0001) and 2 (Emission Unit U–R0002) are BART eligible units. Boilers 1 and 2 are both nearly identical in design, each tangentially fired and each rated to generate 600 MW electricity. Both boilers are capable of firing No. 6 fuel oil and natural gas as the primary fuels. Boiler 1 has a heat input rating of 7927 mm BTU/hr when burning No. 6 fuel oil and 7369 mm BTU/hr when firing natural gas. For Boiler 2, the heat input rating is 7691 mm BTU/hr when firing No. 6 fuel oil and is the same as Boiler 1 when firing natural gas. Both boilers have the same air emissions controls: the NO_X controls employ a combination of fuel oil steam atomization, burners out of service (BOOS) and/or wind-box flue gas recirculation (FGR); PM emissions are controlled with a multiclone mechanical collector; and SO_2 emissions are controlled through limitations on the sulfur content (1.3%) of No. 6 fuel oil. Dynegy has indicated that both boilers have operated at low capacity factors over the past few years and the owner projects that the rated capacity factors in 2014 for each boiler will be similar as in recent past years. New York and Dynegy took these operational characteristics into account in their BART analysis.

Dynegy submitted a BART determination (with 1.3% sulfur fuel oil as the base case) to New York and the State agreed with the owner's recommendations. For control of SO_2 emissions, New York is proposing that BART for Boilers 1 and 2 is the combustion of fuel oil with an annual weighted average sulfur limit of 1.0%. Dynegy's five factor BART analysis evaluated eight SO_2 control options, including wet flue gas desulfurization, combustion of lower sulfur fuel oils, as well as 100% gas firing and gas co-firing with fuel oil. Dynegy determined cost effectiveness with the projected low capacity factors since Dynegy determined that a baseline made on the assumption of ''potential to emit'' is not indicative of future operations. As a result of the BART analysis, Dynegy concluded for each boiler, and New York agreed, that the modeled visibility impacts indicate excessive cost per deciview values for all options modeled, with the exception of gas firing and gas co-firing with fuel oil. Dynegy and New York also concluded that although gas co-firing (and 100% gas firing) appears to be feasible with negative annualized costs [17] (cost/ton and cost/dv), it was ruled out as a control option due to high price volatility of natural gas and potential reliability concerns on the State's electric system due to limited supply of natural gas, particularly during the winter.

For control of NO_X emissions, New York reviewed Dynegy's BART analysis that considered fourteen control technologies, including SCR and SNCR, and the State concluded that none of the technically feasible control options are economically feasible because each boiler is projected to operate at a low annual capacity. In addition, Dynegy's visibility analysis also concluded economic infeasibility. New York concluded that BART is the optimization of the wind-box controls and the State's November 2, 2011 final Title V permit requires lowering the permitted NO_X limit from 0.25 lb/mm BTU to 0.20 lb/MM BTU based upon a 30-day average during the non-ozone season and on a 24-hour average during the ozone season.

For control of PM emissions, New York reviewed Dynegy's BART analysis that considered four potential control options, including electrostatic precipitators (ESPs) and gas co-firing, but Dynegy determined, and New York agreed that ESPs are not cost effective and gas co-firing is not practical for the same reasons discussed above for the SO_2 BART determination. Dynegy expects secondary condensable PM emission reductions that will result from its proposed NO_X and SO_2 BART control measures. New York's final Title V permit proposes that current PM control with multiclone mechanical collectors and the current permitted emission limit of 0.10 lb/mm BTU (by stack tests) for Boilers 1 and 2 represents BART.

Although EPA agrees with New York's BART determination for NO_X and PM, EPA disagrees with New York's determination that the use of fuel oil with a sulfur content of 1.0% is BART for controlling SO_2 emissions. Instead, EPA is proposing a Federal plan requiring that the SO_2 emissions from Roseton's Units 1 and 2 meet an emission limit of 0.55 lb/mm BTU on a 24 hour average. EPA proposes that Dynegy's BART eligible units, Roseton Units 1 and 2, comply with EPA's proposed SO_2 emission limit no later than January 1, 2014 which is the compliance date required by New York's BART regulation at Part 249. EPA has estimated that No. 6 fuel oil containing 0.50% sulfur by weight is equivalent to EPA's proposed SO_2 emission limit of 0.55 lb/mm BTU.[18] EPA's proposed emission limit provides flexibility to Dynegy because it allows the operators to combust the following fuels or any combination thereof: (1) 100% fuel oil with a sulfur content of not more than 0.50% by weight; (2) 100% natural gas; and (3) cofiring natural gas and fuel oil with a sulfur content either higher or lower than 0.50%. It is EPA's understanding that New York plans to propose this year a

[17] Dynegy notes that a negative annualized cost for gas co-firing (including 100% gas firing) result from the current lower prices of natural gas compared to No. 6 fuel oil (which is the base case for the SO_2 BART analysis).

[18] EPA did not have the fuel analysis used at the Roseton Generating Station. To estimate this emission limit, EPA used an average heating value for No. 6 fuel oil of 18,200 BTU per pound as found in ''Useful tables for engineers and steam users,'' Fourteenth edition 1984, by The Babcock and Wilcox Company.

revision to 6 NYCRR Part 225, the state's sulfur in fuel regulation that is applicable to industrial boilers, requiring that fuel oil containing sulfur content of more than 0.50% no longer be purchased in a few years.

EPA proposes to determine this flexibility of combusting various fuel combinations in meeting EPA's proposed SO_2 emission limit should alleviate any concerns Dynegy has on natural gas being susceptible to extreme price volatility and limited supply (especially during the winter months) that might result in negative reliability impacts on the electrical grid. As explained further below, EPA believes that an SO_2 emission limit of 0.55 lb/mm BTU, equivalent to No. 6 fuel oil containing 0.50% sulfur, is cost effective on a dollars per ton of SO_2 reduced basis and will provide significant improvement in visibility in the range of 1.0 dv or more at Lye Brook, and about 4.0+ dv cumulative at the seven Class I areas, depending upon the fuel type combusted. EPA considers a visibility impact of 1.0 dv as causing visibility impairment and therefore EPA's proposed emission limit will significantly reduce visibility impairment in the Lye Brook and seven Class I areas. The following paragraph provides further details that led to EPA's decision.

In comparison with Dynegy's baseline (1.3% sulfur fuel oil), it is clear from Dynegy's BART analysis that there is significant visibility improvement at Lye Brook and seven Class I areas as the SO_2 emissions are reduced as illustrated in Dynegy's BART control options of combusting natural gas, cofiring natural gas with oil and combusting fuel oil with sulfur contents lower than 1.3%. From Dynegy's BART analysis, the control options for combusting 100% gas and cofiring gas/oil are cost effective in terms of dollars per ton of SO_2 ($/ton) reduced from the baseline and in terms of dollars per deciview improvement from the baseline. Dynegy's BART recommendation of 1.0% sulfur fuel oil is actually less cost effective in terms of $/ton and $/dv when compared to Dynegy's other low sulfur fuel oil options of 0.70% sulfur, 0.50% sulfur and 0.30% sulfur. In addition the visibility is improved over the base case (1.3% sulfur oil) by as much as 1.42 ddv (i.e., delta deciview) at the 98 percentile and 0.97 ddv maximum at Lye Brook for the control option using 0.50% sulfur fuel. Even better visibility improvements are achieved for the control option of 60% gas cofiring with oil. The visibility improvement for the Dynegy BART recommendation (combusting 1% sulfur fuel oil) is only 0.57 dv at the 98th percentile and 0.57 dv maximum at Lye Brook. The visibility and cost comparisons for the various fuel control options discussed here are for the Roseton Unit 2 boiler but the results for Unit 1 are similar. The reader is referred to the following tables for both boilers that summarize the previous discussion as taken directly or derived from Dynegy's BART analysis.

TABLE 4—ROSETON UNIT 2 (600 MW)—SUMMARY BART EVALUATION FOR SO_2

Baseline SO_2 Emissions (tpy)	Dynegy Control Technology Options Evaluated (partial list)	Emissions, SO_2 (tpy)	Cost Effectiveness ($/ton)	Visibility Improvement Max/8th high from baseline DDV (Lye Brook)	Visibility Improvement Max/8th high from baseline DDV (7 Class I areas)	Cost (mm$/dv) (max/8th high) (Lye Brook)	Cost (mm$/dv) (max/8th high) (7 Class I areas)	Current Controls	New York's BART Determination
A	B	C	D	E	F	G	H	I	J
6766 tpy	0.30% S oil	1559 tpy	$3,107	Not Deter	Not Deter	Not Deter	Not Deter	Low sulfur (1.3%) fuel oil.	Use 1.0% S fuel oil instead of current 1.3% S fuel oil.
	0.5% S oil	2600 tpy	3,324	0.97/1.42	8.25/3.96	95/65	11.2/23.3.		
	0.70% oil	3642 tpy	3,684	Not Deter	Not Deter	Not Deter	Not Deter.		
	1.0% S oil	5204 tpy	5,819	0.46/0.57	3.04/1.50	131/106	19.9/40.4.		
	Gas cofire (35%).	4333 tpy	−6,909	1.02/0.971	Not Deter	−110/−115	Not Deter.		
	Gas cofire (60%).	2638 tpy	−8,506	1.68/1.64	Not Deter	−138/−143	Not Deter.		
	100% gas	0 tpy	−9,518	2.8/2.48	16.43/7.13	−153/−173	−26/−60		

Note: In columns E and F, DDV means delta-deciview, i.e. visibility improvement.

TABLE 5—ROSETON UNIT 1 (600 MW)—SUMMARY BART EVALUATION FOR SO_2

Baseline SO_2 Emissions (tpy)	Dynegy Control Technology Options Evaluated (partial list)	Emissions, SO_2 (tpy)	Cost Effectiveness ($/ton)	Visibility Improvement Max/8th high from baseline DDV (Lye Brook)	Visibility Improvement Max/8th high from baseline DDV (7 Class I areas)	Cost (mm$/dv) (max/8th high) (Lye Brook)	Cost (mm$/dv) (max/8th high) (7 Class I areas)	Current Controls	New York's BART Determination
A	B	C	D	E	F	G	H	I	J
1860 tpy	0.30% S oil	429 tpy	$43,107	Not Deter	Not Deter	Not Deter	Not Deter	Low sulfur (1.3%) fuel oil.	Use 1.0% S fuel oil instead of current 1.3% S fuel oil.
	0.5% S oil	715 tpy	3,324	0.853/1.370	8.45/4.01	111/69	11.3/23.7.		
	0.70% oil	1001 tpy	3,684	Not Deter	Not Deter	Not Deter	Not Deter.		
	1.0% S oil	1431 tpy	5,646	0.339/0.501	3.17/1.41	179/121	19.1/42.9.		
	Gas cofire (35%).	1179 tpy	−9,908	0.946/0.932	Not Deter	−178/−181	Not Deter.		
	Gas cofire (60%).	713 tpy	10,078	1.644/1.622	Not Deter	−176/−178	Not Deter.		
	100% gas	0 tpy	−10,361	2.8/2.48	15.3/17.3	−172/−194	−27/−58.		

Note: In columns E and F, DDV means delta-deciview, i.e. visibility improvement.

The aforementioned BART requirements for NO_X and PM for Boilers 1 and 2 are included in New York's final Title V permit (dated November 2, 2011) which also includes requirements for monitoring, record keeping and reporting, and includes a compliance date of January 1, 2014. New York expects to submit the permit

as a SIP revision for EPA approval by mid-2012. Once the SIP revision is approved by EPA, the BART requirements for NO_X and PM for each boiler become federally enforceable. Should New York not submit the final Title V permit for Boilers 1 and 2 in a timely manner, EPA proposes that the aforementioned BART requirements for NO_X and PM be considered as federal requirements as part of a FIP.

In addition, as discussed above, EPA is proposing a FIP for controlling SO_2 emissions from Boilers 1 and 2. EPA proposes that SO_2 emissions from Boilers 1 and 2 not exceed the limit of 0.55 lb/mm BTU on a 24-hour average not later than January 1, 2014. EPA further proposes that the same requirements for monitoring, recordkeeping and reporting as described in New York's final Title V permit be required to comply with EPA's proposed BART emission limit for SO_2.

In summary, EPA is proposing partial approval and partial disapproval of New York's BART determinations for Boilers 1 and 2 at Dynegy's Roseton Generating Station. EPA is proposing to approve New York's BART determination for NO_X and PM because it was conducted in a manner consistent with EPA's BART Guidelines. EPA is proposing to disapprove New York's BART determination for SO_2 because, as discussed above, a different control strategy as proposed by EPA, will result in improved visibility that is cost effective over what New York and Dynegy are proposing for BART.

Dynegy—Danskammer Generating Station

Dynegy Northeast Generation Inc. owns and is permitted to operate a 235 megawatt electrical generating unit at its Danskammer Generating Station in Orange County, in the city of Newburgh. New York has determined that Boiler Unit 4 (Emission Unit U–D0004) is a BART eligible unit. Boiler 4 is a tangentially coal-fired steam generating boiler and is capable of firing coal, No. 6 fuel oil and natural gas, with coal as the primary fuel. Boiler 4 has a heat input rating of 2,512 mmBTU/hr when burning coal, 2,004 mmBTU/hr when combusting No. 6 fuel oil and 2,397 mmBTU/hr when firing natural gas. Boiler 4 has existing NO_X emission controls of low excess air, combustion air manipulation, separated overfire air, burners out of service, and low NO_X burners; PM emissions are controlled with an existing cold side electrostatic precipitator; and SO_2 emissions are controlled through limitations on the sulfur content (0.7%) of coal.

Dynegy submitted a BART determination (with 2,512 mmBTU per hour while burning coal as the base case) to New York and the State agreed with the owner's recommendations. On November 2, 2011, New York proposed the Title V permit modification to incorporate Dynegy's BART determinations into their permit and to provide for public comment. New York has not yet issued this permit modification as final. For control of SO_2 emissions, New York is proposing that BART for Boiler 4 is the lowering of the current SO_2 permit limit from 1.10 lbs/mmBTU to 0.50 lbs/mmBTU, resulting in an emission reduction of 6,602 tons per year, or 55%. Dynegy's five factor BART analysis evaluated thirteen SO_2 control options including, Flue Gas Desulfurization options with Lime Based Spray Dryer; Circulating Dry Scrubber and Wet Limestone; Dry Sorbent Injection of Trona options; combustion of alternative coals; 100% combustion of natural gas; co-firing natural gas; and a 0.5 lbs/mmBTU emission limit on a 24-hour basis.

Dynegy determined the annualized costs and the annualized control costs per ton of emission reductions of SO_2 (based on 100% capacity factor) for each BART control option. All of the BART controls were shown to be cost effective according to New York's guidance, at or below $5,500 per ton. The annualized costs were in the range of $20 to 30 million for flue gas desulfurization options, $2 to 3 million for dry sorbent injection options, $8 to 25 million for gas firing options, and $7 to 46 million for alternative coal options. The annualized costs for complying with a 0.5 lb/mmBTU emission limit, New York's proposed BART determination emission limit, are $11 million with a cost effectiveness of $1,683 per ton.

According to Dynegy's analysis, the flue gas desulfurization and dry sorbent injection control options all have energy and adverse non-air quality environmental impacts, including solid waste disposal issues. Wet limestone FGD creates a waste water stream that requires additional treatment prior to release into the water system. The gas firing options could be susceptible to price volatility and limited supply, creating an adverse impact on electric grid reliability, which may also have non-air quality environmental impacts.

Visibility impacts were modeled for selected BART control options. For FGD for example, maximum predicted visibility improvement of 4.749 deciviews and eighth highest improvement of 2.174 deciviews would occur at the nearby seven Class I areas. For gas co-firing at 60% for example, maximum visibility improvement of 4.364 deciviews and eighth highest improvement of 1.522 deciviews would occur. Complying with New York's proposed 0.50 lb/mmBTU BART emission limit was predicted to result in a 2.759 maximum deciview improvement and a 1.015 eighth highest deciview improvement.

Dynegy concluded that:

- Although the FGD options are cost-effective, have high control efficiencies, and would result in visibility improvements, there are many non-air quality environmental concerns and these controls would yield additional power requirements.
- While dry sorbent injection options are also cost-effective, they have lower control efficiencies, non-air quality environmental concerns, and result in less visibility improvement than the 0.50 lb/mmBTU emission limit option.
- Although gas co-firing (and 100% gas firing) appears to be feasible and cost effective, it was ruled out as a control option due to high price volatility of natural gas and potential reliability concerns on the state's electric system due to limited supply of natural gas, particularly during the winter.
- Alternative coal options were also ruled out due to lower heating content, which would require more coal to be shipped and result in more solid waste products.

For control of NO_X emissions, New York is proposing that BART for Boiler 4 is the lowering of the current NO_X permit limit from 0.42 lbs/mmBTU to 0.12 lbs/mmBTU, resulting in an emission reduction of 3,300 tons per year, or 71%. Dynegy's BART analysis considered nineteen control technologies, including Selective Catalytic Reduction; Selective Non-Catalytic Reduction; hybrid SNCR/SCR system; SNCR Trim; Gas Reburn; Flue gas recirculation options; combustion of alternative coals; 100% combustion of natural gas; co-firing natural gas; and a 0.12 lbs/mmBTU emission limit.

Dynegy determined the annualized costs and the annualized control costs per ton of emission reductions of NO_X (based on 100% capacity factor) for each BART control option. The annualized costs were $12 million for SCR, $66 million for SNCR, $9 million for the hybrid SCR/SNCR, $56 million for SNCR Trim, in the range of $7 to 46 million for alternative coal options, in the range of $8 to $25 million for gas firing options, and $348,655 to $9 million for flue gas recirculation options.

The following BART controls were shown to be cost effective according to

New York's guidance, at or below $5,500 per ton: SCR, Hybrid SCR/SNCR, Alternative Chinese Coal, and the FGR options. Dynegy determined SCR and the Hybrid SCR/SNCR option to be technically infeasible due to the ammonia handling issues and other non-air quality environmental impacts. The gas firing options could be susceptible to price volatility and limited supply, creating an adverse impact on electric grid reliability, which may also have non-air quality environmental impacts. Alternative coal options were also ruled out due to lower heating content, which would require more coal to be shipped and result in more solid waste products. FGR options were not necessarily ruled out, but they had minimal visibility improvement and the proposed 0.12 lbs/mmBTU BART emission limit compliance option was more effective in reducing emissions than the other cost-effective options.

Visibility impacts were modeled for selected BART control options. For the Hybrid SCR/SNCR option, maximum predicted visibility improvement of 2.244 deciviews and eighth highest improvement of 0.689 would occur at all of the Class I area. For FGR, maximum visibility improvement of 0.215 deciviews and eighth highest improvement of 0.084 would occur. For FGR and SCR, maximum visibility improvement of 2.477 deciviews and eighth highest improvement of 0.651 deciviews would occur. For gas firing at 100% at 0.08 lbs/mmBTU, maximum visibility improvement of 8.577 deciviews and eighth highest improvement of 2.896 deciviews would occur. Complying with a 0.12 lb/mmBTU emission limit was predicted to result in a 1.943 maximum deciview improvement and a 0.569 eighth highest deciview improvement.

Dynegy concluded that:

- SCR and Hybrid SCR/SNCR while cost-effective were not technically feasible due to several non-air quality environmental concerns. Hybrid SCR/SNCR also had minimal visibility improvement.
- SNCR was ruled out as not cost-effective and also presented many non-air quality environmental concerns.
- Alternative coal options were also ruled out due to lower heating content, which would require more coal to be shipped and result in more solid waste products.
- Other gas co-firing options and 100% gas firing appears not to be cost-effective, and were ruled out as a control option due to high price volatility of natural gas and potential reliability concerns on the state's electric system due to limited supply of natural gas, particularly during the winter.
- While FGR options were not necessarily ruled out, they had minimal visibility improvement and the proposed 0.12 lbs/mmBTU BART emission limit compliance option was more effective in reducing emissions than the other cost-effective options.

Therefore, New York proposes for the control of NO_X emissions, BART for Boiler 4 is the lowering of the current NO_X permit limit from 0.42 lbs/mmBTU to 0.12 lbs/mmBTU. This BART control option is based on optimizing the existing low NO_X burners, co-firing with natural gas, installation of post combustion controls, use of alternative coals, or any combination thereof. The proposed NO_X emission limit is 0.12 lbs/mmBTU (24-hour average during ozone seasons, 30-day average during non-ozone seasons).

For the control of PM emissions, Danskammer Unit 4 currently has a cold side electrostatic precipitator (ESP). This ESP achieved an average 99.98% control efficiency in recent stack tests and is a state-of-the-art technology for PM control for Danskammer Unit 4. Other control technologies such as a mechanical collector, baghouse, or wet particulate scrubbers could be considered as additional feasible PM control options. According to Dynegy's analysis, a search of available control technology research and industry knowledge, any other commonly applied PM control, such as fabric filter or wet scrubber, would be expected to achieve a maximum control efficiency of up to 99% and an average control efficiency of 95%. Therefore, New York proposes the existing ESP to represent the maximum control for BART for Danskammer Unit 4, and completion of the five-step BART process, including visibility modeling, is not required. The proposed BART PM emission rate is 0.060 lbs/mmBTU.

The reader is referred to the following table for Unit 4 that summarizes this discussion as taken directly or derived from Dynegy's BART analysis.

TABLE 6—DANSKAMMER UNIT 4 (235 MW)—SUMMARY BART EVALUATION

	Source and size	Baseline Emissions (tpy)	Possible Control Technology of Interest (partial list)	Emission Rate with this control (lb/mmBTU or other)	Cost Effectiveness ($/ton)	Visibility Improvement (7 Class I areas) max/8th high DV	Cost (mm$/dv) Max/8th high	Current Controls	New York's proposed BART Determination
	A	B	C	D	E	F	G	H	I
SO_2	Unit 4, coal-fired boiler 235 MW. Can burn coal, oil, gas.	12,103 tpy	Lime-Based Spray Dryer FGD with Baghouse 91.5% control efficiency.	1029 tpy; 234.9 lb/hr. 0.09 lb/mmBtu	1840	4.749 max	4.29 max	None. Currently uses 0.7% sulfur coal.	0.50 lb/mmBtu.
			Gas Cofiring 60%.	4712 tpy 1075.8 lb/hr 0.43 lb/mmBtu	2072	2.174 high 8 4.364 max 1.522 high 8	9.37 high 8 3.5 max 10.0 high 8		
			59.97% control efficiency.						
			0.50 lb/mmBtu	5501 tpy	1683	2.759 max	4.02 max		
			55% control efficiency.	1256 lb/hr 0.50 lb/mmBtu		1.015 high 8	10.9 high 8.		
NO_X		4621 tpy	SCR ~ 83% control efficiency.	786 tpy 3004 tpy	3151 41345	Not provided Not provided	Not provided Not provided	low excess air, OFA, BOOS, LNBs.	0.12 lb/mmBTU.
			SNCR ~ 35% control efficiency.						

TABLE 6—DANSKAMMER UNIT 4 (235 MW)—SUMMARY BART EVALUATION—Continued

	Source and size	Baseline Emissions (tpy)	Possible Control Technology of Interest (partial list)	Emission Rate with this control (lb/mmBTU or other)	Cost Effectiveness ($/ton)	Visibility Improvement (7 Class I areas) max/8th high DV	Cost (mm$/dv) Max/8th high	Current Controls	New York's proposed BART Determination
	A	B	C	D	E	F	G	H	I
			Hybrid SCR/ SNCR. 60% control efficiency.	1848 tpy ..... 422 lb/hr 0.17 lb/mmBtu	3353	2.244 max ..... 0.689 high 8	4.1 max 13.5 high 8..		
			Alternative coal options.	2773 to 3656 tpy.	4509 to 47753	Not provided	Not provided.		
			Gas firing 100%. 81% control efficiency.	880 tpy ..... 201 lb/hr 0.08 lb/mmBtu	6824	8.577 max ..... 2.896 high 8	2.98 max 8.81 high 8.		
			FGR ..... 8% control efficiency.	4251 tpy ..... 970.6 lb/hr .... 0.39 lb/mmBtu	943	0.215 max ..... 0.084 high 8	1.62 max 4.15 high 8.		
			FGR + SCR .. 91% control efficiency.	4216.5 tpy ..... 962.7 lb/hr .... 0.38 lb/mmBtu	2012	2.477 max ..... 0.651 high 8	3.42 max 12.99 high 8.		
			0.12 lb/MMBtu ~71% control efficiency.	1320 tpy ..... 301.4 lb/hr .... 0.12 lb/mmBtu	6088	1.943 max ..... 0.569 high 8	10.3 max 35.3 high 8.		
PM	.....	660 tpy	N.A.	N.A.	N.A.	N.A.	N.A.	ESP ..... 99.98% efficient.	0.06 lb/mmBtu Existing control is max control.

EPA is proposing partial approval and partial disapproval of New York's proposed BART determinations for Unit 4 at Dynegy's Danskammer Generation Station. EPA is proposing to approve New York's proposed NO_X BART emission limit of 0.12 lb/mmBTU and proposed PM BART emission limit of 0.06 lb/mmBTU. EPA is proposing to disapprove a portion of New York's proposed BART determination for Danskammer Unit 4 with respect to SO_2 emissions because other BART control options as presented by Dynegy are also technically feasible, cost-effective and provide additional visibility improvement.

In its proposed BART determination, New York and Dynegy considered several SO_2 control technology options including Flue Gas Desulfurization, combustion of alternative coals, and combusting different percentages of natural gas. New York and Dynegy proposed that the SO_2 emission limit of 0.5 lb/mmBTU on a 24-hour average is BART, and that this emission limit will be achieved through some post combustion control, switching of fuels or a combination of these or other options. The result of our own evaluation of Dynegy's analysis is that these same control option strategies can achieve a more stringent SO_2 emission limit than the 0.5 lb/mmBTU limit, on a more cost-effective basis, and therefore result in more visibility improvement. Based on the information contained in Dynegy's BART analysis, and specifically on the emission rate information (also summarized in Table 6), EPA is proposing to establish an SO_2 BART emission limit of 0.09 lb/mmBTU on a 24-hour average. Our proposed disapproval is based in large part on Dynegy's own BART analysis, showing that FGD controls and/or combusting natural gas are cost effective and would result in enough incremental visibility improvement at a single Class I area to justify the incremental cost of the control strategies.

In addition, the results of our own analysis of the visibility improvement differ from Dynegy's analysis in that Dynegy's proposed BART determination appears to be based on the highest visibility improvements that may occur at only one of the seven Class I areas that could be impacted. In making BART determinations, EPA also recommends the consideration of cumulative impacts and improvements that could occur at all of the Class I areas a particular facility might impact. EPA's analysis of the cumulative visibility improvements at all 7 Class I areas justifies a more stringent BART emission limit. While our analysis differs from Dynegy's analysis and New York's proposed BART determination in this respect, we concur with the other portions of the analysis regarding achievable emission reductions and cost-effectiveness.

Since New York's proposed BART determination and permit modification has not been issued as final, there is the possibility that additional information may be provided for New York to evaluate which may influence New York to consider other options for BART. Likewise, additional information may be provided to further support New York's proposed BART determination. EPA is aware that New York has received comments from the public on the proposed BART permit modification. Therefore EPA is similarly providing for the possibility that New York may consider other options for BART before issuing a final BART permit.

While EPA is proposing to disapprove New York's proposed SO_2 BART determination for Danskammer Unit 4, EPA is also proposing two options for the SO_2 BART FIP for Danskammer. (Because we are proposing to disapprove this provision of the SIP, we are concurrently proposing a FIP.) Based on the discussion in this section, our FIP proposes promulgating two options for an SO_2 BART emissions limit for Danskammer Unit 4:

Option 1: EPA proposes to approve New York's proposed SO_2 BART emission limit of 0.50 lb/mmBTU on a 24-hour average in the event additional information is submitted to support this emission limit.

Option 2: EPA proposes to establish an SO_2 BART emission limit of 0.09 lb/mmBTU on a 24-hour average.

EPA is requesting comment on these two options in order to provide for the opportunity for submittal of additional

documentation or information that might be considered by EPA to approve either of the two options as BART.

In summary, we are proposing to approve New York's proposed determination for NO_X and PM BART for Danskammer Unit 4. We are proposing to disapprove New York's proposed SO_2 BART determination for Danskammer Unit 4 to meet an emission limit of 0.5 lb/mmBTU. Because we are proposing to disapprove this provision of the SIP, we are concurrently proposing a FIP. Our FIP proposes promulgating two options for an SO_2 BART emissions limit for Danskammer Unit 4. For option 1 we propose to approve New York's proposed SO_2 BART emission limit of 0.50 lb/mmBTU on a 24-hour average in the event additional information is submitted to support this emission limit. For option 2 we propose to establish an SO_2 BART emission limit of 0.09 lb/mmBTU on a 24-hour average.

The aforementioned BART requirements proposed by New York for Unit 4 are included in New York's proposed Title V permit, which also includes requirements for monitoring, recordkeeping and reporting and includes a compliance date of January 1, 2014. EPA expects New York will issue a final BART determination and submit the permit as a SIP revision for EPA approval. If EPA is able to approve the BART determination, then the permit requirements for the boiler become federally enforceable. Should New York not submit the final Title V permit for Boilers 4 in a timely manner, or adequately demonstrate that the proposed BART determination is BART, EPA proposes that the aforementioned BART requirements be considered as federal requirements as part of a FIP.

GenOn (Mirant)—Bowline Generating Station

This facility, owned and permitted to GenOn Bowline LLC, operates two very large boilers, Boilers 1 and 2, as well as an emergency generator at its Bowline Generating Station located in the town of Haverstraw, Rockland County. New York has determined that Boiler 1 (Emission Unit 1–00001; Emission source 00UN1) and 2 (Emission Unit 1–00002; Emission source 00UN2) are BART eligible units. Boilers 1 and 2 are nearly identical in size (rated maximum heat input of 5546 and 5374 mm BTU/hr, respectively) and each has a nominal electric generating capacity of 570 MW. Boiler 1 is a tangentially-fired boiler that can fire either natural gas or No. 6 fuel oil with a maximum sulfur content of 0.37%. In 2009, Boiler 1 operated only 568 hours (6.5% of the year) during which time No. 6 fuel oil was combusted for 95 hours (or 17% of operating hours). Boiler 2 is an opposed wall-fired boiler that combusts the same fuels as Boiler 1. In 2009, Boiler 2 operated for only 187 hours (2.1% of the year) during which time No. 6 fuel oil was combusted for 24 hours (or 13% of operating hours). New York indicates that both boilers operate very infrequently and are essentially ''peaking'' units under current and expected future operations. New York and NRG took these operational characteristics into account in their BART analysis.

GenOn (Mirant) submitted a BART determination to New York and the State agreed with the owner's recommendations. For control of SO_2 emissions, New York is proposing that the current fuel oil sulfur limit of 0.37% (maximum, not to be exceeded at any time) represents BART for Boilers 1 and 2. This fuel oil sulfur limit is proposed for BART in New York's draft Title V permit. GenOn's (Mirant's) five factor BART analysis evaluated three SO_2 control options, including wet flue gas desulfurization (FGD), spray dryer absorber, and dry sorbent injection. Only wet FGD was determined to be technically feasible however not cost effectiveness due to the low operating hours and low sulfur fuel oil.

For control of NO_X emissions, New York reviewed GenOn's (Mirant's) BART analysis that considered a broad spectrum of control options including combustion controls, post-combustion controls (including SCR and SNCR), and combinations of controls and the State concluded that none of the technically feasible control options are economically feasible. New York concluded that BART is the continued use of existing NO_X controls and the State's draft Title V permit requires the NO_X emissions for Boilers 1 and 2 each be limited to 0.15 lb/mm BTU (24-hour average during the ozone season and 30 day rolling average during the non-ozone season). The existing NO_X controls include off-stoichiometric firing for both boilers and additional controls for Boiler 2 including overfire air (OFA) and windbox flue gas recirculation (FGR).

For control of PM emissions, New York reviewed GenOn's (Mirant's) BART analysis that considered combustion controls, fabric filter, wet electrostatic precipitator, and wet scrubbing. GenOn (Mirant) and New York determined that additional combustion controls and fabric filters are technically infeasible; wet scrubbing is less efficient than ESPs and fabric filters; and wet ESP is technically feasible but not economically feasible. GenOn (Mirant) and New York note that the visibility impacts of PM emissions for Boilers 1 and 2 are relatively low in that PM contributes less than 10% of the total visibility impact on Class I areas for each case modeled. New York concluded that no further control is required as BART for PM. New York's draft Title V permit proposes that current PM emission limit of 0.10 lb/mm BTU for Boilers 1 and 2 represents BART.

The aforementioned BART requirements for Boilers 1 and 2 are included in New York's draft Title V permit including requirements for monitoring, recordkeeping and reporting and includes a compliance date of January 1, 2014. New York expects to finalize the draft Title V permit and to submit it as a SIP revision for EPA approval by mid-2012.

Alcoa, Inc—Alcoa Massena Operations (West Plant)

This aluminum production facility, owned by and permitted to Alcoa Inc, operates an Aluminum Production Cell (Potline), two Anode Baking Furnaces, Four Packaged Boilers and various other processing units at its Massena Operations (West Plant) in St. Lawrence County, in the city of Massena. New York has determined that the Potline (Emission Unit S–00001; Emission Source SS198), Anode Baking Furnaces (Emission Unit S–00002; Emission Source SS78) and four Package Boilers (Emission Unit B–00001; Emission Sources B0001 through B0004) are BART eligible units. Alcoa submitted a BART analysis to New York and the State agreed with the owner's recommendations. The following describes the State's BART determination for each BART eligible unit.

A. Potline

Aluminum metal is produced by electrolytic reduction of alumina in these shallow rectangular cells, or ''pots.'' There is no combustion of any fuels for this unit. Carbon electrodes extending into the pots serve as the anodes and carbon lining of the cells as the cathode. The carbon anodes, which contain sulfur impurities, are continuously depleted during the electrolytic reduction of the alumina and SO_2 is emitted during this process as the anodes are depleted. The current Potline control device is a dry alumina injection system followed by a fabric filter to control fluoride emissions; the system has 98% capture efficiency and a PM collection efficiency of greater than 95%.

For control of SO_2 emissions, New York is proposing that BART for the Potline is limiting the sulfur content of the coke raw material used to produce anodes to 2.5%, which is the limit included in New York's Air State Facility permit that was issued final on March 20, 2012. Alcoa's BART analysis evaluated two types of wet flue gas desulfurization systems but it was determined that both are not economically feasible. In addition, Alcoa determined that any visibility improvement from reduction of SO_2 emissions would be minimal. As a result of this BART analysis, Alcoa concluded, and New York agreed, that BART for the Potlines is limiting the sulfur content of the anodes to not more than 2.5% determined on an annual average rolled monthly.

For control of NO_X emissions, Alcoa determined, and New York agreed, that there are no technically feasible controls that represent BART. Alcoa evaluated two add-on controls, including SCR and SNCR, but these were determined to be technically infeasible due to the low temperatures of the exhaust gas. All combustion modification techniques were eliminated from a BART analysis because there are no conventional burners or combustion points in the Potline operation. New York's final Air State Facility permit includes a BART limit of 50 TPY NO_X.

For control of PM emissions, Alcoa determined, and New York agreed, that the existing dry alumina injection system and fabric filter represents BART for the Potline. Alcoa points out that PM emissions represent only about 1.5% of the total facility visibility impact which is 0.83 dv. New York's final Air State Facility permit includes a BART limit of 168 TPY PM–10.

B. Anode Baking Furnaces

Anodes used in the Potline are manufactured in an on-site production plant. Coke, containing sulfur impurities, is used in the production of the anodes. Alcoa has two anode baking furnaces that are commonly controlled by a single dry alumina injection system and a pulse jet fabric filter which has a control efficiency greater than 95%. These furnaces are fueled with natural gas.

For control of SO_2 emissions, New York is proposing that BART for these two furnaces is limiting the sulfur content of the anode coke to 2.5%, which is the limit included in New York's final Air State Facility permit. Alcoa's BART analysis evaluated wet flue gas desulfurization system but it was determined that it is not economically feasible. As a result of this BART analysis, Alcoa concluded, and New York agreed, that BART for the Anode Baking Furnaces is limiting the sulfur content of the anode coke to not more than 2.5% determined on an annual average rolled monthly.

For control of NO_X emissions, Alcoa determined, and New York agreed, that there are no technically feasible controls that represent BART. Alcoa evaluated two add-on controls, including SCR and SNCR, but these were determined to be technically infeasible due to the low temperatures of the exhaust gas. Combustion modification techniques were also determined to be not technically feasible. New York's final Air State Facility permit includes a BART limit of 203 tpy NO_X.

For control of PM emissions, Alco determined, and New York agreed, that the existing dry alumina injection system with a pulse jet fabric filter satisfies BART for the Anode Baking Furnaces. New York's final Air State Facility permit includes a BART limit of 24 TPY PM–10.

C. Four Package Boilers

These four units are virtually identical boilers fired by either natural gas or oil. Each boiler has one wall-fired burner which has a maximum rated heat capacity of 200 mm BTU/hr for natural gas and approximately 200 mm BTU/hr for No. 6 fuel oil using atomized steam. Current NO_X controls include low NO_X burners (LNB) and flue gas recirculation (FGR).

For control of SO_2 emissions, New York is proposing that BART is limiting the sulfur content of the fuel oil to 1.5% which is the limit included in the State's final Air State Facility permit. Alcoa's BART analysis evaluated the cost of fuel oil with sulfur content from 1.5% down to 0.5% and determined that it was not economically feasible to purchase fuel oil with sulfur content lower than 1.5%. As indicated above for the Dynegy Roseton BART analysis, New York plans to propose this year revisions to it sulfur in fuel regulation, Part 225, by limiting the sulfur content of residual oil to 0.50% to be effective within a few years. New York indicated that recent (2011) deliveries to the plant had fuel oil sulfur content in the range of 0.60 to 0.90%. Alcoa's BART analysis indicates that sulfur emissions from the boilers contribute a visibility impact of only about 0.18 dv. As a result of this BART analysis, Alcoa concluded, and New York agreed, that BART for these four boilers is limiting the sulfur content of the fuel oil to not more than 1.5% for any fuel delivery.

For control of NO_X emissions, Alcoa determined, and New York agreed, that the current control technologies (LNB and FGR) and current permitted emission limit represents BART. Alcoa evaluated other control options, including SCR and SNCR, but these were determined to be economically infeasible. New York took into consideration that recent testing indicates that NO_X emissions are reported to be 0.08 lb/mm BTU for gas and 0.27 lb/mm BTU for oil. New York's final State Facility permit includes a BART limit of 0.30 lb/mm BTU NO_X.

For control of PM emissions, Alco determined, and New York agreed, that the current permit emission limit represents BART. New York indicates that compliance tests conducted in March 2006 show measured total particulate emissions of 0.045 lb/mm BTU when firing No. 6 fuel oil.

Additionally, Alcoa's BART analysis indicated that PM emissions from the boilers have a small impact on visibility. Consequently, New York's final State Facility permit includes a PM–10 BART limit of 0.10 lb/mm BTU.

The aforementioned BART requirements for the Potline, Anode Baking Furnaces and four Package Boilers are included in New York's final (on March 20, 2012) Air State Facility permit including requirements for monitoring, record keeping and reporting and includes a compliance date of January 1, 2014. New York expects to submit the permit as a SIP revision for EPA approval by mid-2012.

Lehigh Northeast Cement Company

This facility, owned by and permitted to Lehigh Northeast Cement Company, operates a rotary kiln and associated clinker cooler as part of this Portland cement manufacturing operation, and associated quarry, located at Glens Falls, Warren County. New York has determined that the rotary kiln (Emission Unit: 0–UKILN) and the associated clinker cooler are BART eligible units. Lehigh submitted a BART analysis to New York and the State agreed with the owner's recommendations. The following describes the State's BART determination for each of the BART eligible units.

A. Rotary Kiln

This unit is a short, dry preheater kiln rated at 160 tons per hour. Coal is the primary fuel used in the kiln, with natural gas used as a startup or backup fuel. Currently, PM emissions from the kiln are controlled by an electrostatic precipitator (ESP) and a lime slurry system is used for detached plume abatement and for SO_2 control.

For control of SO_2 emissions, New York is proposing that current operations represent BART. The rotary kiln currently reduces SO_2 emissions through an inherent dry scrubbing (IDS) process which entails the operation of a raw mill that is part of the kiln operation. The raw mill typically operates as part of the kiln operation for about 80% of the time and SO_2 emissions from the kiln are reduced to about 20 ppm (typically) whenever the raw mill is operated. New York indicates that SO_2 reduction from the kiln is approximately 85% when the raw mill is in operation. When the raw mill is not operating, Lehigh currently employs a lime spray drying system to reduce SO_2 emissions and for purposes of abatement of an ammonium sulfate plume (detached plume abatement). This lime spray drying system typically achieves up to 74% SO_2 reduction[19] during periods when the raw mill is not operating. Lehigh's BART analysis evaluated four other SO_2 control options including fuel substitution, raw material substitution, dry lime injection and wet lime scrubbing (WLS) and Lehigh determined, and New York agreed, that the evaluated control options are either not cost effective (WLS), not technically feasible (upgrade the existing lime spray dryer), have no appreciable improvement in SO_2 reduction over the existing system or have no appreciable improvement in visibility (WLS and lime spray dryer upgrade). New York's Title V permit was issued final on February 28, 2012 and includes the following currently effective SO_2 emission limits for the rotary kiln: (1) 5.0 lbs/mm BTU of fuel measured on a daily basis; and (2) 3.8 lb/mm BTU of fuel measured on a monthly rolled 3 month calendar basis; and (3) 3.4 lb/mm BTU of fuel on a monthly rolled 12 calendar month period. The Title V permit states that the SO_2 emission limits become effective upon Lehigh's certification of a future SO_2 CEMS to be located on the rotary kiln exhaust stack(s). Until the SO_2 CEMS system is certified, the sulfur limits in the coal fired in the rotary kiln are enforceable by the State. The Title V permit includes the following currently effective limits on the sulfur content of the coal fired in the kiln: (1) 2.5 lb/mm BTU maximum at any time; (2) 1.9 lb/mm BTU on a 90-day average; and (3) 1.7 lb/mm BTU annual maximum rolled monthly. New York's Title V permit indicates that the sulfur limits in the coal will expire once Lehigh has certified successful operation of the SO_2 CEMS. However, New York has clarified to EPA that the installation of SO_2 CEMS is optional and not a permit requirement. It should also be noted that SO_2 emissions also result from sulfur in the raw materials fed to the kiln. Although the permitted SO_2 emissions seem high, EPA expects that actual emissions from the kiln will be much lower given that Lehigh states in its BART analysis that SO_2 reductions with the raw mill in operation is about 85%; and is about 74% when the lime slurry system becomes operational as the raw mill stops operating.

For the control of NO_X emissions, New York is proposing that BART for the rotary kiln is the installation of selective non-catalytic reduction (SNCR) technology. Lehigh's BART analysis evaluated five potential NO_X control technologies, including SCR and SNCR, and concluded that only two control technologies are technically feasible, i.e., SNCR and low NOx burners (LNB). Lehigh concluded that SNCR technology is cost effective ($1,145/ton NO_X removed) and results in greater reduction in NO_X emissions from the rotary kiln than LNB and therefore SNCR is considered BART. The SNCR manufacturer provides a guarantee NO_X removal of 50%. New York's final Title V permit establishes a BART NO_X emission limit of 2.88 lb/ton clinker produced with a compliance date of January 1, 2014.

For control of PM emissions, Lehigh determined, and New York agreed, that the removal and replacement of the existing ESP with a fabric filter to meet the requirements of EPA's Portland cement MACT (40 CFR part 63, Subpart LLL) also represents BART. Lehigh's BART analysis for PM evaluated four potential control options including ESP, fabric filter, cyclones and a wet scrubber. The wet scrubber was deemed technically infeasible for a cement plant for PM control. Although the fabric filter was deemed the most effective PM control technology, Lehigh determined it to be not cost effective for BART but committed to replace the existing ESP with a fabric filter to comply with EPA's Portland cement MACT. New York's final Title V permit requires that PM emissions from the rotary kiln meet a limit of 0.30 lb/ton feed. Additional PM reductions are expected to occur in the future as required to meet the new Portland Cement MACT standards, since the PM limit promulgated in the Portland Cement MACT standard for existing cement kilns is 0.04 lb/ton clinker.

B. Clinker Cooler

The clinker cooler is a portion of the kiln processing system. When the clinker has been fully formed in the kiln, it is conveyed to the clinker cooler, which consists of a series of grates over which the clinker travels and is exposed to forced ambient air for cooling. Hence, only PM is emitted from the clinker cooler. The current PM control on the clinker cooler is a baghouse. Lehigh proposed, and New York agreed, that the existing baghouse represents BART for the clinker cooler. Because the unit is required to meet the Portland Cement MACT standard for clinker coolers, Lehigh contends that the compliance with the applicable PM emission limits in the Portland Cement MACT rule and the use of the existing baghouse represents BART. Lehigh did not evaluate other technologies since there are no other new technologies subsequent to the MACT standard. New York's final Title V permit requires that PM emissions from the clinker cooler meet a BART limit of 0.10 lb/ton feed. Additional PM reductions are expected to occur in the future as required to meet the new Portland Cement MACT standards, since the PM limit promulgated in the Portland Cement MACT standard for an existing clinker cooler is 0.04 lb/ton clinker.

The aforementioned BART requirements for the rotary kiln and associated clinker cooler are included in New York's final (on February 28, 2012) Title V permit including requirements for monitoring, recordkeeping and reporting and includes a compliance date of January 1, 2014. New York expects to submit the final Title V permit as a SIP revision for EPA approval by mid-2012. Once the SIP revision is approved by EPA, the BART requirements for the kiln and clinker cooler become federally enforceable. Should New York not submit the final Title V permit for the kiln and clinker cooler in a timely manner, EPA proposes that the aforementioned BART requirements be considered as federal requirements as part of a FIP. Should the existing final Title V permit be revised under New York's permitting procedures, New York must submit any revisions to EPA as a SIP revision for the purpose of complying with BART.

Kodak—Eastman Business Park

This facility, owned by and permitted to Eastman Kodak Co, operates three very large boilers, Boiler 41 (Emission Unit U–00015; Emission Source 321AG), Boiler 42 (Emission Unit U–00015; Emission Source 321AH), Boiler 43 (Emission Unit U–00015; Emission

[19] Lehigh's BART analysis states (p3–5) that the designer of the lime spray drying system indicates that this system is adequately sized and sufficient to control SO_2 to 125 ppm.

Source 321AI) as well as one other large boiler, four package boilers, and miscellaneous small units at its Eastman Business Park in Monroe County, in the city of Rochester. New York has determined that Boilers 41, 42 and 43 as well as the four package boilers and the miscellaneous small (non-boiler) units are BART eligible units. The most significant BART eligible units (based upon emissions of SO_2, NO_X and PM) are Boilers 41, 42 and 43. The remaining BART eligible units have smaller emissions than Boilers 41–43 and the visibility impacts are small. Each of the three large BART eligible boiler units are used for generating steam and electricity for the Kodak facility. Each of the three units are cyclone type boilers that combust bituminous coal with a maximum sulfur content of 2.5%. The boilers are also capable of combusting Number 6 fuel oil with up to 1.5% sulfur content. Each of the three boiler units are equipped with electrostatic precipitators (ESP) to control PM emissions and natural gas reburn to control emissions of NO_X and SO_2. Kodak submitted a BART determination to New York and the State agreed with the owner's recommendations.

A. Boilers 41, 42, 43

Kodak provided a five factor BART analysis dated September 29, 2010 and a supplemental five factor analysis dated October 11, 2012. Kodak concluded that BART for these three boilers are as follows: (1) Boiler 41 is to be permanently retired; (2) Boiler 42 will either permanently retire or repower with natural gas; and (3) Boiler 43 will meet current permit emission limits, given the likelihood that Boiler 43 will install emission control equipment, as required, to comply with EPA's Boiler MACT rule. Typical controls to meet Boiler MACT requirements may be the installation of a dry lime injection system for acid gas (e.g., hydrogen chloride) and a fabric filter for PM control. A lime injection system designed for acid gas removal will also typically reduce SO_2 emissions. Since EPA is currently reconsidering the Boiler MACT rule,[20] it is uncertain what the MACT compliance date and emission limits will be.

Therefore New York proposes in its draft Title V permit, issued for public comment on April 4, 2012, that the final BART requirements and compliance dates are as follows:

—(1) Boiler 41 is to permanently retire by December 31, 2013; and

—(2) Boiler 42 is to either permanently retire or repower by the Boiler MACT compliance date but not later than August 16, 2017. New York's draft Title V permit does not include any emission limits and

—(3) for Boiler 43, New York's draft Title V permit reiterates the following current emission limits as BART: (a) SO_2: Fuel sulfur limits for coal at 2.5% and for oil at 1.5%; (b) NO_X: 0.60 lb/mm BTU; (c) PM: 0.24 lb/mm BTU when combusting coal and 0.10 lb/mm BTU when combusting fuel oil.

EPA has reviewed New York's draft Title V permit and in a letter dated April 11, 2012, EPA states that the agency agrees with the permit's BART requirements except that an emission limit for NO_X is required for Boiler 42 should Kodak decide to repower this boiler with natural gas. EPA's comment letter to New York requires that the NO_X emission limit be set at 0.20 lb/mm BTU. This is the required limit, starting on July 1, 2014, for a very large gas/oil fired cyclone boiler established by New York's adopted regulation Subpart 227–2 (Reasonably Available Control Technology (RACT) for Major Sources on Oxides of Nitrogen (NO_X)). Subpart 227–2 requires compliance with this limit on 24-hour basis during the ozone season and on a 30-day rolling average during the non-ozone season.

Should Boiler 42 repower with natural gas, EPA is not requiring emission limits for SO_2 and PM. New York has stated that it does not include emission limits for SO_2 and PM for gas fired boilers since these emissions are small and limiting these contaminants is not practically enforceable. New York estimates that if this boiler repowers with natural gas, the emission reductions will be about 4591 tpy SO_2 (99% reduction), 220 tpy PM (90% reduction), and 607 tpy NO_X (67% reduction). EPA agrees that New York's analysis is reasonable and therefore EPA is not requiring emission limits for SO_2 and PM if Boiler 42 repowers with natural gas.

Since New York's draft Title V permit does not include an emission limits for NO_X for Boiler 42, EPA proposes to disapprove New York's BART determination for this boiler except that EPA is approving the draft compliance date for either retiring or repowering. EPA proposes a federal plan establishing a NO_X emission limit of 0.20 lb/mm BTU if Boiler 42 is repowered with natural gas.

Kodak's BART analysis for Boiler 43 included an evaluation of selective catalytic reduction (SCR) to reduce NO_X emission by almost 67% to reach an emission limit of approximately 0.20 lb/mm BTU. Kodak's evaluation indicated that it is cost effective ($5,358/ton) to install SCR to reduce NO_X emissions by 67% at this cyclone type boiler. However Kodak's visibility analysis indicates that the visibility improvement at the Lye Brook Class I area is about 0.254 dv (8th high) and 0.273 dv (8th high) cumulative at seven Class I areas even when full Boiler MACT controls (lime scrubber and a fabric filter) and SCR are evaluated together. Since the visibility improvement is small, EPA agrees with Kodak's evaluation that the current control technology (natural gas reburn) and limits summarized above for NO_X represent BART for Boiler 43.

Kodak's BART analysis for Boiler 43 also included an evaluation of lime spray dryer absorber (SDA) to reduce SO_2 emission by 90%. Lime SDA or an equal control technology is what may be required to meet the future Boiler MACT requirement for removal of the acid gas such as hydrogen chloride (HCl). Kodak's evaluation indicated that it is cost effective ($788/ton) to install such a control to remove SO_2 emissions. However, as indicated above for the SCR evaluation, Kodak's expected visibility analysis on a cumulative basis is only 0.273 dv (8th high) when SDA and SCR controls are evaluated together. Since this visibility improvement is small, EPA agrees with Kodak's evaluation and agrees that the current control limits for SO_2 summarized above represents BART for Boiler 43.

Kodak's BART analysis for Boiler 43 did not include an evaluation of additional PM controls beyond the existing electrostatic precipitators. When the future Boiler MACT is implemented, the typical control retrofit will be the installation of a fabric filter, especially if a dry lime scrubber is installed. EPA agrees with Kodak's evaluation and agrees that the current control limits summarized above for PM represent BART for Boiler 43.

B. Four Package Boilers and Miscellaneous Small Sources

New York has determined that four package boilers and numerous small (non-boiler) miscellaneous sources at the Kodak facility are BART eligible. Kodak conducted visibility modeling to demonstrate that the four BART eligible

[20] "National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial and Institutional Boilers and Process Heaters," published March 21, 2011 (76 FR 15608). Also referred to as 40 CFR part 63, subpart DDDDD. This rule is in effect but under reconsideration. EPA plans to issue a revised Boiler MACT rule in the spring of 2012. On February 7, 2012, EPA notified owners of affected sources that the agency would not take enforcement action for violations of notification requirements for the Major Source Boiler rule issued in March 2011.

package boilers, having low emissions, had visibility impacts below 0.10 dv in Class I areas. The largest emissions from the numerous small non-boiler units were comparable to the emissions from the package boilers but were emitted from much shorter stacks. New York concluded therefore that these numerous small sources would have similar minimal visibility impacts on downwind Class I areas.

With respect to the other smaller emission sources, EPA's BART Guidelines provide for exempting a BART-eligible source from being subject to BART if the source's impact on visibility impairment from SO_2, NO_X, and PM at any Class I area is de minimis. New York's rule established de minimis in this case as less than 0.1 deciviews. Analysis and modeling of the four packaged boilers and small numerous miscellaneous sources demonstrated maximum impacts of less than 0.10 dv. Therefore New York determined these units have negligible impacts on visibility and exempted them from further BART analysis. Since EPA's BART Guidelines for exempting a BART-eligible source applies to the entire facility and not individual units, and EPA did not set a specific visibility level as a cutoff for a required BART analysis, EPA does not agree that these units are exempted from a BART analysis. However, EPA agrees with New York that a study of possible BART controls for these miscellaneous sources with negligible visibility impacts would only result in the conclusion that BART control is economically infeasible on a dollar per deciview basis. Therefore EPA proposes to accept New York's determination that current operations with no additional control is BART.

The aforementioned BART requirements for Boilers 41, 42 and 43 are included in New York's draft Title V permit including requirements for monitoring, record keeping and reporting and includes compliance dates as indicated above. New York expects to finalize the draft Title V permit and to submit it as a SIP revision for EPA approval by mid-2012.

In addition, as discussed above, EPA is proposing a FIP for establishing a NO_X emission limit of 0.20 lb/mm BTU for Boiler 42 should Kodak decide to repower this boiler with natural gas. The compliance date is by the Boiler MACT compliance date but not later than August 16, 2017.

In summary, EPA is proposing partial approval and partial disapproval of New York's BART determinations for Boilers 41, 42 and 43 at Kodak's Eastman Business Park facility. EPA is proposing to approve New York's BART determination for Boilers 41 and 43 and the compliance date for Boiler 42 to either permanently retire or repower because this BART determination was conducted in a manner consistent with EPA's Guidelines. EPA is proposing to disapprove a portion of New York's BART determination for Boiler 42 because it does not include an emission limit for NO_X should this boiler be repowered with natural gas.

International Paper Ticonderoga Mill

The International Paper Company operates the Ticonderoga Mill, a Kraft Paper Mill, in Essex County. BART-eligible emission units at the Ticonderoga Mill are a Power Boiler and a Recovery Boiler. New York determined other smaller emission sources at the Mill consisting of a smelt dissolving tank, a lime kiln, and PM emission sources (a starch silo and two wood chip cyclones) to be exempt from further BART analysis based on modeling results showing that these units have less than 0.1 deciview impacts.

The power boiler is rated at 855 mmBTU/hr heat input and designed to combust wood residue and No. 6 fuel oil at 1.5% sulfur and typically operates with a fuel mix of 80% oil and 20% wood/bark. The power boiler is currently equipped with low NO_X burners, a wet scrubber and a multicyclone unit and subject to SO_2, NO_X and PM emission limits as a result of BACT, RACT, MACT and New York State regulations. The recovery boiler is a kraft recovery furnace used to recover chemicals from spent pulping liquor and to produce steam for the mill. The recovery boiler processes black liquor and combusts No. 6 fuel oil as an auxiliary fuel less than 10% of the time. The boiler operates with a three-level staged combustion air supply system and an electrostatic precipitator control.

A. Power Boiler

The power boiler currently operates with a wet-alkaline sodium hydroxide scrubber to control SO_2 emissions at a rate of approximately 65 percent efficiency. New York identified wet or dry scrubbing, the use of a lower sulfur fuel oil and combustion of natural gas as potential control technologies in the reduction of SO_2 emissions from the power boiler. The use of natural gas was not feasible due to the 70 miles distance to the nearest gas pipeline. Using a lower sulfur content fuel oil was shown to result in emission rates at or above the existing 309 lb/hr emission rate. In addition, the BART determination demonstrated insignificant visibility improvement (from 0.02 to 0.07 deciviews) with any lowering of the sulfur fuel oil, and any upgrades or improved operation of the existing control devices.

New York determined that current operation of the wet-alkaline sodium hydroxide scrubber and the existing SO_2 emission limit of 309 lb/hr on a 24-hour rolling average (approximately 1,350 tons per year) to be BART for the power boiler. In the future, the boiler will need to comply with the ICI Boiler MACT acid gas control requirements. In response to EPA and FLM comments, New York also analyzed increasing the rate of caustic to the existing wet scrubber as a potential control technology for addressing BART. While this alternative is technically feasible and appears to be cost-effective, it results in an insignificant visibility improvement ranging from 0.02 to 0.11 deciviews at the Lye Brook Wilderness Area, the closest Class I Area. In addition, any physical modifications to the scrubber would adversely affect PM control. Therefore, New York determined that existing controls and current emission limits represent BART for the control of SO_2 emissions from the power boiler.

The power boiler presently operates with low NO_X burners, over fired air and flue gas recirculation. The existing emission limit for NO_X emissions is 0.25 lb/mmBTU (approximately 936 tons per year). The boiler is also subject to 40 CFR 63 subpart DDDDD for Industrial, Commercial and Institutional Boilers and Process Heaters which may require additional emissions monitoring and control in the future. The BART determination considered lowering the emission rate to 0.20 lb/mmBTU and 0.15 lb/mmBTU; however these emission rates were shown to result in an insignificant visibility improvement. Meeting a 0.20 lb/mmBTU emission rate resulted in maximum and eighth-highest visibility improvements of only 0.08 to 0.09 dv and 0.03 to 0.04 dv, respectively. Meeting a 0.15 lb/mmBTU emission rate resulted in maximum and eighth-highest visibility improvements of 0.17–0.18 dv and 0.07 dv, respectively. New York's BART determination notes that EPA's BART rule did not set specific presumptive NO_X limits for oil-fired boilers, but should generally consider ''current combustion control technology.''

New York determined that current operation of the low NO_X burners, over fired air and flue gas recirculation controls and the existing NO_X emission limit of 0.25 lb/mmBTU to be BART for the power boiler. In addition the power boiler will need to comply with the ICI Boiler MACT and the Department's NO_X

RACT regulation. Under EPA Guidance, states have wide discretion as to how they assess the BART five factors. Although EPA does not generally recommend that states rely solely on the visibility improvement consideration in making BART determinations, EPA does not believe that broader analysis of the costs and visibility benefits associated with installation of other post-combustion controls, such as SNCR and SCR, would have resulted in a different BART determination in this case. EPA proposes to find the current controls as being sufficient for BART is reasonable. For informational purposes, EPA notes that separate from International Paper's BART analysis, International Paper also evaluated possible controls to meet New York's NO_X RACT requirements. Based on International Paper's January 2, 2012 analysis, SCR was found to not be technically feasible. SNCR would only achieve a 21% emission reduction from the current potential emission rate of 0.25 lb/mmBTU and therefore was not cost-effective.

Filterable PM emissions from the power boiler are controlled by a multicyclone and the wet scrubber. Filterable PM emissions are limited to 0.10 lb/mmBTU. The maximum modeled visibility impact on a Class I area due to PM is 0.03 dv. Additional PM reductions are expected in the future to be required to meet new MACT standards. The proposed Industrial Commercial Institutional Boilers and Process Heaters MACT standard (40 CFR 63 subpart DDDDD) that would apply to the Power Boiler is 0.02 lb/mmBTU. New York found that PM emissions from the power boiler are low and have minimal impact on visibility.

B. Recovery Boiler

Operation of the recovery boiler differs from that of conventional steam boilers in that the primary objective is to recover and re-use the sulfur. Proper operation of a recovery boiler itself results in inherent control of SO_2 emissions. Additionally, this unit is a non-direct evaporation recovery furnace which inherently results in low SO_2 emissions. The available retrofit technologies for SO_2 control from kraft mill recovery boilers are staged combustion systems and wet scrubbers. The recovery boiler is already equipped with a three-level staged combustion air control system. New York determined it is technically infeasible to install a wet scrubbing device downstream of the existing ESP. There are only three recovery boilers in the U.S. equipped with wet scrubbers in addition to ESPs. New York determined that current operation of the three-level staged combustion air control system with ESPs be considered as BART for SO_2 emissions for the recovery boiler. EPA proposes to find that other control technologies were not found to have been applied to other recovery boilers, and the current controls of the recovery boiler could be considered the maximum control for BART with a permitted emission limit of 4 parts per million dry volume.

The majority of NO_X formed in the recovery boiler is believed to be primarily fuel NO_X due to the low temperatures in the boiler's combustion zone. Fuel NO_X emissions from recovery furnaces are typically low due to the low nitrogen content of black liquor solids. The boiler's three-level staged combustion system can also be operated to minimize NO_X formation/emissions. New York considered other potential NO_X control technologies to be staged combustion systems, selective catalytic reduction (SCR), selective non-catalytic reduction (SNCR), low NO_X burners, and flue gas recirculation (FGR). Based on the unique nature of recovery boiler operation, each of these traditional boiler controls was ruled out as being technically infeasible. New York determined compliance with BART for NO_X is the currently installed three-level staged combustion air control system with ESPs. The current permitted NO_X emission rate for the Recovery Boiler is 100 ppm (by volume) corrected to 8% O_2. Since there have been no applications of SCR or SNCR on recovery boilers in the United States, EPA proposes to find the current controls as being sufficient for BART is reasonable. Particulate emissions from the recovery boiler are currently controlled with a three-chamber ESP. In addition to ESPs, New York considered wet scrubbers and fabric filters as potential PM controls, however it is technically infeasible to install a wet scrubber downstream of the existing ESP on the recovery boiler, and fabric filters have not been applied to any recovery boilers at kraft pulp mills. The recovery boiler complies with the Chemical Recovery MACT standard (40 CFR 63, subpart MM). Therefore New York determined that current PM controls and emission limits for the recovery boiler satisfy BART. Since EPA states in its BART rule, ''* * * you may rely upon MACT standards for purposes of BART,'' EPA proposes to find the current controls as being sufficient for BART is reasonable.

With respect to the other smaller emission sources, EPA's BART Guidelines provide for exempting a BART-eligible source from being subject to BART if the source's impact on visibility impairment from SO_2, NO_X and PM at any Class I area is de minimis. New York's rule established de minimis in this case as less than 0.1 deciviews. Modeling of the smelt dissolving tank, lime kiln, and PM emission sources demonstrated maximum impacts of 0.017 dv, 0.001 dv and 0.008 dv, respectively. Therefore New York determined these units have negligible impacts on visibility and exempted them from further BART analysis. Since EPA's BART Guidelines for exempting a BART-eligible source applies to the entire facility and not individual units, and EPA did not set a specific visibility level as a cutoff for a required BART analysis, EPA does not agree that these units are exempted from a BART analysis. However, EPA agrees with New York that a study of possible BART controls for these miscellaneous sources with negligible visibility impacts would only result in the conclusion that BART control is economically infeasible on a dollar per deciview basis. The highest emitting of these smaller sources, the smelt dissolving tank, is already equipped with a wet scrubber and meets the MACT standard for PM. Therefore, EPA proposes to accept New York's determination that current operations with no additional control is BART.

EPA has reviewed New York's analyses for all of the International Paper BART-eligible sources and concluded they were conducted in a manner consistent with EPA's BART Guidelines. EPA proposes to approve New York's BART determinations for the International Paper facility and specifically proposes to approve the following emission limits for the power boiler: 309 lbs SO_2/hr; 0.25 lbs NO_X/mmBTU; 0.1 lbs PM/mmBTU; and for the recovery boiler: 4 ppmdv total reduced sulfur; 100 ppmdv for NO_X; and 0.03 grains per dry standard cubic foot for PM. Though New York's Part 249 requires BART controls to be installed and implemented by January 1, 2014, International Paper must presently comply with these BART emission limits since they represent existing permit conditions.

EPA proposes approval of the International Paper BART determination as a revision to the SIP. If New York does not submit all of the BART determinations and associated documents and permits to EPA as source-specific SIP revisions, then this proposal also serves as EPA's proposed federal plan for determining BART for BART-eligible sources at International Paper.

In summary, all of the aforementioned BART requirements for each unit of all

19 BART sources are included in New York's draft or final Title V permits including requirements for monitoring, record keeping and reporting. Compliance is due by the effective date of the Title V permit. New York expects to finalize all draft Title V permits and to submit all final Title V permits as a SIP revision for EPA approval by mid-2012. Once the SIP revision is approved by EPA (EPA final action for all 19 BART sources is scheduled for August 16, 2012) the BART requirements for each unit become federally enforceable. Should New York not submit the final Title V permit for each unit in a timely manner, EPA proposes that the BART requirements be considered as federal requirements as part of a FIP as discussed above.

c. Enforceability of BART

New York's BART requirements must be included as operating permit conditions in accordance with 40 CFR part 70, and the State regulations promulgated at 6 NYCRR Part 249. All of the BART facilities submitted permit modification applications to incorporate the BART requirements. New York has approved the permit modifications for National Grid's EF Barrett Power Station, National Grid's Northport Power Station, Con Ed's 59th Street Station, NRG's Arthur Kill's Generating Station, TC Ravenswood's Ravenswood Generating Station, Con Ed's Ravenswood Steam Plant, Dynegy's Roseton Generating Station, Holcim US's Catskill Plant, Lafarge Building Materials' Ravena Plant, International Paper's Ticonderoga Mill, Lehigh Northeast Cement's Glens Falls Plant, Alcoa Massena Operation's West Plant, Johnstown BPU's Samuel A Carlson Generating Station, and has proposed the permit modifications for GenOn's Bowline Generating Station, Dynegy's Danskammer Generating Station, Owens Corning's Delmar Plant, NRG's Oswego Harbor Power, GDF Suez's Syracuse Energy Corporation, Eastman Kodak/Duke Energy's Kodak Park Division. When all permit modifications are completed, New York will submit all of the BART determinations and associated documents and permits to EPA as source-specific SIP revisions.

EPA has reviewed New York's BART determinations for all of the BART eligible sources, including all supporting documentation, information and proposed permit modifications. New York has requested public comment on the proposed permit modifications, which identify the required BART controls, and in many cases the comment periods have closed. New York is in the process of addressing any comments received and issuing the permit modifications in final form. EPA proposes in the alternative to approve New York's BART determinations and emissions limits should New York submit final permit modifications to EPA as SIP revisions and the revisions match the terms of our proposed FIP. EPA is proposing approval of New York's BART determinations because they were conducted in a manner consistent with EPA's BART Guidelines. In the event New York does not submit a SIP revision with final permit modifications for all BART sources, EPA will publish a final rulemaking with a FIP for those BART sources, as proposed in this action.

Should New York submit all of the final BART permit modifications as a SIP revision, and the revisions match the terms of our proposed FIP, EPA proposes to approve New York's BART requirements based on the BART determinations discussed above and the respective BART limitations on emissions, source operation and fuel use. New York's BART determinations contain the appropriate regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the sources. Lastly, New York's BART determinations require BART controls be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the Regional Haze SIP, as required in the CAA and in the RHR.

d. New York's Part 249—Best Available Retrofit Technology (BART)

On August 2, 2010, New York submitted to EPA as a revision to its SIP, rule changes to Part 249 ''Best Available Retrofit Technology (BART)'' and amendments to Part 200 ''General Provisions'' of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR). New York completed all the administrative requirements for these rule changes, including a public hearing and response to comments. The effective date for Part 249 and amendments to Part 200 is May 6, 2010.

Part 249 was adopted pursuant to the Clean Air Act Section 169A and the federal Regional Haze Rule to reduce the emissions of pollutants which contribute to regional haze in Federal Class I areas. New York was obligated to promulgate Part 249 in order to require New York sources which contribute to haze issues in Class I areas in downwind states to control emissions which contribute to haze. Part 249 required BART eligible facilities to perform an analysis of potential controls for each visibility-impairing pollutant. The analysis of controls was due to New York by October 1, 2010. The compliance date contained in Part 249 is January 1, 2014—within EPA's BART Guidance for compliance within five years of EPA's approval of the state's Regional Haze SIP. Part 249 also provides that each BART determination established by New York will be submitted to EPA for approval as a revision to the SIP.

New York completed all the administrative requirements for this rule, including a public hearing and addressed the public comments. EPA has evaluated New York's BART rule submittal for consistency with the Clean Air Act, EPA regulations, and EPA policy and the rule meets administrative requirements. Therefore, EPA proposes to approve New York's Part 249 as part of the SIP.

C. Consultation With States and Federal Land Managers

On May 10, 2006, the MANE–VU State Air Directors adopted the Inter-RPO State/Tribal and FLM Consultation Framework that documented the consultation process within the context of regional haze planning, intended to create greater certainty and understanding among RPOs. MANE–VU States held ten consultation meetings and/or conference calls from March 1, 2007 through March 21, 2008. In addition to MANE–VU members attending these meetings and conference calls, participants from VISTAS, Midwest RPO, and the relevant Federal Land Managers also attended. In addition to the conference calls and meeting, the FLMs were given the opportunity to review and comment on each of the technical documents developed by MANE–VU. No additional measures beyond those developed as part of the MANE–VU ''ask'' were recommended by other states or the FLMs.

New York State provided the FLMs a copy of the draft SIP. The FLM's comments and New York State's responses are included in Appendix B, Summary of Federal Land Manager Comments and Responses. New York committed to coordinate and consult with the FLMs on implementation of emission strategies, by providing summaries of major new source permits, upcoming rulemakings that may contribute to visibility impairment, and any revisions to the haze plans. Based on these actions and commitments, EPA has determined that New York has fulfilled the requirements for consultation with the FLMs. In addition,

in New York's attempts to implement the MANE–VU emission control agreements, New York fulfills the requirement for consultation with states with Class I areas.

New York State held public hearings on this proposed SIP revision, its BART rule and implementation of New York's legislation on sulfur content in fuels. The hearings occurred in Albany, Avon and New York City on the first three days in December. Written comments relevant to the proposal were accepted through December 24, 2009. The State responded to the comments in its public comments document. Comments came from the EPA, potential BART sources and organizations of industry groups.

D. Periodic SIP Revisions and Five-Year Progress Reports

In Section 11.0 of its haze SIP, New York commits to revise and submit a regional haze implementation plan by July 31, 2018 to address the next ten years of progress toward the national goal in the Act of eliminating manmade haze by 2064, and to submit a plan every ten years thereafter, in accordance with the requirements listed in 40 CFR 51.308(f) of the Federal rule for regional haze. New York commits to submitting the required Mid-Course Review report every five years after the initial submittal of the haze SIP. New York's commitment includes continuing to consult with the FLMs on the implementation of Section 51.308 and this SIP, including development and review of SIP revisions and five-year progress reports, and on the implementation of other programs affecting the impairment of visibility in Class I areas. Finally, New York commits to meet the required periodic updates of the emission inventory as required under 51.308(d)(4)(v).

Since there are no Class I areas in the State, New York does not have to address the RAVI and monitoring strategy requirements of the RHR.

V. What action is EPA proposing to take?

EPA is proposing to partially approve and partially disapprove the revision to the New York SIP addressing regional haze submitted on March 15, 2010, and supplemented on August 2, 2010. EPA proposes to disapprove the following BART determinations:

- New York's SO_2 BART determinations and emissions limits for Roseton Units 1 and 2.
- New York's SO_2 BART determinations and emissions limits for Danskammer Unit 4.
- New York's SO_2, NO_X and PM emissions limits for Kodak's Boiler 42.

EPA proposes to disapprove the following facility BART determinations and emission limits because while New York has proposed permit modifications, New York has not issued final permit modifications or submitted them to EPA as a SIP revision: Bowline Point Generating Station; Danskammer Generating Station; Owens Corning Delmar Plant; Oswego Harbor Power; Syracuse Energy Corporation; Kodak Park Division.

EPA proposes to disapprove the following facility BART determinations and emission limits because New York has not submitted final permit modifications to EPA as a SIP revision: EF Barrett Power Station; Northport Power Station; 59th Street Station; Arthur Kill Generating Station; Ravenswood Generating Station; Ravenswood Steam Plant; Roseton Generating Station; Holcim (US) Inc—Catskill Plant; Lafarge Building Materials; International Paper Ticonderoga Mill; Lehigh Northeast Cement; ALCOA Massena Operations (West Plant); Samuel A Carlson Generating Station.

EPA is proposing a FIP to address the deficiencies identified in our proposed partial disapproval of New York's Regional Haze SIP. In lieu of this proposed FIP, or a portion thereof, we are proposing approval of a SIP revision if the State submits such a revision in a timely way, and the revision matches the terms of our proposed FIP, or relevant portion thereof.

EPA proposes to approve the remaining aspects of New York's Regional Haze SIP revision as follows: New York's determination under the reasonable progress requirements that all measures found to be reasonable have been enacted and implemented; New York's Long Term Strategy, will be approvable, only if New York submits all of the final permit modifications in a timely manner, and with the level of control in EPA's proposed FIP; New York's SIP revision consisting of New York's 6 NYCRR Part 249.

EPA proposes in the alternative to approve all of the facility BART determinations and emissions limits should New York submit final permit modifications to EPA as SIP revisions, and the revisions match the terms of our proposed FIP.

EPA is taking this action pursuant to those provisions of the Act. EPA is soliciting public comments on the issues discussed in this document and will consider these comments before taking final action.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). As discussed in detail in section C below, the proposed FIP applies to only nine facilities. It is therefore not a rule of general applicability.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Under the Paperwork Reduction Act, a ''collection of information'' is defined as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons. * * *'' 44 U.S.C. 3502(3)(A). Because the proposed FIP applies to just nine facilities, the Paperwork Reduction Act does not apply. See 5 CFR 1320(c).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for our regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant

economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed action on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. The Regional Haze FIP that EPA is proposing for purposes of the regional haze program consists of imposing federal controls to meet the BART requirement for SO_2, NO_X, and PM emissions on specific units at nine facilities in New York. The net result of this FIP action is that EPA is proposing direct emission controls on selected units at only nine facilities. The facilities in question are either large electric generating plants or large industrial boilers that are not owned by small entities, and therefore are not small entities. The proposed partial approval of the SIP, if finalized, merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (DC Cir. 1985)

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more (adjusted for inflation) in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of UMRA allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under Title II of UMRA, EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million by State, local, or Tribal governments or the private sector in any 1 year. In addition, this proposed rule does not contain a significant Federal intergovernmental mandate as described by section 203 of UMRA nor does it contain any regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 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 the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism 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 State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation 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 regulation.

This rule 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 addresses the State not fully meeting its obligation to prohibit emissions from interfering with other states measures to protect visibility established in the CAA. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

Executive Order 13045: *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a

disproportionate effect on children. EPA interprets E.O. 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 E.O. has the potential to influence the regulation. This action is not subject to E.O. 13045 because it implements specific standards established by Congress in statutes. However, to the extent this proposed rule will limit emissions of SO_2, NO_X, and PM the rule will have a beneficial effect on children's health by reducing air pollution.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

We have determined that this proposed rule, if finalized, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This proposed rule limits emissions of SO_2, NO_X, and PM from nine facilities in New York. The partial approval of the SIP, if finalized, merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: April 16, 2012.

Judith A. Enck,

Regional Administrator, Region 2.

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

PART 52—[AMENDED]

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

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

Subpart HH—New York

2. New § 52.1686 is added to read as follows:

§ 52.1686 Federal implementation plan for regional haze.

(a) *Applicability.* This section applies to each owner and operator of the following electric generating units (EGUs) and large industrial boilers in the State of New York: Danskammer Generating Station, Unit 4; Roseton Generating Station, Units 1 and 2; Syracuse Energy Corporation, Unit 1; Bowline Point Generating Station, Units 1 and 2; Eastman Kodak Business Park, Units 41, 42, and 43; Delmar Plant, Units EU2, EU3, EU12, EU13 and EU14; Oswego Harbor Power, Units 5 and 6; and Ravenswood Generating Station, Units 10, 20 and 30; EF Barrett Power Station, Northport Power Station, 59th Street Station, Arthur Kill Generating Station, Ravenswood Steam Plant, Roseton Generating Station, Holcim Catskill Plant, Lafarge Building Materials, International Paper Ticonderoga Mill, Lehigh Northeast Cement Plant, ALCOA Massena Operations (West Plant), Samuel A Carlson Generating Station.

(b) *Definitions.* Terms not defined below shall have the meaning given them in the Clean Air Act or EPA's regulations implementing the Clean Air Act. For purposes of this section:

Boiler operating day means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the EGU, boiler or emission unit. It is not necessary for fuel to be combusted for the entire 24-hour period.

Continuous emission monitoring system or CEMS means the equipment required by this section to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of SO_2, NO_X, and PM emissions, other pollutant emissions, diluent, or stack gas volumetric flow rate.

SO_2 means sulfur dioxide.

NO_X means nitrogen oxides.

PM means particulate matter.

Owner/operator means any person who owns, leases, operates, controls, or supervises an EGU or boiler identified in paragraph (a) of this section.

Unit means any of the EGUs or boilers identified in paragraph (a) of this section.

(c) *Emissions limitations*—(1) The owners/operators subject to this section shall not emit or cause to be emitted SO_2, NO_X, and PM in excess of the following limitations, averaged over a rolling 30-day period unless otherwise indicated below:

Facilities	BART Unit	BART Controls/Limits		
		NO_X	SO_2	PM
Danskammer Generating Station—Dynegy.	4	0.12 lb/mm BTU, 24 hr avg ozone season, 30 day avg rest of yr. Compliance 7/1/2014.	Option 1: 0.50 lb/mm BTU, 24 hr avg. Compliance 7/1/2014. Option 2: 0.09 lb/mm BTU, 24 hr avg. Compliance 7/1/2014.	0.06 lb/mm BTU, 1 hr avg. Compliance 7/1/2014.
Roseton Generating Station—Dynegy.	1 & 2	0.20 lb/mm BTU, 24 hr avg ozone season, 30 day avg rest of yr.	0.55 lb/mm BTU, 24 hr avg.	0.10 lb/mm BTU.
Syracuse Energy Corporation—GDF Suez.	1	Retire 1/1/2014	Retire 1/1/2014	Retire 1/1/2014.
Bowline Point Generating Station—GenOn.	1 & 2	0.15 lb/mm BTU, 24 hr avg ozone season, 30 day avg rest of yr.	0.37% sulfur fuel oil	0.10 lb mm BTU.
Kodak Operations at Eastman Business Park—Kodak.	41	Retire 12/31/2013	Retire 12/31/2013	Retire 12/31/2013.
	42	Retire or repower with natural gas by the Boiler MACT compliance date but not later than 8/16/2017. 0.20 lb/mm Btu, 24 hr avg ozone season, 30 day avg rest of yr.	Retire or repower with natural gas by the Boiler MACT compliance date but not later than 8/16/2017.	Retire or repower with natural gas by the Boiler MACT compliance date but not later than 8/16/2017.
	43	0.60 lb/mm BTU, 24 hr avg ozone season, 30 day avg rest of yr.	Coal 2.5% sulfur Oil 1.5% sulfur.	Coal 0.24 lb/mm BTU, Oil 0.10 lb/mm BTU.
Owens Corning Delmar Plant—Owens Corning.	EU2, EU3, EU12, EU13 & EU14.	Emit <250 tons per year, cumulative.	Emit <250 tons per year, cumulative.	Emit <250 tons per year, cumulative.
Oswego Harbor Power—NRG.	5	383 tpy, 12 month rolling total.	0.75% sulfur fuel, 0.80 lb/mm BTU, 3 hr rolling avg.	0.10 lb/mm BTU.
	6	665 tpy, 12 month rolling total.	0.75% sulfur fuel, 0.80 lb/mm BTU, 3 hr rolling avg.	0.10 lb/mm BTU.
Ravenswood Generating Station—Trans Canada.	10, 20, 30	Natural gas primary fuel, 0.15 lb/mm BTU.	0.30% sulfur fuel oil	0.1 lb/mm BTU.
EF Barrett Power Station—NG.	2	0.10 lb/mm BTU, when firing natural gas and 0.20 lb/mm BTU when firing low sulfur fuel oil, both on a 24-hour avg.	0.37% sulfur fuel	0.10 lb/mm BTU.
Northport Power Station—NG.	1–3	0.10 lb/mm BTU, when firing natural gas and 0.20 lb/mm BTU when firing fuel oil, both on a 24 hr avg.	0.70% sulfur fuel	0.10 lb/mm BTU.
	4	0.10 lb/mm BTU, when firing natural gas and 0.20 lb/mm BTU when firing fuel oil, both on a 24 hr avg.	0.75% sulfur fuel	0.10 lb/mm BTU.
59th Street Station—Con Ed.	114 & 115	0.32 lb/mm BTU, 30-day rolling average.	0.30% sulfur fuel	0.10 lb/mm BTU, by stack tests.
Arthur Kill Generating Station—NRG.	30	Natural gas combustion, 0.15 lb/mm BTU, 24 hr avg ozone season, 30 day avg rest of yr.	Natural gas combustion 0.15 lb/MM BTU.	359 tpy.
Ravenswood Steam Plant—Con Ed.	2	0.32 lb/mm BTU, 30-day rolling average.	0.30% sulfur fuel	0.10 lb/mm BTU.
Catskill Plant—Holcim (US) Inc.	0KILN	Retire 2/13/2012	Retire 2/13/2012.	
Lafarge Building Materials	1 & 2	Retire 6/30/2015	Retire 6/30/2015	Retire 6/30/2015.
International Paper Ticonderoga Mill—International Paper.	Power	0.25 lb/mm BTU	309 lb/hr on a 24-hr rolling average.	0.10 lb/mm BTU.
	Recovery	100 ppm dry volume, corrected to 8% O_2.	4 ppm dry volume Total reduced sulfur.	0.03 grains per dry standard cubic foot.

Facilities	BART Unit	BART Controls/Limits		
		NO_X	SO_2	PM
Lehigh Northeast Cement—Lehigh Cement.	kiln	2.88 lb/ton clinker produced.	2.5 lb/mm BTU max, 1.9 lb/mm BTU on a 90-day average, 1.7 lb/mm BTU max on a 12 month rolling average, When CEMS certified: 5.10 lb/mm BTU daily, 3.8 lb/mm BTU on a 90-day average, 3.4 lb/mm BTU on a 12 month rolling average	0.03 lb/ton feed.
	Clinker cooler			0.10 lb/ton feed.
ALCOA Massena Operations (West Plant)—Alcoa.	Potlines	Emit ≤50 tpy	2.5% sulfur anode coke, 12 month rolling avg.	Emit ≤168 tpy PM–10.
	Baking furnaces	Emit ≤203 tpy	2.5% sulfur anode coke, 12 month rolling avg.	Emit ≤24 tpy PM–10.
Samuel A Carlson Generating Station—Jamestown Board of Public Utilities.	Boilers	0.30 lb/mm BTU	1.5% sulfur fuel	0.10 lb/mm BTU.
	12	Retire 1/1/2014	Retire 1/1/2014	Retire 1/1/2014.

(2) These emission limitations shall apply at all times, including startups, shutdowns, emergencies, and malfunctions.

(d) *Compliance date.* The owners and operators subject to this section shall comply with the emissions limitations and other requirements of this section by January 1, 2014 unless otherwise indicated in paragraph (c).

(e) *Compliance determination using CEMS*—(1) *CEMS.* At all times after the compliance date specified in paragraph (d) of this section, the owner/operator of each unit shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR part 75, to accurately measure SO_2, NO_X, and PM, diluent, and stack gas volumetric flow rate from each unit. The CEMS shall be used to determine compliance with the emission limitations in paragraph (c) of this section for each unit.

(2) *Method.* (i) For any hour in which fuel is combusted in a unit, the owner/operator of each unit shall calculate the hourly average SO_2, NO_X, and PM concentration in lb/MMBtu at the CEMS in accordance with the requirements of 40 CFR part 75. At the end of each boiler operating day, the owner/operator shall calculate and record a new average emission rate, consistent with paragraph (c) averaging period, in lb/MMBtu from the arithmetic average of all valid hourly emission rates from the CEMS for the current boiler operating day.

(ii) An hourly average SO_2, NO_X, or PM emission rate in lb/MMBtu is valid only if the minimum number of data points, as specified in 40 CFR part 75, is acquired by the SO_2, NO_X, or PM pollutant concentration monitor and the diluent monitor (O_2 or CO_2).

(iii) Data reported to meet the requirements of this section shall not include data substituted using the missing data substitution procedures of subpart D of 40 CFR part 75, nor shall the data have been bias adjusted according to the procedures of 40 CFR part 75.

(f) *Compliance determination using fuel certification*—

The owner or operator of each affected facility subject to a federally enforceable requirement limiting the fuel sulfur content may use fuel supplier certification to demonstrate compliance. Records of fuel supplier certification, as described under paragraph (f)(1), (2), (3), or (4) of this section, as applicable, shall be maintained and reports submitted as required under paragraph (h). In addition to records of fuel supplier certifications, the report shall include a certified statement signed by the owner or operator of the affected facility that the records of fuel supplier certifications submitted represent all of the fuel combusted during the reporting period.

Fuel supplier certification shall include the following information:

(1) For distillate oil:

(i) The name of the oil supplier;

(ii) A statement from the oil supplier that the oil complies with the specifications under the definition of distillate oil in § 60.41c; and

(iii) The sulfur content or maximum sulfur content of the oil.

(2) For residual oil:

(i) The name of the oil supplier;

(ii) The location of the oil when the sample was drawn for analysis to determine the sulfur content of the oil, specifically including whether the oil was sampled as delivered to the affected facility, or whether the sample was drawn from oil in storage at the oil supplier's or oil refiner's facility, or other location;

(iii) The sulfur content of the oil from which the shipment came (or of the shipment itself); and

(iv) The method used to determine the sulfur content of the oil.

(3) For coal:

(i) The name of the coal supplier;

(ii) The location of the coal when the sample was collected for analysis to determine the properties of the coal, specifically including whether the coal was sampled as delivered to the affected facility or whether the sample was collected from coal in storage at the mine, at a coal preparation plant, at a coal supplier's facility, or at another location. The certification shall include the name of the coal mine (and coal seam), coal storage facility, or coal preparation plant (where the sample was collected);

(iii) The results of the analysis of the coal from which the shipment came (or of the shipment itself) including the sulfur content, moisture content, ash content, and heat content; and

(iv) The methods used to determine the properties of the coal.

(4) For other fuels:

(i) The name of the supplier of the fuel;

(ii) The potential sulfur emissions rate or maximum potential sulfur emissions rate of the fuel in ng/J heat input; and

(iii) The method used to determine the potential sulfur emissions rate of the fuel.

(g) *Compliance determination with an annual emission limit*—The owner or operator of each affected facility subject to a federally enforceable requirement limiting the annual emissions shall calculate the annual emissions individually for each fuel combusted, as applicable. The annual emission limitation is determined on a 12-month rolling average basis with a new annual emission limitation calculated at the end of the calendar month, unless a different reporting period is identified in paragraph (c).

(h) *Recordkeeping.* Owner/operator shall maintain the following records for at least five years:

(1) All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results.

(2) All fuel supplier certifications and information identified in paragraph (f)(1), (2), (3), or (4) of this section, as applicable.

(3) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR Part 75.

(4) Records of all major maintenance activities conducted on emission units, air pollution control equipment, and CEMS.

(5) Any other records required by 40 CFR part 75.

(i) *Reporting.* All reports under this section shall be submitted to the Director, Division of Enforcement and Compliance Assistance, U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007–1866.

(1) Owner/operator shall submit quarterly excess emissions reports no later than the 30th day following the end of each calendar quarter. Excess emissions means emissions that exceed the emissions limits specified in paragraph (c) of this section. The reports shall include the magnitude, date(s), and duration of each period of excess emissions, specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

(2) Owner/operator shall submit quarterly CEMS performance reports, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks), reason(s) why the CEMS was inoperative and steps taken to prevent recurrence, any CEMS repairs or adjustments, and results of any CEMS performance tests required by 40 CFR part 75 (Relative Accuracy Test Audits, Relative Accuracy Audits, and Cylinder Gas Audits).

(3) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, such information shall be stated in the report.

(4) Owner/operator shall submit semi-annual fuel certification reports no later than the 30th day following the end of each six month period.

(5) Owner/operator shall submit an annual emissions limitation calculation report no later than the 30th day following the end of the calendar year or quarter if a rolling average is required in paragraph (c).

(j) *Notifications.* (1) Owner/operator shall submit notification of commencement of construction of any equipment which is being constructed to comply with the NO_X emission limits in paragraph (c) of this section.

(2) Owner/operator shall submit semi-annual progress reports on construction of any such equipment.

(3) Owner/operator shall submit notification of initial startup of any such equipment.

(k) *Equipment operation.* At all times, owner/operator shall maintain each unit, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions.

(l) *Credible Evidence.* Nothing in this section shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with requirements of this section if the appropriate performance or compliance test procedures or method had been performed.

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