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DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

7 CFR Part 3430

RIN 0524–AA58

Competitive and Noncompetitive Non-Formula Federal Assistance Programs—General Award Administrative Provisions and Specific Administrative Provisions

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: The National Institute of Food and Agriculture (NIFA) is publishing program-specific administrative provisions for the following Federal assistance programs: Agriculture and Food Research Initiative (AFRI) as subpart G; the Organic Agriculture Research and Extension Initiative (OREI); and the Integrated Research, Education, and Extension Competitive Grants Program (406), to supplement the Competitive and Noncompetitive Non-formula Federal Assistance Programs—General Award Administrative Provisions for these programs. Section 7406 of the Food, Conservation, and Energy Act of 2008 (FCEA or the "2008 Farm Bill") amended section 2(b) of the Act of August 4, 1965, Competitive, Special, and Facilities Research Grant Act, to authorize the Agriculture and Food Research Initiative (AFRI) to provide funding for fundamental and applied research, extension, and education to address food and agricultural sciences. The Organic Agriculture Research and Extension Initiative is authorized under section 1672B of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act), as amended by FCEA. The Integrated Research, Education, and Extension, Competitive Grants Program is authorized under section 406 of the Agricultural Research, Extension, and Education Reform Act of 1998, as amended by FCEA.

DATES: This interim rule becomes effective on September 9, 2010. The Agency must receive comments on or before November 8, 2010.

ADDRESSES: You may submit comments, identified by RIN 0524–AA58, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: RFP-OEP@nifa.usda.gov. Include Regulatory Information Number (RIN) number 0524–AA58 in the subject line of the message.

Fax: 202–401–7752.

Mail: paper, disk or CD–ROM submissions should be submitted to National Institute of Food and Agriculture; U.S. Department of Agriculture; STOP 2299; 1400 Independence Avenue, SW., Washington, DC 20250–2299.

Hand Delivery/Courier: National Institute of Food and Agriculture; U.S. Department of Agriculture; Room 2258, Waterfront Centre; 800 9th Street, SW., Washington, DC 20024.

Instructions: All submissions received must include the agency name and the RIN for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ellen Danus, Chief, Policy and Oversight Branch, Office of Extramural Programs, National Institute of Food and Agriculture, U.S. Department of Agriculture, STOP 2299, 1400 Independence Avenue, SW., Washington, DC 20250–2299; Voice: 202–205–5667; Fax: 202–401–7752; E-mail: *edanus@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Summary

Authority

This rulemaking is authorized by section 1470 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), as amended, Public Law 95–113 (7 U.S.C. 3316). Section 7406 of the Food, Conservation, and Energy Act of 2008 (FCEA) (Pub. L. 110–246) amended section 2(b) of the Competitive, Special, and Facilities Research Grant Act (7 U.S.C. 450i(b)) to authorize the Agriculture and Food Research Initiative (AFRI) to provide funding for fundamental and applied research, extension, and education to address food and agricultural sciences. The Organic Agriculture Research and Extension Initiative is authorized under section 1672B of the Food, Agriculture, Conservation, and Trade Act OF 1990 (FACT Act), as amended by FCEA (7 U.S.C. 5925b). The Integrated Research, Education, and Extension Competitive Grants Program is authorized under section 406 of the Agricultural Research, Extension, and Education Reform Act of 1998, as amended by FCEA (7 U.S.C. 7626).

Organization of 7 CFR Part 3430

A primary function of NIFA is the fair, effective, and efficient administration of Federal assistance programs implementing agricultural research, education, and extension programs. The awards made under the above authorities are subject to the NIFA assistance regulations at 7 CFR part 3430, Competitive and Noncompetitive Non-formula Federal Assistance Programs. NIFA's development and publication of these regulations for its non-formula Federal assistance programs serve to enhance its accountability and to standardize procedures across the Federal assistance programs it administers while providing transparency to the public. NIFA published 7 CFR part 3430 with subparts A through F as a final rule on September 4, 2009 [74 FR 45736–45752]. These regulations apply to all Federal assistance programs administered by NIFA except for the formula grant programs identified in 7 CFR 3430.1(f), the Small Business Innovation Research programs with implementing regulations at 7 CFR part 3403, and the Veterinary Medicine Loan Repayment Program (VMLRP) regulations at 7 CFR 3431.

NIFA organized the regulation as follows: Subparts A through E provide administrative provisions for all competitive and noncompetitive non-formula Federal assistance programs. Subparts F and thereafter apply to specific NIFA programs.

NIFA is, to the extent practical, using the following subpart template for each program authority: (1) Applicability of

regulations, (2) purpose, (3) definitions (those in addition to or different from 3430.2), (4) eligibility, (5) project types and priorities, (6) funding restrictions, and (7) matching requirements. Subparts F and thereafter contain the above seven components in this order. Additional sections may be added for a specific program if there are additional requirements or a need for additional rules for the program (*e.g.,* additional reporting requirements). Through this rulemaking, NIFA is adding subparts G, H, and I for the administrative provisions that are specific to the AFRI, OREI, and 406.

Solicitation of Stakeholder Input and Development of Subparts G, H, and I

NIFA has been administering the 406 programs for almost 10 years. Under this authority, the integration of research, education, and extension is achieved at the program level. Integration at the program level indicates that the program offers opportunities in that fiscal year for integrated projects, along with single function projects in research, education, or extension, which together achieve stated program goals. Integrated projects incorporate at least two of the three components of the agricultural knowledge system (*i.e.,* research, education, and extension) within a project, bringing them together around a problem or activity. Consequently, NIFA has adopted the definitions of "integrated programs" and "integrated projects" under Subpart I. For the OREI program, an integrated project incorporates only the research and extension components as the OREI authority applies only to these components. Both subparts H and I include the standard elements of a subpart including applicability, purpose, definitions, eligibility, project types and priorities, funding restrictions, and matching requirements. Although NIFA has not administered the OREI program as long as the 406 programs, it has a well-established grants cycle and Request for Applications (RFA) process.

While the 406 and OREI programs had been administered by NIFA for a number of years, NIFA implemented (AFRI) in FY 2009. AFRI combines the former National Research Initiative (NRI) and the Initiative for Future Agriculture and Food Systems (IFAFS) programs. AFRI is the new core competitive grant program for research, education, and extension in USDA. With the enactment of the 2008 Farm Bill, the NRI and IFAFS program authorities have been repealed. Subpart G for AFRI includes the standard elements of a subpart as identified above, as well as certain statutory and administrative requirements for the program. The regulations for the NRI program were codified at 7 CFR Part 3411 and were implemented prior to the Government-wide and Agency efforts to standardize and streamline Federal assistance policies and procedures. Consequently, 7 CFR 3411 incorporates many more elements that are now addressed in 7 CFR 3430 Subparts A through E. Subpart G addresses only those aspects of the grant program that are unique to AFRI.

To implement AFRI and to draft subpart G, NIFA sought to solicit stakeholder input in the development and implementation of AFRI. Consequently, NIFA published a **Federal Register** *Notice* on August 29, 2008 [73 FR 50926–50928], soliciting written stakeholder input comments on the implementation of the AFRI and announcing a public meeting to solicit additional input. Approximately 40 people attended this session. NIFA also received written comments by telephone, e-mail, and fax in response to the **Federal Register** announcement. In all, stakeholder input was received from: American Soybean Association; American Forest and Paper Association; American Peanut Council; American Phytopathological Society; American Society for Nutrition; Agronomy Society of America; Crop Science Society of America; Soil Science Society of America; Association of Southern Region Extension Directors; BASF Plant Science LLC; California Certified Organic Farmers; Council on Food, Agricultural and Resource Economics; National Organic Coalition; Experiment Station Committee on Organization and Policy; Heron's Nest Farm; Institute of Food Technologies; Kentucky Farm Bureau; Michael Fields Agricultural Institute; National Association of Plant Breeders; National Association of State Universities and Land Grant Colleges (NASULGC); NASULGC Board on Human Sciences; National Association of Wheat Growers; National Coalition for Food and Agricultural Research; Nourse Farms; Organic Farmers' Agency for Relationship Marketing, Inc.; Sustainable Agriculture Coalition; Union of Concerned Scientists; Washington State Potato Commission; Western Association of Agricultural Experiment Station Directors; university faculty and several individuals. This list includes several community-based organizations, professional organizations, universities, farms, small businesses, and others.

Many stakeholders recognized a need and supported increased investments in plant and animal breeding. Many breeding objectives are targeting regional to local conditions and are not supported by commercial breeders. NIFA feels this is a clear role for competitive Federal support. Based on stakeholder input, NIFA has included an emphasis on plant and animal breeding within the program and this is reflected in the FY 2010 Request for Applications (RFA).

During the stakeholder comment period, there was additional discussion of the value of making awards for up to 10 years as provided in the legislation. Several areas were identified where awards of this length could expand the ability of the program to achieve substantial goals. For example, longer awards would allow for the full development of new plant varieties in breeding programs. Studies of nutrition would be more valuable if the improvements in nutrition and health could be studied over a longer term to determine if the benefits observed could be sustained. The FY 2010 RFAs provide opportunities for up to 5-year duration on awards (with opportunity for up to 2 additional years of no-cost extension). NIFA is reviewing this authority, along with the 10-year authority available for the Specialty Crop Research Initiative (authorized under section 412 of the Agricultural Research, Extension, and Education Reform Act of 1998), and working to implement the 10-year authority for these programs.

To accomplish identified program goals, many stakeholders pointed out that it may be effective to make single function awards (*i.e.,* research, education, and extension). Clearly there are cases where, to meet national workforce needs, education programs are needed. Similarly, when there are issues that can be resolved by directly engaging farmers and others, extension programs may be appropriate. Based on these stakeholder recommendations, NIFA has included education- and extension-only program priorities. For the FY 2010 RFA, NIFA also solicited proposals for integrated projects (that combine research, education and/or extension).

There will be a continuous process in soliciting and considering stakeholder input for the AFRI program; and ongoing stakeholder input will continue to be encouraged. All stakeholder input received has been made available at *http://www.regulations.gov* under CSREES_FRDOC_0001–0062 and under NIFA–2010–0001.

Timeline for Implementing Regulations

NIFA is publishing this rule as interim with a 60-day comment period

and anticipates a final rule by December 31, 2010. However, in the interim, these regulations apply to the AFRI, OREI, and 406 programs.

II. Administrative Requirements for the Rulemaking

Executive Order 12866

This action has been determined to be not significant for purposes of Executive Order 12866. This interim rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; nor will it materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; nor will it have an annual effect on the economy of $100 million or more; nor will it adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way. Furthermore, it does not raise a novel legal or policy issue arising out of legal mandates, the President's priorities or principles set forth in the Executive Order.

Regulatory Flexibility Act of 1980

This interim rule has been reviewed in accordance with The Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612. The Department concluded that the rule will not have a significant economic impact on a substantial number of small entities. The rule does not involve regulatory and informational requirements regarding businesses, organizations, and governmental jurisdictions subject to regulation.

Paperwork Reduction Act (PRA)

The Department certifies that this interim rule has been assessed in accordance with the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA) The Department concludes that this interim rule does not impose any new information requirements or increase the burden hours. In addition to the SF–424 form families (*i.e.,* Research and Related and Mandatory) and the SF–425 Federal Financial Report (FFR) No. 0348–0061, NIFA has three currently approved OMB information collections associated with this rulemaking: OMB Information Collection No. 0524–0042, NIFA Current Research Information System (CRIS) (Note that CRIS will be superceded by REEport in the fall of 2010). The Notice of Intent To Request Approval To Establish a New Information Collection was published in the **Federal Register** on July 12, 2010 in FR Doc 2010–16854. Comments will be accepted until September 15, 2010; please reference docket number NIFA–2010–0002); No. 0524–0041, NIFA Application Review Process; and No. 0524–0026, Assurance of Compliance with the Department of Agriculture Regulations Assuring Civil Rights Compliance and Organizational Information.

Catalog of Federal Domestic Assistance

This interim regulation applies to the following Federal assistance programs administered by NIFA including CFDA No. 10.310, Agriculture and Food Research Initiative; CFDA No. 10.307, Organic Agriculture Research and Extension Initiative; and CFDA No. 10.303, Integrated Research, Education, and Extension Competitive Grants Program.

Unfunded Mandates Reform Act of 1995 and Executive Order 13132

The Department has reviewed this interim rule in accordance with the requirements of Executive Order No. 13132 and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* and has found no potential or substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. As there is no Federal mandate contained herein that could result in increased expenditures by State, local, or Tribal governments, or by the private sector, the Department has not prepared a budgetary impact statement.

Clarity of This Regulation

Executive Order 12866 and the President's Memorandum of June 1, 1998, require each agency to write all rules in plain language. The Department invites comments on how to make this interim rule easier to understand.

List of Subjects in 7 CFR Part 3430

Administrative practice and procedure, Agricultural research, education, extension; Federal assistance.

■ Accordingly, Title 7 of the Code of Federal Regulations is amended as set forth below:

PART 3430—COMPETITIVE AND NONCOMPETITIVE NON-FORMULA FEDERAL ASSISTANCE PROGRAMS—GENERAL AWARD ADMINISTRATIVE PROVISIONS

■ 1. The authority citation for Part 3430 continues to read as follows:

Authority: 7 U.S.C. 3316; Pub. L. 106–107 (31 U.S.C. 6101 note).

■ 2. Add new subparts G, H, and I, to read as follows:

Subpart G—Agriculture and Food Research Initiative

Sec.

3430.300 Applicability of regulations.
3430.301 Purpose.
3430.302 Definitions.
3430.303 Eligibility.
3430.304 Project Types and priorities.
3430.305 Funding restrictions.
3430.306 Matching requirements.
3430.307 Coordination and stakeholder input requirements.
3430.308 Duration of awards.
3430.309 Priority areas.
3430.310 Allocation of AFRI funds.
3430.311 Allocation of research funds.
3430.312 Emphasis on Sustainable Agriculture.

Subpart G—Agriculture and Food Research Initiative

§ 3430.300 Applicability of regulations.

The regulations in this subpart apply to the Agriculture and Food Research Initiative (AFRI) authorized under section 2(b) of the Competitive, Special, and Facilities Research Grant Act (7 U.S.C. 450i(b)).

§ 3430.301 Purpose.

The purpose of this program is to make competitive grants for fundamental and applied research, extension, and education to address food and agricultural sciences, as defined under section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103).

§ 3430.302 Definitions.

The definitions applicable to the competitive grant programs under this subpart include:

Food and Agricultural Science Enhancement (FASE) awards means funding awarded to eligible applicants to strengthen science capabilities of Project Directors, to help institutions develop competitive scientific programs, and to attract new scientists into careers in high-priority areas of National need in agriculture, food, and environmental sciences. FASE awards may apply to any of the three agricultural knowledge components (*i.e.,* research, education, and

extension). FASE awards include Pre- and Postdoctoral Fellowships, New Investigator grants, and Strengthening grants.

Limited institutional success means institutions that are not among the most successful universities and colleges for receiving Federal funds for science and engineering research. A list of successful institutions will be provided in the RFA.

Minority means Alaskan Native, American Indian, AsianAmerican, African-American, Hispanic American, Native Hawaiian, or Pacific Islander. The Secretary will determine on a case-by-case basis whether additional groups qualify under this definition, either at the Secretary's initiative, or in response to a written request with supporting explanation.

Minority-serving institution means an accredited academic institution whose enrollment of a single minority or a combination of minorities exceeds fifty percent of the total enrollment, including graduate and undergraduate and full- and part-time students. An institution in this instance is an organization that is independently accredited as determined by reference to the current version of the *Higher Education Directory,* published by Higher Education Publications, Inc., 6400 Arlington Boulevard, Suite 648, Falls Church, Virginia 22042.

Multidisciplinary project means a project on which investigators from two or more disciplines collaborate to address a common problem. These collaborations, where appropriate, may integrate the biological, physical, chemical, or social sciences.

Small and mid-sized institutions means academic institutions with a current total enrollment of 17,500 or less, including graduate and undergraduate as well as full- and part-time students. An institution, in this instance, is an organization that possesses a significant degree of autonomy. Significant degree of autonomy is defined by being independently accredited as determined by reference to the current version of the *Higher Education Directory,* published by Higher Education Publications, Inc., 6400 Arlington Boulevard, Suite 648, Falls Church, Virginia 22042 (703–532–2300).

Strengthening grants means funds awarded to institutions eligible for FASE grants to enhance institutional capacity, with the goal of leading to future funding in the project area, as well as strengthening the competitiveness of the investigator's research, education, and/or extension activities. Strengthening grants consist of standard and Coordinated Agricultural Project (CAP) grant types as well as seed grants, equipment grants, and sabbatical grants.

USDA EPSCoR States (Experimental Program for Stimulating Competitive Research) means States which have been less successful in receiving funding from AFRI, or its predecessor, the National Research Initiative (NRI), having a funding level no higher than the 38th percentile of all States based on a 3-year rolling average of AFRI and/or NRI funding levels, excluding FASE Strengthening funds granted to EPSCoR States, and small, mid-sized, and minority-serving degree-granting institutions. The most recent list of USDA EPSCoR States will be provided in the RFA.

§ 3430.303 Eligibility.

(a) *General.* Unless otherwise specified in the RFA or this subpart, eligible applicants for the grant program implemented under this subpart include:

(1) State agricultural experiment stations;

(2) Colleges and universities (including junior colleges offering an associate's degree);

(3) University research foundations;

(4) Other research institutions and organizations;

(5) Federal agencies;

(6) National laboratories;

(7) Private organizations or corporations;

(8) Individuals; and

(9) Any group consisting of 2 or more entities identified in paragraphs (a)(1) through (8) of this section.

(b) *Integrated projects.* Eligible entities for the integrated component under this subpart include:

(1) Colleges and universities;

(2) 1994 Institutions; and

(3) Hispanic-serving agricultural colleges and universities (as defined in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103).

(c) *FASE Grants.*

(1) *New investigator awards.* To be eligible to apply, a new investigator must be in the beginning of his/her career, without an extensive publication record, and must have less than 5 years of postgraduate, career-track experience. To be eligible to receive a grant, the new investigator may not have received competitively awarded Federal funds, with the exception of pre- or postdoctoral awards or NRI/AFRI Seed Grants. The AFRI RFA will contain specific instructions for New Investigator Grant eligibility, restrictions, and application preparation.

(2) *Pre- and postdoctoral fellowships.* The following eligibility requirements apply to applicants for pre- and postdoctoral fellowships.

(i) The doctoral degree of the applicant must be received not earlier than January 1 of the calendar year three years prior to the submission of the proposal and not later than nine months after the proposal due date; and

(ii) For pre-doctoral applications, the applicant must have advanced to candidacy by the application deadline.

(3) *Strengthening grants.* Eligibility for all strengthening categories includes:

(i) Small and mid-sized academic institutions that have had limited institutional success;

(ii) Degree-granting institutions and State agricultural experiment stations (SAES) in USDA Experimental Program for Stimulating Competitive Research (EPSCoR) states; and

(iii) Minority-serving institutions with limited institutional success.

§ 3430.304 Project Types and priorities.

For each RFA, NIFA may develop and include the appropriate types of projects and focus areas to address the needs of scientists and educators in advanced or early stages of their careers and the differences in institutional capabilities. Types of projects will be revisited periodically based on stakeholder input and as deemed appropriate by NIFA. Types of projects under AFRI include, but are not limited to, the following.

(a) *Project Types.*

(1) *Research projects.* Single-function fundamental and applied Research Projects are conducted by individual investigators, co-investigators within the same discipline, or multidisciplinary teams.

(2) *Education projects.* Single-function Education Projects provide funding to conduct classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and other related educational matters. Projects may include faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methods.

(3) *Extension Projects.* Single-function Extension Projects provide funding for programs and activities that deliver science-based knowledge and informal educational programs to people, enabling them to make practical decisions.

(4) *Integrated Projects.* Multifunction Integrated Projects bring together at least two of the three components of the

agricultural knowledge system (*i.e.,* research, education, and extension) around a problem or issue. The functions addressed in the project should be interwoven throughout the life of the project and act to complement and reinforce one another. The proposed research component of an Integrated Project should address knowledge gaps that are critical to the development of practices and programs to address the stated problem. The proposed education component of an Integrated Project should strengthen institutional capacities and result in curricula and related products that will be sustained beyond the life of the project. The proposed extension component of an Integrated Project should lead to measurable, documented changes in learning, actions, or conditions in an identified audience or stakeholder group. Appropriate project activities will be discussed in the RFA.

(b) *Grant Types.*

(1) *Standard Grants.* Standard Grants support targeted, original scientific Research, Education, Extension, or Integrated Projects.

(2) *Coordinated Agricultural Project (CAP) Grants.* A CAP is a type of Research, Education, Extension, or Integrated Project that supports large-scale multi-million dollar projects that promote collaboration, open communication, and the exchange of information; reduce duplication of effort; and coordinate activities among individuals, institutions, States, and regions. Integrated CAP grants address problems through multi-function projects that incorporate at least two of the three components of the agricultural knowledge system (*i.e.,* research, extension and education). Please note that there occasionally may be programs in which an Integrated CAP Grant is required to address all three components of the agricultural knowledge system. In a CAP, participants serve as a team that conducts targeted research, education and/or extension in response to emerging or priority area(s) of national need. A CAP contains the needed science-based expertise in research, education, and/or extension, as well as expertise from principle stakeholders and partners, to accomplish project goals and objectives.

(3) *Planning/Coordination Grants.* Planning/Coordination Grants provide assistance to applicants in the development of quality future CAP applications. Applications must articulate benefits accrued from formal planning activities and provide evidence of a high likelihood that quality future applications will be submitted. These activities can take the form of workshops or symposia that bring together biological, physical, and social scientists and others as appropriate, including end-users and technology providers, to identify research, education, and/or extension needs, foster collaboration, and create networking opportunities. These events and the information they generate should be used to build teams that can develop applications to address priorities identified in the RFA.

(4) *Conference grants.* AFRI provides partial or total funding for a limited number of scientific meetings that bring together scientists to identify research, education, or extension needs within the scope of AFRI.

(5) *FASE Grants.*

(i) *General.* FASE Grants are designed to help institutions develop competitive Research, Education, Extension, and Integrated Projects and to attract new scientists into careers in high-priority areas in agriculture, food, and environmental sciences. The FASE grants provide funding for new investigators, pre- and postdoctoral fellowships, and strengthening grants. FASE grants will be awarded as follows:

(A) To an institution to allow for the improvement of the research, development, technology transfer, education, and extension capacity of the institution through the acquisition of special research equipment and the improvement of agricultural research, education, and extension;

(B) To single investigators or coinvestigators who are beginning research, education, or extension careers and do not have an extensive publication record;

(C) To ensure that the faculty of small, mid-sized, and minority-serving institutions who have not previously been successful in obtaining competitive grants under this subsection receive a portion of the grants; and

(D) To improve research, extension, and education capabilities in USDA EPSCoR States, as defined in § 3430.302.

(ii) *Types of FASE Grants.*

(A) *New Investigator Grant.* These awards support Project Directors who meet the eligibility criteria of § 3430.303.

(B) *Pre- and Postdoctoral Fellowship Grants.* Doctoral candidates and individuals who recently have received or will soon receive their doctoral degree, and meet the eligibility criteria of § 3430.303, may submit proposals for pre- and postdoctoral fellowships.

(C) *Strengthening Grants.* Strengthening awards consist of the following four types of grants.

(*1*) *Strengthening Standard and CAP Grant.* These grants provide funding to eligible entities, as defined in § 3430.303, who submitted meritorious Standard Grant or CAP Grant applications that were highly ranked but were below the funding line.

(*2*) *Equipment Grant.* These grants provide funding for the purchase of one major piece of equipment. The amount requested shall not exceed 50 percent of the cost of the equipment. Unless eligible for a waiver (as described in § 3430.306(b)(2)), the Project Director is responsible for securing the required non-Federal funds. No installation, maintenance, warranty, or insurance expenses may be paid from these awards, nor may these costs be part of the matching funds.

(*3*) *Seed Grant.* A Seed grant is intended to provide funds to enable investigators to collect preliminary data in preparation for applying for a Standard Research, Standard Education, Standard Extension, or Integrated Grant. The grants are not intended to fund stand-alone projects, but rather projects that will lead to further work applicable to one of the priority areas in AFRI.

(*4*) *Sabbatical grants.* A Sabbatical grant is intended to provide an opportunity for faculty to enhance their capabilities through sabbatical leaves.

§ 3430.305 Funding restrictions.

(a) *Construction.* Funds made available under this subpart shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing facility (including site grading and improvement, and architect fees).

(b) *Indirect costs.* Subject to § 3430.54, indirect costs are allowable. However, indirect costs are not allowed on pre- and postdoctoral grants, equipment grants, or conference grants.

§ 3430.306 Matching requirements.

(a) *General.* Matching funds are not required as a condition of receiving grants under this subpart except as provided in paragraphs (c) and (d) of this section.

(b) *Indirect costs.* Use of indirect costs as in-kind matching contributions is subject to § 3430.52(b).

(c) *Equipment grants.*

(1) Except as provided in paragraph (c)(2) of this section, the amount of an equipment grant may not exceed 50 percent of the cost of the special research equipment or other equipment acquired using funds from the grant.

(2) *Waiver.* The Secretary may waive all or part of the matching requirement under paragraph (c)(1) of this section in

the case of a college, university, or research foundation maintained by a college or university that ranks in the lowest ⅓ of such colleges, universities, and research foundations on the basis of Federal research funds received, if the equipment to be acquired using funds from the grant costs not more than $25,000, and has multiple uses within a single project or is usable in more than 1 project.

(d) *Applied research grants.* As a condition of making a grant for applied research, the Secretary shall require the funding of the grant to be matched with equal matching funds from a non-Federal source if the grant is for applied research that is:

(1) Commodity-specific; and

(2) Not of national scope.

§ 3430.307 Coordination and stakeholder input requirements.

(a) *Stakeholder input.* In making grants under this Part, NIFA shall solicit and consider input from persons who conduct or use agricultural research, extension, or education in accordance with section 102(b) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7612(b)).

(b) *Allocation of funds to high-priority research.* To the maximum extent practicable, the Secretary, in coordination with the Under Secretary, shall allocate grants under this subpart to high-priority research as defined in section 1672 of Food, Agriculture, Conservation, and Trade Act of 1990, 7 U.S.C. 5925. NIFA shall take into consideration, when available, the determinations made by the Advisory Board.

§ 3430.308 Duration of awards.

The Secretary may set award limits up to 10 years based on priorities and stakeholder input, subject to other statutory limitations. The duration of individual awards may vary as specified in the RFA and is subject to the availability of appropriations.

§ 3430.309 Priority areas.

NIFA will award competitive grants in the following areas:

(a) Plant health and production and plant products. Plant systems, including:

(1) Plant genome structure and function;

(2) Molecular and cellular genetics and plant biotechnology;

(3) Conventional breeding, including cultivar and breed development, selection theory, applied quantitative genetics, breeding for improved food quality, breeding for improved local adaptation to biotic stress and abiotic stress, and participatory breeding;

(4) Plant-pest interactions and biocontrol systems;

(5) Crop plant response to environmental stresses;

(6) Unproved nutrient qualities of plant products; and

(7) New food and industrial uses of plant products.

(b) Animal health and production and animal products. Animal systems, including:

(1) Aquaculture;

(2) Cellular and molecular basis of animal reproduction, growth, disease, and health;

(3) Animal biotechnology;

(4) Conventional breeding, including breed development, selection theory, applied quantitative genetics, breeding for improved food quality, breeding for improved local adaptation to biotic stress and abiotic stress, and participatory breeding;

(5) Identification of genes responsible for improved production traits and resistance to disease;

(6) Improved nutritional performance of animals;

(7) Improved nutrient qualities of animal products and uses; and

(8) The development of new and improved animal husbandry and production systems that take into account production efficiency, animal well-being, and animal systems applicable to aquaculture.

(c) Food safety, nutrition, and health. Nutrition, food safety and quality, and health, including:

(1) Microbial contaminants and pesticides residue relating to human health;

(2) Links between diet and health;

(3) Bioavailability of nutrients;

(4) Postharvest physiology and practices; and

(5) Improved processing technologies.

(d) Renewable energy, natural resources, and environment. Natural resources and the environment, including:

(1) Fundamental structures and functions of ecosystems;

(2) Biological and physical bases of sustainable production systems;

(3) Minimizing soil and water losses and sustaining surface water and ground water quality;

(4) Global climate effects on agriculture;

(5) Forestry; and

(6) Biological diversity.

(e) Agriculture systems and technology. Engineering, products, and processes, including:

(1) New uses and new products from traditional and nontraditional crops, animals, byproducts, and natural resources;

(2) Robotics, energy efficiency, computing, and expert systems;

(3) New hazard and risk assessment and mitigation measures; and

(4) Water quality and management.

(f) Agriculture economics and rural communities. Markets, trade, and policy, including:

(1) Strategies for entering into and being competitive in domestic and overseas markets;

(2) Farm efficiency and profitability, including the viability and competitiveness of small and medium-sized dairy, livestock, crop and other commodity operations;

(3) New decision tools for farm and market systems;

(4) Choices and applications of technology;

(5) Technology assessment; and

(6) New approaches to rural development, including rural entrepreneurship.

§ 3430.310 Allocation of AFRI funds.

(a) *General.* The Secretary shall decide the allocation of funds among research, education, extension, and integrated multifunctional projects in an appropriate manner and in accordance with the allocation restrictions found in this section.

(b) *Integrated programs.* Not less than 30 percent of funds allocated to AFRI each fiscal year shall be used to fund integrated programs.

(c) *FASE awards.*

(1) Each fiscal year, a percentage of AFRI funding (no less than 10 percent of the available funding) will be awarded as FASE awards. This percentage requirement may be adjusted by the Secretary based upon priorities and stakeholder input.

(2) The Secretary shall use not less than 25 percent of the funds made available for FASE grants to provide fellowships to outstanding pre- and postdoctoral students for research in the agricultural sciences.

(d) *Rapid Response Food and Agricultural Science for Emergency Issues Awards.* The Secretary may allocate some funding to address emergency issues in the food and agricultural sciences as determined by the Secretary. Letters of intent and applications may be requested, as appropriate. Although the solicitation and award processes may be expedited for these awards, NIFA will adhere to AFRI peer review and competitive requirements of this subpart.

§ 3430.311 Allocation of research funds.

(a) *Fundamental research.* Of the amount allocated by the Director for research, not less than 60 percent shall

be used to make grants for fundamental research (as defined in subsection (f)(1) of section 251 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6971)).

(1) *Research by multidisciplinary teams.* Of the amount allocated by the Director for fundamental research under this paragraph (a), not less than 30 percent shall be made available to make grants for research to be conducted by multidisciplinary teams.

(2) *Equipment grants.* Of the amount allocated by the Director for fundamental research under this paragraph (a) not more than 2 percent shall be used for equipment grants.

(b) *Applied research.* Of the amount allocated by the Director for research, not less than 40 percent shall be made available to make grants for applied research.

§ 3430.312 Emphasis on sustainable agriculture.

NIFA shall ensure that grants made under this subpart are, where appropriate, consistent with the development of systems of sustainable agriculture as defined in section 1404 of NARETPA.

Subpart H—Organic Agriculture Research and Extension Initiative

Sec.

3430.400 Applicability of regulations.
3430.401 Purpose.
3430.402 Definitions.
3430.403 Eligibility.
3430.404 Project types and priorities.
3430.405 Funding restrictions.
3430.406 Matching requirements.
3430.407 Program requirements.

Subpart H—Organic Agriculture Research and Extension Initiative

§ 3430.400 Applicability of regulations.

The regulations in this subpart apply to the program authorized under section 1672B of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), Public Law 110–246 (7 U.S.C. 5925b).

§ 3430.401 Purpose.

(a) The purpose of this program is to make competitive grants, in consultation with the Advisory Board, to support research and extension activities regarding organically grown and processed agricultural commodities.

(b) Grants may be made for the following purposes:

(1) Facilitating the development of organic agriculture production, breeding, and processing methods;

(2) Evaluating the potential economic benefits to producers and processors who use organic methods;

(3) Exploring international trade opportunities for organically grown and processed agricultural commodities;

(4) Determining desirable traits for organic commodities;

(5) Identifying marketing and policy constraints on the expansion of organic agriculture;

(6) Conducting advanced on-farm research and development that emphasizes observation of, experimentation with, and innovation for working organic farms, including research relating to production and marketing and to socioeconomic conditions;

(7) Examining optimal conservation and environmental outcomes relating to organically produced agricultural products; and

(8) Developing new and improved seed varieties that are particularly suited for organic agriculture.

§ 3430.402 Definitions.

The definitions applicable to the competitive grant programs under this subpart include:

Integrated project means a project that incorporates the research and extension components of the agricultural knowledge system around a problem or activity.

§ 3430.403 Eligibility.

Unless otherwise specified in the RFA, eligible applicants for the grant program implemented under this subpart include:

(a) State agricultural experiment stations;

(b) Colleges and universities (including junior colleges offering an associate's degree);

(c) University research foundations;

(d) Other research institutions and organizations;

(e) Federal agencies;

(f) National laboratories;

(g) Private organizations or corporations;

(h) Individuals; and

(i) Any group consisting of 2 or more entities identified in paragraphs (a) through (i) of this section.

§ 3430.404 Project types and priorities.

For each RFA, NIFA may develop and include the appropriate project types and priority areas based on stakeholder input and as deemed appropriate by NIFA. Duration and amount of grants may vary depending on the type of project.

§ 3430.405 Funding restrictions.

(a) *Construction.* Funds made available for grants under this subsection shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing building or facility (including site grading and improvement, and architect fees).

(b) *Indirect costs.* Subject to § 3430.54, indirect costs are allowable.

(c) *Start-up businesses.* NIFA does not fund start-up businesses under this subpart.

§ 3430.406 Matching requirements.

(a) *In general.* NIFA requires the recipient of a grant under this section to provide funds or in-kind support from non-Federal sources in an amount at least equal to the amount provided by the Federal Government.

(b) *Indirect costs.* Use of indirect costs as in-kind matching contributions is subject to § 3430.52(b).

(c) *Waiver authority.* NIFA may waive the matching requirement specified in paragraph (a) of this section with respect to a grant if NIFA determines that:

(1) The results of the project, while of particular benefit to a specific agricultural commodity, are likely to be applicable to agricultural commodities generally; or

(2) When all three of the following conditions are present:

(i) The project involves a minor commodity,

(ii) The project deals with scientifically important research, and

(iii) The grant recipient is unable to satisfy the matching funds requirement.

§ 3430.407 Program requirements.

Following the completion of a peer review process for grant proposals received under this subpart, the Director may provide a priority for those proposals, found in the peer review process to be scientifically meritorious, that involve the cooperation of multiple entities.

Subpart I—Integrated Research, Education, and Extension Competitive Grants Program

Sec.

3430.500 Applicability of regulations.
3430.501 Purpose.
3430.502 Definitions.
3430.503 Eligibility.
3430.504 Project types and priorities.
3430.505 Funding restrictions.
3430.506 Matching requirements.
3430.507 Program requirements.

Subpart I—Integrated Research, Education, and Extension Competitive Grants Program

§ 3430.500 Applicability of regulations.

The regulations in this subpart apply to the program authorized under section

406 of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA), 7 U.S.C. 7626, as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), Public Law 110–246.

§ 3430.501 Purpose.

The purpose of this subpart is to make competitive grants for integrated, multifunctional agricultural research, extension, and education activities.

§ 3430.502 Definitions.

The definitions applicable to the competitive grant programs under this subpart include:

Integrated program means a program that brings the three agricultural knowledge components (*i.e.,* research, extension, and education) together around a problem or activity through the award of integrated projects and single component projects.

Integrated project means a project that brings at least two out of three agricultural knowledge components (*i.e.,* research, extension, and education) together around a problem or activity.

§ 3430.503 Eligibility.

The following entities are eligible to apply for and receive a grant under this subpart:

(a) Colleges and universities;

(b) 1994 Institutions; and

(c) Hispanic-serving agricultural colleges and universities (as defined in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103), and in the RFA).

§ 3430.504 Project types and priorities.

For each RFA, NIFA may develop and include the appropriate project types and priority areas based on stakeholder input and as deemed appropriate by NIFA, in consultation with the Advisory Board, and that involve integrated research, extension, and education activities. Duration and amount of grants may vary depending on the type of project.

§ 3430.505 Funding restrictions.

(a) *Construction.* Funds made available for grants under this subsection shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing building or facility (including site grading and improvement, and architect fees).

(b) *Indirect Costs.* Subject to § 3430.54, indirect costs are allowable.

§ 3430.506 Matching requirements.

(a) *General requirement.* If a grant under this subpart provides a particular benefit to a specific agricultural commodity, the recipient of the grant is required to provide funds or in-kind support to match the amount of funds provided by NIFA.

(b) *Indirect costs.* Use of indirect costs as in-kind matching contributions is subject to § 3430.52(b).

(c) *Waiver authority.* NIFA may waive the matching requirement specified in paragraph (a) of this section with respect to a grant if NIFA determines that:

(1) The results of the project, while of particular benefit to a specific agricultural commodity, are likely to be applicable to agricultural commodities generally; or

(2) When all three of the following conditions are present:

(i) The project involves a minor commodity,

(ii) The project deals with scientifically important research, and

(iii) The grant recipient is unable to satisfy the matching funds requirement.

§ 3430.507 Program requirements.

(a) *General.* Grants under this subpart shall address priorities in the United States agriculture that involve integrated research, extension, and education activities as determined by the Secretary through Agency stakeholder input processes and in consultation with the Advisory Board.

(b) *Duration of awards.* The term of a grant under this subpart may not exceed 5 years.

Done at Washington, DC, this 30th day of August 2010.

Roger Beachy,

Director, National Institute of Food and Agriculture.

[FR Doc. 2010–22387 Filed 9–8–10; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30740; Amdt. No. 3388]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective September 9, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 9, 2010.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike

Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on August 20, 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 23 SEP 2010

Birmingham, AL, Birmingham-Shuttlesworth Intl, RNAV (GPS) Y RWY 6, Amdt 1A
Birmingham, AL, Birmingham-Shuttlesworth Intl, RNAV (GPS) Y RWY 24, Amdt 2A
Birmingham, AL, Birmingham-Shuttlesworth Intl, RNAV (RNP) Z RWY 6, Orig
Birmingham, AL, Birmingham-Shuttlesworth Intl, RNAV (RNP) Z RWY 24, Orig
Courtland, AL, Courtland, RNAV (GPS) RWY 13, Amdt 1
Courtland, AL, Courtland, RNAV (GPS) RWY 31, Amdt 1
Courtland, AL, Courtland, Takeoff Minimum and Obstacle DP, Amdt 1
Courtland, AL, Courtland, VOR RWY 13, Amdt 1
Fort Payne, AL, Isbell Field, GPS RWY 4, Orig, CANCELLED
Fort Payne, AL, Isbell Field, GPS RWY 22, Orig, CANCELLED
Fort Payne, AL, Isbell Field, NDB–A, Amdt 1
Fort Payne, AL, Isbell Field, RNAV (GPS) RWY 4, Orig
Fort Payne, AL, Isbell Field, RNAV (GPS) Y RWY 22, Orig
Fort Payne, AL, Isbell Field, RNAV (GPS) Z RWY 22, Orig
Fort Payne, AL, Isbell Field, Takeoff Minimum and Obstacle DP, Amdt 1
Flagstaff, AZ, Flagstaff Pulliam, RNAV (GPS)–B, Orig
Flagstaff, AZ, Flagstaff Pulliam, VOR–A, Amdt 4
Hawthorne, CA, Jack Northrop Field/ Hawthorne Muni, LOC RWY 25, Amdt 11
Hawthorne, CA, Jack Northrop Field/ Hawthorne Muni, VOR RWY 25, Amdt 16
Little River, CA, Little River, RNAV (GPS) RWY 29, Orig
Oakland, CA, Metropolitan Oakland Intl, ILS OR LOC RWY 11, Amdt 6
Oakland, CA, Metropolitan Oakland Intl, RNAV (GPS) Y RWY 11, Amdt 1
Oakland, CA, Metropolitan Oakland Intl, RNAV (GPS) Y RWY 27L, Amdt 2
Oakland, CA, Metropolitan Oakland Intl, RNAV (GPS) Y RWY 27R, Amdt 1
Oakland, CA, Metropolitan Oakland Intl, RNAV (GPS) Y RWY 29, Amdt 1
Oakland, CA, Metropolitan Oakland Intl, RNAV (RNP) Z RWY 11, Orig
Oakland, CA, Metropolitan Oakland Intl, RNAV (RNP) Z RWY 27L, Orig
Oakland, CA, Metropolitan Oakland Intl, RNAV (RNP) Z RWY 27R, Orig
Oakland, CA, Metropolitan Oakland Intl, RNAV (RNP) Z RWY 29, Orig
San Jose, CA, Norman Y. Mineta San Jose Intl, RNAV (GPS) Y RWY 12L, Amdt 2
San Jose, CA, Norman Y. Mineta San Jose Intl, RNAV (GPS) Y RWY 30R, Amdt 2
San Jose, CA, Norman Y. Mineta San Jose Intl, RNAV (RNP) Z RWY 12L, Orig
San Jose, CA, Norman Y. Mineta San Jose Intl, RNAV (RNP) Z RWY 12R, Amdt 1
San Jose, CA, Norman Y. Mineta San Jose Intl, RNAV (RNP) Z RWY 30L, Amdt 1
San Jose, CA, Norman Y. Mineta San Jose Intl, RNAV (RNP) Z RWY 30R, Orig
Colorado Springs, CO, City of Colorado Springs Muni, RNAV (GPS) Y RWY 17R, Amdt 2
Colorado Springs, CO, City of Colorado Springs Muni, RNAV (RNP) Z RWY 17L, Orig

Colorado Springs, CO, City of Colorado Springs Muni, RNAV (RNP) Z RWY 17R, Orig
Colorado Springs, CO, City of Colorado Springs Muni, RNAV (RNP) Z RWY 35L, Orig
Colorado Springs, CO, City of Colorado Springs Muni, RNAV (RNP) Z RWY 35R, Orig
Denver, CO, Denver Intl, ILS OR LOC RWY 34L, ILS RWY 34L (CAT II), ILS RWY 34L (CAT III), Amdt 1
Denver, CO, Denver Intl, ILS OR LOC RWY 34R, ILS RWY 34R (CAT II), ILS RWY 34R (CAT III), Amdt 2
Denver, CO, Denver Intl, ILS OR LOC RWY 35L, ILS RWY 35L (CAT II), ILS RWY 35L (CAT III), Amdt 4
Denver, CO, Denver Intl, ILS OR LOC RWY 35R, ILS RWY 35R (CAT II), ILS RWY 35R (CAT III), Amdt 2
Denver, CO, Denver Intl, RNAV (GPS) RWY 34L, Amdt 1
Denver, CO, Denver Intl, RNAV (GPS) RWY 34R, Amdt 1
Denver, CO, Denver Intl, RNAV (GPS) RWY 35L, Amdt 1
Denver, CO, Denver Intl, RNAV (GPS) RWY 35R, Amdt 1
Fort Lauderdale, FL, Fort Lauderdale Executive, RNAV (GPS) RWY 8, Amdt 1
Fort Lauderdale, FL, Fort Lauderdale Executive, RNAV (GPS) RWY 26, Amdt 1
McRae, GA, Telfair-Wheeler, NDB RWY 21, Amdt 10
Pine Mountain, GA, Harris County, RNAV (GPS) RWY 9, Orig
Pine Mountain, GA, Harris County, VOR–A, Amdt 5
Council Bluffs, IA, Council Bluffs Muni, ILS OR LOC RWY 36, Orig
Jefferson, IA, Jefferson Muni, GPS RWY 14, Orig-A, CANCELLED
Jefferson, IA, Jefferson Muni, GPS RWY 32, Orig-A, CANCELLED
Jefferson, IA, Jefferson Muni, NDB RWY 32, Amdt 6
Jefferson, IA, Jefferson Muni, RNAV (GPS) RWY 14, Orig
Jefferson, IA, Jefferson Muni, RNAV (GPS) RWY 32, Orig
Idaho Falls, ID, Idaho Falls Rgnl, RNAV (GPS) Y RWY 2, Amdt 1
Idaho Falls, ID, Idaho Falls Rgnl, RNAV (GPS) Y RWY 20, Amdt 1
Idaho Falls, ID, Idaho Falls Rgnl, RNAV (RNP) Z RWY 2, Orig
Idaho Falls, ID, Idaho Falls Rgnl, RNAV (RNP) Z RWY 20, Orig
Alton/St Louis, IL, St Louis Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Decatur, IL, Decatur, VOR RWY 36, Amdt 16
Peru, IL, Illinois Valley Rgnl-Walter A Duncan Field, RNAV (GPS) RWY 18, Orig-A
Peru, IL, Illinois Valley Rgnl-Walter A Duncan Field, RNAV (GPS) RWY 36, Orig-A
Sullivan, IN, Sullivan County, GPS RWY 18, Orig, CANCELLED
Sullivan, IN, Sullivan County, GPS RWY 36, Amdt 1, CANCELLED
Sullivan, IN, Sullivan County, RNAV (GPS) RWY 18, Orig
Sullivan, IN, Sullivan County, RNAV (GPS) RWY 36, Orig
Warsaw, IN, Warsaw Muni, ILS OR LOC/DME RWY 27, Amdt 1
Warsaw, IN, Warsaw Muni, RNAV (GPS) RWY 9, Orig
Warsaw, IN, Warsaw Muni, RNAV (GPS) RWY 27, Orig
Warsaw, IN, Warsaw Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Warsaw, IN, Warsaw Muni, VOR RWY 9, Amdt 6
Warsaw, IN, Warsaw Muni, VOR RWY 27, Amdt 7
Syracuse, KS, Syracuse-Hamilton County Muni, RNAV (GPS) RWY 18, Orig
Syracuse, KS, Syracuse-Hamilton County Muni, RNAV (GPS) RWY 36, Orig
Syracuse, KS, Syracuse-Hamilton County Muni, Takeoff Minimums and Obstacle DP, Orig
New Orleans, LA, Louis Armstrong New Orleans Intl, RNAV (GPS) Y RWY 28, Amdt 2
Faribault, MN, Faribault Muni, Takeoff Minimums and Obstacle DP, Orig
Minneapolis, MN, Airlake, RNAV (GPS) RWY 12, Orig
St. Louis, MO, Lambert-St. Louis Intl, ILS OR LOC RWY 12L, ILS RWY 12L (CAT II), ILS RWY 12L (CAT III), Amdt 6
St. Louis, MO, Lambert-St. Louis Intl, ILS OR LOC RWY 30R, ILS RWY 30R (CAT II), ILS RWY 30R (CAT III), Amdt 10
St. Louis, MO, Lambert-St. Louis Intl, ILS PRM RWY 12L, ILS PRM RWY 12L (CAT II); ILS PRM RWY 12L (CAT III), (Simultaneous Close Parallel), Amdt 1
St. Louis, MO, Lambert-St. Louis Intl, Takeoff Minimums and Obstacle DP, Amdt 2
Indianola, MS, Indianola Muni, RNAV (GPS) RWY 18, Amdt 1
Indianola, MS, Indianola Muni, RNAV (GPS) RWY 36, Amdt 1
Indianola, MS, Indianola Muni, Takeoff Minimums and Obstacle DP, Amdt 1
West Yellowstone, MT, Yellowstone, RNAV (GPS) RWY 1, Orig
West Yellowstone, MT, Yellowstone, RNAV (GPS) RWY 19, Orig
Beaufort, NC, Michael J. Smith Field, LOC RWY 26, Amdt 2
Beaufort, NC, Michael J. Smith Field, RNAV (GPS) RWY 21, Amdt 1
Beaufort, NC, Michael J. Smith Field, RNAV (GPS) RWY 26, Amdt 1
Smithfield, NC, Johnston County, RNAV (GPS) RWY 3, Orig-A
Harvey, ND, Harvey Muni, GPS RWY 11, Orig, CANCELLED
Harvey, ND, Harvey Muni, GPS RWY 29, Orig, CANCELLED
Harvey, ND, Harvey Muni, RNAV (GPS) RWY 11, Orig
Harvey, ND, Harvey Muni, RNAV (GPS) RWY 29, Orig
Harvey, ND, Harvey Muni, Takeoff Minimums and Obstacle DP, Orig
Hamilton, NY, Hamilton Muni, RNAV (GPS) Y RWY 17, Orig
Hamilton, NY, Hamilton Muni, RNAV (GPS) Z RWY 17, Orig
White Plains, NY, Westchester County, COPTER ILS OR LOC/DME RWY 16, Orig-E
White Plains, NY, Westchester County, ILS OR LOC RWY 16, Amdt 23
White Plains, NY, Westchester County, ILS OR LOC RWY 34, Amdt 4
White Plains, NY, Westchester County, NDB RWY 16, Amdt 21B
White Plains, NY, Westchester County, RNAV (GPS) Y RWY 16, Amdt 1
White Plains, NY, Westchester County, RNAV (GPS) Y RWY 34, Amdt 3
White Plains, NY, Westchester County, RNAV (RNP) Z RWY 16, Orig
White Plains, NY, Westchester County, RNAV (RNP) Z RWY 34, Orig
Dayton, OH, James M Cox Dayton Intl, ILS OR LOC RWY 24R, Amdt 9
Frederick, OK, Frederick Rgnl, GPS RWY 35L, Amdt 1, CANCELLED
Frederick, OK, Frederick Rgnl, RNAV (GPS) RWY 35, Orig
Portland, OR, Portland Intl, ILS OR LOC RWY 10L, Amdt 3
Portland, OR, Portland Intl, ILS OR LOC RWY 10R, ILS RWY 10R (CAT II), ILS RWY 10R (CAT III), Amdt 33
Portland, OR, Portland Intl, ILS OR LOC RWY 28L, Amdt 2
Portland, OR, Portland Intl, ILS OR LOC RWY 28R, Amdt 14
Portland, OR, Portland Intl, LOC/DME RWY 21, Amdt 8
Portland, OR, Portland Intl, RNAV (GPS) RWY 10L, Amdt 1
Portland, OR, Portland Intl, RNAV (GPS) RWY 10R, Amdt 1
Portland, OR, Portland Intl, RNAV (GPS) RWY 28L, Amdt 1
Portland, OR, Portland Intl, RNAV (GPS) RWY 28R, Amdt 1
Portland, OR, Portland Intl, Takeoff Minimums and Obstacle DP, Amdt 7
Portland, OR, Portland Intl, VOR/DME RWY 21, Amdt 1
North Myrtle Beach, SC, Grand Strand, ILS OR LOC/DME RWY 23, Amdt 11
North Myrtle Beach, SC, Grand Strand, VOR RWY 5, Amdt 22
North Myrtle Beach, SC, Grand Strand, VOR RWY 23, Amdt 20
Huntingdon, TN, Carroll County, GPS RWY 19, Orig, CANCELLED
Huntingdon, TN, Carroll County, NDB RWY 1, Amdt 2
Huntingdon, TN, Carroll County, RNAV (GPS) RWY 1, Orig
Huntingdon, TN, Carroll County, RNAV (GPS) RWY 19, Orig
Lewisburg, TN, Ellington, GPS RWY 20, Orig, CANCELLED
Lewisburg, TN, Ellington, NDB RWY 20, Amdt 5
Lewisburg, TN, Ellington, RNAV (GPS) RWY 2, Orig
Lewisburg, TN, Ellington, RNAV (GPS) RWY 20, Orig
Corpus Christi, TX, Corpus Christi Intl, RNAV (RNP) Z RWY 13, Orig
Corpus Christi, TX, Corpus Christi Intl, RNAV (RNP) Z RWY 31, Orig
Corpus Christi, TX, Corpus Christi Intl, RNAV (RNP) Z RWY 35, Orig
Eagle Lake, TX, Eagle Lake, RNAV (GPS) RWY 17, Orig-A
Temple, TX, Draughon-Miller Central Texas Rgnl, ILS OR LOC RWY 15, Amdt 12
Jonesville, VA, Lee County, RNAV (GPS) RWY 25, Amdt 1
Martinsville, VA, Blue Ridge, RNAV (GPS) RWY 12, Amdt 1
Martinsville, VA, Blue Ridge, RNAV (GPS) RWY 30, Amdt 2

On August 2, 2010 (75 FR 45049) the FAA published an Amendment in Docket No. 30736, Amdt 3384 to Part 97 of the Federal Aviation Regulations under section 97.23 and 97.33. The following entry effective 26 August 2010 is hereby *rescinded:*

Troy, AL, Troy Muni, Radar-1, Amdt 9

On August 2, 2010 (75 FR 45049) the FAA published an Amendment in Docket No. 30736, Amdt 3384 to Part 97 of the Federal Aviation Regulations under section 97.23 and 97.33. The following entries effective 23 September 2010 are hereby *rescinded:*

Austin, TX, Austin Executive, RNAV (GPS) RWY 13, Orig

Austin, TX, Austin Executive, RNAV (GPS) RWY 31, Orig

Austin, TX, Austin Executive, Takeoff Minimums and Obstacle DP, Orig

Bryce, UT, Bryce Canyon, BRYCE ONE Graphic Obstacle DP

Bryce, UT, Bryce Canyon, RNAV (GPS) RWY 3, Orig

Bryce, UT, Bryce Canyon, RNAV (GPS) RWY 21, Orig

Bryce, UT, Bryce Canyon, Takeoff Minimums and Obstacle DP, Orig

[FR Doc. 2010–21909 Filed 9–8–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30741; Amdt. No. 3389]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective September 9, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 9, 2010.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on August 20, 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
23–Sep–10 ..	OH	MIDDLETOWN	MIDDLETOWN/HOOK FIELD MUNI.	0/1895	8/17/10	NDB OR GPS RWY 23, AMDT 8D.
23–Sep–10 ..	OH	MIDDLETOWN	MIDDLETOWN/HOOK FIELD MUNI.	0/1896	8/17/10	NDB OR GPS A, AMDT 2B.
23–Sep–10 ..	OH	MIDDLETOWN	MIDDLETOWN/HOOK FIELD MUNI.	0/1897	8/17/10	LOC RWY 23, AMDT 7F.
23–Sep–10 ..	IL	PERU	ILLINOIS VALLEY RGNL—WALTER A DUNCAN FIELD.	0/1998	8/10/10	LOC RWY 36, AMDT 3.
23–Sep–10 ..	TN	CHATTANOOGA	LOVELL FIELD	0/2155	8/10/10	ILS OR LOC RWY 2, AMDT 7A.
23–Sep–10 ..	TN	CHATTANOOGA	LOVELL FIELD	0/2156	8/10/10	VOR RWY 33, AMDT 17.
23–Sep–10 ..	NY	BUFFALO	BUFFALO NIAGARA INTL	0/3929	8/10/10	ILS OR LOC/DME RWY 32, ORIG–A.
23–Sep–10 ..	VA	MARION/ WYTHEVILLE.	MOUNTAIN EMPIRE	0/7685	8/9/10	LOC RWY 26, AMDT 1B.

[FR Doc. 2010–21939 Filed 9–8–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2010–0818]

Drawbridge Operation Regulations; Cape Fear River and Northeast Cape Fear River, in Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of two North Carolina Department of Transportation (NCDOT) drawbridges: The Cape Fear River Memorial Bridge, across Cape Fear River, mile 26.8, and the Isabel S. Holmes Bridge, across Northeast Cape Fear River, mile 1.0, both in Wilmington, NC, to accommodate River Fest 8K Run. The deviation allows the bridges to remain in the closed position to vessels.

DATES: This deviation is effective from 8 a.m. to 10 a.m. on October 3, 2010.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0818 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0818 in the "keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Sandra S. Elliott, Bridge Management Specialist, Fifth Coast Guard District; telephone 757–398–6557, e-mail *Sandra.S.Elliott@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Cape Fear River Memorial Bridge, a vertical lift drawbridge, has vertical clearances in full open and closed positions to vessels of 135 feet and 65 feet above mean high water (MHW), respectively. The Isabel S. Holmes Bridge, across Northeast Cape Fear River, mile 1.0, a bascule lift bridge, has a vertical clearance in the closed position to vessels of 40 feet above MHW.

The North Carolina Department of Transportation, owner of the drawbridges, has requested a temporary deviation from the current operating regulations of the aforementioned bridges set out in 33 CFR 117.5, 117.823 and 117.829(a), respectively, to accommodate the River Fest 8K Run scheduled for Sunday, October 3, 2010, from 8 a.m. to 10 a.m.

Under this deviation, the drawbridges will be allowed to remain in the closed-to-navigation position from 8 a.m. to 10 a.m. on Sunday, October 3, 2010 to accommodate the River Fest 8K Run.

The Coast Guard will inform the users of the waterways through our Local and Broadcast Notices to mariners of the closure period for the bridges so that vessels can arrange their transits and to minimize any impact caused by the temporary deviation. There are no alternate routes for vessels transiting these sections of the Cape Fear and Northeast Cape Fear Rivers and the drawbridges will be able to open in the event of an emergency.

In accordance with 33 CFR 117.35(e), the drawbridges must return to their regular operating schedules immediately at the end of the

designated time period. This deviation from the operation regulations is authorized under CFR 117.35.

Dated: August 27, 2010.

Waverly W. Gregory Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 2010–22415 Filed 9–8–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2010–0819]

Drawbridge Operation Regulation; Trent River, New Bern, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the US70 (Alfred C. Cunningham) Bridge across Trent River, mile 0.0, at New Bern, NC, to accommodate a Bridge Run. This deviation allows the drawbridge to be maintained in the closed position to vessels at specific date and times.

DATES: This deviation is effective from 6 a.m. to 11 a.m. on Saturday, October 16, 2010.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0819 and are available online by going to *http://www.regulations.gov*, inserting USCG–2010–0819 in the "Keyword" box and then clicking "Search. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Sandra S. Elliott, Bridge Management Specialist, Fifth Coast Guard District; telephone 757–398–6557, e-mail *Sandra.S.Elliott@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The US70 (Alfred C. Cunningham) Bridge a bascule lift bridge across Trent River, at mile 0.0, has a vertical clearance in the closed position to vessels of approximately 14 feet above mean high water.

On behalf of the Neuse River Bridge Run Organization and the City of New Bern NC, the North Carolina Department of Transportation has requested a temporary deviation from the current operating regulations of the bridge set out in 33 CFR 117.843 (a) to accommodate the Bridge Run schedule for Saturday, October 16, 2010.

Under this deviation, the drawbridge would be allowed to remain in the closed-to-navigation position from 6 a.m. to 11 a.m. to vessels on Saturday, October 16, 2010, to accommodate the Bridge Run.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the closure period for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation. There are no alternate routes for vessels transiting this section of the Trent River and the drawbridge will be able to open in the event of an emergency.

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

Dated: August 27, 2010.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 2010–22416 Filed 9–8–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0755]

RIN 1625–AA00

Safety Zone; Thunder on the Bay, Chesapeake Bay, Buckroe Beach Park, Hampton, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a 210-foot radius safety zone on the navigable waters of Chesapeake Bay in Hampton, VA in support of the Thunder on the Bay fireworks event. This action is intended to restrict vessel traffic movement to protect mariners and spectators from the hazards associated with aerial fireworks displays.

DATES: This rule is effective from 9:15 p.m. to 10 p.m. on September 17, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0755 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0755 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Michael DiPace, Sector Hampton Roads Waterways Management Division, Coast Guard; telephone 757–668–5580, e-mail *Michael.S.DiPace@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because any delay encountered in this regulation's effective date by publishing a NPRM would be contrary to public interest since immediate action is needed to provide for the safety of life and property on navigable waters. Additionally, this temporary safety zone will be enforced for approximately forty-five minutes on Friday, September 17, 2010 while the fireworks display is in progress.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment during the fireworks

event. Therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives: Protecting persons and vessels involved in the event and enhancing public and maritime safety.

Basis and Purpose

On September 17, 2010, the City of Hampton, VA will sponsor a fireworks display on the Buckroe Beach Park Fishing Pier over the navigable waters of the Chesapeake Bay in approximate position 37°02′23″ N/076°17′22″ W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris, vessel traffic will be temporarily restricted within 210 feet of the fireworks launch site.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone on the navigable waters of the Chesapeake Bay within the area bounded by a 210-foot radius circle centered on position 37°02′23″ N, 076°17′22″ W (NAD 1983). This safety zone will be established in the vicinity of Buckroe Beach Park in Hampton, VA from 9:15 p.m. to 10 p.m. on September 17, 2010. In the interest of public safety, general navigation within the safety zone will be restricted during the specified date and times. Except for participants and vessels authorized by the Coast Guard Captain of the Port, or his representative, no person or vessel may enter or remain in the regulated area.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

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

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the specified portion of The Chesapeake Bay from 9:15 p.m. to 10 p.m. on September 17, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This rule will be enforced for only forty-five minutes on September 17, 2010; (2) Vessel traffic will be able to navigate safely around the zone without significant impact to their transit plans; and (3) Before the effective period begins, we will issue maritime advisories.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a safety zone around a fireworks display and is expected to have no impact on the water or environment. This zone is designed to protect mariners and spectators from the hazards associated with aerial fireworks displays. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subject 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0755 to read as follows:

§ 165.T05–0755 Safety Zone; Thunder on the Bay, Chesapeake Bay, Buckroe Beach Park, Hampton, VA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Chesapeake Bay within the area bounded by a 210-foot radius circle centered on position 37°02′23″ N/ 076°17′22″ W (NAD 1983).

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

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

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

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

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

(3) The Captain of the Port, Hampton Roads can be reached through the Command Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone number (757) 638–6641.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65 Mhz) and channel 16 (156.8 Mhz).

(d) *Enforcement Period.* This regulation will be enforced from 9:15 p.m. to 10 p.m. on September 17, 2010.

Dated: August 10, 2010.

M.S. Ogle,

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

[FR Doc. 2010–22418 Filed 9–8–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0556; FRL–9197–9]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota; Carbon Monoxide (CO) Limited Maintenance Plan for the Twin Cities Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a request submitted by the Minnesota Pollution Control Agency (MPCA) on June 16, 2010, to revise the Minnesota State Implementation Plan (SIP) for carbon monoxide (CO) under the Clean Air Act (CAA). The State has submitted a limited maintenance plan for CO showing continued attainment of the CO National Ambient Air Quality Standard (NAAQS) in the Minneapolis-St. Paul (Twin Cities) area. The one hour CO NAAQS and eight hour CO NAAQS are 35 parts per million (ppm), and 9 ppm, respectively. This limited maintenance plan satisfies section 175A of the CAA, and is in accordance with EPA's October 29, 1999, approval of the State's redesignation request and maintenance plan for the Twin Cities area. Additionally, this limited maintenance plan for CO satisfies the requirements contained in the October 6, 1995, EPA memorandum entitled "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas."

DATES: This direct final rule will be effective November 8, 2010, unless EPA receives adverse comments by October 12, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0556, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: bortzer.jay@epa.gov.*
3. *Fax:* (312) 692–2054.
4. *Mail:* Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2010–0556. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in 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 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andy Chang, Environmental Engineer, at (312) 886–0258 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andy Chang, Environmental Engineer, Air Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0258, *chang.andy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. Background
A. Why did the State make this submittal?
B. Limited Maintenance Plan
1. What is a limited maintenance plan, and what are the general requirements that must be met by a State in order to submit a limited maintenance plan?
2. What additional elements does a State need to include as part of a limited maintenance plan?
C. Did the State hold public hearings for the limited maintenance plan?
II. What criteria is EPA using to evaluate this submittal?
III. What is EPA's analysis of this submittal?
A. Requirements of Section 175A of the CAA
B. Consistency With the October 6, 1995, Memorandum
1. Attainment Inventory
2. Maintenance Demonstration
3. Monitoring Network and Verification of Continued Attainment
4. Contingency Plan
5. Conformity Determination Under Limited Maintenance Plan
IV. What action is EPA taking?
V. Statutory and Executive Order Reviews

I. Background

A. Why did the State make this submittal?

On November 6, 1991, EPA designated most of the Twin Cities seven county metropolitan area (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties), along with parts of Wright County, as being a moderate nonattainment area for the CO NAAQS under section 107 of the CAA (56 FR 56694).

On March 23, 1998, MPCA submitted a redesignation request and maintenance plan for the Twin Cities nonattainment area. EPA found that the redesignation request met all applicable requirements under section 107(d)(3)(E) of the CAA, and also found that the maintenance plan met the requirements of section 175A of the CAA. MPCA's redesignation request and maintenance plan for the Twin Cities area was approved on October 29, 1999 (64 FR 58347); comprehensive details about the maintenance plan can be found in EPA's proposed approval on May 13, 1999 (64 FR 25855).

Section 175A(b) of the CAA mandates that the State shall submit an additional revision to the maintenance plan eight years after redesignation of any area as an attainment area. Minnesota's limited maintenance plan satisfies this requirement, and is also consistent with the requirements for limited maintenance plan elements outlined in an October 6, 1995, memorandum from the Group Leader of the Integrated Policy and Strategies Group, entitled, "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas." EPA observes that although the Twin Cities area was designated as a moderate nonattainment area for the CO NAAQS, redesignation to attainment status in conjunction with meeting all requirements of the October 6, 1995, memorandum, allows the State to be eligible to submit a limited maintenance plan as the update to its original maintenance plan per section 175A(b) of the CAA. The State submitted the limited maintenance plan to EPA on June 16, 2010.

B. Limited Maintenance Plan

The definition, general requirements, and additional elements of a limited maintenance plan will be explained below.

1. What is a limited maintenance plan, and what are the general requirements that must be met by a State in order to submit a limited maintenance plan?

A maintenance plan, as defined in section 175A of the CAA, is a revision to the SIP to provide for the maintenance of the NAAQS for the air pollutant in question in the area concerned for at least 10 years after the redesignation. Eight years after the redesignation, States should submit an update to the maintenance plan to provide for the maintenance of the NAAQS for another 10 years after the initial 10 year period has expired. As previously mentioned, Minnesota's

original maintenance plan was approved on October 29, 1999 (64 FR 58347).

A limited maintenance plan for CO is a maintenance plan that is available to States who have demonstrated that the design values for CO in the nonclassifiable nonattainment area are at, or below, 7.65 ppm (85 percent of the eight hour CO NAAQS). The area's design value must not exceed the 7.65 ppm threshold throughout the entire rulemaking process. The design value for CO is defined as the second highest reading in the area in a two year period. Should an area have more than one monitor, the monitor with the second highest value in a two year period serves as the design monitor. As previously mentioned, EPA has determined that the limited maintenance plan for CO is available to all States as part of their update to maintenance plans per section 175A(b), regardless of the original nonattainment classification, or lack thereof.

2. What additional elements does a State need to include as part of a limited maintenance plan?

In addition to meeting all applicable requirements of section 175A of the CAA, States should also include the following elements in a limited maintenance plan for CO: Attainment Inventory, Maintenance Demonstration, Monitoring Network/Verification of Continued Attainment, Contingency Plan, and Conformity Determinations Under Limited Maintenance Plans. These elements were outlined in the October 6, 1995, EPA memorandum, and will be comprehensively discussed below.

C. Did the State hold public hearings for the limited maintenance plan?

Public notice was given on May 10, 2010, in the *Minnesota State Register.*

II. What criteria is EPA using to evaluate this submittal?

In addition to the general requirements in section 175A of the CAA, guidance for CO limited maintenance plans is provided in the October 6, 1995, memorandum, which states that the following five components need to be addressed: Attainment Inventory, Maintenance Demonstration, Monitoring Network/ Verification of Continued Attainment, Contingency Plan, and Conformity Determination Under Limited Maintenance Plan.

III. What is EPA's analysis of this submittal?

A. Requirements of Section 175A of the CAA

Section 175A contains four subsections pertaining to maintenance plans. Section 175A(a) establishes requirements for initial SIP redesignation request maintenance plans, as addressed in EPA's October 29, 1999, approval of the Minnesota plan. Section 175A(b) requires States to submit an update to the maintenance plan eight years following the original redesignation to attainment, and MPCA has satisfied the requirements of this element with its current submittal. It also requires that within this update, the State must outline methods for maintaining the pertinent NAAQS for ten years after the expiration of the ten-year period referred to in subsection (a), *i.e.,* Minnesota's maintenance plan update must outline methods for maintaining the CO NAAQS through 2019. However, EPA stated in the October 6, 1995, memorandum that it is not necessary for States to project emissions over this maintenance period. Instead, EPA believes that if the area begins the maintenance period at, or below, 7.65 ppm (85 percent of the eight hour CO NAAQS), the applicability of prevention of significant deterioration (PSD) requirements,[1] control measures already in the SIP, and other Federal measures should provide adequate assurance of maintenance throughout the maintenance period. Section 175A(c) does not apply to this rulemaking, given that EPA has previously redesignated the Twin Cities area to attainment for CO. The contingency provisions requirements outlined in section 175A(d) will be addressed in detail in section B4, below.

B. Consistency With the October 6, 1995, Memorandum

As discussed above, EPA's interpretation of section 175A of the CAA, as it pertains to limited maintenance plans for CO, is contained in the October 6, 1995, memorandum. Minnesota has addressed the five major elements of that policy, as follows:

1. Attainment Inventory

The State is required to develop an attainment emissions inventory to identify a level of emissions in the area which is sufficient to attain the CO NAAQS. In its June 16, 2010, submittal, MPCA provided a comprehensive CO emissions inventory for nonroad mobile, stationary, and onroad mobile sources. This set of estimated emissions was identical to that which EPA approved for the Twin Cities area on December 9, 2004 (69 FR 71375). The December 9, 2004, approval was not a full update to the CO maintenance plan for the Twin Cities area, but applied only to the 1996 and 2009 CO emissions inventory and the 2009 Motor Vehicle Emissions Budgets; both of these emissions were estimated using the MOBILE6 model. EPA observed in the December 9, 2004, approval that the updated emissions using the MOBILE6 model were much better predictors of CO emissions in the Twin Cities area because there had been substantial changes made to the model between MOBILE6 and its MOBILE5 predecessor, released in 1993. In its June 16, 2010, submittal, MPCA highlighted that the total estimated CO emissions in the Twin Cities area has decreased from 2,506 tons per winter day in 1996, to 1,856 tons per winter day in 2009.[2] This represents a 26 percent decrease in total CO emissions in tons per winter day. The onroad mobile emissions for the Twin Cities area, thought to be the major source of the original nonattainment designation, decreased from 1,872 tons per winter day in 1996 to 1,311 tons per winter day in 2009. This represents a 30 percent decrease in onroad mobile CO emissions in tons per winter day. MPCA also estimated that between 1996 and 2030, there would be a 36 percent decrease in onroad mobile CO emissions in tons per winter day in the Twin Cities area. Monitoring data from 1998 to 2009 shows consistent compliance with the eight hour CO NAAQS at levels well below the 85 percent threshold of 7.65 ppm; therefore the State has satisfied the attainment inventory requirement for limited maintenance plans.

2. Maintenance Demonstration

In the October 6, 1995, memorandum, EPA stated that the maintenance demonstration requirement is considered to be satisfied for nonclassifiable areas if the monitoring data show that the area is meeting the air quality criteria for limited maintenance areas, *i.e.,* 85 percent of the eight hour CO NAAQS, or 7.65 ppm. As previously mentioned, EPA determined in this same memo that there is no requirement to project emissions over the maintenance period. Instead, EPA believes that if the area begins the maintenance period at, or

[1] EPA has delegated the authority to implement the Federal PSD program pursuant to 40 CFR 52.21 to Minnesota.

[2] CO emissions are generally highest during the winter, and thus the modeling was performed in such a way that yielded tons per winter day.

below, 7.65 ppm (85 percent of the eight hour CO NAAQS), the applicability of PSD requirements, control measures already in the SIP, and other Federal measures should provide adequate assurance of maintenance throughout the maintenance period.

In its submittal, MPCA showed, using validated ambient monitoring data collected between 1998 and July of 2009, that the Twin Cities area is meeting both the one hour and eight hour CO NAAQS. The design values for the eight hour CO NAAQS in this area are below the 7.65 ppm threshold; therefore, the State has satisfied the maintenance demonstration requirement for limited maintenance plans. In addition, the design values for the one hour CO NAAQS in the Twin Cities area are very low when compared to the NAAQS; the highest design value for the one hour CO NAAQS between 1998 and 2009 was 11.1 ppm, or 31 percent of the NAAQS. The design values for the Twin Cities area for 2007 to 2009 (in its entirety) are shown below in Table 1. Subsequent Air Quality Systems (AQS) queries for validated monitoring data for available 2010 data indicates that the one hour and eight hour CO NAAQS are being met in the Twin Cities area at values well below either NAAQS.

TABLE 1—CO DESIGN VALUES AND PERCENTAGE OF NAAQS FOR THE TWIN CITIES AREA

Year	1 Hour CO NAAQS design value (ppm)	Percent of 1 Hour CO NAAQS	8 Hour CO NAAQS design value (ppm)	Percent of 8 Hour CO NAAQS
2007	2.5	7.1	1.8	20.0
2008	3.1	8.9	2.4	26.7
2009	2.5	7.1	2.0	22.2

3. Monitoring Network and Verification of Continued Attainment

Once an area has been redesignated, the State should continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. This is particularly important for areas using a limited maintenance plan because there will be no cap on emissions. In its submittal, MPCA specifically identifies two monitoring sites located in the Twin Cities area, which are AQS I.D. 27–053–0954 (528 Hennepin Ave. in Minneapolis) and AQS I.D. 27–123–0050 (1088 W. University Ave. in St. Paul). MPCA commits to continue monitoring CO at these two sites to ensure that CO concentrations remain well below the 7.65 ppm threshold for limited maintenance plans. Furthermore, MPCA commits to consult with EPA should changes to the existing monitoring network be needed, and the State's monitoring plan for 2011 can be found at the following site: *http://www.pca.state.mn.us/index.php/air/air-monitoring-and-reporting/air-emissions-and-monitoring/air-monitoring-network-plan.html*. The State has satisfied the monitoring network and verification of continued attainment requirements for the limited maintenance plan.

4. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of an area. The October 6, 1995, memorandum further requires that the contingency provisions identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State.

In its June 16, 2010, submittal, MPCA committed to the same contingency measures that EPA previously approved on October 29, 1999. MPCA stated that if CO levels in the Twin Cities area reach 85 percent of the eight hour CO NAAQS, it would work closely with EPA to determine which of the originally listed contingency measures would be the most appropriate to implement in the case of a NAAQS violation.

MPCA also committed to use a monitored air quality violation as the trigger event for the contingency measure. The triggering date will be the date that the State certifies to EPA that the air quality data are quality assured and not found to be due to an exceptional event, malfunction, or noncompliance with a permit condition or rule requirement. The triggering date will be no more than 30 days after an ambient air quality violation is monitored. MPCA attested that it would implement one or more appropriate contingency measures if a violation occurs and the triggering event is confirmed. The applicable measure(s) would be selected by the MPCA commissioner within six months of a triggering event; the measure(s) would be implemented per the respective schedules that EPA approved on October 29, 1999. Specific details about these measures and implementation schedules can be found in EPA's May 13, 1999 (64 FR 25855) proposed approval. The State has satisfied the contingency plan requirements pursuant to section 175A(d) of the CAA as well as those of the October 6, 1995, memorandum.

5. Conformity Determination Under Limited Maintenance Plan

The transportation conformity rule of November 24, 1993, (58 FR 62188) and the general conformity rule of November 30, 1993 (58 FR 63214) apply to nonattainment areas and maintenance areas operating under maintenance plans. Under either rule, one means of demonstrating conformity of Federal actions is to indicate that expected emissions from planned actions are consistent with the emissions budget for the area.

Minnesota currently uses the "Transportation Conformity Procedures for Minnesota: A Handbook for Transportation and Air Quality Professionals," developed by an interagency workgroup, to determine transportation conformity. This handbook addresses the consultation and other required portions of the Federal transportation conformity program. Minnesota is in the process of developing a memorandum of understanding (MOU) to formally implement the processes in the handbook, which are already being used. Additionally, Minnesota intends to submit the MOU and handbook to EPA for approval as Minnesota's transportation conformity SIP.

The October 6, 1995, memorandum also states that emissions budgets in limited maintenance plan areas may be treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that such an area will experience so much growth in that period that a violation of

the CO NAAQS would result. In other words, EPA concluded that, for these areas, emissions need not be capped for the maintenance period.

For transportation conformity, Federal actions requiring conformity determinations under the transportation conformity rule could be considered to satisfy the "budget test" required in sections 93.118, 93.119, and 93.120 of the rule once the limited maintenance plan is approved by EPA. In its June 16, 2010, submittal, MPCA observed that for the Twin Cities area, transportation plans, transportation improvement, and regionally significant projects still require conformity determinations in order to proceed. Additionally, Federally funded projects are still subject to "hot spot" analysis requirements. However, no regional modeling analysis would be required. The State has satisfied the conformity determination under limited maintenance plan requirements for the limited maintenance plan.

IV. What action is EPA taking?

We are approving this CO limited maintenance plan for the Twin Cities area. The State of Minnesota has complied with requirements of section 175A of the CAA, as interpreted by the guidance provided in the October 6, 1995, memorandum. Minnesota has shown through its submittal that CO emissions in the Twin Cities area have decreased steadily between 1996 and 2009. Minnesota has also shown that the monitored levels of CO in the Twin Cities area have been consistently well below the requisite level of 7.65 ppm for the eight hour CO NAAQS in order to qualify for the limited maintenance plan option. Lastly, Minnesota has shown that all monitored values for the one hour and eight hour CO NAAQS have been consistently well below the respective NAAQS levels. These low monitored values of CO are expected through the end of the maintenance period.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective November 8, 2010 without further notice unless we receive relevant adverse written comments by October 12, 2010. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period; therefore, any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective November 8, 2010.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because approval of a CO limited maintenance plan does not impose any new regulatory requirements on Tribes, impact any existing sources of air pollution Tribal lands, nor impair the maintenance of CO NAAQS in Tribal lands. However, because there are Tribal lands located in Scott County, we provided the affected Tribe with the opportunity to consult with EPA on the CO limited maintenance plan. The affected Tribe raised no concerns with the final rule.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference.

Dated: August 26, 2010.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart Y—Minnesota

■ 2. Section 52.1237 is amended by adding paragraph (e) to read as follows:

§ 52.1237 Control strategy: Carbon monoxide.

* * * * *

(e) Approval—On June 16, 2010, Minnesota submitted a carbon monoxide (CO) limited maintenance plan for the Minneapolis-St. Paul area under section 175A of the CAA for the continued attainment of the one hour and eight hour CO NAAQS.

[FR Doc. 2010–22338 Filed 9–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2010–0113; FRL–9197–8]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Baton Rouge 8-Hour Ozone Nonattainment Area; Determination of Attainment of the 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA has determined that the Baton Rouge (BR) moderate 8-hour ozone nonattainment area has attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based upon complete, quality assured, certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2006–2008 and 2007–2009 monitoring periods. Preliminary data available for 2010 is consistent with continued attainment.

Under the provisions of EPA's 8-hour ozone implementation rule, as a consequence of this determination the requirements for this area to submit an attainment demonstration, a reasonable further progress plan, contingency measures, and other planning State Implementation Plan (SIP) requirements related to attainment of the 1997 8-hour ozone NAAQS, are suspended for so long as the area continues to attain the 1997 8-hour ozone NAAQS.

DATES: This final rule is effective October 12, 2010.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R06–OAR–2010–0113. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) 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 Air Planning Section (6PDL), 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 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Rennie, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7367, fax (214) 665–7263, e-mail address rennie.sandra@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" means EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What action is EPA taking?
II. What is the effect of this action?
III. Response to Comments
IV. Final Action
V. Statutory and Executive Order Reviews

I. What action is EPA taking?

We are determining that the BR 8-hour ozone nonattainment area is currently attaining the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based upon complete, quality-assured, certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2006–2008 and 2007–2009 monitoring periods, and that preliminary data available for 2010 is consistent with continued attainment of the NAAQS.

As a consequence of this determination, under the provisions of EPA's ozone implementation rule (see 40 CFR section 51.918), the requirements for this area to submit an attainment demonstration, a reasonable further progress plan (RFP), applicable contingency measures, and other planning State Implementation Plan (SIP) requirements related to attainment of the 1997 8-hour ozone NAAQS, are suspended for so long as the area continues to attain the 1997 8-hour ozone NAAQS.

The rationale for our action is explained in the Notice of Proposed Rulemaking (NPR) published on June 25, 2010 (75 FR 36316) and in today's rulemaking. We received one comment in support of the proposal.

II. What is the effect of this action?

Under the provisions of EPA's ozone implementation rule, 40 CFR 51.918, the requirements for the State of Louisiana to submit an attainment demonstration, a RFP plan, contingency measures under sections 172(c)(9), and any other planning SIPS related to attainment of the 1997 8-hour ozone NAAQS are suspended for so long as the area continues to attain the 1997 8-hour standard.

If EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the BR area has violated the 1997 8-hour ozone NAAQS, the basis for the suspension of the requirements would no longer exist, and EPA would take action to withdraw the determination and direct the area to address the suspended requirements.

This final action does not constitute a redesignation to attainment under CAA section 107(d)(3), because we do not yet have an approved maintenance plan for the area as required under section 175A of the CAA, nor a determination that the area has met the other requirements for redesignation. The classification and designation status of the area remain moderate nonattainment for the 1997 8-hour ozone NAAQS until such time as

EPA determines that it meets all the CAA requirements for redesignation to attainment.

III. Response to Comments

EPA received one comment letter in response to the proposed rulemaking. The letter, submitted on behalf of the Louisiana Chemical Association, Louisiana Mid-Continent Oil and Gas Association, and the Baton Rouge Area Chamber of Commerce, expressed support for EPA's proposal.

IV. Final Action

For the reasons set forth in the proposed rulemaking and in this final rulemaking, and based on upon complete, quality-assured, certified ambient air monitoring data showing the BR area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2006–2008 and 2007–2009 monitoring periods, and preliminary data for 2010 that is consistent with continued attainment, EPA is finalizing its determination that the BR area has attained the 1997 8-hour ozone standard. As provided in 40 CFR 51.918, the requirements for submitting the 1997 8-hour ozone attainment demonstration SIP, the RFP requirements, section 172(c)(9) contingency measures and any other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS are suspended for so long as the area continues to attain the 1997 8-hour ozone standard.

V. Statutory and Executive Order Reviews

This action makes a determination of attainment based upon air quality that results in suspensions of certain Clean Air Act requirements, and does not impose additional requirements. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because there is no federally recognized Indian country located in the states, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 2010. Filing a petition for reconsideration by the Administrator of these final rules does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 25, 2010.

Al Armendariz,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart T—Louisiana

■ 2. Section 52.977 is amended by designating the existing undesignated paragraph as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 52.977 Control strategy and regulations: Ozone.

* * * * *

(b) *Determination of Attainment.* Effective October 12, 2010 EPA has determined that the Baton Rouge 8-hour ozone nonattainment area has attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). Under the provisions of 40 CFR 51.918 this determination suspends the requirements for this area to submit an attainment demonstration, a reasonable further progress plan, applicable contingency measures, and other planning Louisiana State Implementation Plan (SIP) requirements related to attainment of the 1997 8-hour ozone NAAQS for so long as the area continues to attain the 1997 8-hour ozone NAAQS.

[FR Doc. 2010–22341 Filed 9–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9198–6]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List; Partial Deletion of the Denver Radium Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is publishing a direct final Notice of Partial Deletion of

the Denver Radium Superfund Site (Site). Specifically, EPA intends to delete from the National Priorities List (NPL) each of the 11 operable units at the Denver Radium Site, located in the City and County of Denver, Colorado. Groundwater contamination associated with Operable Unit 8 will remain on the NPL. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final partial deletion is being published by EPA with the concurrence of the State of Colorado, through the Colorado Department of Public Health and Environment, because EPA has determined that all appropriate response actions at these identified parcels under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this partial deletion does not preclude future actions under Superfund.

This partial deletion pertains to each of the 11 operable units of the Denver Radium Superfund Site. Groundwater contamination associated with Operable Unit 8 will remain on the NPL and is not being considered for deletion as part of this action.

DATES: This direct final rule is effective November 8, 2010 unless EPA receives adverse comments by October 12, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register** informing the public that the partial deletion will not take effect.

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

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *E-mail: dalton.john@epa.gov.*
- *Fax:* (303) 312–7110 (Attention: John Dalton, Public Affairs and Involvement)
- *Mail:* John Dalton, Public Affairs and Involvement (8OCPI), U.S. EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–6633.
- *Hand Delivery:* U.S. EPA Region 8, 1595 Wynkoop Street, Denver, CO. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

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

Docket

All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. Environmental Protection Agency Region 8 Records Center, 1595 Wynkoop Street, Denver, CO 80202, Hours: M–F, 8 a.m. to 4 p.m.

Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246, Hours: M–F, 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Rebecca Thomas, Project Manager (8EPR–SR), U.S. Environmental Protection Agency Region 8, EPR–SR, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–6552, *thomas.rebecca@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

EPA Region 8 is publishing this direct final Notice of Partial Deletion for the Denver Radium Superfund Site (Site) from the National Priorities List (NPL). This partial deletion pertains to each of the 11 operable units of the Denver Radium Superfund Site, with the exception of groundwater contamination associated with Operable Unit 8. The NPL constitutes Appendix B of 40 CFR part 300, which is the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Denver Radium Superfund Site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List, 60 FR 55466 (Nov. 1, 1995). As described in Section 300.425 (e)(3) of the NCP, a portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

Because EPA considers this action to be non-controversial and routine, this action will be effective November 8, 2010 unless EPA receives adverse comments by October 12, 2010. Along with this direct final Notice of Partial Deletion, EPA is co-publishing a Notice of Intent for Partial Deletion in the "Proposed Rules" section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this partial deletion action, EPA will publish a timely withdrawal of this direct final Notice of Partial Deletion before the effective date of the partial deletion, and the partial deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent for Partial Deletion and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Denver Radium Superfund Site and demonstrates how portions of the Site proposed for deletion meet the deletion criteria. Section V discusses EPA's action to partially delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

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

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

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

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

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

III. Partial Deletion Procedures

The following procedures apply to partial deletion of the 11 operable units of the Site:

(1) EPA consulted with the State of Colorado prior to developing this direct final Notice of Partial Deletion and the Notice of Intent for Partial Deletion co-published in the "Proposed Rules" section of the **Federal Register**.

(2) EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent for Partial Deletion prior to their publication today, and the State, through the Colorado Department of Public Health and Environment, has concurred on the partial deletion of the Site from the NPL.

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

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

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

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

IV. Basis for Partial Site Deletion

The following information provides EPA's rationale for deleting from the NPL each of the 11 operable units of the Denver Radium Site, with the exception of groundwater contamination associated with Operable Unit 8:

Site Location

The Denver Radium Superfund Site (*EPA ID:* COD980716955), located in Denver, Colorado, consists of more than 40 contaminated properties. These properties have been grouped into 11 operable units which, except for groundwater contamination associated with OU 8, are proposed for deletion from the NPL. At certain locations, marked with an asterisk, waste has been left in place. These locations will require continued operation and maintenance to inspect the integrity of the cap and ensure institutional controls (ICs) are functioning properly. The Site was added to the Superfund NPL in 1983 (48 FR 40658, September 8, 1983).

OU	Property name	Address
OU1	B & C Metals (*now Martin Shea Millworks*)	1623–1625 West 12th Ave.
OU1	Erickson Monuments	1241–1245 Quivas St.
OU1	Materials Handling, Inc	1740 West 13th Ave.
OU1	Rudd	1223–1229 Quivas St.
OU1	City/County of Denver Alley/Driveway	East of B & C Metals, between 12th Ave. and Erickson Monuments.
OU2*	DuWald Steel (*now Atlas Metals & Iron*)	1100 Umatilla Street.
OU2	Rocky Mountain Research Corporation (*now A1 Transmission and Nationwide Courier).*	1020–1030 Yuma Street.
OU2	G&K Services	999 Vallejo Street.
OU2	Jenkins Property	2191 West 10th Street.
OU2	Staab Property	2121 West 10th Street.
OU2	Air Conditioning, Inc	1001 South Tejon Street.
OU2*	Burlington Northern Railroad	Between 10th & 11th Avenues.
OU2	Colorado DOT—Jerome Maintenance Yard	2300 West 11th Avenue.
OU2	Flame Spray, Inc	1900 West 12th Avenue.
OU2	Alpha Omega Electronics	1010 Yuma Street.
OU2	Capital Management Realty (*now Royal Textile)*	1050 Yuma Street.
OU2	Denver Water Board	1600 West 12th Avenue.

OU	Property name	Address
OU3	Creative Illumination, Inc	1298 South Kalamath Street.
OU3*	Packaging Corporation of America (PCA) (*now Caraustar Custom Packaging*).	1377 South Jason Street.
OU3	GT Car Shop/Aspen Design and Manufacturing	1235 South Jason Street.
OU3*	Denver right-of-way	1377 S. Jason Street.
OU3	Kwan Sang Noodle Company, formerly Titan Labels	1140 West Louisiana.
OU3	Various tenants	1300 South Jason Street.
OU3*	Central & Sierra Railroad	Between W. Louisiana & W. Florida Streets.
OU4*	Robinson Brick and Tile Company (ROBCO) (*now Home Depot*).	500 South Santa Fe Drive.
OU5	Denver and Rio Grande Western Railroad ROW	Immediately East of OU4.
OU6	Alley in City and County of Denver right-of-way	Between Mariposa and Lipan Streets and between 5th and 6th Avenues.
OU6	Allied (General Chemical)	1271 West Bayaud Avenue.
OU6	Brannan Sand and Gravel	61st Ave. and Clear Creek.
OU6	Central and Sierra Railroad right-of-way/Centennial Tire	2301 15th Street.
OU6	Denver Water Department	1190 Yuma Street.
OU6	Public Service Company	South Pecos St. & West Arizona Ave.
OU6	Ruby Hill Park	Jewell St. and S. Platte River Drive.
OU6	Environmental Metals, Inc. (bldg has been razed)	1155 West 5th Avenue.
OU7	9th Ave.: Ogden St. to Cheesman Pk	N/A.
OU7	11th Ave.: Josephine St. to Cheesman Pk	N/A.
OU7	23rd St.: California St. to Lawrence St	N/A.
OU7	Corona: 7th Ave. to 10th Ave	N/A.
OU7	Downing St .: 7th Ave. to 10th Ave	N/A.
OU7	Humboldt St.: 7th Ave. to 9th Ave	N/A.
OU7	Lafayette St.: 1st Ave. to 10th Ave	N/A.
OU7	Marion St.: 6th Ave. to 10th Ave	N/A.
OU7	York St.: 6th Ave. to 13th Ave	N/A.
OU8	S.W. Shattuck Chemical Company (soil)	1805 South Bannock Street.
OU8*	S.W. Shattuck Chemical Company (groundwater)	1805 South Bannock Street.
OU9A	International House of Pancakes and Larry's Trading Post (*now Mama's Café, Herbs and Art, and Purple Haze*).	2001, 2015, and 2017 East Colfax Avenue.
OU9B*	Robinson Brick and Tile Company (ROBCO) Metals (*now Home Depot*).	500 South Santa Fe Drive.
OU10	Card Corp	1314 West Evans Avenue.
OU11	Commercial Investors Realty (formerly owned by Thomas Real Estate Corp.) (*now Murphy Beds and a Starbucks*).	1285–1295 South Santa Fe Drive.

Site History

OU1

Contamination at OU1 resulted from a radium, vanadium, and uranium processing facility at 1201 Quivas Street owned by the Pittsburgh Radium Company (PRC) from 1925 until 1926. The Radium Ores Company, which was associated with PRC, operated the facility until approximately 1927. Approximately 120 tons of carnotite and 500 tons of vanadium were processed monthly.

OU2

The contamination at Operable Unit 2 is believed to be from activities of the Schlesinger Radium Company which began operations in 1914 where Atlas Metals & Iron (formerly DuWald Steel Corporation) currently is located (1100 Umatilla Street). In 1917, Schlesinger Radium Company became Radium Company of Colorado. Radium Company of Colorado ceased operations at OU2 in 1924. Complex Ore Recovery Company occupied the 1100 Umatilla property until 1928. It is not known whether that company also processed radium ore.

Since 1914, at least 38 companies have operated within the operable unit. OU2, as originally designated, included only the 1100 Umatilla and 1020 and 1030 Yuma Street properties. The other properties were included as subsequent investigations revealed additional contamination.

OU3

It is believed that the vacant lot, located at 1000 South Louisiana and owned by Packaging Corporation of America, may have been the site of a smelter that operated in the late 19th century. This smelter may have been turned into a radium-processing facility in the early 20th century. The Chemical Products Company, which occupied portions of OU3 between 1918 and 1921, separated radium and vanadium from uranium ores for the National Radium Institute. Most of the buildings associated with radium processing were demolished prior to 1970. The exception was a brick building located at 1298 South Kalamath Street, which was purchased by Creative Illumination, Inc. and used for light-fixture fabrication. The Creative Illumination, Inc. building was demolished during remediation activities.

OU4/5

OU4 (ROBCO) was the site of a radium processing facility established by the National Radium Institute (NRI) in 1913. The NRI facility was created for the purpose of developing and demonstrating the commercial feasibility of radium extraction techniques. This facility operated on the site for approximately four years and then closed after producing 7.5 grams of radium and successfully demonstrating commercially feasible extraction processes. ROBCO acquired the property in the 1940s and used it as a brick and tile-manufacturing site until the 1980s. The radium-contaminated area of OU5 (D&RGW right-of-way) covers 1.6 acres. This property is crossed by several rail lines and contains a network of electronic controls to operate railway lights and switches. OU5 has been in use as a railroad right-of-way throughout the

industrial and commercial use of the adjacent ROBCO property.

OU6, OU9A, OU11

Much of the radiological contamination present at OU6, OU9A and OU11 is believed to be either the direct result of radium and uranium processing on the property or the result of deposition of residual wastes from other processing sites.

OU7

These properties comprise a number of city streets which were underlain by radium-contaminated soil. Radium production from about 1914 to the mid-1920s generated large quantities of radioactive residues in the Denver area. Radium-contaminated tailing and other wastes were discarded or left on site when the facilities were closed. Due to changes in ownership and use of the properties, the residues were used as cover, fill, foundation material, and as aggregate in concrete and asphalt mixtures.

OU8

The Shattuck property has been the location of several mineral-processing operations since the early 1900s. The operations included the extraction of molybdenum and vanadium from ores, processing of "radium slimes" for the production of radium salts and uranium compounds, recovery of rhenium as a by-product of molybdenum production, and for a short period of time processing of depleted uranium. The primary site contaminants were radium, thorium, uranium, molybdenum, arsenic, selenium, and several volatile and semi-volatile organics. Shattuck's operations ceased in 1984.

OU9B

OU 9B–ROBCO Metals was designated to distinguish response actions addressing metals contamination from response actions addressing the OUs 4/5 radium contamination. In May 1988, excavation of the radiologically contaminated soil began at OUs 4/5. In September 1988, during the course of the radium cleanup, metals contamination was discovered on the ROBCO property. Contaminants of concern included arsenic, lead, and zinc. An investigation to characterize the nature and extent of metals contamination was conducted in 1989 and 1990. This metal contamination is believed to be from the operation of the Tabor Smelter on this property in the 1880s and 1890s.

OU10

Contamination at OU10 was from PRC processing of vanadium between 1920 and 1924. During 1924, PRC is believed to have processed as much as 10 tons of vanadium daily. OU1–OU11, with the exception of OU8 groundwater, are proposed for partial deletion.

Characterization of Risk

Radium and its associated decay products were the primary contaminants of concern at the Denver Radium Site. Other contaminants at the site were thorium, uranium, arsenic, zinc, and lead.

The elevated concentration of radium and the uncontrolled state of contaminants at the Denver Radium Site posed a health hazard due to three potential exposure pathways: Inhalation of radon gas and its decay products, direct gamma radiation exposure from the decay of radium and ingestion or inhalation of radium-contaminated materials. Ingestion or contact with contaminated groundwater is not a principal exposure pathway. There is no surface water on site.

Inhalation of radon decay products presents the greatest health risk from long-term exposure. Prolonged inhalation of air with a high concentration of radon decay products has been conclusively shown to increase the risk of lung cancer. Dispersion quickly dilutes radon emanating from radium-contaminated ground. The greatest risk from radon is when it builds up in well-sealed buildings. Radon decay product contamination in buildings (where applicable) was as much as 0.30 working levels (WL) above the EPA standard of 0.02.

Remedial Investigation and Feasibility Study

The Remedial Investigation (RI) report for the Denver Radium Superfund Site was issued in April 1986. The Feasibility Study (FS) was issued in September 1987. The site-wide RI focused on radium and uranium processing residues discarded in the early 1900s. These residues contain uranium, radium, and thorium.

A number of Remedial Action alternatives were evaluated in the site-wide FS including: No Action; On-Site Processing with Permanent Disposal; In-Situ Vitrification; On-Site Permanent Disposal; Off-Site Permanent Disposal, and On-Site Temporary Containment with Off-Site Permanent Disposal. These site-wide RI and FS reports provided the basis for selecting remedies in most of the Records of Decision. Separate RI/FS reports were generated for the metals contamination at OU4 (ROBCO) and the contamination at OU8 (Shattuck).

Remedial Action Objectives

The following objectives were identified for soil across the site:

Remedial actions shall be conducted so as to provide reasonable assurance that, as a result of residual radioactive materials from any designated processing site:

(a) The concentration of radium-226 in land averaged over any area of 100 square meters shall not exceed the background level by more than—

(1) 5 pCi/g, averaged over the first 15 centimeters of soil below the surface, and

(2) 15 pCi/g, averaged over 15-centimeter thick layers of soil more than 15 centimeters below the surface.

Supplemental Standards: (OUs 2, 3, 4, 9B)

40 CFR Part 192 provides that under certain circumstances the agency performing the cleanup may choose a remedial action that does not achieve complete removal of radium contamination to the levels described in 40 CFR Section 192.12(a). Under 40 CFR Section 192.21(c), "supplemental standards" can be applied when:

"The estimated cost of remedial action to satisfy 40 CFR Section 192.12(a) at a * * * site * * * is unreasonably high relative to the long-term benefits, and the residual radioactive materials do not pose a clear present or future hazard. The likelihood that buildings will be erected or that people will spend long periods of time at such a vicinity site should be considered in evaluating this hazard. Remedial action will generally not be necessary where residual radioactive materials have been placed semi-permanently in a location where site-specific factors limit their hazard and from which they are costly or difficult to remove, or where only minor quantities of residual radioactive materials are involved. Examples are residual radioactive materials under hard surface public roads and sidewalks, around public sewer lines, or in fence post foundations."

The following objectives were identified for buildings across the site:

(b) In any occupied or habitable building—

(1) The objective of remedial action shall be, and reasonable effort shall be made to achieve, an annual average (or equivalent) radon decay product concentration (including background) not to exceed 0.02 WL. In any case, the radon decay product concentration (including background) shall not exceed 0.03 WL, and

(2) The level of gamma radiation shall not exceed the background level by more than 20 microroentgens per hour.

The following objectives were identified for groundwater:

OU8—Restoration of groundwater quality to Safe Drinking Water Act maximum contaminant levels through monitored natural attenuation.

OU9B—No remedial action objectives were identified for groundwater because the alluvial aquifer is not presently used as a drinking water source and is unlikely to be used as a drinking water source due to poor natural quality (*i.e.,* high total dissolved solids), low yield, and its location (*i.e.,* in an industrial area between a major rail corridor and an interstate highway). Groundwater protection is achieved by controlling the source of contamination and periodic monitoring to verify that contamination does not reach the South Platte River in detrimental concentrations. Deed restrictions include a prohibition on placement of any wells on the Site for the purpose of supplying drinking water.

Selected Remedies

The RODs for OUs 1, 2, 3, 4/5, 6/9/11, and 10 each selected excavation and off-site permanent disposal as the remedy. At the time the RODs were signed, there were no disposal facilities in the nation that accepted radioactive waste. For this reason, the RODs included temporary on-site land storage of the contaminated materials with subsequent off-site permanent disposal. Plans for on-site temporary land storage were abandoned for all operable units, with the exception of OU 4/5, when a permanent disposal facility opened before excavation began. Excavated material was shipped by rail to Envirocare of Utah, Inc., a disposal facility in Tooele County, Utah. For OU 4/5, contaminated soil was stockpiled on the ROBCO property until the permanent disposal facility became available and a transportation contract was negotiated.

OU1

In the Record of Decision (ROD), dated September 1987, EPA selected excavation and off-site disposal as the remedy for OU1. The objectives of this remedy were to prevent: Radiation exposure due to inhalation of radon gas and its daughter products; radiation exposure due to inhalation and ingestion of long-lived radionuclides; and direct exposure to gamma radiation.

OU2

In the ROD, dated September 1987, EPA selected excavation and off-site permanent disposal as the remedy for OU2. The objectives of this remedy were to prevent: Radiation exposure due to inhalation of radon gas and its daughter products; radiation exposure due to inhalation and ingestion of long-lived radionuclides; and direct exposure to gamma radiation.

The scope of Remedial Action detailed in the ROD included:

- Decontaminating the roof of the Rocky Mountain Research Corporation building and excavating the majority of the approximately 15,400 cubic yards of contaminated material located under buildings and in open areas on the properties, and placing the material in a temporary on-site land storage facility,
- Maintaining the 6-inch-thick concrete pad, covering contaminated soil on the northeast part of the Atlas Metals & Iron (formerly DuWald Steel Corporation) property,
- Removing the contaminated material from the temporary storage and containment locations to the permanent disposal facility when such a facility became available.

In September 1993, EPA issued an Explanation of Significant Differences (ESD) to address on-site conditions that became apparent after the ROD was signed. The changes made to the remedy selected for OU2 in the ROD were:

- A greater volume of radium-contaminated soil was excavated and removed.
- Relatively small amounts of radium contamination were left on the 1100 Umatilla Street property. Radium contaminated soil was left in place in the following locations: (a) Under structures on the Du-Wald property, (b) near the underground power line, (c) within a four foot buffer zone around water and sewer lines, (d) below the ground water level, and (e) on the Burlington Northern Railroad (BNRR) right-of-way.
- Institutional controls (ICs) were required where waste was left in place.
- There was no temporary on-site storage.
- Soil containing commingled radium and lead was solidified in a cement matrix prior to shipment to a permanent, off-site disposal facility.

OU3

In the ROD, dated September 1987, EPA selected excavation and off-site disposal as the remedy for OU3. The objectives of this remedy were to prevent: Radiation exposure due to inhalation of radon gas and its daughter products; radiation exposure due to inhalation and ingestion of long-lived radionuclides; and direct exposure to gamma radiation.

In December 1993, EPA issued an ESD to address on-site conditions that became apparent after the ROD was signed. The ESD presents the changes that were made to the remedy selected for OU3; briefly, the differences were:

- No temporary storage prior to removal and shipment of contaminated material to the permanent off-site disposal facility.
- Over 52,000 cubic yards of contaminated soil were excavated and the area of contamination was extended east of South Jason Street.
- As part of the remediation, the Creative Illumination building was demolished, contaminated material was removed, and the contaminated materials were shipped to the off-site repository.
- There was no excavation of contaminated soil below groundwater, near water lines, or under South Jason Street, Platte River Drive and the Packaging Corporation of America building.
- ICs were required where waste was left in place.

OU4/5

EPA selected excavation and off-site disposal as the remedy for this OU in a ROD dated September 30, 1986. The objectives of this remedy were to prevent: Radiation exposure due to inhalation of radon gas and its daughter products; radiation exposure due to inhalation and ingestion of long-lived radionuclides; and direct exposure to gamma radiation. The ROD determined that the shallow alluvial aquifer is not a drinking water source.

In December 1994, EPA issued an ESD to address on-site conditions that became apparent after the ROD was signed. The ESD describes in more detail the changes that were made to the remedy selected for OU4 and OU5. The remedy, as implemented, differed in two respects from the remedy chosen in the 1986 ROD. Those differences were:

- The volume of contaminated soil increased; and
- Relatively small volumes of contaminated soil were left in place below the groundwater level.
- ICs were required on the OU4 property where wastes were left in place.

OU6, OU9A, OU11

EPA selected excavation and off-site disposal as the remedy for OU6, OU9A, and OU11 in a ROD dated September 29, 1987. The objectives of this remedy were to prevent: Radiation exposure due to inhalation of radon gas and its daughter products; radiation exposure due to inhalation and ingestion of long-lived radionuclides; and direct exposure to gamma radiation.

Remedial design at these operable units focused on excavation and direct off-site disposal of radiologic waste materials.

In January 1995, EPA issued an ESD to address on-site conditions that became apparent after the ROD was signed. The ESD describes the changes that were made to the remedy selected for OU6, OU9A, and OU11. Briefly, these differences include:

- A relatively small volume of radium-contaminated soil was left in place at the following locations in OU6: a) near a concrete box culvert on the Confluence Park property; and b) under the Environmental Materials (EMI) Building.
- ICs were required on the OU6 property where wastes were left in place. Note: Even though the 1995 ESD describes waste left in place, all contamination was subsequently removed. ICs are not required.
- Additional properties were found to be contaminated and a greater volume of radium-contaminated soil was excavated and placed in a permanent off-site repository.
- Soil commingled with metals contamination was shipped to the permanent off-site disposal facility.

OU7

EPA issued a ROD for OU7 on March 24, 1986 that combined features of the Excavation and Off-site Disposal alternative with a no action alternative. The ROD called for leaving the contaminated material in-place and required ICs to monitor all maintenance, repair, or construction activities in the affected streets. Any contaminated material excavated during these activities would be shipped off site for disposal.

The objectives of this remedy were to prevent: Radiation exposure due to inhalation of radon gas and its daughter products; radiation exposure due to inhalation and ingestion of long-lived radionuclides; and direct exposure to gamma radiation.

In September 1992, EPA issued an ESD to address on-site conditions that became apparent after the ROD was signed. This ESD amended the existing ROD to allow for reburial of excavated materials. The significant difference from the original remedy allows on-site retention and reburial of radium-contaminated material excavated during all maintenance, repair or other construction activities. Should maintenance, repair or other construction activities be required, excavated radium-contaminated materials will be retained and reburied on site if feasible, provided that the area to be excavated is not greater than 20% of the total area of the roadway in one city block. Special variance to the 20% limit may be granted by the CDPHE should an unusual circumstance require such a variance. Reburied materials will be covered with a new, hard surface, such as asphalt or concrete having a minimum depth of 6 inches to ensure no direct exposure. If retention and reburial are not feasible, the materials will be disposed at a licensed, off-site disposal facility, consistent with the ROD.

OU8

The original ROD for Shattuck was signed on January 28, 1992. EPA selected on-site soil stabilization and solidification to prevent further degradation of groundwater and allow for natural attenuation with monitoring for groundwater. Groundwater monitoring will be performed to (1) monitor the effectiveness of source control measures, and (2) monitor attenuation of the plume until it meets maximum contaminant levels for contaminants of concern. An IC program was an integral part of the remedy and required restrictions against excavating into the cover and stabilized materials, prohibition of the construction of enclosed structures on the disposal site, restrictions against the use of groundwater, and restrictions to prevent agricultural use of the site. In 1999, EPA conducted a discretionary five-year-review of the Shattuck OU and found deficiencies in aspects of the design and integrity of the on-site disposal cell. Based on these findings, EPA could not be assured of the long-term protection of the original remedy. In addition to the technical concerns raised by the 1999 five-year review, the State, Denver, elected officials, and the local community requested that EPA consider other alternatives to the on-site remedy to allow for unrestricted use of the site.

In June 2000, after developing a proposed plan and receiving public input, EPA selected off-site removal in a ROD Amendment. Off-site disposal benefits included the following:

- Long-term protection of human health and the environment;
- Removal of potential source material for future groundwater contamination;
- Disposal of material in a permitted facility;
- Unrestricted future land use; and
- Monitored attenuation of the plume until it meets maximum contaminant levels for contaminants of concern for groundwater use remain as required in the 1992 Record of Decision.

An ESD was issued for the Shattuck Site in February 2007. The ESD was required due to the elevated costs from the original estimate based on the 2000 ROD. The 2000 estimate cost for the off-site removal was $29 million with a final cost of $57 million. Reasons for the increased costs are described in the ESD.

OU9B

As discussed above, OU9B was designated when substantial metals-contaminated soil, not commingled with radium wastes, was discovered during implementation of the OU 4/5 remedy. At this OU, EPA selected a remedy leaving the metals-contaminated soil on site under a protective soil cover and implemented ICs. The objectives of the remedy were to:

- Prevent direct contact with or ingestion of metals-contaminated soil that exceeds the health-based action levels and monitor migration of the contaminants of concern in groundwater that could result in degradation of water quality in the South Platte River.
- Cap the metals-contaminated soil, conduct environmental monitoring to ensure the effectiveness of the Remedial Action, and implement ICs to limit use of groundwater at the site and maintain the integrity of the cap.

OU10

In the ROD, dated June 30, 1987, EPA selected excavation and off-site disposal as the remedy for OU10. The objectives of this remedy were to prevent: Radiation exposure due to inhalation of radon gas and its daughter products; radiation exposure due to inhalation and ingestion of long-lived radionuclides; and direct exposure to gamma radiation.

Response Actions

OU1

Remediation activities at OU1 were conducted in three phases to facilitate construction and to accommodate the various business activities in the unit. Construction began on October 2, 1989 and concluded on July 18, 1991. The quantity of material removed during remediation was 32,665 tons.

OU2

Remedial Actions at OU2 began in August 1990 and, except for ICs, were completed in August 1993. Activities included:

- Excavation of radium-contaminated soil in open areas.
- Analysis of the contaminated materials for disposal to ensure compliance with transportation and disposal regulations.

• Shipment of contaminated materials to the permanent off-site disposal facility.

• Confirmation sampling of excavated area.

A total of 14,211 tons of radiologic and commingled material was excavated and shipped off site. The commingled material was stabilized by solidification prior to off-site disposal. A Supplemental Standards Report was prepared in May 1994 to document that 11,060 cubic yards of radiological contaminated soil were left in place on the Burlington Northern Railroad property and the 1100 Umatilla Street property (Atlas Metals and Iron) at OU2.

Pursuant to the terms of an administrative settlement agreement (November 22, 2005), the current owner of the former DuWald property, Atlas Umatilla, LLC, has prepared and is implementing an O&M Plan and signed and executed an environmental covenant on June 25, 2006. The environmental covenant restricts disturbance of the concrete cap and subsurface soil. In addition, Denver's zoning ordinance and its radium fee ordinance provide ICs generally at properties in OU2 where radium-contaminated soil remains in place under supplemental standards.

OU3

Remedial Actions at OU3 began in August 1989 and were completed in September 1991. A phased approach to the cleanup allowed on-site businesses to maintain operations throughout the excavation and shipment of 63,672 tons of contaminated material from OU3. Activities included:

• Excavation of radium-contaminated soil in open areas;

• Demolition of certain radium-contaminated buildings;

• Analysis of the contaminated materials to be disposed to ensure compliance with transportation and disposal regulations;

• Shipment of contaminated materials to the permanent off-site disposal facility; and

• Confirmation sampling of excavated area.

The Creative Illumination building was demolished and 3,657 tons of radium-contaminated materials were excavated and removed from this location. A total of 32,389 tons of radium-contaminated soil was excavated and removed from the Packaging Corporation of America (PCA) property and a vacant lot owned by PCA located at 1000 West Louisiana. Other activities included the excavation and off-site disposal of 27,626 tons of radiologically contaminated soil. Remediation of OU3 was completed when 50 tons of radiologically contaminated soil were excavated from the GT Car Shop and Aspen Design and Manufacturing properties for off-site disposal.

OU4/5

Remedial Action at OU4 and OU5 included the following:

• Excavation of radium-contaminated soil;

• Demolition of certain radium-contaminated buildings;

• Analysis of the contaminated materials to ensure compliance with transportation and disposal regulations;

• Shipment of contaminated materials to the permanent off-site facility; and

• Confirmation sampling of excavated area.

Remedial Action at OU4/5 was conducted in phases, beginning in April 1988 and, except for ICs, completed in March 1991. A total of 57,586 tons of radiologically contaminated material was excavated during the initial phase of the cleanup. This material was stockpiled on site temporarily until it could be transported to the off-site disposal facility. Approximately 1,290 tons of soil, contaminated with elevated levels of Thorium-230, were removed during a later phase of the project. The stockpiled material, as well as an additional 9,677 tons of contaminated material situated immediately below the stockpile, were shipped during a later phase of the cleanup. Finally, 29,721 tons of radiologically contaminated soil were excavated and transported by rail in covered gondola cars to a permanent off-site disposal facility operated by Envirocare of Utah, Inc., in Tooele County, Utah. Of this total, 2,100 tons were contaminated with metals as well as radioactive material. A Supplemental Standards Report, prepared in March 1994, documented radiological contamination that remained on site at OU4. Materials left in place are located at 500 South Santa Fe Drive (ROBCO); and the Burlington Northern Railroad ROW immediately east of ROBCO (OU4).

Pursuant to the terms of the Agreement and Covenant Not To Sue (July, 1995; also called the Prospective Purchaser Agreement (Home Depot PPA), Home Depot USA (Home Depot) placed a restrictive covenant on OU4. The restrictive covenant restricts future use of the areas where radiological contamination was left in place under supplemental standards. In addition, Denver's zoning ordinance and its radium fee ordinance provide ICs generally at properties in OU 4/5 where radium-contaminated soil remains in place under supplemental standards. Also, the PPA provides additional ICs for this operable unit.

OU6, OU9A, OU11

Remedial Action operations at OU6, OU9A, and OU11 included the following:

• Excavation of radium-contaminated soil;

• The analysis of the contaminated materials to ensure compliance with transportation and disposal regulations;

• Shipment of contaminated materials to the permanent off-site disposal facility; and

• Confirmation sampling of excavated area.

Remediation was conducted in phases to facilitate the cleanup and to accommodate the various business activities within these operable units. Remediation began in March 1989 and was completed in December 1993. During the Remedial Action for OU6, OU9A, and OU11, 8,336 tons of contaminated soil were excavated and disposed off site.

118 tons of contaminated soil were excavated from a property at South Pecos Street and West Arizona Avenue and disposed off site. The excavated area was backfilled with clean soil and re-vegetated. Various properties within OU6, OU9A and OU11 also were remediated and a total of 5,365 tons of material were excavated for off-site disposal. A total of 2,403 tons of contaminated soil was excavated from the Environmental Materials, Inc. (EMI) and Regional Transportation District properties. This soil was transported by rail to the permanent disposal facility in Utah. In 1993, during the final phase, 450 tons of contaminated soil were excavated from the EMI property and transported by rail to the permanent disposal facility in Utah. Even though the 1995 ESD spoke about supplemental standards applying to OU6, all contamination was subsequently removed, thus, institutional controls are not required.

OU7

The EPA selected remedy combines features of excavation and disposal with the modified no action alternative. This remedy entails:

• Leaving the contaminated material in place;

• Improving ICs so that all routine maintenance, repair and construction activities in the affected streets by government agencies, utility companies, contracting companies, and private individuals will be monitored; and

• Removing any contaminated material excavated during routine maintenance, repair, or construction activities in the affected streets to a facility approved for storage or disposal of contaminated material.

• Due to the location, nature, and volume of radioactive contamination at OU7, the modified no action alternative was implemented at this operable unit. The potential routes of human exposure to the radioactivity are limited since the contaminated material is bound in the asphalt and is not free to move in any direction. None of the streets are near surface water or groundwater resources and the material has little potential for erosion or leaching because the contaminated aggregate is bound in the asphalt matrix within the pavement cap. Thus, the contamination in the asphalt matrix does not pose a threat to human health or the environment if left undisturbed.

The City and County of Denver has been actively managing the radium materials for many years. This active management served as the ICs for this operable unit. Due to the effort, requiring annual training for city and utility workers and the financial commitment, the City and County of Denver opted to ensure long-term public health and safety by removing the contaminated material from these streets in OU7. This action included the removal of asphalt and any contaminated road base and fill material.

As part of the Denver Radium Streets Program, between 2003 and 2007 Denver removed contamination from the following properties: South Bannock Street; 11th Avenue from Race Street to Josephine; Marion Street from 6th Avenue to 10th Avenue; Humboldt Street from 7th to 9th Avenue; Lafayette Street from 1st Avenue to 10th Avenue; Downing Street from 7th to 10th Avenue; 9th Avenue from Ogden to Franklin Street; Corona Street from 7th to 10 Avenue; Park Avenue West from Arapahoe to California Street; York from 6th to 13th Avenue. In addition, the Denver Streets portion of OU3, Jason Street, was remediated in 2007. As a result of these actions, there is no waste left in place within Operable Unit 7, and ICs are not required.

OU8

The initial Remedial Action at OU8 was substantially completed in September 1998. Remedial Action at OU8 included the following:

• Demolition of radium-contaminated buildings;

• Excavation of radium-contaminated soil from vicinity properties, Bannock Street, the storm sewer located east of Santa Fe Drive, and the Shattuck Chemical property;

• On-site stabilization/solidification of the radium-contaminated soil into a disposal cell;

• Capping of the stabilized material; and

• Installation of monitoring wells to evaluate the effectiveness of the remedy.

The Remedial Action at OU8 was conducted in two phases, beginning September 1992, and was substantially complete in September 1998. During Phase I approximately 67,345 tons of building debris were disposed off site and 8,700 cubic yards of soil were excavated from the vicinity properties. During this phase, approximately 200 cubic yards of asbestos containing material were removed and disposed under appropriate regulations. Approximately 400 cubic yards of radiologically contaminated material were excavated from beneath Bannock Street. Stabilization/solidification of the radiologically contaminated material began in July 1996 and was completed in November 1997.

Approximately 65,000 loose cubic yards of radiologically contaminated soil excavated from Shattuck Chemical and the vicinity properties were stabilized/solidified on site in a disposal cell. Capping of the stabilized material was completed in June 1998. ICs were implemented through a Declaration of Covenants and Restrictions, filed with the City and County of Denver on March 25, 1999, that restricted surface and groundwater use.

During the excavation of radiologically contaminated soil, oil-impacted soil also was found on site. The materials were below the action levels established in the ROD. Approximately 2,000 cubic yards of oil-impacted soil were excavated from the Shattuck Chemical Property located at 1805 South Bannock Street during Phase 2 activities. This material was covered and transported by truck to Conservation Services, Inc. in Thornton, Colorado. Bioremediation was used for oil-impacted soil that extended beneath the completed portion of the monolith. A plan addressing the remaining oil-contaminated soil at OU8 was submitted in August 1998. The bio-venting system was approved by EPA and was installed in September 1998.

In 1997, the storm sewer along Santa Fe Boulevard west of the site was remediated. During the remediation, an in-situ form liner was installed into the original pipe to isolate storm water discharges to the South Platte River from the influx of contaminated groundwater. This liner system, while in place, did not remedy the problem. In 1998, the sewer remediation was investigated by EPA and the City of Denver and determined to be incomplete. The City and County of Denver installed a new sewer cutoff that has significantly limited the amount of potential infiltration into the sewer line along Bannock Street. A management plan for OU8 Bannock Street was developed and adopted in March 1999 by the City and County of Denver to govern all maintenance, repair, or other construction activities at OU8 Bannock Street.

In 1999, the EPA conducted a discretionary five-year review of the monolith and found deficiencies in the cover design and the structural and chemical integrity of the structure. EPA concluded that it could not assure the long-term protectiveness of this remedy. The June 2000 amended ROD required removal of 100,000 cubic yards of the material and full cleanup of the site. Groundwater quality will continue to be monitored until performance standards are met; therefore, the groundwater is not part of this partial deletion.

EPA began to remove the contaminated soil and monolith in March 2003 to U.S. Ecology, a permitted facility in Grandview, Idaho. Waste shipments began on March 9, 2003. A total of 243,872 tons of contaminated soil and materials was removed by the fall of 2006. The site has been verified to be clean and restored. Clean excavation and fill material was backfilled into all open areas where the contamination was removed and has been returned to grade. The covenant restricting surface and groundwater use was later modified to remove the surface use restrictions.

The Amended Declaration of Covenants and Restrictions was filed in 2007. However, there are still elevated levels of contaminants in groundwater including uranium, arsenic, cadmium, selenium, molybdenum, and gross alpha and gross beta radioactivity. In addition to the restrictive covenant, a restriction notifying each well permit applicant about the potential for contamination in the groundwater was placed July 17, 2006 on OU8 through the Colorado Office of the State Engineer.

OU9B

The Remedial Action at OU9B (ROBCO Metals) was completed in three phases, beginning in October 1995 and completed in April 1996. During Phase 1 activities, the ROBCO Site was prepared for the excavation, movement and consolidation of heavy metal contaminated soil. During Phase 2 activities, the existing ROBCO Building/

Plant foundation was demolished and the area of contamination outside the Area of Consolidation was excavated. Approximately 62,062 cubic yards of material were excavated and/or moved during Phase 2 of the Remedial Action. During Phase 3 activities, the Area of Consolidation cap was constructed, the identification barrier was installed, and structural fill was placed and compacted to final design grade and contour.

In accordance with the Home Depot PPA, Home Depot, USEPA, and CDPHE performed closure of the Robinson Brick Company in a defined "shared" and "phased" manner. Home Depot submitted a Draft O&M Plan on May 30, 1997. CDPHE and EPA approved the O&M Plan on March 17, 1998. Based on the O&M Plan, EPA and CDPHE will perform biannual, off-site groundwater monitoring and Home Depot will perform biannual inspections of store facilities and site utilities.

The restrictive covenant that Home Depot recorded for OU 4/5 waste also covers the OU 9B heavy metal contamination. The restrictive covenant prohibits disturbance of the Area of Consolidation and prohibits use of groundwater.

The Home Depot PPA requires that any breaches of the soil cap system over the Post-Consolidation Area of Contamination will be reported to EPA and CDPHE with the requirement that new construction, remodeling and site repair generally will not be conducted in this area.

OU10

Remediation activities at OU10 began in September 1988 and ended September 22, 1989. A total of 15,021 tons of materials with depths raging from 0 to 80 inches was removed and was disposed off site at Envirocare of Utah.

No extensive changes were made to the major structures on the property, although several small structures were removed and not replaced at the request of the owner. Some un-assessed contamination required removal, but the volumes were not large.

Cleanup Standards

For radiological contamination, EPA calculates risk based on area averaging of several measurements over 100 square meters. When these calculations are below the EPA surface standard of less than 5 pCi/g above background and below the subsurface standard of 15 pCi/g above background, the area is considered safe for unlimited use and unrestricted exposure as long as soil at depth with 15 pCi/g above background remains at depth.

Operation and Maintenance

The City and County of Denver have agreed to implement a management plan for radium-contaminated soil remaining in place in Denver's rights-of-way and to continue to enforce Denver's zoning ordinance and its radium fee ordinance as ICs at private properties where radium-contaminated soil remains in place under supplemental standards. The management plan and ordinances provide ICs wherever supplemental standards apply across the Site. Specifically, these institutional controls apply to waste left in place at Operable Units 2, 3, and 4.

In addition to the Denver management plan and ordinances, EPA has agreements in place with owners of other operable units whereby those owners have agreed to manage waste left in place and provide institutional controls. These additional controls include limitations on the use of groundwater at OUs 8 and 9B. Those operable units are described below.

OU2

Pursuant to the terms of a settlement agreement, the current owner of the Umatilla property, formerly DuWald property, Atlas Umatilla, LLC, has prepared an O&M Plan and signed and executed an environmental covenant on June 25, 2006. The environmental covenant restricts disturbance of the concrete cap and subsurface soil. In addition, indoor air quality will be monitored.

OU4/5 & 9B

Pursuant to the terms of the Home Depot PPA, Home Depot prepared an O&M Plan and placed a restrictive covenant on OU4. The restrictive covenant restricts future use of the areas where wastes were left in place, including the area of consolidation of metal wastes and the radioactive waste left in place under supplemental standards. Home Depot has an amended O&M Plan as of August 18, 2003.

Five-Year Reviews

Remedial actions which result in any hazardous substances, pollutants, or contaminants remaining on site will be subject to statutory five-year reviews. The purpose of a five-year review is to evaluate the implementation and performance of a remedy to ensure that the remedy is and remains protective of public health and the environment.

The first five-year review was completed in September of 1993, triggered by remedial actions at OU 4/5. The first five-year review addressed OU 4/5 only. The following year, a site-wide review was completed on September 12, 1994. No modifications or improvements to the remedy were suggested in these first two reviews.

A discretionary five-year review, conducted in 1999 for OU8 only, identified concerns with the long-term effectiveness of the on-site remedy. The remedy was modified in 2000, and remediation was completed in 2006.

Another site-wide five-year review was completed in 2003. This review identified (1) deficiencies in ICs at three OUs and (2) new requirements for risk assessments where waste was left in place under supplemental standards. ICs have since been implemented and the risk assessments were revised. No modifications to the selected remedies were required.

The 2008 Five-Year Review identified a few issues, however none of them affected current or future protectiveness. The review found that because the remedial actions at all OUs are protective, the Site is protective of human health and the environment.

Since waste is left in place, five-year reviews will continue indefinitely to ensure continued protectiveness of the remedies. The next statutory five-year review is scheduled September 2013.

Community Involvement

EPA's Community Relations Plan involved the community in the decision process for selecting all remedies for the Denver Radium Site and promoted communications among interested parties throughout the duration of the project.

Community relation's activities included:

- Briefing State and local officials, public interest groups, neighborhood associations, interested citizens, and media representatives on the status of the various phases of the project,
- Conducting public meetings to keep citizens informed of the progress of the Denver Radium Site project and to solicit comments,
- Establishing information centers at the Denver Public Library and the EPA's Denver Superfund Records Center to make available for public review the study reports, site air-monitoring data, supplemental assessments, and other Denver Radium Site information,
- Maintaining a mailing list of interested parties and distributing information updates to those parties during the Remedial Action phases,
- Organizing a committee of representatives from citizen groups, State and local governments, EPA, DOE, USBR, and the transportation contractor

to provide input to the transportation and disposal activities associated with the Denver Radium Site,

• Informing communities along the transportation route, through meetings and mailings, of health and safety issues associated with waste transportation,

• Distributing news releases to the major news media in affected areas.

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

Determination That the Criteria for Partial Deletion Have Been Met

In accordance with 40 CFR 300.425(e), Region 8 of the EPA finds that the Denver Radium Superfund Site meets the substantive criteria for partial NPL deletions, with the exception of groundwater at OU8. Groundwater contamination associated with OU8 will remain on the NPL. EPA has consulted with and has the concurrence of the State of Colorado. All responsible parties or other persons have implemented all appropriate response actions required. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate.

V. Partial Deletion Action

The EPA, with concurrence of the State of Colorado, through the Colorado Department of Public Health and Environment, (in a letter dated January 2, 2008) has determined that all appropriate response actions under CERCLA, other than operation, maintenance, monitoring and five-year reviews, have been completed. Therefore, EPA intends to delete from the NPL each of the 11 OUs at the Denver Radium Site. Groundwater contamination associated with OU8 will remain on the NPL.

These remedies ensure protection of human health and the environment by minimizing exposure to any radium-contaminated or heavy metals contaminated soil that remain within the Denver Radium Superfund Site. Therefore, EPA is deleting the above properties from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective November 8, 2010 unless EPA receives adverse comments by October 12, 2010. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final Notice of Partial Deletion before the effective date of the partial deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent for Partial Deletion and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

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

Dated: August 31, 2010.

James B. Martin,

Regional Administrator, Region 8.

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

PART 300—[AMENDED]

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

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

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by revising the entry under Colorado for "Denver Radium Site", "Denver" to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
*	*	*	*
Colorado	Denver Radium Site	Denver	P
*	*	*	*

[a] A = Based on issuance of health advisor by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be > 28.50).

* P = Sites with partial deletion(s).

* * * * *

[FR Doc. 2010–22489 Filed 9–8–10; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Chapter XXV

RIN 3045–AA51

AmeriCorps National Service Program

AGENCY: Corporation for National and Community Service.

ACTION: Final rule; correction.

SUMMARY: The Corporation for National and Community Service (the Corporation) is correcting a final rule to implement changes to the operation of the National Service Trust and the Senior Corps programs under the Serve America Act, that appeared in the **Federal Register** of August 20, 2010 (75 FR 51395). That document incorrectly failed to redesignate part 2533 as part 2534. This document corrects the final rule by revising the instruction.

DATES: Effective September 20, 2010.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, Docket Manager, Corporation for National and Community Service, (202) 606–6930, TDD (202) 606–3472. Persons with visual impairments may request this document in an alternate format.

SUPPLEMENTARY INFORMATION: In FR Doc. 2010–20525, beginning on page 51395 in the **Federal Register** of Friday, August 20, 2010, make the following correction: On page 51413, in the third column, revise instruction number 36 to read as follows: 36. Under the authority of 42 U.S.C. 12651d, redesignate parts 2530, 2531, 2532, and 2533 as parts

2531, 2532, 2533, and 2534, respectively.

Dated: August 24, 2010.

Wilsie Minor,

Acting General Counsel.

[FR Doc. 2010–21488 Filed 9–8–10; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 300

[Docket Number 100831418–0418–01]

RIN 0660–AA22

Revision to the Manual of Regulations and Procedures for Federal Radio Frequency Management

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: The National Telecommunications and Information Administration (NTIA) hereby makes certain changes to its regulations, which relate to the public availability of the Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual). Specifically, NTIA updates the version of the Manual of Regulations and Procedures for Federal Radio Frequency Management with which federal agencies must comply when requesting use of the radio frequency spectrum.

DATES: *Effective Date:* This regulation is effective on September 9, 2010. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 9, 2010.

ADDRESSES: A reference copy of the NTIA Manual, including all revisions in effect, is available in the Office of Spectrum Management, 1401 Constitution Avenue, NW., Room 1087, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: William Mitchell, Office of Spectrum Management at (202) 482–8124 or *wmitchell@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

NTIA authorizes the U.S. Government's use of the radio frequency spectrum. 47 U.S.C. 902(b)(2)(A). As part of this authority, NTIA developed the NTIA Manual to provide further guidance to applicable federal agencies. The NTIA Manual is the compilation of policies and procedures that govern the use of the radio frequency spectrum by the U.S. Government. Federal government agencies are required to follow these policies and procedures in their use of the spectrum.

Part 300 of title 47 of the Code of Federal Regulations provides information about the process by which NTIA regularly revises the NTIA Manual and makes public this document and all revisions. Federal agencies are required to comply with the specifications in the NTIA Manual when requesting frequency assignments for use of the radio frequency spectrum. *See* 47 U.S.C. 901 *et seq.,* Executive Order 12046 (March 27, 1978), 43 FR 13349, 3 CFR 1978 Comp. at 158.

This rule updates section 300.1(b) of title 47 of the Code of Federal Regulations to specify the version of the NTIA Manual with which federal agencies must comply when requesting frequency assignments for use of the radio frequency spectrum. In particular, this rule amends section 300.1(b) by replacing "September 2009" with "May 2010." *See* Revision to the Manual of Regulations and Procedures for Federal Radio Frequency Management, 75 FR 6818 (Feb. 11, 2010) (revising the Manual through September 2009). Upon the effective date of this rule, federal agencies must comply with the requirements set forth in the January 2008 edition of the NTIA Manual, as revised through May 2010.

The NTIA Manual is scheduled for revision in January, May, and September of each year and is submitted to the Director of the Federal Register for Incorporation by Reference approval. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and part 51 of title 1 of the Code of Federal Regulations. The NTIA Manual is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, by referring to Catalog Number 903–008–00000–8. A reference copy of the NTIA Manual, including all revisions in effect, is available in the Office of Spectrum Management, 1401 Constitution Avenue, NW., Room 1087, Washington, DC 20230, or call William Mitchell on (202) 482–8124, and available online at *http://www.ntia.doc.gov/osmhome/redbook/redbook.html.* The NTIA Manual is also on file at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Paperwork Reduction Act

This action does not contain collection of information requirements subject to the Paperwork Reduction Act (PRA). Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the PRA, unless that collection displays a currently valid OMB Control Number.

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

Administrative Procedure Act/ Regulatory Flexibility Act

NTIA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment as it is unnecessary. This action amends the regulations to include the date of the most current version of the NTIA Manual. These changes do not impact the rights or obligations of the public. The NTIA Manual applies only to federal agencies. Because these changes impact only federal agencies, NTIA finds it unnecessary to provide for the notice and comment requirements of 5 U.S.C. 553. NTIA also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for the reasons provided above. Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Executive Order 13132

This rule does not contain policies having federalism implications as that term is defined in EO 13132.

Regulatory Text

List of Subjects in 47 CFR Part 300

Incorporation by reference; Radio.

■ For the reasons set forth in the preamble, NTIA amends title 47, Part 300 as follows:

PART 300—MANUAL OF REGULATIONS AND PROCEDURES FOR FEDERAL RADIO FREQUENCY MANAGEMENT

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

Authority: 47 U.S.C. 901 *et seq.,* Executive Order 12046 (March 27, 1978), 43 FR 13349, 3 CFR 1978 Comp., p. 158.

■ 2. Section 300.1 (b) is revised to read as follows:

§ 300.1 Incorporation by reference of the Manual of Regulations and Procedures for Federal Radio Frequency Management.

* * * * *

(b) The federal agencies shall comply with the requirements set forth in the January 2008 edition of the NTIA Manual, as revised through May 2010, which is incorporated by reference with approval of the Director, Office of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

Dated: September 2, 2010.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

[FR Doc. 2010–22411 Filed 9–8–10; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No.100218107–0199–01]

RIN 0648–XY08

Fisheries Off West Coast States; Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions #9, #10, and #11

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of fishing seasons, gear restrictions, and landing and possession limits; request for comments.

SUMMARY: NOAA Fisheries announces three inseason actions in the ocean salmon fisheries. Inseason actions #9 and #11 modified the commercial fishery in the area from U.S./Canada Border to Cape Falcon, Oregon. Inseason action #10 modified the recreational fishery in the areas from U.S. Canada Border to Cape Alava (Neah Bay Subarea), Cape Alava to Queets River (La Push Subarea), and Queets River to Leadbetter Point (Westport Subarea).

DATES: Inseason action #9 was effective on July 16, 2010. Inseason action #10 was effective on July 23, 2010. Inseason action #11 was effective on July 30, 2010. Inseason actions #9, #10, and #11 remain in effect until the closing date of the 2010 salmon season announced in the 2010 annual management measures or through additional inseason action. Comments will be accepted through September 24, 2010.

ADDRESSES: You may submit comments, identified by 0648–XY08, 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: Peggy Busby
- Mail: 7600 Sand Point Way NE, Building 1, Seattle, WA, 98115

Instructions: No comments will be posted for public viewing until after the comment period has closed. 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: Peggy Busby, by phone at 206–526–4323.

SUPPLEMENTARY INFORMATION: In the 2010 annual management measures for ocean salmon fisheries (75 FR 24482, May 5, 2010), NMFS announced the commercial and recreational fisheries in the area from the U.S./Canada Border to the U.S./Mexico Border, beginning May 1, 2010.

The Regional Administrator (RA) consulted with representatives of the Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife on July 15, 2010. The information considered during this consultation related to Chinook and coho salmon catch to date and Chinook and coho salmon catch rates compared to quotas and other management measures established preseason.

Inseason action #9 increased the landing and possession limits for the commercial salmon fishery from the U.S./Canada Border to Cape Falcon, Oregon. The open period landing and possession limits of 40 Chinook salmon and 30 coho per vessel, imposed by inseason action #6 (75 FR 51183, August 19, 2010), were increased to 60 Chinook salmon and 50 coho per vessel north of Leadbetter Point or 60 Chinook salmon and 50 coho per vessel south of Leadbetter Point. This action was taken because salmon catch rates had been lower than expected due to poor weather conditions that had limited fishery participation. There was concern that if landing and possession limits were not increased there would be lost opportunity to utilize available salmon quota. On July 15, 2010, the states recommended this action and the RA concurred; inseason action #9 took effect on July 16, 2010. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

The RA consulted with representatives of the Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife on July 20, 2010. The information considered during this consultation related to catch to date for Chinook and coho salmon and Chinook and coho salmon catch rates compared to quotas and other management measures established preseason for the recreational fishery.

Inseason action #10 modified fishery openings in the recreation fisheries in Neah Bay, La Push, and Westport subareas. Openings described in the 2010 annual management measures were Tuesday through Saturday for Neah Bay and La Push subareas, and Sunday through Thursday for the Westport subarea. Inseason action #10 changed these 5–day openings to 7–day openings. This action was taken to provide more opportunity for recreational fishing as fishing effort had been low, due largely to poor weather conditions. Low fishing effort resulted in unutilized Chinook and coho salmon quota in these subareas. On July 20, 2010, the states recommended this action and the RA concurred; inseason action #10 took effect on July 23, 2010. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

The RA consulted with representatives of the Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife on July 29, 2010. The information considered during this consultation related to catch to date for Chinook and coho salmon and Chinook and coho salmon catch rates compared to quotas and other management measures established preseason for the fishery.

Inseason action #11 increased the landing and possession limit for Chinook salmon in the commercial salmon fishery from the U.S./Canada Border to Cape Falcon, Oregon;

superseding the limit established by inseason action #9. The open period landing and possession limit of 60 Chinook salmon per vessel, imposed by inseason action #9, was increased to 75 Chinook salmon per vessel. No change was made to the open period limit of 50 coho per vessel. Inseason action #11 also modified the commercial fishery openings north of Cape Falcon that were scheduled Saturday through Tuesday, beginning July 31, 2010; openings will instead be Friday through Tuesday, beginning July 30, 2010. This action was taken because salmon catch rates had been lower than expected due to poor weather conditions that had limited fishery participation. There was concern that if the landing and possession limit for Chinook salmon was not increased there would be lost opportunity to utilize available salmon quota. On July 29, 2010, the states recommended this action and the RA concurred; inseason action #11 took effect on July 30, 2010. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

All other restrictions and regulations remain in effect as announced for the 2010 Ocean Salmon Fisheries and previous inseason actions.

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the date the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (75 FR 24482, May 5, 2010), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best available scientific information, thus allowing fishers access to the available fish at the time the fish were available while ensuring that quotas are not exceeded. The AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3), as a delay in effectiveness of these actions would allow fishing at levels inconsistent with the goals of the Salmon Fishery Management Plan and the current management measures.

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 3, 2010.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–22520 Filed 9–8–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XY84

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amounts of the 2010 pollock incidental catch allowance (ICA) to the directed fisheries in the Bering Sea subarea. This action is necessary to provide opportunity for harvest of the 2010 total allowable catch (TAC) of pollock, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP).

DATES: Effective September 3, 2010, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands Management Area (BSAI) according to the FMP prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In the Bering Sea subarea, the portion of the 2010 pollock TAC allocated to the ICA is 29,268 mt as established by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010).

As of September 2, 2010, the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that the ICA has been set too high: 4,500 mt of the 2010 pollock ICA in the Bering Sea subarea will not be harvested. Therefore, in accordance with § 679.20(a)(5)(i)(A)(*1*), NMFS reallocates 4,500 mt of the 2010 pollock ICA to the directed fisheries in the Bering Sea subarea.

As a result, in accordance with § 679.20(a)(5)(i)(A)(*3*), (*4*), and (*5*), the 2010 harvest specifications for pollock in the Bering Sea subarea included in the final harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010) are revised as follows: 24,768 mt to the pollock ICA, 212,980 mt to B season AFA catcher vessels harvesting pollock for processing by AFA inshore processors, 170,384 mt to B season AFA catcher/processors and AFA catcher vessels delivering pollock to catcher/processors, and 42,596 mt to B season AFA catcher vessels harvesting pollock for processing by AFA motherships. This will enhance the socioeconomic well-being of harvesters dependent upon Pacific cod in this area. The Regional Administrator considered the following factors in reaching this decision: (1) The current catch of Pacific cod by the applicable BSAI sectors and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in the sectors participating in this fishery.

Furthermore, pursuant to § 679.20(a)(5)(i), Table 3 of the final 2010 and 2011 final harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010) is

revised for 2010 pollock allocations consistent with this reallocation. This reallocation results in adjustments to the 2010 pollock ICA and directed fisheries in the Bering Sea subarea established at § 679.20(a)(5)(i)(A).

TABLE 3—2010 AND 2011 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2010 Allocations	2010 A season [1]		2010 B season [1]	2011 Allocations	2011 A season [1]		2011 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea	813,000	n/a	n/a	n/a	1,110,000	n/a	n/a	n/a
CDQ DFA	81,300	32,520	22,764	48,780	111,000	44,400	31,080	66,600
ICA [1]	24,768	n/a	n/a	n/a	39,960	n/a	n/a	n/a
AFA Inshore	353,466	140,486	98,340	212,980	479,520	191,808	134,266	287,712
AFA Catcher/Processors [3]	282,773	112,389	78,672	170,384	383,616	153,446	107,412	230,170
Catch by C/Ps	258,737	102,836	n/a	155,901	351,009	140,403	n/a	210,605
Catch by CVs [3]	24,036	9,553	n/a	14,483	32,607	13,043	n/a	19,564
Unlisted C/P Limit [4]	1,414	562	n/a	852	1,918	767	n/a	1,151
AFA Motherships	70,693	28,097	19,668	42,596	95,904	38,362	26,853	57,542
Excessive Harvesting Limit [5]	123,714	n/a	n/a	n/a	167,832	n/a	n/a	n/a
Excessive Processing Limit [6]	212,080	n/a	n/a	n/a	287,712	n/a	n/a	n/a
Total Bering Sea DFA	706,932	280,973	196,681	425,959	959,040	383,616	268,531	575,424
Aleutian Islands subarea [1]	19,000	n/a	n/a	n/a	19,000	n/a	n/a	n/a
CDQ DFA	1,900	760	n/a	1,140	1,900	760	n/a	1,140
ICA	1,600	800	n/a	800	1,600	800	n/a	800
Aleut Corporation	15,500	15,500	n/a	0	15,500	15,500	n/a	0
Bogoslof District ICA [7]	50	n/a	n/a	n/a	50	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock, after subtraction for the CDQ DFA—10 percent and the ICA—3.35 percent, is allocated as a DFA as follows: inshore component—50 percent, catcher/processor component—40 percent, and mothership component—10 percent. In the Bering Sea subarea, the A season, January 20–June 10, is allocated 40 percent of the DFA and the B season, June 10–November 1, is allocated 60 percent of the DFA. Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance—10 percent and second the ICA—1,800 mt, is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

[2] In the Bering Sea subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*) NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(*7*) NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the pollock DFAs.

[7] The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only, and are not apportioned by season or sector.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of pollock in the Bering Sea subarea. Since the pollock fishery is currently open, it is important to immediately inform the industry as to the final Bering Sea subarea pollock allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery; allow the industry to plan for the fishing season and avoid potential disruption to the fishing fleet as well as processors; and provide opportunity to harvest increased B season pollock allocations while value is optimum.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 3, 2010.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–22498 Filed 9–3–10; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 75, No. 174
Thursday, September 9, 2010

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.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AC46

Commodity Pool Operators: Relief From Compliance With Certain Disclosure, Reporting and Recordkeeping Requirements for Registered CPOs of Commodity Pools Listed for Trading on a National Securities Exchange; CPO Registration Exemption for Certain Independent Directors or Trustees of These Commodity Pools

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing changes to its regulations as they affect certain commodity pool operators (CPOs) of commodity pools whose units of participation are listed and traded on a national securities exchange (Proposal). Specifically, the Proposal would codify the relief from certain disclosure, reporting and recordkeeping requirements that Commission staff previously has issued on a case-by-case basis to these CPOs. In addition, the Proposal would provide relief from the CPO registration requirement for certain independent directors or trustees of actively-managed commodity pools.

DATES: Written comments must be received on or before October 25, 2010.

ADDRESSES: Interested persons may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* [e-mail address TBD] Include "Proposed Regulatory Relief for CPOs of Exchange-Listed Commodity Pools" in the subject line of the message.
- *Fax:* (202) 418–5521.
- *Mail:* Send to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581.
- *Courier:* Same as Mail above.

All comments received will be posted, without change, to *http://www.cftc.gov.* All comments must be in English or, if in another language, accompanied by an English translation.

FOR FURTHER INFORMATION CONTACT: Christopher W. Cummings, Special Counsel, Division of Clearing and Intermediary Oversight, or Barbara S. Gold, Associate Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, telephone number: (202) 418–5450; facsimile number: (202) 418–5528; and electronic mail: *ccummings@cftc.gov,* or *bgold@cftc.gov,* respectively.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulation of CPOs

Section 1a(5) of the Commodity Exchange Act (Act) defines the term "commodity pool operator" to mean:

> [A]ny person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, * * *[1]

Section 4m(1) of the Act provides, in relevant part, that it is unlawful for any CPO, "unless registered under [the] Act, to make use of the mails or any means or instrumentality of interstate commerce" in connection with its business as a CPO.[2]

Part 4 of the Commission's regulations governs the operations and activities of CPOs.[3] Generally, CPOs who are, or who are required to be, registered with the Commission must deliver to prospective pool participants a Disclosure Document containing specified information[4]—*e.g.,* the business background of the CPO and its principals, past performance of the pool being offered, fees and other expenses, and conflicts of interest—and they must distribute to participants in their pools periodic unaudited Account Statements and certified Annual Reports of their pools' operations.[5] These CPOs also must make and keep specified books and records at their main business office.[6] Additionally, regardless of registration status, all persons who come within the CPO definition are subject to certain operational[7] and advertising requirements[8] under Part 4, to all other provisions of the Act and the Commission's regulations prohibiting fraud that apply to CPOs,[9] and to all other relevant provisions of the Act and the Commission's regulations that apply to all commodity interest market participants, such as the general antifraud provisions, prohibitions against manipulation, and the trade reporting requirements.[10]

B. Relief From CPO Regulation

1. In General

In implementing its statutory mandate to regulate the activities of CPOs, the Commission has endeavored to refine its regulations as appropriate to respond to changing market conditions in a manner consistent with customer protection. In addition to the issuance of relief by Commission staff on a case-by-case basis to facilitate application of regulatory requirements to new market conditions, the Commission has provided certain exemptions for registered CPOs from various of the requirements of Part 4 of its regulations, and where appropriate, it has provided exemptions from the CPO registration requirement itself. In 1985, the Commission adopted Regulation 4.5 to exclude from the CPO

[1] 7 U.S.C. 1a(5) (2006).

The Act and the Commission's regulations may be accessed through the Commission's Web site, at: *http://www.cftc.gov*.

[2] 7 U.S.C. 6m(1) (2006).

[3] The Commission's regulations are found at 17 CFR Ch. I (2010), and, as noted previously, can be accessed through the Commission's Web site. Part 4 of the regulations also governs the operations and activities of commodity trading advisors (CTAs), who are defined in Section 1a(6) of the Act and, like CPOs, are subject to registration under Section 4m(1) of the Act. However, the operations and activities of CTAs are not the subject of the Proposal.

[4] Regulation 4.21.

[5] Regulation 4.22.

[6] Regulation 4.23.

[7] Regulation 4.20.

[8] Regulation 4.41.

[9] *See, e.g.,* Section 4*o* of the Act.

[10] *See, e.g.,* Section 4b of the Act and Parts 15 and 18 of the Regulations.

definition (and thus from the requirement to register as a CPO) certain otherwise highly-regulated persons in connection with their operation of specified "qualifying entities"—*i.e.,* registered investment companies, insurance company separate accounts, bank collective trust funds and qualifying pension plans.[11] In 1987, the Commission adopted Regulation 4.12(b) to provide relief from specific compliance with certain disclosure, reporting and recordkeeping requirements of Part 4 for certain CPOs who operate pools that trade generally and routinely in securities instruments, and who intend to commit no more than 10 percent of the value of their pools' assets as initial margin or as option premiums for commodity interest trading.[12] In addition, in 1992, the Commission adopted Regulation 4.7 to make available a simplified regulatory framework for CPOs privately offering commodity pools to certain highly accredited investors, termed "qualified eligible participants" or "QEPs."[13] In 2000, the Commission amended Regulation 4.7 to expand the rule's availability.[14] Most recently, in 2003, the Commission adopted Regulations 4.13(a)(3) and (a)(4) to exempt, respectively, from the CPO registration requirement operators of pools that are offered to certain types of sophisticated investors and that restrict their commodity interest trading to specified limits and operators of pools that admit exclusively investors meeting a higher sophistication standard, but that need not restrict their trading.

As is explained in greater detail below, the Proposal is intended to respond to financial market developments by providing relief to operators of commodity pools where units of participation in the pool are listed for trading on a national securities exchange.

2. Commodity Exchange Traded Funds

Historically, exchange-traded funds, or ETFs, have been investment companies registered as such under the Investment Company Act of 1940 either as unit investment trusts or as open-end investment companies. Shares of ETFs are traded by both institutional and retail investors on national securities exchanges, and in the over-the-counter markets. ETFs are designed to replicate the holdings, or correspond to the performance and yield of, a referenced securities index or a highly-correlated subset of the securities underlying the index.[15] More recently, ETFs have been offered that seek to use active management of the fund's trading.

In 2005, registered CPOs began offering commodity pools whose units of participation ("shares") are publicly-offered and listed for trading on a national securities exchange. These pools have come to be known as "Commodity ETFs" because they are designed to emulate ETFs.[16] Like ETFs, a Commodity ETF may passively seek to track or replicate the performance of a specific commodity index, or it may actively trade commodity interests without regard to an index or benchmark.

CPOs of Commodity ETFs have requested and received from Commission staff exemptive relief from certain of the disclosure, reporting and recordkeeping requirements of Subpart B of Part 4 of the Commission's regulations (Prior Relief Letters).[17] In each case, the CPO sought exemption from certain of the Disclosure Document delivery and acknowledgment requirements of Regulation 4.21,[18] the periodic Account Statement distribution requirement of Regulation 4.22,[19] and the requirement under Regulation 4.23 to keep the pool's books and records at the CPO's main business office.[20] In support of their requests, the CPOs offered substituted compliance with other requirements and various undertakings.[21] The Proposal would codify the exemptions that Commission staff has granted.

These CPOs sought relief from the specific Disclosure Document delivery and acknowledgment requirements of Regulation 4.21 because the prospectus delivery requirements under federal securities laws applicable to registered public offerings of exchange-traded shares (such as units of participation in Commodity ETFs) differ from Commission regulations with respect to timing and other aspects. Thus, the CPOs claimed that requiring simultaneous compliance with both sets of requirements was unnecessarily cumbersome, and would needlessly interfere with the established procedures for conducting a registered public offering of shares to be listed on a national securities exchange. In support of their requests, the CPOs represented that the prospectus required under federal securities laws would contain all of the information required to be included in a Disclosure Document under Regulations 4.24 and

[11] *See* 50 FR 15868 (Apr. 23, 1985).

[12] *See* 52 FR 41975 (Nov. 2, 1987).

[13] *See* 57 FR 34853 (Aug. 7, 1992).

[14] *See* 65 FR 47848 (Aug. 4, 2000).

[15] *See* Letter from James A. Brigagliano, Esq., Assistant Director, SEC Division of Market Regulation, to Stuart M. Strauss, Esq., dated October 24, 2006 (re: Class Relief for Exchange Traded Index Funds), available at: *http://www.sec.gov/divisions/marketreg/mr-noaction/etifclassrelief102406-msr.pdf.*

[16] CPOs have operated Commodity ETFs on the basis that the units of participation or shares constitute securities for purposes of the U.S. federal securities laws and that they can be offered, sold and transferred as such. However, in Commission Staff Letters cited below at n. 17, staff stated that, while not necessarily agreeing with the SEC's or the CPOs' analyses or conclusions on this issue, it would not recommend that the Commission commence any enforcement action against a Commodity ETF or market participants in connection with the offer, sale and transfer of units of participation in the Commodity ETFs.

[17] *See* CFTC Staff Letters 10–24 [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶31,586 (Jun. 28, 2010); 10–23 [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶31,584 (Jun. 7, 2010); 10–22 [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶31,583 (Jun. 3, 2010); 08–16 [2007–2009 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶30,925 (Sep. 3, 2008); 08–15 [2007–2009 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶30,924 (Aug. 20, 2008); 08–02 [2007–2009 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶30,796 (Jan. 29, 2008); 08–01 [2007–2009 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶30,795 (Jan. 11, 2008); 06–26 [2005–2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶30,396 (Sep. 26, 2006); 06–27 [2005–2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶30,397 (Sep. 26, 2006); 06–16 [2005–2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶30,311 (Jul. 6, 2006); 06–15 [2005–2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶30,310 (Jul. 12, 2006); and 05–19 [2005–2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶30,164 (Nov. 10, 2005). The following involve actively-traded Commodity ETFs: CFTC Staff Letters 10–06 [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶31,557 (Mar. 29, 2010) and 09–39 [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶31,473 (Jul. 30, 2009). All of the foregoing are accessible at the Commission's Internet Web site at *http://www.cftc.gov.* Staff issued these exemptions pursuant to the authority delegated to it by the Commission under Regulation 140.93.

[18] Regulation 4.21 requires each CPO registered or required to be registered to deliver to a prospective participant in a pool that it operates or intends to operate, a Disclosure Document prepared in accordance with Regulations 4.24 and 4.25. It further provides that the CPO may not accept or receive funds, securities or other property from a prospective participant unless the CPO first receives from the prospective participant a signed and dated acknowledgment stating that the prospective participant received a Disclosure Document for the pool.

[19] Regulation 4.22 provides that each CPO registered or required to be registered must periodically distribute to each participant in each pool that it operates an Account Statement presented in the form of a Statement of Income (Loss) and a Statement of Changes in Net Asset Value for the prescribed period. The Account Statement must be distributed monthly in the case of pools with net assets of more than $500,000, and otherwise at least quarterly. CPOs of Commodity ETFs will generally be subject to the requirement to distribute Account Statements monthly. The financial statements must be presented in accordance with generally accepted accounting principles, consistently applied.

[20] Regulation 4.23 provides, in relevant part, that each CPO who is registered or required to be registered must make and keep the books and records specified in the regulation "at its main business office."

[21] *See* the Prior Exemption Letters for the particular details of the Commodity ETF structure and offering mechanics, as well as for the exemptive relief and the facts and conditions upon which it was based.

4.25,[22] and that, in addition to being made available in accordance with SEC prospectus delivery requirements, the Disclosure Document would be made readily available at the CPO's Internet Web site.[23] Further, the CPOs represented that in acquiring Commodity ETF shares, prospective and actual investors would utilize the services of registered broker-dealers, who would be directed by the CPO either to inform investors where they could obtain the current Disclosure Document or to deliver a copy of the Disclosure Document.

The CPOs sought relief from the Account Statement delivery requirement for the reason that an issuer of exchange-traded shares held in book-entry form through the Depository Trust Company (such as the CPO of a Commodity ETF) typically does not readily know the identities of the ultimate beneficial owners of the shares. The CPOs argued that it would be unduly burdensome and costly to require them to ascertain, on a monthly basis, the identities of purchasers of shares in the secondary market in order to comply with the requirement under Rules 4.22(a) and (b) to deliver monthly Account Statements to those participants. Commission staff noted that, while traditional publicly-offered commodity pools typically provide for redemption of shares no more frequently than monthly, because of the secondary market for a Commodity ETF's shares on a national securities exchange, ownership of those shares was expected to change, frequently on a daily basis, and even throughout the day. The CPOs subject to the Prior Exemption Letters undertook that the same information that would otherwise be provided in the monthly Account Statements, including net asset value and the certification required by Regulation 4.22(h),[24] would be made readily available via the CPO's Internet Web site, of which availability the Disclosure Document would advise participants.

The CPOs also sought exemption from the requirement to keep the books and records required under Regulation 4.23 at the CPO's main business address, seeking instead to keep books and records with one or more banks or professional service providers.[25] As a condition to granting the requested exemption, Commission staff required the CPO to provide signed acknowledgments by each alternate recordkeeper that the books and records may be inspected and copied by any representative of the Commission, the National Futures Association (NFA) or the United States Department of Justice and may be inspected and copied during normal business hours by pool participants.

C. CPO Registration Relief for Independent Directors or Trustees of Commodity ETFs

As directed by the Sarbanes-Oxley Act of 2002,[26] the SEC has adopted rules requiring national securities exchanges to prohibit the listing of the securities of any issuer (*e.g.,* units of participation in a Commodity ETF) that does not comply with specified requirements for audit committees.[27] Pursuant to Rule 10A–3 [28] under the Securities Exchange Act of 1934 ('34 Act), in order for a national securities exchange to permit an issuer to list its securities, the members of the issuer's audit committee must be members of its board of directors but otherwise independent.[29] The audit committee is to be responsible for appointing, compensating and overseeing the public accountant employed to prepare the issuer's audit report. National securities exchanges have amended their listing requirements to conform to, and carry out, the SEC rule.

Under SEC Rule 10A–3(c)(7), a trust or other unincorporated organization that does not have a board of directors or persons acting in a similar capacity is not subject to the audit committee requirements if the organization's activities are limited to passively owning or holding securities or other assets for the benefit of the organization's security holders. Commodity ETFs that track commodity indices have relied upon this provision. Now that Commodity ETFs are being formed to trade commodity interests in an active manner, such Commodity ETFs must have independent directors (or trustees). Because a director (or trustee) of a commodity pool is presumed to be a CPO by virtue of the power such person can exercise, these independent directors (trustees) must either register as CPOs or seek registration relief.[30]

II. Relief From Compliance With Subpart B of Part 4 for CPOs of Commodity ETFs: New Regulation 4.12(c)

Regulation 4.12 currently contains paragraph (a), which states the Commission's power to exempt persons from the provisions of Part 4, consistent with the public interest and subject to appropriate terms and conditions, and paragraph (b), which makes an exemption from certain disclosure,

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[22] The Commission has said that a prospectus can be used to satisfy the Disclosure Document requirement so long as the prospectus complies with the Commission's content requirements. *See* 44 FR 1918, 1922 (Jan. 8, 1979).

[23] The CPOs did not seek relief from Regulation 4.21 with respect to sales of pool shares on a national securities exchange (i.e., sales on the secondary market). A CPO's obligation to deliver a Disclosure Document (and the requirement to obtain a signed acknowledgment of receipt) extends to the direct purchaser of units of participation, and not to persons who subsequently purchase from that purchaser. In this regard, the Commission has stated that, with respect to the transfer of a participation unit in a commodity pool, the CPO of the pool "is not required to provide a Disclosure Document (Rule 4.21) to a person who purchases a unit of participation or interest in the pool from a pool participant if the pool operator did not solicit the purchase." 44 FR 25658, 25659 (May 2, 1979).

[24] Pursuant to Regulation 4.22(h), a representative duly authorized to bind the CPO must sign an oath or affirmation that, to the best of the knowledge and belief of the individual making the oath or affirmation, the information contained in the Account Statement is accurate and complete.

[25] For example, in one case, the alternate recordkeepers were a CPO-affiliated national banking association, a state-regulated bank and a registered broker-dealer. In several other cases, the alternate recordkeepers were a state- and Federal Reserve Board-regulated bank and a registered broker-dealer performing distribution-related services.

The CPOs also asked Commission staff to confirm that none of the entities selected as alternate recordkeepers would be deemed to be CPOs solely by reason of keeping required books and records of a pool. In response, staff noted that the Commission has stated that such service providers as a registered investment company's depositor, sponsor, underwriter or investment adviser were "outside the CPO definition." *See* 50 FR 15868 at 15871 (Apr. 23, 1985). It further noted that, as the Commission previously has acknowledged, in determining who is acting in the manner contemplated by the statutory CPO definition, Commission staff typically looks at such factors as "who will be promoting the pool by soliciting, accepting or receiving from others, property for the purpose of commodity interest trading—and who will have the authority to hire (and fire) the pool's CTA and to select (and change) the pool's [futures commission merchant]." *Id.,* citing 49 FR 4778, 4780 (Feb. 8, 1984).

[26] Public Law 107–204, 116 Stat. 745, enacted July 30, 2002.

[27] The requirements, set forth in 15 U.S.C. 78j–1(m)(2) through (6) (2006), concern: Responsibility for appointing, compensating and overseeing the issuer's public accounting firm; independence of audit committee members; procedures for handling complaints regarding accounting and auditing matters; and the audit committee's authority to engage outside advisers.

[28] 17 CFR 240.10A–3 (2010).

[29] Audit committee members may not accept any consulting, advisory or other compensatory fee from the issuer, other than as a member of the board or of a committee thereof, and they may not be affiliated persons of the issuer or any of its subsidiaries. *See* 17 CFR § 240.10A–3(b)(1)(ii) (2010).

[30] *See* CFTC Staff Letter 10–06 [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 31,557 (Mar. 29, 2010), for additional explanation of this point.

reporting and recordkeeping requirements available to registered CPOs whose pools, among other requirements, trade commodity interests in a manner solely incidental to their securities trading activities and do not enter into commodity interest transactions for which the aggregate initial margin and premiums exceed 10 percent of the fair market value of the pool's assets (after taking into account unrealized profits and losses). To make generally available the relief its staff has issued to the registered CPOs of Commodity ETFs, the Commission is proposing to add a new paragraph (c) to existing Regulation 4.12.[31] The new paragraph would first specify the eligibility requirements for the exemption, and would then set forth the relief that an eligible CPO could claim.

A. Eligibility

Under proposed paragraph (c)(1), a registered CPO, or a person who has applied for CPO registration, would be able to claim the relief available under the rule with respect to any pool that meets the following criteria: that the units of participation be offered and sold pursuant to an effective registration statement under the '33 Act, and that they be listed for trading on a national securities exchange registered as such under the '34 Act.[32]

B. The Proposed Relief

Proposed paragraph (c)(2) would specify the exemptive relief available under the Proposal, as well as the duties and obligations of the CPO who claims the relief.

1. Relief From the Disclosure Document Delivery and Acknowledgment Requirement of Regulation 4.21

Proposed paragraph (c)(2)(i) would provide certain relief from the Disclosure Document delivery requirement of Regulation 4.21(a), and relief from the signed acknowledgment requirement of Regulation 4.21(b) for an eligible CPO. The CPO claiming relief would be required to make the pool's Disclosure Document readily accessible on an Internet Web site maintained by the CPO.[33] The CPO must also comply with the requirements of Regulation 4.26 to keep the Disclosure Document current and to correct the Disclosure Document as necessary. The CPO must clearly inform prospective pool participants of the availability of the Disclosure Document and the Internet address for accessing it, and to direct any selling agent to whom the pool operator sells units of participation to so inform prospective participants. Finally, the CPO must comply with all other requirements in Part 4 applicable to Disclosure Documents, which includes the form and content requirements of Regulations 4.24 and 4.25.

Proposed paragraph (c)(2)(ii) would state that the CPO may satisfy the requirement of Regulation 4.26(b) to attach to the Disclosure Document a copy of the pool's most current Account Statement and Annual Report by making the same readily accessible on an Internet Web site maintained by the CPO.

2. Relief From the Periodic Account Statement Distribution Requirement of Regulation 4.22

Proposed paragraph (c)(2)(iii) would provide certain substituted compliance relief from Regulations 4.22(a) and (b). In lieu of compliance with the requirement in the regulation that the CPO distribute a monthly Account Statement to each pool participant, the Proposal would permit the CPO to maintain the pool's Account Statement, including the certification required by Regulation 4.22(h), readily accessible on a Web site operated by the CPO. This relief, however, would be subject to the CPO: (1) Keeping the Account Statement readily accessible on the Web site for a period of 30 days following the date the Account Statement is first posted on the Web site; [34] (2) indicating in the Disclosure Document that the information required to be included in the Account Statement will be readily accessible on the CPO's Web site; and (3) including in the Disclosure Document the Internet address of the pool's Account Statement. (Proposed Regulations 4.12(c)(2)(iii)(A) and (B)).[35]

3. Relief From the Books and Records Location Requirement of Regulation 4.23

Proposed paragraph (c)(2)(iv) would provide relief from the location requirement of Regulation 4.23. The proposed regulation would permit such of the required books and records as are not kept at the CPO's main business address to be kept at the office of the pool's administrator, its distributor, or a bank or registered broker dealer that is providing services to the CPO or the pool similar to those provided by an administrator or distributor.

Under proposed paragraph (c)(2)(iv)(B), the CPO would be required to provide certain information about storage of books and records at the time that the CPO files to claim relief under Regulation 4.12(c). When filing the notice claiming relief (discussed in greater detail below), the CPO would include a statement identifying, by name and specified contact information, each person other than the CPO who will be keeping required pool books and records, and it would identify each of the categories of books and records, as set forth in various numbered paragraphs of Regulation 4.23, that each such person will be keeping.

Proposed paragraph (c)(2)(iv)(B)(*4*) would require that the CPO's statement contain representations from the CPO that: (1) It will promptly amend the statement if the contact information or location of any required books and records change; [36] (2) the CPO ultimately remains responsible for maintenance and availability of all books and records required under

[31] In addition, the Commission is proposing certain technical changes to Regulation 4.12 to accommodate this new paragraph. Specifically, existing subparagraphs (b)(3) through (b)(6) of Regulation 4.12 (which currently set forth the filing requirements to claim relief under Regulation 4.12(b)) would be re-designated as a separate paragraph (d) and revised to include similar filing requirements for CPOs seeking to claim the proposed new relief.

[32] The claimed relief would become effective upon filing the notice, for registered CPOs, and upon CPO registration for applicants.

[33] In its *Interpretation Regarding Use of Electronic Media by Commodity Pool Operators and Commodity Trading Advisors for Delivery of Disclosure Documents and Other Materials,* 62 FR 39104 (July 22, 1997), the Commission said "[i]n stating that the Disclosure Document be 'readily accessible,' the Commission requires that the Disclosure Document be accessible on a comparable basis to other promotional material on the CPO's or CTA's Web site." 62 FR at 39108–39109. In other words, the user should not have to proceed through a confusing series of menus or hyperlinks in order to reach the desired item. The process of retrieving an item cannot be so burdensome that the intended user cannot effectively access the information in a manner comparable to receiving a hard-copy document.

[34] A requirement to make each Account Statement readily accessible for a 30-day period corresponds to the existing requirement as to currency of the information in the Account Statement. Unlike a Disclosure Document that is required to be updated and kept current, each Account Statement is superseded by the succeeding Account Statement. This 30-day requirement does not affect the CPO's obligation under Regulation 4.23(a)(12) to retain for a period of five years a manually signed copy of each Account Statement for the pool.

[35] The CPOs did not request, and the Commission is not now proposing, relief from the requirement that a CPO prepare and deliver an Annual Report for the pool at this time. The Commission does not believe that the burden involved in distributing an Annual Report to pool participants is outweighed by the benefit to the participants of receiving certified financial statements at least annually.

[36] The CPO would be required to file a separate claim of exemption and accompanying statement if additional required books and records are subsequently kept at a location other than the CPO's main business address, or if the CPO chooses to keep books and records subsequently at an additional location other than its main business address.

Regulation 4.23; (3) it will obtain and provide to Commission, NFA or Department of Justice representatives within 48 hours of any request, original books and records from whatever location they are being kept; [37] and (4) it will disclose in the pool's Disclosure Document the location of its books and records that are required under Regulation 4.23.

Finally, proposed paragraph (c)(2)(iv)(C) would require that the statement contain an acknowledgment by each person keeping pool books and records (other than the CPO) that the person will be keeping the books and records identified by the CPO, and that the person will make those books and records available in accordance with Regulation 4.23.

C. Procedure for Claiming Relief

As noted previously [38] the Proposal would redesignate existing paragraphs (b)(3) through (b)(6) of Regulation 4.12, which currently set forth the filing requirements to claim relief under Regulation 4.12(b), as a separate paragraph (d). The Proposal would also revise the existing language to include filing requirements for CPOs claiming the proposed new relief (as well as those claiming relief under Regulation 4.12(b)).

As with Regulation 4.12(b), a CPO wishing to obtain the exemption provided under Regulation 4.12(c) would electronically file a claim of exemption with NFA through NFA's electronic exemptions filing system, which claim will be effective upon filing. The claim would provide the specified identifying information, representations that the pool will be operated in compliance with the requirements of Regulation 4.12(c)(1), and specify the relief sought. As discussed above, the claim of exemption must also include the statements required under paragraphs (c)(2)(iii)(B) and (c)(2)(iii)(C) concerning books and records kept and maintained at a location other than the CPO's main business office.[39]

Failure to meet the criteria for exemption as set forth in the Proposal will mean that the person claiming exemption is not exempt and that the full range of Part 4 requirements continue to apply to it.

[37] If original books and records are maintained at a location outside the United States, the CPO is required to provide them at its main business office within seventy-two hours of a request.

[38] *See* footnote 31.

[39] If the Proposal is adopted, the Commission will issue an order authorizing NFA to accept electronically the notices and other documents called for by Regulation 4.12(c).

III. CPO Registration Relief for Certain Directors or Trustees of Commodity ETFs: New Regulation 4.13(a)(5)

The Commission is proposing to provide an exemption from the requirement to register as a CPO for persons who serve as a pool's director, trustee or in a similar position, solely for the purpose of complying with the audit committee requirements of SEC Rule 10A–3. The new exemption would be contained in paragraph (a)(5) of Regulation 4.13 (and existing paragraph (a)(5) would be re-numbered as paragraph (a)(6)). Like the other exemptions provided in Regulation 4.13, the new exemption would require a notice to be filed electronically with NFA before the exemption became effective.[40] The notice would be filed by the individual director or trustee. The pool's registered CPO would be liable for any violation of the Act or of the Commission's regulations by the director or trustee in connection with serving as a director or trustee of the pool.

IV. Effect of Final Rulemaking on Prior Relief Letters

If the requirements for obtaining relief in the final rule are no more restrictive than those set forth in a Prior Relief Letter, then the person or persons granted relief under that Prior Relief Letter will not be required to do anything further in order to continue operating under that relief. If, however, the requirements for obtaining relief in the final rule are more restrictive than those set forth in a Prior Relief Letter, then the person or persons granted relief under that Prior Relief Letter may not continue operating under that relief and will be required to file a Notice under the final rule. Also, if the facts and representations upon which the Prior Relief Letter was based materially change, the person will be required to file a Notice under the final rule, or cease engaging in the activities that prompted the request for the Prior Relief Letter.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [41] requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[42] With respect to CPOs, the Commission has previously determined that a CPO is a small entity if it meets the criteria for exemption from registration under current Regulation 4.13(a)(2).[43] Therefore, the requirements of the RFA do not apply to CPOs who do not meet those criteria. The Commission believes that the Proposal will not place any burdens, whether new or additional, on CPOs who would be affected hereunder. This is because the instant proposal, if adopted, would provide disclosure, reporting and recordkeeping relief for more CPOs.

[40] The Commission has delegated to NFA the authority to process statements of exemption from registration as a CPO pursuant to Regulation 4.13. *See* 62 FR 52088 (Oct. 6, 1997).

[41] 5 U.S.C. 601 *et seq.*

[42] 47 FR 18618 (Apr. 30, 1982).

[43] Id. at 18619–20.

B. Paperwork Reduction Act

The Proposal affects information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission has submitted a copy of this section to the Office of Management and Budget for its review.

If adopted, the Proposal will require existing and new CPO registrants that operate pools whose units of participation are listed on a national securities exchange, and that wish to claim the exemptive relief provided by the proposed amended regulations, to submit certain filings to the Commission that had not been required previously. As registered CPOs, persons claiming exemption under the Proposal will also be subject to the same information collection requirements under Regulations 4.22 and 4.23 as other registered CPOs, and the burden previously approved by OMB for Collection 3038–005 will be adjusted to account for the additional registrants. Because the information required under Regulation 4.21 will already have been collected under the requirements of the Federal securities laws for which Paperwork Reduction Act collections and burdens have already been established, the burden attributable to Commission Regulation 4.21 will not be affected.

Collection of Information

Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants, OMB Control Number 3038–0005.

The burden associated with Commission Regulation 4.12 is expected to be increased by 5 hours:

Estimated number of respondents: 35.

Annual responses by each respondent: 1.

Estimated average hours per response: .5.

Annual reporting burden: 17.5.

This annual reporting burden of 17.5 hours represents an increase of 5 hours as a result of the proposed amendments to Regulation 4.12.

The burden associated with Commission Regulations 4.22(a) and (b) is expected to be increased by 1,039.5 hours, due solely to additional, new registrants:

Estimated number of respondents: 519.

Pools by each respondent: 3

Annual responses by each respondent: 9.

Estimated average hours per response: 3.85.

Annual reporting burden: 53,950.05.

This annual reporting burden of 53,950.05 hours represents an increase of 1,039.5 hours as a result of the proposed amendments to Regulation 4.12.

The burden associated with Commission Rule 4.23 is expected to be increased by 520 hours:

Estimated number of respondents: 516.

Annual responses by each respondent: 1.

Estimated average hours per response: 52.

Annual reporting burden: 26,832

This annual reporting burden of 26,832 hours represents an increase of 520 hours as a result of the proposed amendments to Regulation 4.12.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting delivery of information via Internet Web sites.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5160.

C. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Proposal is intended to facilitate market innovation, and to rationalize application of Commission regulations to entities subject to other regulatory frameworks. The Commission is considering the costs and benefits of these rules in light of the specific provisions of Section 15(a) of the Act as follows:

1. Protection of Market Participants and the Public

While the proposed amendments are expected to lessen the burden that would otherwise be imposed upon CPOs of Commodity ETFs, any exemption of persons from regulatory requirements would be based on such factors as substituted compliance with other similar requirements. Accordingly, the Proposal should have no effect on the Commission's ability to protect market participants and the public.

2. Efficiency and Competition

The Proposal is expected to benefit efficiency and competition by facilitating the listing and trading on national securities exchanges of units of participation in commodity pools.

3. Financial Integrity of Futures Markets and Price Discovery

The Proposal should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the commodity futures and options markets.

4. Sound Risk Management Practices

The Proposal should increase the available range of risk management alternatives for CPOs and other market participants.

5. Other Public Interest Considerations

The Proposal will also take into account new product developments in the financial services industry (*i.e.,* the offering of Commodity ETFs).

After considering these factors, the Commission has determined to propose the amendments discussed above. The Commission invites public comment on its application of the cost-benefit considerations. Commenters also are invited to submit with their comment letters any data that they may have quantifying the costs and benefits of the Proposal.

List of Subjects in 17 CFR Part 4

Advertising, Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Reporting and recordkeeping requirements.

For the reasons presented above, the Commission proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6*l,* 6m, 6n, 6*o,* 12a and 23.

2. Section 4.12 is amended by:

a. Revising the heading of paragraph (b);

b. Revising the introductory text of paragraph (b)(1);

c. Amending paragraph (b)(2) by adding a heading;

d. Redesignating paragraphs (b)(3) through (b)(6) as paragraphs (d)(1) through (d)(4) and revising the redesignated paragraphs; and

e. Adding new paragraph (c), to read as follows:

§ 4.12 Exemption from provisions of part 4.

* * * * *

(b) *Exemption from Subpart B for certain commodity pool operators based on amount and nature of commodity interest trading.* (1) *Eligibility.* Subject to compliance with the provisions of paragraph (d) of this section, any person who is registered as a commodity pool operator, or has applied for such registration, may claim any or all of the relief available under paragraph (b)(2) of this section if:

* * * * *

(2) *Relief available to pool operator.*

* * *

(c) *Exemption from Subpart B for certain commodity pool operators based on listing of pool participation units for trading on a national securities exchange.* (1) *Eligibility.* Subject to compliance with the provisions of paragraph (d) of this section, any person who is registered as a commodity pool operator, or has applied for such registration, may claim any or all of the relief available under paragraph (c)(2) of this section if the units of participation in the pool for which it makes such claim:

(i) Will be offered and sold pursuant to an effective registration statement under the Securities Act of 1933; and

(ii) Will be listed for trading on a national securities exchange.

(2) *Relief available to pool operator.* The commodity pool operator of a pool whose units of participation meet the criteria of paragraph (c)(1) of this section may claim the following relief:

(i) In the case of § 4.21, exemption from the specific requirements of that section, *Provided, however,* that the pool operator:

(A) Cause the pool's Disclosure Document to be readily accessible on an Internet Web site maintained by the pool operator;

(B) Cause the Disclosure Document to be kept current in accordance with the requirements of § 4.26(a);

(C) Clearly inform prospective pool participants of the Internet address of such Web site and direct any broker, dealer or other selling agent to whom the pool operator sells units of participation in the pool to so inform prospective pool participants; and

(D) Comply with all other requirements applicable to pool Disclosure Documents under Part 4. The pool operator may satisfy the requirement of § 4.26(b) to attach to the Disclosure Document a copy of the pool's most current Account Statement and Annual Report if the pool operator makes such Account Statement and Annual Report readily accessible on an Internet Web site maintained by the pool operator.

(ii) In the case of § 4.22, exemption from the Account Statement distribution requirement of that section; *Provided, however,* that the pool operator:

(A) Cause the pool's Account Statements, including the certification required by § 4.22(h), to be readily accessible on an Internet Web site maintained by the pool operator within 30 calendar days after the last day of the applicable reporting period and continuing for a period of not less than 30 calendar days; and

(B) Cause the Disclosure Document for the pool to clearly indicate:

(*1*) That the information required to be included in the Account Statements will be readily accessible on an Internet Web site maintained by the pool operator; and

(*2*) The Internet address or URL of such Web sitse.

(iii) In the case of § 4.23, exemption from the requirement to keep the books and records specified by that section at the pool operator's main business office; *Provided, however,* that:

(A) The books and records that the pool operator will not keep at its main business office will be maintained by one or more of the following: The pool's administrator, distributor or custodian, or a bank or registered broker or dealer acting in a similar capacity with respect to the pool;

(B) At the time it files electronically with the National Futures Association the notice required under paragraph (d) of this section, the pool operator files a statement that:

(*1*) Identifies the name, main business address, and main business telephone number of the person(s) who will be keeping required books and records *in lieu* of the pool operator;

(*2*) Sets forth the name and telephone number of a contact for each person who will be keeping required books and records *in lieu* of the pool operator;

(*3*) Specifies, by reference to the respective paragraph of § 4.23, the books and records that such person will be keeping; and

(*4*) Contains representations from the pool operator that:

(*i*) It will promptly amend the statement if the contact information or location of any of the books and records required to be kept by § 4.23 changes, by identifying in such amendment the new location and any other information that has changed;

(*ii*) It remains responsible for ensuring that all books and records required by § 4.23 are kept in accordance with § 1.31;

(*iii*) Within forty-eight hours after a request by a representative of the Commission, it will obtain the original books and records from the location at which they are maintained, and provide them for inspection at the pool operator's main business office; *Provided, however,* that if the original books and records are permitted to be, and are maintained, at a location outside the United States, its territories or possessions, the pool operator will obtain and provide such original books and records for inspection at the pool operator's main business office within seventy-two hours of such a request; and

(*iv*) It will disclose in the pool's Disclosure Document the location of its books and records that are required under § 4.23.

(C) At the time it files the notice required under paragraph (d) of this section, the pool operator files electronically with the National Futures Association a statement from each person who will be keeping required books and records *in lieu* of the pool operator wherein such person:

(*1*) Acknowledges that the pool operator intends that the person keep and maintain required pool books and records;

(*2*) Agrees to keep and maintain such required books and records in accordance with § 1.31 of this chapter; and

(*3*) Agrees to keep such required books and records open to inspection by any representative of the Commission or the United States Justice Department in accordance with § 1.31 of this chapter and to make such required books and records available to pool participants in accordance with § 4.23 of this chapter.

(d)(1) *Notice of claim for exemption.* Any registered commodity pool operator, or applicant for commodity pool operator registration, who desires to claim the relief available under paragraph (b) or (c) of this section must file electronically a claim of exemption

with the National Futures Association through its electronic exemption filing system. Such claim must:

(i) Provide the name, main business address and main business telephone number of the registered commodity pool operator, or applicant for such registration, making the request;

(ii) Provide the name of the commodity pool for which the request is being made;

(iii) Contain representations, as appropriate, that:

(A) The pool will be operated in compliance with paragraph (b)(1)(i) of this section and the pool operator will comply with the requirements of paragraph (b)(1)(ii) of this section; or

(B) The pool will be operated in compliance with paragraph (c)(1) of this section;

(iv) Specify the relief sought under paragraph (b)(2) or (c)(2), as the case may be, of this section; and

(v) Be filed by a representative duly authorized to bind the pool operator.

(2)(i) The claim of exemption must be filed before the date the commodity pool first enters into a commodity interest transaction.

(ii) The claim of exemption shall be effective upon filing; *Provided, however,* That any exemption claimed hereunder:

(A) Will not be effective unless and until the notice required by this paragraph (d) contains all information called for herein and any statements required under paragraph (c)(2)(iii) of this section have been provided; and

(B) Will cease to be effective upon any change which would render the representations made pursuant to paragraph (d)(1)(iii) of this section inaccurate or the continuation of such representations false or misleading.

(3)(i) If a claim of exemption has been made under paragraph (b)(2)(i) of this section, the commodity pool operator must make a statement to that effect on the cover page of each offering memorandum, or amendment thereto, that it is required to file with the National Futures Association pursuant to § 4.26.

(ii) If a claim of exemption has been made with respect to paragraph (b)(2)(iii) of this section, the pool operator must make a statement to that effect on the cover page of each annual report that it is required to file with the National Futures Association pursuant to § 4.22(c).

(4)(i) Any claim of exemption effective hereunder shall be effective only with respect to the pool for which it has been made.

(ii) The effectiveness of such claim shall not affect the obligations of the commodity pool operator to comply with all other applicable provisions of this part 4, the Act and the Commission's regulations issued thereunder with respect to the pool and any other pool the pool operator operates or intends to operate.

3. Section 4.13 is amended by:

a. Removing the word "or" at the end of paragraph (a)(3)(iv);

b. Removing the period at the end of paragraph (a)(4)(ii)(B) and adding "; or";

c. Redesignating paragraph (a)(5) as paragraph (a)(6), and revising newly designated paragraph (a)(6)(i) introductory text;

d. Adding new paragraph (a)(5); and

e. Revising paragraphs (b)(1)(ii) and (b)(2), to read as follows:

§ 4.13 Exemption from registration as a commodity pool operator.

* * * * *

(a) * * *

(5) The person is acting as a director or trustee with respect to a pool whose operator is registered as a commodity pool operator and is eligible to claim relief under § 4.12(c) of this chapter, *Provided, however,* that:

(i) The person acts in such capacity solely to comply with a requirement under the Federal securities laws that the pool have an audit committee comprised exclusively of independent directors or trustees;

(ii) The person has no power or authority to manage or control the operations or activities of the pool except as necessary to comply with such requirement; and

(iii) The registered pool operator of the pool is and will be liable for any violation of the Act or the Commission's regulations by the person in connection with the person's serving as a director or trustee with respect to the pool.

(6)(i) Eligibility for exemption under paragraph (a)(1), (a)(2), (a)(3) or (a)(4) of this section is subject to the person furnishing in written communication physically delivered or delivered through electronic transmission to each prospective participant in the pool:

* * *

* * * * *

(b)(1) * * *

(ii) Contain the section number pursuant to which the operator is filing the notice (i.e., § 4.13(a)(1), (a)(2), (a)(3), (a)(4) or (a)(5), or both (a)(3) and (a)(4)) and represent that the pool will be operated in accordance with the criteria of that paragraph or paragraphs; and

* * * * *

(2) The person must file the notice by no later than the time that the pool operator delivers a subscription agreement for the pool to a prospective participant in the pool; *Provided, however,* that in the case of a claim for relief under § 4.13(a)(5), the person must file the notice by the later of the effective date of the pool's registration statement under the Securities Act of 1933 or the date on which the person first becomes a director or trustee; and *Provided, further,* that where a person registered with the Commission as a commodity pool operator intends to withdraw from registration in order to claim exemption hereunder, the person must notify its pool's participants in written communication physically delivered or delivered through electronic transmission that it intends to withdraw from registration and claim the exemption, and it must provide each such participant with a right to redeem its interest in the pool prior to the person filing a notice of exemption from registration.

* * * * *

Issued in Washington, DC, on September 1, 2010 by the Commission.

David Stawick,

Secretary of the Commission.

[FR Doc. 2010–22395 Filed 9–8–10; 8:45 am]

BILLING CODE P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 16

RIN 3038–AC63

Account Ownership and Control Report

AGENCY: Commodity Futures Trading Commission ("Commission").

ACTION: Extension of comment period.

SUMMARY: The Commission is extending the comment period for the Notice of Proposed Rulemaking ("NPRM") that calls for the collection of ownership, control and related information.[1] The new deadline for submitting public comments is October 7, 2010.

DATES: Written comments must be received on or before October 7, 2010.

ADDRESSES: Comments should be sent to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be submitted via e-mail at *OCR@cftc.gov.* "Account Ownership and Control Report" must be in the subject field of responses submitted via e-mail, and clearly indicated on written submissions. Comments may also be submitted by connecting to the Federal eRulemaking Portal at *http://*

[1] 75 FR 41775 (July 19, 2010).

www.regulations.gov and following comment submission instructions. All comments must be submitted in English, or if not, must be accompanied by an English translation.

FOR FURTHER INFORMATION CONTACT: Sebastian Pujol Schott, Associate Deputy Director, Market Compliance, 202–418–5641, or Cody J. Alvarez, Attorney Advisor, 202–418–5404, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: On July 19, 2010, the Commission published for public comment a NPRM, where it proposed to collect certain ownership and control information via an account "Ownership and Control Report" submitted weekly by all U.S. futures exchanges and other reporting entities. The NPRM established a 60-day period for submitting public comment, ending September 17, 2010. On September 16, 2010, Commission staff intends to hold a public roundtable meeting at which invited participants will discuss issues arising from the Commission's NPRM. Shortly after the public roundtable meeting, a transcript of the meeting will be published on the Commission's Account Ownership and Control Report public comment page at *http://www.cftc.gov/LawRegulation/PublicComments/10-009.html.* In order to give interested parties time to prepare comments on matters that were discussed at the public roundtable meeting, the Commission has determined to extend the comment period for the NPRM by an additional twenty days to October 7, 2010.

Issued in Washington, DC on September 1, 2010 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–22398 Filed 9–8–10; 8:45 am]

BILLING CODE P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 16

Account Ownership and Control Report; Notice of Public Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission ("Commission").

DATE AND TIME: Thursday, September 16, 2010, commencing at 1 p.m. and ending at 4:30 p.m.

PLACE: Three Lafayette Centre, 1155 21st Street, NW., Washington, DC, Lobby Level Hearing Room (Room 1000).

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda: (1) Sources of Ownership and Control Report Data; and (2) Implementation of the Ownership and Control Report.

SUPPLEMENTARY INFORMATION: Notice is hereby given that Commission staff will hold a public roundtable meeting at which invited participants will discuss issues arising from the Commission's notice of proposed rulemaking that calls for the collection of ownership, control and related information for all trading accounts active on U.S. futures exchanges and other reporting entities.[1] Written comments on the proposed rule will be received until October 7, 2010. The meeting will be open to the public with seating on a first-come, first-served basis. Members of the public may also listen by telephone. Call-in participants should be prepared to provide their first name, last name, and affiliation. The information for the conference call is set forth below.

- *U.S./Canada Toll-Free:* (866) 312–4390
- *International Toll:* (404) 537–3379
- *Conference ID:* 94281936

Shortly after the public roundtable meeting, a transcript of the meeting will be published on the Commission's Account Ownership and Control Report public comment page at *http://www.cftc.gov/LawRegulation/PublicComments/10–009.html.*

CONTACT PERSONS AND ADDRESSES: Written comments should be sent to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be submitted via e-mail at *OCR@cftc.gov.* "Account Ownership and Control Report" must be in the subject field of responses submitted via e-mail, and clearly indicated on written submissions. Comments may also be submitted by connecting to the Federal eRulemaking Portal at *http://www.regulations.gov* and following comment submission instructions. All comments must be submitted in English, or if not, must be accompanied by an English translation. For questions, please contact Sauntia Warfield, 202–418–5084.

Issued in Washington, DC, on September 1, 2010 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–22400 Filed 9–8–10; 8:45 am]

BILLING CODE P

[1] 75 FR 41775 (July 19, 2010).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–119046–10]

RIN 1545–BJ54

Requirement of a Statement Disclosing Uncertain Tax Positions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations allowing the IRS to require corporations to file a schedule disclosing uncertain tax positions related to the tax return as required by the IRS. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 12, 2010. Outlines of topics to be discussed at the public hearing scheduled for October 15, 2010, at 10 a.m., must be received by October 12, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–119046–10), room 5205, 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–119046–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–119046–10). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kathryn Zuba at (202) 622–3400; concerning submissions of comments, the public hearing, and to be placed on the building access list to attend the public hearing, Oluwafunmilayo Taylor of the Publications and Regulations Branch at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 6012 relating to the returns of income corporations are required to file. Section 6011 provides that persons liable for a tax imposed by Title 26 shall

make a return when required by regulations prescribed by the Secretary of the Treasury according to the forms and regulations prescribed by the Secretary. Treasury Regulation § 1.6011–1 requires every person liable for income tax to make such returns as are required by regulation. Section 6012 requires corporations subject to an income tax to make a return with respect to that tax. Treasury Regulation § 1.6012–2 sets out the corporations that are required to file returns and the form those returns must take.

In Announcement 2010–9, 2010–7 I.R.B. 408, and Announcement 2010–17, 2010–13 I.R.B. 515, the IRS announced it was developing a schedule requiring certain taxpayers to report uncertain tax positions on their tax returns. The IRS released the draft schedule, Schedule UTP, accompanied by draft instructions that provide a further explanation of the IRS's proposal in conjunction with Announcement 2010–30, IRB 2010–19. That announcement invited public comment by June 1, 2010, on the draft schedule and instructions, which would be finalized after the IRS received and considered the comments regarding the overall proposal and the draft schedule and instructions.

The draft schedule and instructions provide that, beginning with the 2010 tax year, certain corporations with both uncertain tax positions and assets equal to or exceeding $10 million will be required to file Schedule UTP if they or a related party issued audited financial statements. The draft schedule and instructions stated that, for 2010 tax years, the IRS will require corporations filing the following returns to file Schedule UTP: Form 1120, U.S. Corporation Income Tax Return; Form 1120 L, U.S. Life Insurance Company Income Tax Return; Form 1120 PC, U.S. Property and Casualty Insurance Company Income Tax Return; and Form 1120 F, U.S. Income Tax Return of a Foreign Corporation. The draft schedule and instructions do not require a Schedule UTP from any other Form 1120 series filers, pass-through entities, or tax-exempt organizations in 2010 tax years.

A substantial number of public comments have been received regarding the draft schedule. The IRS and Treasury Department are currently reviewing the comments and anticipate publishing a final Schedule UTP in sufficient time to allow taxpayers to comply with the proposed effective date of these regulations.

Explanation of Provisions

These proposed regulations require corporations to file a Schedule UTP consistent with the forms, instructions, and other appropriate guidance provided by the IRS. As explained in Announcement 2010–9, the United States federal income tax system relies on taxpayers to make a self-assessment of tax and to file returns that show the facts upon which tax liability may be determined and assessed. Section 601.103 of the Procedure and Administration Regulations. To discharge its obligation to fairly and uniformly administer the tax laws, the IRS must be able to quickly and efficiently identify those returns, and the issues underlying those returns, that present a significant risk of noncompliance with the Internal Revenue Code.

Existing corporate tax returns do not currently require that taxpayers separately identify and explain the uncertain tax positions that are identified in the process of complying with generally accepted accounting principles. Instead, to identify uncertain tax positions the IRS must select a return for audit and expend a substantial amount of effort by revenue agents to determine what uncertain tax positions might relate to the return.

Corporations that prepare financial statements are required by generally accepted accounting principles to identify and quantify all uncertain tax positions as described in Financial Accounting Standards Board, *Interpretation No. 48, Accounting for Uncertainty in Income Taxes* (June 2006) (FIN 48). FIN 48 is now codified in FASB ASC Topic 740–10 Income Taxes. Income Taxes, Accounting Standards Codification Subtopic 740–10 (Fin. Accounting Standards Bd. 2010). Other corporations that file returns of income in the United States may be subject to other requirements regarding accounting for uncertain tax positions. For example, corporations may be subject to other generally accepted accounting standards, including International Financial Reporting Standards and country-specific generally accepted accounting standards.

Congress, through the Internal Revenue Code, has given the IRS broad authority and discretion to specify the form and content of returns, so long as the IRS promulgates regulations requiring persons made liable for a tax to file those returns. This regulation will authorize the IRS to require certain corporations, as set out in forms, publications, or instructions, or other guidance, to provide information concerning uncertain tax positions concurrent with the filing of a return. This information will aid the IRS in identifying those returns that pose the most significant risks of noncompliance and in selecting issues for examination. The IRS intends to implement the authority provided in this regulation initially by issuing a schedule and explanatory publication that require those corporations that prepare audited financial statements to file a schedule identifying and describing the uncertain tax positions, as described in FIN 48 and other generally accepted accounting standards, that relate to the tax liability reported on the return.

Proposed Effective/Applicability Date

When adopted as a final regulation, this rule will apply to returns filed for tax years beginning after December 15, 2009, and ending after the date of publication of these rules as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

This regulation will only affect taxpayers that prepare or are required to issue audited financial statements. Small entities rarely prepare or are required to issue audited financial statements due to the expense involved. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). Accordingly, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their 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 written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the substance of the proposed regulations, as well as on the clarity of the proposed rules and how they can be made easier to understand. All comments submitted by the public will be made available for public inspection and copying. A public hearing has been scheduled for October 15, 2010, beginning at 10 a.m. in the IRS Auditorium, of the Internal Revenue

Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identifications to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 12, 2010. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Kathryn Zuba of the Office of the Associate Chief Counsel (Procedure and Administration).

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 is amended by adding an entry in numerical order to read as follows:

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

Section 1.6012–2 is also issued under the authority of 26 U.S.C. 6011 and 6012.

Par. 2. Section 1.6012–2 is amended by adding paragraphs (a)(4) and (a)(5) to read as follows:

§ 1.6012–2 Corporations required to make returns of income.

(a) * * *

(4) *Disclosure of uncertain tax positions.* A corporation required to make a return under this section shall attach Schedule UTP, Uncertain Tax Position Statement, or any successor form, to such return, in accordance with forms, instructions, or other appropriate guidance provided by the IRS.

(5) *Effective/applicability date.* Paragraph (a)(4) of this section applies to returns filed for tax years beginning after December 15, 2009, and ending after the date of publication of the adoption of these rules as final regulations in the **Federal Register**.

* * * * *

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2010–22624 Filed 9–7–10; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Chapter I

RIN 1219–AB71

Safety and Health Management Programs for Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public meetings; notice of close of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold three public meetings to gather information about effective, comprehensive safety and health management programs at mines. Public meetings will include presentations on model programs by representatives from: Academia; safety and health professionals; industry organizations; worker organizations; and government agencies. Model programs should be designed to prevent injuries and illnesses, maintain compliance with the Federal Mine Safety and Health Act, safety and health standards and regulations, and include participation of everyone from the Chief Executive Officer (CEO) to workers and contractors. Model programs should involve hazard identification and control and training and retraining of workers. The Agency will use information from the meetings to help develop a proposed rule for Safety and Health Management Programs for mines which will allow miners and operators to be proactive in their approach to health and safety.

DATES: All comments must be received by midnight Eastern Standard Time on December 17, 2010. MSHA will hold three meetings on October 8, 2010, October 12, 2010, and October 14, 2010 at the locations listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: Comments must be identified with "RIN 1219–AB71" and may be sent by any of the following methods:

(1) *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

(2) *Electronic mail: zzMSHA-comments@dol.gov.* Include "RIN 1219–AB71" in the subject line of the message.

(3) *Facsimile:* 202–693–9441. Include "RIN 1219–AB71" in the subject line of the message.

(4) *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939.

(5) *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

Comments can be accessed electronically at *http://www.msha.gov* under the Rules and Regs link.

Comments may also be reviewed at the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

MSHA maintains a list that enables subscribers to receive e-mail notification when rulemaking documents are published in the **Federal Register.** To subscribe, go to *http://www.msha.gov/subscriptions/subscribe.aspx.*

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, at *silvey.patricia@dol.gov* (e-mail), 202–693–9440 (voice), or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION: All meetings will start at 9 a.m. and conclude by 5 p.m. The agenda for the meetings will include:

- Registration,
- Opening Statement,
- Presentations,
- Comments from the Public, and
- Closing Statement.

MSHA requested academia, safety and health professionals, industry organizations, worker organizations, and government agencies to present information at these meetings on best practices for safety and health programs. MSHA is particularly interested in information on programs which include active involvement of workers from the development of the program through implementation to evaluation. Requests to present at a meeting may be made by telephone (202–693–9440), facsimile (202–693–9441), or mail (MSHA, Office of Standards, Regulations and

Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939).

The meetings will be conducted in an informal manner. Presenters and attendees may provide written information to the court reporter for inclusion in the rulemaking record. MSHA will make transcripts of the meetings available on MSHA's Web site *http://www.msha.gov,* and include them in the rulemaking record.

The meetings will be held on the following dates at the locations indicated:

Date	Location	Contact number
October 8, 2010	MSHA National Office, 1100 Wilson Boulevard, 25th Floor Conference Room, Arlington, VA 22209.	(202) 693–9440
October 12, 2010	Embassy Suites Sacramento-Riverwalk Promenade, 100 Capitol Mall, Sacramento, CA 95814.	(916) 326–5000
October 14, 2010	Omni William Penn Hotel, 530 William Penn Place, Pittsburgh, PA 15219	(412) 281–7100

MSHA has reviewed a number of guidelines for safety and health management programs, including:

- The Occupational Safety and Health Administration's (OSHA's) Voluntary Protection Program and its Safety and Health Program Management Guidelines;
- The American National Standards Institute's (ANSI's) and American Industrial Hygiene Association's (AIHA's) ANSI/AIHA's Z10–2005, Occupational Health and Safety Management Systems;
- The International Standards Organization's (ISO's) ISO 9001:2008 (E), Quality management systems—Requirements; and
- The British Standards Institution's (BSI's) BS OHSAS 18001:2007, Occupational Health and Safety Assessment Series, Occupational health and safety management systems—Requirements.

The Guidelines reveal that the components of effective safety and health management programs generally include:

1. Management Commitment.
2. Worker Involvement.
3. Hazard Identification, including workplace inspections for violations of mandatory health and safety standards.
4. Hazard Prevention and Control.
5. Safety and Health Training.
6. Program Evaluation.

Year after year, many companies experience low injury and illness rates and low violation rates. For these companies, preventing harm to their workers is more than compliance with safety and health requirements; it reflects the embodiment of a culture of safety—from the CEO to the worker to the contractor. This culture of safety derives from a commitment to a systematic, effective, comprehensive safety and health management program, implemented with the full participation of all workers. MSHA understands that many companies have developed and implemented effective safety and health management programs. At the meetings, you will hear about some of these programs. The Agency is interested in receiving comments on all aspects of safety and health management programs.

MSHA will accept written comments and information for the record from any interested party, including those not presenting oral statements.

Dated: September 2, 2010.

Joseph A. Main,

Assistant Secretary of Labor, for Mine Safety and Health.

[FR Doc. 2010–22403 Filed 9–8–10; 8:45 am]

BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0556; FRL–9198–1]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota; Carbon Monoxide (CO) Limited Maintenance Plan for the Twin Cities Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request submitted by the Minnesota Pollution Control Agency (MPCA) on June 16, 2010, to revise the Minnesota State Implementation Plan (SIP) for carbon monoxide (CO) under the Clean Air Act (CAA). The State has submitted a limited maintenance plan for CO showing continued attainment of the CO National Ambient Air Quality Standard (NAAQS) in the Minneapolis-St. Paul (Twin Cities) area. The one hour CO NAAQS and eight hour CO NAAQS are 35 parts per million (ppm), and 9 ppm, respectively. This limited maintenance plan satisfies section 175A of the CAA, and is in accordance with EPA's October 29, 1999, approval of the State's redesignation request and maintenance plan for the Twin Cities area. Additionally, this limited maintenance plan for CO satisfies the requirements contained in the October 6, 1995, EPA memorandum entitled "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas."

DATES: Comments must be received on or before October 12, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0556, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. E-mail: *bortzer.jay@epa.gov.*
3. *Fax:* (312) 692–2054.
4. *Mail:* Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Final Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Andy Chang, Environmental Engineer, Air Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0258, *chang.andy@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial

submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: August 26, 2010.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 2010–22339 Filed 9–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0715; FRL–9200–3]

Approval and Promulgation of Implementation Plans—Maricopa County (Phoenix) PM–10 Nonattainment Area; Serious Area Plan for Attainment of the 24-Hour PM–10 Standard; Clean Air Act Section 189(d)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

EPA is proposing to approve in part and disapprove in part State implementation plan (SIP) revisions submitted by the State of Arizona to meet the Clean Air Act (CAA) requirements applicable to the serious Maricopa County (Phoenix) nonattainment area (Maricopa area). These requirements apply to the Maricopa area following EPA's June 6, 2007 finding that the area failed to meet its December 31, 2006 serious area deadline to attain the national ambient air quality standards (NAAQS) for particulate matter of ten microns or less (PM–10). Under CAA section 189(d), Arizona was required to submit a plan by December 31, 2007 providing for expeditious attainment of the PM–10 NAAQS and for an annual emission reduction in PM–10 or PM–10 precursors of not less than five percent per year until attainment (189(d) plan). EPA is proposing to disapprove provisions of the 189(d) plan for the Maricopa area because they do not meet applicable CAA requirements for emissions inventories as well as for attainment, five percent annual emission reductions, reasonable further progress and milestones, and contingency measures. EPA is also proposing to disapprove the 2010 motor vehicle emission budget in the 189(d) plan as not meeting the requirements of CAA section 176(c) and 40 CFR 93.118(e)(4). EPA is also proposing a limited approval and limited disapproval of State regulations for the control of PM–10 from agricultural sources. Finally, EPA is proposing to approve various provisions of State statutes relating to the control of PM–10 emissions in the Maricopa area.

DATES: Any comments must arrive by October 12, 2010.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0715, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: nudd.gregory@epa.gov.*

3. *Mail or deliver:* Gregory Nudd (Air-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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FOR FURTHER INFORMATION CONTACT: Gregory Nudd, U.S. EPA Region 9, 415–947–4107, *nudd.gregory@epa.gov* or *http://www.epa.gov/region09/air/actions.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," and "our" mean U.S. EPA.

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I. PM–10 Air Quality Planning in the Maricopa Area

The NAAQS are standards for certain ambient air pollutants set by EPA to protect public health and welfare. PM–10 is among the ambient air pollutants for which EPA has established health-based standards. PM–10 causes adverse health effects by penetrating deep in the lungs, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable.

On July 1, 1987 EPA revised the health-based national ambient air quality standards (52 FR 24672), replacing the standards for total suspended particulates with new standards applying only to particulate matter up to ten microns in diameter (PM–10). At that time, EPA established two PM–10 standards, annual standards and 24-hour standards. Effective December 18, 2006, EPA revoked the annual PM–10 standards but retained the 24-hour PM–10 standards. 71 FR 61144 (October 17, 2006). The 24-hour PM–10 standards of 150 micrograms per cubic meter ($\mu g/m^3$) are attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$, as determined in accordance with appendix K to 40 CFR part 50, is equal to or less than one. 40 CFR 50.6 and 40 CFR part 50, appendix K.

On the date of enactment of the 1990 Clean Air Act Amendments (CAA or the

Act), many areas, including the Maricopa area, meeting the qualifications of section 107(d)(4)(B) of the amended Act were designated nonattainment by operation of law. 56 FR 11101 (March 15, 1991). The Maricopa area is located in the eastern portion of Maricopa County and encompasses the cities of Phoenix, Mesa, Scottsdale, Tempe, Chandler, Glendale, as well as 17 other jurisdictions and unincorporated County lands. The nonattainment area also includes the town of Apache Junction in Pinal County. EPA codified the boundaries of the Maricopa area at 40 CFR 81.303.

Once an area is designated nonattainment for PM–10, section 188 of the CAA outlines the process for classifying the area as moderate or serious and establishes the area's attainment deadline. In accordance with section 188(a), at the time of designation, all PM–10 nonattainment areas, including the Maricopa area, were initially classified as moderate.

A moderate PM–10 nonattainment area must be reclassified to serious PM–10 nonattainment by operation of law if EPA determines after the applicable attainment date that, based on air quality, the area failed to attain by that date. CAA sections 179(c) and 188(b)(2). On May 10, 1996, EPA reclassified the Maricopa area as a serious PM–10 nonattainment area. 61 FR 21372.

As a serious PM–10 nonattainment area, the Maricopa area acquired a new attainment deadline of no later than December 31, 2001. CAA section 188(c)(2). However CAA section 188(e) allows states to apply for up to a 5-year extension of that deadline if certain conditions are met. In order to obtain the extension, there must be a showing that: (1) Attainment by the applicable attainment date would be impracticable; (2) the state complied with all requirements and commitments pertaining to the area in the implementation plan for the area; and (3) the state demonstrates that the plan for the area includes the most stringent measures (MSM) that are included in the implementation plan of any state or are achieved in practice in any state, and can feasibly be implemented in the specific area. Arizona requested an attainment date extension under CAA section 188(e) from December 31, 2001 to December 31, 2006.

On July 25, 2002, EPA approved the serious PM–10 plan for the Maricopa area as meeting the requirements for such areas in CAA sections 189(b) and (c), including the requirements for implementation of best available control measures (BACM) in section 189(b)(1)(B) and MSM in section 188(e). In the same action, EPA granted Arizona's request to extend the attainment date for the area to December 31, 2006. 67 FR 48718. This final action, as well as the two proposals preceding it, provide a more detailed discussion of the history of PM–10 planning in the Maricopa area. *See* 65 FR 19964 (April 13, 2000) and 66 FR 50252 (October 2, 2001).

On June 6, 2007, EPA found that the Maricopa area failed to attain the 24-hour PM–10 NAAQS by December 31, 2006 (72 FR 31183) and required the submittal of a new plan meeting the requirements of section 189(d) by December 31, 2007.

On December 19, 2007, the Maricopa Association of Governments (MAG) adopted the "MAG 2007 Five Percent Plan for PM–10 for the Maricopa County Nonattainment Area." In this proposal, we refer to this plan as the "189(d) plan." On December 21, 2007 the Arizona Department of Environmental Quality (ADEQ) submitted the 189(d) plan and two Pinal County resolutions.[1] MAG adopted and ADEQ submitted this SIP revision in order to address the CAA requirements in section 189(d).

CAA section 110(k)(1) requires EPA to determine whether a SIP submission is complete within 60 days of receipt. This section also provides that any plan that has not been affirmatively determined to be complete or incomplete shall become complete within 6 months by operation of law. EPA's completeness criteria are found in 40 CFR part 51, appendix V. The 189(d) plan submittal became complete by operation of law on June 21, 2008.

II. Overview of Applicable CAA Requirements

As a serious PM–10 nonattainment area that failed to meet its applicable attainment date, December 31, 2006, the Maricopa area is subject to CAA section 189(d) which provides that the state shall "submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the PM–10 air quality standard and, from the date of such submission until attainment, for an annual reduction of PM–10 or PM–10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for the area."

The general planning and control requirements for all nonattainment plans are found in CAA sections 110 and 172. EPA has issued a General Preamble[2] and Addendum to the General Preamble[3] describing our preliminary views on how the Agency intends to review SIPs submitted to meet the CAA's requirements for the PM–10 NAAQS. The General Preamble mainly addresses the requirements for moderate nonattainment areas and the Addendum, the requirements for serious nonattainment areas. EPA has also issued other guidance documents related to PM–10 plans which are cited as necessary below. In addition, EPA addresses the adequacy of the motor vehicle budget for transportation conformity (CAA section 176(c)) in this proposed plan action. The PM–10 plan requirements addressed by this proposed action are summarized below.

A. Emissions Inventories

CAA section 172(c)(3) requires that an attainment plan include a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutants.

B. Attainment Demonstration

The attainment deadline applicable to an area that misses the serious area attainment date is as soon as practicable, but no later than 5 years from the publication date of the nonattainment finding notice. EPA may, however, extend the attainment deadline to the extent it deems appropriate for a period no greater than 10 years from the publication date, "considering the severity of nonattainment and the availability and feasibility of pollution control measures." CAA sections 179(d)(3) and 189(d).

C. Five Percent (5%) Requirement

A 189(d) plan must provide for an annual reduction of PM–10 or PM–10 precursor emissions within the area of not less than 5% of the amount of such emissions as reported in the most recent inventory prepared for the area.

[1] Subsequently, in June 4, 2008 and February 23, 2009 letters from Nancy C. Wrona, ADEQ, to Deborah Jordan, EPA, the State submitted "Supplemental Information to Section 189(d) 5% Reasonable Further Progress PM–10 SIP Revisions for the Maricopa County and Apache Junction (Metropolitan Phoenix) Nonattainment Area."

[2] "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992) (General Preamble) and 57 FR 18070 (April 28, 1992).

[3] "State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998 (August 16, 1994) (Addendum).

D. Reasonable Further Progress and Quantitative Milestones

CAA section 172(c)(2) requires that implementation plans demonstrate reasonable further progress (RFP) as defined in section 171(1). Section 171(1) defines RFP as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part [part D of title I] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date."

Section 189(c)(1) requires the plan to contain quantitative milestones which will be achieved every 3 years and which will demonstrate that RFP is being met.

E. Contingency Measures

CAA section 172(c)(9) requires that implementation plans provide for "the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date applicable under this part [part D of title I]. Such measures are to take effect in any such case without further action by the State or the Administrator."

F. Transportation Conformity and Motor Vehicle Emissions Budgets

Transportation conformity is required by CAA section 176(c). Our conformity rule (40 CFR part 93, subpart A) requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestone. Once a SIP that contains motor vehicle emissions budgets (MVEBs) has been submitted to EPA, and EPA has found it adequate, these budgets are used for determining conformity: emissions from planned transportation activities must be less than or equal to the budgets.

G. Adequate Legal Authority and Resources

CAA section 110(a)(2)(E)(i) requires that implementation plans provide necessary assurances that the state (or the general purpose local government) will have adequate personnel, funding and authority under state law. Requirements for legal authority are further defined in 40 CFR part 51, subpart L (51.230–51.232) and for resources in 40 CFR 51.280. States and responsible local agencies must also demonstrate that they have the legal authority to adopt and enforce provisions of the SIP and to obtain information necessary to determine compliance. SIPs must also describe the resources that are available or will be available to the State and local agencies to carry out the plan, both at the time of submittal and during the 5-year period following submittal of the SIP.

III. Evaluation of the 189(d) Plan's Compliance With CAA Requirements

A. Emissions Inventories

CAA section 172(c)(3) requires all nonattainment area plans to contain a comprehensive, accurate, and current inventory of emissions from all sources of the relevant pollutants in the geographic area encompassed in the plan. EPA believes that the inventories submitted by Arizona as part of the 189(d) plan for the Maricopa area are comprehensive and current, but are not sufficiently accurate as discussed below.

MAG developed the 189(d) plan using the "2005 Periodic Emissions Inventory for the Maricopa County, Arizona Nonattainment Area," May 2007 (2005 Periodic Inventory). 189(d) plan, appendices, volume one, appendix B, exhibit 1. This inventory was developed by the Maricopa County Air Quality Department (MCAQD) as the baseline inventory for the area. 189(d) plan, p. 3–2.

MAG used economic growth estimates to project 2007, 2008, 2009 and 2010 emissions inventories for the area from the 2005 Periodic Inventory baseline. MAG then used these projected inventories to calculate the 5% reduction target required by section 189(d) and as the baseline for the RFP demonstration required by section 189(c).[4] *See* 189(d) plan, appendices, volume three, "Technical Document in Support of the MAG 2007 Five Percent Plan for PM–10 for the Maricopa County Nonattainment Area," (189(d) plan TSD), chapter II.

The 2005 Periodic Inventory prepared for the Maricopa area describes and quantifies the annual and daily emissions of PM–10 from point, area, nonroad, on-road, and nonanthropogenic sources in the 2,880 square mile nonattainment area.[5] The 2005 Periodic Inventory indicates that the dominant sources of PM–10 emissions in the Maricopa area are construction-related fugitive dust, including residential, commercial, road and other land clearing (38 percent); paved road dust, including trackout (16 percent); unpaved roads (10 percent); and windblown dust (9 percent). 2005 Periodic Inventory, table 1.6–11.

EPA has evaluated the base year inventory relied on by MAG in light of the three criteria in section 172(c)(3) and our conclusions follow.

Current: The base year, 2005, is a reasonably current year, considering the length of time needed to develop an inventory and thereafter to develop a plan based on it. The 2005 Periodic Inventory was the most recent inventory available when the 189(d) plan was developed.

Comprehensive: The 189(d) plan's inventories are sufficiently complete. All of the relevant source categories are quantified.

Accurate: The 2005 Periodic Inventory is not sufficiently accurate for the purposes of the 189(d) plan. As discussed below, this inventory and the subsequent year inventories that MAG derived from it overestimate the baseline emissions for construction and other sources. The accuracy of the baseline inventory is particularly important for this plan because it relies heavily on reductions from improving the effectiveness of existing rules[6] for construction and other sources in order to meet the CAA's 5%, RFP and attainment requirements. *See* 189(d) plan, chapters 7 and 8.

MCAQD Rule 310 requires control measures for dust generating activities such as excavation, construction, demolition and bulk material handling. According to the 2005 Periodic Inventory, the majority of emissions subject to control under Rule 310 are from residential, commercial and road

[4] The 189(d) plan projects that the Maricopa area will attain the PM–10 standard by December 31, 2010. For the 5% demonstration, the plan projects emission reductions in 2008, 2009 and 2010. The RFP demonstration shows annual emission reductions in a downward linear trend from 2007 to 2010. *See* 189(d) plan, chapters 7 and 8, and discussions of these demonstrations below.

[5] The 2005 Periodic Inventory in the 189(d) plan also includes data on PM–10 precursors. However, a scientific analysis of the particulate matter found on filters on exceedance days indicates that the vast majority of PM–10 on these days is directly emitted PM–10 such as soil dust. *See* attachment, "On speciated PM in the Salt River industrial area in 2002," dated January 22, 2010, to E-mail from Peter Hyde, Arizona State University, to Gregory Nudd, EPA, July 30, 2010. Therefore, the 189(d) plan appropriately focuses on directly emitted PM–10.

[6] Rule effectiveness is an estimate of the ability of a regulatory program to achieve all of the emission reductions that could have been achieved by full compliance with the applicable regulations at all sources at all times. EPA requires a state to account for rule effectiveness when estimating emissions from source categories that are subject to regulations that reduce emissions. *See* "Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations," EPA–454/R–05–001, November 2005 (2005 Emissions Inventory Guidance), p. B–3.

construction. Measure #8 in the 189(d) plan is a commitment to implement proactive and complaint based inspections during night-time and on weekends and is a telling example of how the 189(d) plan depends primarily on improving Rule 310 effectiveness to demonstrate the required annual 5% reductions and RFP. The plan asserts that Measure #8 will reduce PM–10 emissions by 1,884 tons per year (tpy). 189(d) plan, p. 7–3. Of that, 1,694 tpy are attributed to increases in compliance, and therefore in the effectiveness, of Rule 310. 189(d) plan TSD, p. III–5. This pattern is repeated in Measures #2, #3, #9, #10, #16, and #44, with a large majority of the 189(d) plan's total emissions reductions derived from increased compliance with Rule 310. This pattern is further detailed in table 2 below.

For the 2005 Periodic Inventory, MCAQD used a set of 63 sample inspections of sources subject to Rule 310 in order to estimate its effectiveness.[7] An analysis of these inspections yielded an estimated rule effectiveness of 51 percent. However, an analysis conducted by MCAQD of the entire database of over 11,000 relevant inspections during the time period of the sample inspections yielded an estimated rule effectiveness of 64.5 percent. In other words, examination of the larger database suggests that a significantly higher percentage of sources were in compliance, and accordingly the aggregate emissions inventory for this source category could be proportionately smaller than that suggested by the smaller set of sample inspections. While MCAQD conducted this analysis in 2010, after the development of the 189(d) plan, the data and the method were available at the time it produced the 2005 Periodic Inventory.[8] Table 1 below shows the impact of these two different rule effectiveness values on the estimate of fugitive dust emissions from construction sources in the Maricopa area. The data in table 1 are from the emission rate back-casting analysis conducted by MCAQD in 2010.[9]

TABLE 1—IMPACT OF RULE 310 EFFECTIVENESS METHODOLOGY ON ESTIMATED EMISSIONS FROM CONSTRUCTION ACTIVITY

Estimation method	Rule effectiveness (percent)	Estimated 2005 emissions for construction activity (tons per year)
Sample Rule 310 inspections (63 total inspections between July and December 2006)	51	32,130
All Rule 310 inspections (over 11,000 between July 2006 and June 2007)	64.5	24,968
Difference in emissions		7,162 (−22%)

EPA believes that analysis of the full database of 11,000 Rule 310 inspections provides a more accurate measure of rule effectiveness than using a sample of 63 inspections. This is because the 63 inspections may not be representative of the entire population of sources covered by the rule. The larger data set is much more likely to be free of sample biases. Therefore, based on this analysis of the larger data set, EPA has determined that the initial estimate of rule effectiveness for Rule 310 was not accurate.

There is a similar inaccuracy in the rule effectiveness calculations for MCAQD Rule 310.01[10] for unpaved parking lots, unpaved roads and similar sources of fugitive dust emissions. For the 2005 Periodic Inventory, MCAQD used a set of 124 sample inspections to estimate the effectiveness of Rule 310.01. 2005 Periodic Inventory, appendix 2.2. An analysis of these inspections yielded an estimated rule effectiveness of 68 percent. However, an analysis conducted by MCAQD of the entire database of over 4,500 relevant inspections during the time period of the sample inspections yielded an estimated rule effectiveness of 90 percent. *See* Poppen Email.

The significance of the inventory inaccuracies discussed above is graphically depicted in table 2:

TABLE 2[11]—MEASURES TO IMPROVE COMPLIANCE WITH RULES 310 AND 310.01 COMPARED TO ALL MEASURES SUPPORTING THE ATTAINMENT, 5% AND RFP DEMONSTRATIONS

	2008	2009	2010
Total reductions from attainment, 5% and RFP measures [tpy]	6,603	15,422	19,840
Reductions from measures to improve rule effectiveness of Rule 310	4,658	11,292	15,244
Reductions from measures to improve rule effectiveness of Rule 310.01	360	1,061	1,063
% of reductions from such measures	76%	80%	82%

As shown in table 2, the 189(d) plan is designed to achieve the additional reductions in emissions required for the attainment, 5% and RFP demonstrations primarily through improvements in rule effectiveness for the sources regulated

[7] 2005 Periodic Inventory, appendix 2.2, "Rule Effectiveness Study for the Maricopa County Rules 310, 310.01, and 316."

[8] The data from the 2010 analysis were from inspections conducted at the time the original rule effectiveness calculation was being developed, so that information should have been in the MCAQD's database. The analytical method was a hybrid of a simple average of the results in the inspection database and the 2005 Emissions Inventory Guidance.

[9] E-mail from Matthew Poppen, MCAQD, to Gregory Nudd, EPA, "Back-casting of RE rates," April 19, 2010 (Poppen E-mail).

[10] EPA is also concerned that the method MCAQD used to estimate rule effectiveness for non-metallic mineral processing and other sources subject to Rule 316 is dependent on qualitative factors rather than compliance data.

[11] This data summary was compiled from the emission reduction calculations found in the 189(d) plan TSD, chapter III.

by Rules 310 and 310.01. The inaccuracies in the baseline emissions inventory were carried through into the future year emission inventories and the calculations of emission reductions for those demonstrations.

Moreover, the underestimation of the effectiveness of Rules 310 and 310.01 resulted in a control strategy with a high probability of failure because the over-emphasis on achieving emission reductions from the sources regulated by these rules likely resulted in a corresponding de-emphasis on emission reductions from other sources contributing to the nonattainment problem in the Maricopa area. In table 3 below we compare the projected percentage of 2010 emissions attributable to certain source categories before implementation of the 189(d) plan's controls to the projected percentage of emission reductions attributed to controls for these categories in 2010. The source categories are those contributing more than 5% to the projected 2010 inventory of annual PM–10 emissions. *See* 189(d) TSD, pp. II–17 and chapter III.

TABLE 3—COMPARISON OF THE 2010 EMISSIONS REDUCTIONS EXPECTED FROM THE CONTROL MEASURES TO THE PROPORTION OF 2010 EMISSIONS FOR PRINCIPAL SOURCES OF PM–10 IN THE NONATTAINMENT AREA

Source category	Percentage of pre-control 2010 emissions	Percentage of estimated 2010 emission reductions
Construction	33.1	82.5
Paved Roads (including trackout)	19.1	5.1
Unpaved Roads	17.4	0.0
Fuel Combustion and Fires	5.6	0.2
Windblown dust from vacant land	5.4	7.7
Other Sources (<5% each)	19.4	4.5

As can be seen from this comparison, the plan's emphasis on reducing emissions from the construction industry is out of proportion to that source category's relative contribution to the projected 2010 inventory.

For the reasons discussed above, EPA is proposing to disapprove under CAA section 110(k)(3) the 2005 baseline emissions inventory in the 189(d) plan and all of the projected inventories as not meeting the requirements of section 172(c)(3).

B. Measures in the 189(d) Plan

1. Introduction

The 189(d) plan contains 53 measures designed to reduce emissions of PM–10. A detailed description and implementation schedule for each measure is provided in chapter 6 of the plan. Of the 53 measures, 25 measures are intended to support the attainment, RFP and 5% demonstrations provided in the plan, and 9 are contingency measures. These measures incorporate differing strategies to target emissions from a variety of activities within the Maricopa area. The remaining measures are included to represent additional efforts by the State and local jurisdictions to reduce emissions beyond those quantified in the plan. As those measures are implemented, the 189(d) plan provides that a more detailed assessment of the air quality benefits may be developed and reported in the future.

EPA is proposing action on the measures in the 189(d) plan that constitute mandatory directives to the regulated community or to various local jurisdictions to adopt certain legislative requirements. These measures typically involve emissions reductions that can be reasonably quantified, and/or regulatory components that are enforceable. The 189(d) plan does not take specific emission reduction credits for the additional measures referred to above where the ability to quantify emission reductions was considered to be limited.

In reviewing a statute, regulation, or rule for SIP approval, EPA looks to ensure that the provision is enforceable as required by CAA section 110(a), is consistent with all applicable EPA guidance, and does not relax existing SIP requirements as required by CAA sections 110(l) and 193. Guidance and policy documents that we use to evaluate enforceability and PM–10 rules include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

3. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992) (General Preamble); 57 FR 18070 (April 28, 1992).

4. "State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998 (August 16, 1994) (Addendum).

5. "PM–10 Guideline Document," EPA 452/R–93–008, April 1993.

2. Measures Proposed for Approval

EPA has identified the State statutory provisions submitted with the 189(d) plan that implement the directives in each measure for which we are proposing action. Many of the 189(d) plan measures refer to Arizona Senate Bill 1552 (SB 1552). In 2007, the Arizona Legislature passed SB 1552, which includes several air quality provisions designed to reduce PM–10. SB 1552 adds new and amends existing provisions of the Arizona Revised Statutes (ARS) and is included in the 189(d) plan submittal. 189(d) plan, chapter 10, "Commitments for Implementation," volume two. We are proposing to approve the sections of the ARS that implement the plan measures identified in table 4 below. For ease of discussion, the statutory provisions that we are proposing to approve are associated with measures that can be generally grouped into seven categories: on-site dust management, certification programs, vehicle use, leaf blowers, unpaved areas, burning and agriculture. A brief discussion of each category is provided after the table.

TABLE 4—189(d) PLAN MEASURE CATEGORIES AND ASSOCIATED STATUTORY PROVISIONS

Category	Measure numbers from 189(d) plan	Associated statutory provisions
On-site management	2, 3, 16	ARS 49–474.05.
Certification programs	5*, 24*	ARS 9–500.04, ARS 49–457.02, ARS 49–474.01.
Vehicle Use	19*, 23, 31, 46	ARS 9–500.04, ARS 9–500.27, ARS 49–457.03, ARS 49–457.04, ARS 49–474.01.
Leaf blowers	18, 21, 22, 45	ARS 9–500.04, ARS 11–877, ARS 49–457.01.
Unpaved areas	25, 26*, 28, 33	ARS 9–500.04, ARS 28–6705, ARS 49–474.01.
Burning	35, 47	ARS 49–501.
Agriculture	50*	ARS 49–457.[12]

*The State submitted these measures as contingency measures pursuant to CAA section 172(c)(9). *See* section III.F below for further discussion.

With the exception of ARS 49–457, discussed in section III.B.3 below, and ARS 49–474.01, the ARS sections listed above are not currently in the Arizona SIP. On August 10, 1988, we approved an earlier version of ARS 49–474.01 that was submitted by the State to EPA on May 22, 1987. 53 FR 30224. In comparison to this previously approved version, the newly submitted version of ARS 49–474.01 contains several additional requirements regarding unstabilized areas and vehicle use that make the statutory provision more stringent. Therefore, we believe the current submitted version of ARS 49–474.01 represents a strengthening of the SIP and is consistent with the relevant policy and guidance regarding SIP relaxations.

On-Site Management

Many of the 189(d) plan measures are related to the reduction of PM–10 emissions through dust control training and on-site management by trained personnel. Measures #2 and #3 address development of basic and comprehensive training programs for the suppression of emissions. The program requires completion of dust control training for water truck and water pull drivers, and on-site representatives of sites with more than one acre of disturbed surface area subject to a permit requiring control of PM–10 emissions. Any site with five or more acres of disturbed surface area subject to a permit requiring control of PM–10 emissions will be required to have a trained dust control coordinator on site. Measure #16 involves the requirement for subcontractors engaged in dust generating operations to be registered with the control officer. These measures are implemented through ARS 49–474.05. *See* 189(d) plan, pp. 6–20, 6–24, 6–42, and 6–46.

Certification Programs

Some of the 189(d) plan measures seek to achieve emissions reductions through certification of equipment or personnel. In certain cases, the certification program is intended to provide an incentive for voluntary emission reductions and good operating practices. In other cases, the certification program seeks to maintain an appropriate level of emissions control from regularly used equipment. Measure #5 directs ADEQ to establish the Dust-Free Developments Program. The purpose of this program is to certify persons and entities that demonstrate exceptional commitment to the reduction of airborne dust. *See* ARS 49–457.02 and 189(d) plan, p. 6–29. Measure #24 directs cities and towns to require that new or renewed contracts for sweeping of city streets must be conducted with certified street sweepers. Street sweepers must meet the certification specifications contained in South Coast Air Quality Management District (SCAQMD) Rule 1186. *See* ARS 9–500.04, ARS 49–474.01, and 189(d) plan, p. 6–72.

Vehicle Use

Because vehicle use often generates PM–10 emissions, the 189(d) plan addresses several different activities related to vehicle use. Measures #19, #23, and #46 restrict off-road vehicle use in certain areas and on high pollution advisory days, and prescribe outreach to off-road vehicle purchasers to inform them of methods for reducing generation of dust. *See* ARS 9–500.27, ARS 49–457.03, ARS 49–457.04, and 189(d) plan, pp. 6–53, 6–71 and 6–190. Measure #31 restricts vehicle use and parking on unpaved or unstabilized vacant lots. *See* ARS 9–500.04, ARS 49–474.01 and 189(d) plan, p. 6–141.

Leaf Blowers

The 189(d) plan seeks to reduce PM–10 emissions from the operation of leaf blowers. Measures #18 and #45 restrict the use of leaf blowers on high pollution advisory days or on unstabilized surfaces. Measure #21 involves the banning of leaf blowers from blowing landscape debris into public roadways. Measure #22 requires outreach to buyers and sellers of leaf blowing equipment to inform them of safe and efficient use, methods for reducing generation of dust, and dust control ordinances and restrictions. *See* ARS 9–500.04, ARS 11–877, ARS 49–457.01 and 189(d) plan, pp. 6–50, 6–69, 6–70 and 6–189.

Unpaved Areas

The 189(d) plan contains several measures that seek to reduce PM–10 emissions by reducing the number of unpaved or unstabilized areas. Measures #25, #26, and #28 direct cities and towns to pave or stabilize parking lots, dirt roads, alleys, and shoulders. Measure #33 allows counties the ability to assess fines to recover the cost of stabilizing lots. *See* ARS 9–500.04, ARS 49–474.01, ARS 28–6705 and 189(d) plan, pp. 6–86, 6–103, 6–124, and 6–169.

Burning

Several measures are designed to regulate burning activities. Measure #35 bans the use of outdoor fireplaces in the hospitality industry on "no burn" days. Measure #47 bans open burning during the ozone season. *See* ARS 49–501 and 189(d) plan, pp. 6–174 and 6–190.

3. Measure Proposed for Limited Approval/Disapproval

Measure #50 is included in the 189(d) plan as a contingency measure and is designed to achieve emission reductions

[12] Measure #50 concerns the State statutory and regulatory program for the control of PM–10 from agricultural sources in the Maricopa area. The program is codified in ARS 49–457 and Arizona Administrative Code (AsAC) R18–2–610 and R18–2–611. ARS 49–457 established the program and authorized a committee to adopt implementing regulations. While we are proposing to fully approve the amendment to ARS–457 which was submitted with the 189(d) plan, we do not describe it further in this section because we address the agricultural program in detail in section III.B.3 below.

from agricultural sources of PM–10. 189(d) plan, pp. 6–191 and 8–73. Measure #50 is implemented through SB 1552 which amended ARS 49–457 and requires in section 20 that the best management practices (BMP) committee for regulated agricultural activities adopt revised rules. These rules, AAC R18–2–610 and R18–2–611, were revised pursuant to amended ARS 49–457 and submitted with the 189(d) plan. 189(d) plan, chapter 10, "Commitments for Implementation," volume two. *See* also 189(d) plan, Measure #41, p. 6–185. On May 6, 2010, Arizona again submitted the revised versions of AAC R18–2–610 and R18–2–611 with additional documentation and the "Agricultural Best Management Practices Guidance Booklet and Pocket Guide" (Handbook). Letter from Benjamin Grumbles, ADEQ, to Jared Blumenfeld, EPA, with enclosures, May 6, 2010. The Handbook provides regulated sources with guidance on how to implement BMPs and provides information to the public and farm organizations about AAC R18–2–610 and R18–2–611 (Handbook, p. 5).

We describe the history of agricultural PM–10 controls in the Maricopa area and we evaluate amended ARS 49–457 and revised AAC R18–2–610 and R18–2–611 below.

a. History

The analysis done for the "Plan for Attainment of the 24-hour PM–10 Standard—Maricopa County PM–10 Nonattainment Area," May 1997—(Microscale Plan)—revealed the contribution agricultural sources make to exceedances of the 24-hour PM–10 standard in the Maricopa area. *See* Microscale plan, pp. 18–19. In order to develop adequate controls for this source category, Arizona passed legislation, the original version of ARS 49–457, in 1997 establishing the agricultural BMP committee and directing the committee to adopt by rule by June 10, 2000, an agricultural general permit specifying best management practices for reducing PM–10 from agricultural activities. The legislation also required that implementation of the agricultural controls begin by June 10, 2000, with an education program and full compliance with the rule to be achieved by December 31, 2001.

In September 1998, the State submitted ARS 49–457 and on June 29, 1999 we approved the statute as meeting the reasonably available control measure (RACM) requirements of the CAA.[13] 64 FR 34726.

After a series of meetings during 1999 and 2000, the agricultural BMP committee in 2000 adopted the original versions of AAC R18–2–610, "Definitions for R18–2–611," and AAC R18–2–611, "Agricultural PM–10 General Permit; Maricopa PM10 Nonattainment Area" (collectively, general permit rule). 66 FR 34598. The BMPs are defined in AAC R18–2–610. AAC R18–2–611 groups the BMPs into three categories (tilling and harvest, noncropland, and cropland). The original version of AAC R18–2–611 required that commercial farmers select one practice from each of these categories. AAC R18–2–611 also requires that commercial farmers maintain records demonstrating compliance with the general permit rule.

In July 2000, the State submitted the general permit rule. The State also submitted an analysis quantifying the emission reductions expected from the rule and the demonstration that the rule meets the CAA's RACM, BACM and MSM requirements. We approved the general permit rule as meeting the RACM requirement in CAA section 189(a)(1)(C) on October 11, 2001. 66 FR 51869. We approved the general permit rule as meeting the requirements for BACM and MSM in CAA sections 189(b)(1)(B) and 188(e) on July 25, 2002. 67 FR 48718.

b. Amendments to ARS 49–457 and Revisions to the General Permit Rule

SB 1552 amended ARS 49–457 to increase the number of required BMPs from one to two in the general permit rule by December 31, 2007. SB 1552 also expanded the scope of the applicability of the general permit rule by amending the definition of regulated area to include any portion of Area A [14] that is located in a county with a population of two million or more persons.

The agricultural BMP committee added definitions for the following terms to AAC R18–2–610: "Area A," "cessation of night tilling," "forage crop," "genetically modified," "genetically modified organism," "global position satellite system," "green chop," "high pollution advisory," "integrated pest management," "night tilling," "organic farming practices," "precision farming," and "transgenic crops." The definitions for "commercial farm" and "regulated agricultural activity" were amended to include Area A.

The agricultural BMP committee also amended AAC R18–2–611. Section C of AAC R18–2–611 was amended to require commercial farmers to implement two BMPs each from the categories of tillage and harvest, noncropland, and cropland. The following additional BMPs were added to the tillage and harvest category in Section E of AAC R18–2–611: Green chop, integrated pest management, cessation of night tilling, precision farming, and transgenic crops. The cropland category in Section G was augmented with the following additional options: Integrated pest management and precision farming.

c. Evaluation of Amendments to ARS 49–457 and Revisions to the General Permit Rule

As stated above, in reviewing a statute, regulation, or rule for SIP approval, EPA looks to ensure that the provision is enforceable as required by CAA section 110(a), is consistent with all applicable EPA guidance, and does not relax existing SIP requirements as required by CAA sections 110(l) and 193. ARS 49–457 and the general permit rule generally meet the applicable requirements and guidance. We are proposing to approve amended ARS 49–457 because it strengthens the SIP by requiring an increase in the number of required BMPs and expanding the geographical scope of the agricultural BMP program. With regard to the general permit rule, we are proposing a limited approval and limited disapproval and we discuss the bases for that proposal below.

As stated above, we approved the general permit rule as meeting the CAA requirements for BACM in 2002. Since then, several air pollution control agencies in California, including the San Joaquin Valley Unified Air Pollution Control District (SJVAPCD) and the Imperial County Air Pollution Control District (ICAPCD), have adopted analogous rules for controlling PM–10 emissions from agricultural sources. The relevant State and local rules in Arizona, California and Nevada are summarized in our recent action on ICAPCD's Rule 806. 75 FR 39366, 39383 (July 8, 2010).

Since the adoption of controls for agricultural sources in the Maricopa area, other State and local agencies which have adopted such controls, as well as EPA, have acquired additional expertise about how to control

[13] Prior to its classification as serious, the Maricopa area, as a moderate PM–10 nonattainment area, was required to implement RACM pursuant to CAA section 189(a)(1)(C).

[14] Area A is defined in ARS 49–541. The 189(d) plan does not take any credit for emission reductions from the general permit rule's expansion to Area A because it extends beyond the boundaries of the Maricopa area. 189(d) plan, p. 8–73. ARS 49–451 was not submitted for inclusion into the SIP. While not a basis for our proposed action here, we recommend that ADEQ either insert the definition from ARS 49–451 into the general permit rule or submit ARS 49–451 to EPA.

emissions from these sources and implement regulations for them. As a result, we no longer believe that the requirements in the general permit rule that we approved in 2002 for the Maricopa area fully meet CAA requirements.

AAC R18–2–611 Sections E, F and G list BMPs intended to control emissions from tillage and harvest, noncropland and cropland, and the BMPs on these lists are defined in AAC R18–2–610. However, as discussed below, the definitions in AAC R18–2–610 are overly broad. Moreover, there is no mechanism in the rule to provide sufficient specificity to ensure a BACM level of control.[15]

As an example of the breadth of the BMPs, one of the BMPs in AAC R18–2–611 Section E, the tillage and harvest category, is "equipment modification." This term is defined in AAC R18–2–610 Section 18 as "modifying agricultural equipment to prevent or reduce particulate matter generation from cropland." The types of equipment modification are not specified in the rule, and according to the Handbook, examples of this practice include using shields to redirect the fan exhaust of the equipment or using spray bars that emit a mist to knock down PM–10. Handbook, p. 10. Because most of the PM–10 generated during active agricultural operations is due to disturbance from parts of agricultural equipment that come into direct contact with the soil, we expect that using appropriately designed spray bars would be far more effective at reducing PM–10 than redirecting a machine's fan exhaust. However, there is no provision in the general permit rule that requires a source or regulatory agency to evaluate whether the more effective version of this BMP is economically and technologically feasible. Moreover, while AAC R18–2–611 Section I requires that a farmer record that he has selected the "equipment modification" BMP, it does not require the farmer to record what type of equipment modification he will be implementing. Hence, neither ADEQ nor the public can verify whether what is being implemented is a best available control measure.

An example from AAC R18–2–611 Section F, the category for noncropland, is the "watering" BMP. AAC R18–2–610 Section 52 defines watering as "applying water to noncropland." The level of control achieved would depend on the amount of water that was applied, the frequency with which it was applied, as well as the size and conditions of the area to which it was applied. However, the rule does not specify the frequency or amount of water application or otherwise ensure that watering under this measure is effective. Moreover, the definition for "noncropland" in Section 31 of AAC R18–2–611 states that it "includes a private farm road, ditch, ditch bank, equipment yard, storage yard, or well head." It is not clear which of these areas a farmer would need to control upon selecting the "watering" BMP. As written, the rule allows regulated sources to implement the "watering" BMP in a manner that may not be as effective as best available controls. Furthermore, while AAC R18–2–611 Section I requires that a farmer record that he has selected the "watering" BMP, it does not require the farmer to record how he will be implementing this BMP. Hence, neither ADEQ nor the public can verify whether the BMP that is being implemented is in fact a best available control measure.

An example from AAC R18–2–611 Section G, the category for cropland, is the "artificial wind barrier" BMP. AAC R18–2–610 Section 4 defines "artificial wind barrier" as "a physical barrier to the wind." The control effectiveness of the barrier will depend on what the barrier is constructed of, the size of the barrier, as well as the placement of the barrier. In fact, the Handbook suggests that certain materials (e.g., board fences, burlap fences, crate walls, and bales of hay) be used, notes that the distance of 10 times the barrier height is considered the protected area downwind of a barrier, and states that the barrier should be aligned across the prevailing wind direction. Handbook, p. 20. However, the general permit rule does not specify any parameters that need to be met for the implementation of the "artificial wind barrier" BMP. Hence a source can construct a barrier that is not a best available control and still be in compliance with the general permit rule.

The absence of sufficiently defined requirements makes it difficult for regulated parties to understand and ensure compliance with the requirements, and makes it difficult for ADEQ or others to verify compliance with the general permit rule. The general permit rule needs to be revised to ensure that the BMPs are enforceable as required by CAA section 110(a) and are implemented at a BACM level as required by section 189(b)(1)(B).

4. Summary of Proposed Action on Measures in 189(d) Plan

EPA believes the statutory provisions associated with the 189(d) plan measures in table 4 in section III.B.2 above are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. Therefore, we are proposing to fully approve under CAA section 110(k)(3) the following Arizona statutory provisions, as submitted with the 189(d) plan:

ARS 9–500.04
ARS 9–500.27
ARS 11–877
ARS 28–6705
ARS 49–457
ARS 49–457.01
ARS 49–457.02
ARS 49–457.03
ARS 49–457.04
ARS 49–474.01
ARS 49–474.05
ARS 49–501

EPA is also proposing pursuant to CAA section 110(k)(3) to approve the "Agricultural Best Management Practices Guidance Booklet and Pocket Guide" as submitted on May 6, 2010.

EPA is also proposing pursuant to CAA section 110(k)(3) a limited approval and limited disapproval of AAC R18–2–610 and AAC R18–2–611, as submitted in the 189(d) plan. We are proposing a limited approval because AAC R18–2–610 and AAC R18–2–611 strengthen the SIP. We are proposing a limited disapproval because the general permit rule does not meet the enforceability requirements of CAA section 110(a) and no longer ensures that controls for agricultural sources in the Maricopa area are implemented at a BACM level as required by section 189(b)(1)(B).

C. Attainment Demonstration

CAA section 189(d) requires the submittal of plan revisions that provide for expeditious attainment of the PM–10 NAAQS. The attainment deadline applicable to an area that misses the serious area attainment date is as soon as practicable, but no later than five years from the publication date of the notice of a nonattainment finding unless extended by EPA as meeting certain specified requirements. CAA section 179(d)(3). Because, as stated previously, EPA published the nonattainment finding for the Maricopa area on June 6, 2007 (72 FR 31183), the attainment deadline for the area is as expeditiously

[15] For example, SJVAPCD's Rule 4550 has an application submittal and approval process. Great Basin Unified Air Pollution Control District's (GBUAPCD) Rule 502 has a similar application submittal and approval process. SJVAPCD's and GBUAPCD's application forms require sources to select conservation management practices (CMPs), the analogue to Arizona's BMPs, and to describe the specifics of the practices chosen. Such an application submittal and approval process provides a mechanism to ensure that controls are implemented at a BACM level.

as practicable but no later than June 6, 2012.

The 189(d) plan projects through a modeled attainment demonstration that the Maricopa area will attain the PM–10 standard by December 31, 2010. 189(d) plan, chapter 8. According to the plan, modeling was conducted for the two areas, the Salt River area and the Higley monitor, that have the mix and density of sources that caused the highest 24-hour PM–10 monitor readings in the Maricopa area from 2004 through 2006. The Salt River area includes the three monitors (West 43rd Avenue, Durango Complex and Bethune Elementary) that recorded violations during those years. The Higley monitor did not violate the PM–10 standard for that period but had one exceedance in 2004 and one in 2006 and the surrounding area has a different mix of sources than the Salt River area. The plan also provides a modeled attainment demonstration for the remainder of the nonattainment area. AERMOD was used for the attainment demonstration for the Salt River area. Attainment for the Higley monitor area and the remainder of the nonattainment area was shown using a proportional rollback approach.

AERMOD is an EPA-approved model and was appropriately used in the 189(d) plan. The proportional rollback approach was also appropriate because of the lack of good models for PM–10 on large geographic scales. However, EPA cannot approve an attainment demonstration for PM–10 nonattainment areas based on modeled projections of attainment if actual ambient air quality monitoring data show that the area cannot attain by the projected date. Under 40 CFR 50.6(a), the 24-hour PM–10 standard is attained when the expected number of exceedances per year at each monitoring site is less than or equal to one. The number of expected exceedances at a site is determined by recording the number of exceedances in each calendar year and then averaging them over the past 3 calendar years. 40 CFR part 50, appendix K. Thus, in order for the Maricopa area to attain the standard by December 31, 2010, there can be no more than one exceedance at any one monitor in the nonattainment area in calendar years 2008, 2009 and 2010.

There were 11 recorded exceedances of the PM–10 standard in 2008 in the Maricopa area. Five of these exceedances were recorded at the West 43rd Avenue monitor, two at the Durango Complex monitor, two at the South Phoenix monitor, and two at the Coyote Lakes monitor. In 2009, there were 22 exceedances recorded in the Maricopa Area. Seven of these exceedances were recorded at the West 43rd Avenue monitor, three at the Durango Complex monitor, three at the South Phoenix monitor, two at the Higley monitor, two at the West Chandler monitor, one at the West Phoenix monitor, one at the Glendale monitor, one at Greenwood monitor, one at the Dysart monitor, and one at the Bethune Elementary School monitor.[16]

Of the eleven 2008 exceedances, ten were flagged by the State as due to exceptional events under EPA's Exceptional Events Rule (EER)[17] which allows the Agency to exclude air quality monitoring data from regulatory determinations related to exceedances or violations of the NAAQS if the requirements of the EER are met. All of the 2009 exceedances were flagged as exceptional events under the EER.[18]

Under the EER, EPA may exclude monitored exceedances of the NAAQS from regulatory determinations if a state adequately demonstrates that an exceptional event caused the exceedances. 40 CFR 50.14(a). Before EPA will exclude data from these regulatory determinations, the state must flag the data in EPA's Air Quality System (AQS) database and, after notice and an opportunity for public comment, submit a demonstration to justify the exclusion. After considering the weight of evidence provided in the demonstration, EPA will decide whether or not to concur on each flag.

EPA has evaluated four of the 2008 exceedances recorded at the West 43rd Avenue monitor in south-central Phoenix that the State claims to be due to exceptional events.[19] The exceedances were recorded on March 14, April 30, May 21, and June 4. On May 21, 2010 EPA determined that the events do not meet the requirements of the EER and therefore do not qualify as exceptional events for regulatory purposes. Letter from Jared Blumenfeld, EPA, to Benjamin H. Grumbles, ADEQ, re: PM_{10} National Ambient Air Quality Standard in Phoenix; Request for Concurrence for Treatment as "Exceptional Events," May 21, 2010, with enclosures. As a result, EPA is not excluding the exceedances recorded on these dates from regulatory determinations regarding NAAQS exceedances in the Maricopa area.

Under 40 CFR part 50, appendix K, because there have been four exceedances in 2008 at the West 43rd Avenue monitor, the area cannot attain the standard by December 31, 2010 as projected in the 189(d) plan. Therefore, EPA is proposing to disapprove under CAA section 110(k)(3) the attainment demonstration in the plan as not meeting the requirements of sections 189(d) and 179(d)(3).

Finally, we note here, as we address in more detail in section III.A above, that most of the emission reductions relied on in the 189(d) plan are projected to be achieved by increased compliance with MCAQD Rules 310, 310.01 and 316. This is the case for the attainment demonstration, as well as for the 5% and RFP demonstrations discussed in sections III.D and III.F below. The 189(d) plan provides little or no support for the emission reductions attributed to these increased compliance measures. *See,* e.g., Measure #8 (Conduct Nighttime and Weekend Inspections) which, with no explanation, estimates that compliance with MCAQD Rules 310 and 316 will increase by 4 percent in 2008, 6 percent in 2009 and 8 percent in 2010. 189(d) plan TSD, pp. III–4 through III–6. We recognize that calculating accurate emission reduction estimates for increased compliance measures is challenging. It is, however, important for such estimates to have a technical basis, especially when such measures are expected to achieve the majority of the emission reductions in a SIP. One way to begin to address this issue would be to initiate an ongoing process to verify that compliance rates are increasing as expected and that, as a result, the projected emission reductions are actually being realized.

D. 5% Requirement

The demonstration addressing the 5% requirement of CAA section 189(d) is presented in chapter 7 of the 189(d) plan. Chapter 7 shows the annual 5% emission reductions of PM–10[20] for

[16] "USEPA Quick Look Report for Maricopa County (01/01/2008–12/31/2010) Air Quality System database, run date: August 26, 2010" (AQS 2008–2010 Quick Look Report). The Air Quality System Identifier numbers for the monitors referenced in this section are as follows: West 43rd Avenue (04–013–4009), Durango Complex (04–013–9812), South Phoenix (04–013–4003), Coyote Lakes (04–013–4014), Higley (04–013–4006), West Chandler (04–013–4004), West Phoenix (04–013–0019), Glendale (04–013–2001), Greenwood (04–013–3010), Dysart (04–013–4010), Bethune Elementary School (04–013–8006).

[17] *See* "Treatment of Data Influenced by Exceptional Events," 72 FR 13560 (March 22, 2007). The EER is codified at 40 CFR 50.1 and 50.14. For the state flagging requirements, see 40 CFR 50.14(c)(2).

[18] AQS 2008–2010 Quick Look Report.

[19] EPA has not evaluated the remaining exceptional event claims for 2008 or those for 2009. As discussed below, such an evaluation was not necessary for us to determine that the Maricopa area cannot attain the PM–10 standard by December 31, 2010.

[20] While the 5% requirement of section 189(d) can be met by emission reductions of PM–10 or

2008 through 2010, the projected attainment year. The plan quantifies emission reductions attributable to 25 of the 53 measures in the plan to meet the annual 5% targets. Table 7–2 in the 189(d) plan shows the base case PM–10 emissions from the 2005 Periodic Inventory discussed in section III.A above. Table 7–3 presents the controlled emissions for 2007 through 2010, i.e., the emissions after the emission reductions from the 25 quantified measures have been applied. The plan explains that the annual target is obtained by multiplying the controlled 2007 emissions in table 7–3 by 5% and concludes that the 5% targets are met in 2008, 2009 and 2010 with a surplus margin of benefit in each year. 189(d) plan, table 7–4, p. 7–19.

EPA believes the methodology for determining the 5% targets for the years 2008, 2009 and 2010 is generally appropriate. However, because we have determined that the 2005 Periodic Inventory on which the State based these calculations is inaccurate, the emission reduction targets themselves are also necessarily inaccurate. Because the 189(d) plan projects emission reductions surplus to the 5% targets in each year, it is theoretically possible that creditable reductions from the 25 quantified measures would still achieve the 5% reductions when recalculated from an accurate base year inventory. However that could only be determined by an EPA review of a revised plan based on adjusted calculations.

Furthermore, the language of section 189(d) compels us to conclude that the 5% demonstration in the 189(d) plan does not meet that section's requirement. CAA section 189(d) requires that the plan provide for annual reductions of PM–10 or PM–10 precursors of not less than 5% each year from the date of submission of the plan until attainment. The 189(d) plan submitted by Arizona does not provide for reductions after 2010 because it projects attainment of the PM–10 standard by the end of that year. As discussed in section III.C above, the Maricopa area cannot attain by December 31, 2010.

For the above reasons, EPA is proposing to disapprove under section 110(k)(3) the demonstration of the 5% annual emission reductions in the 189(d) plan as not meeting the 5% requirement in CAA section 189(d).

PM–10 precursors, the 189(d) plan relies on PM–10 reductions. This reliance is consistent with the nature of the particulate matter problem in the Maricopa area. *See* footnote 5.

E. Reasonable Further Progress and Quantitative Milestones

Under section 189(c)(1), the 189(d) plan must demonstrate RFP. We have explained in guidance that for those areas, such as the Maricopa area, where "the nonattainment problem is attributed to area type sources (e.g., fugitive dust, residential wood combustion, etc.), RFP should be met by showing annual incremental emission reductions sufficient generally to maintain linear progress towards attainment. Total PM–10 emissions should not remain constant or increase from 1 year to the next in such an area." Further, we stated that "in reviewing the SIP, EPA will determine whether the annual incremental emission reductions to be achieved are reasonable in light of the statutory objective to ensure timely attainment of the PM–10 NAAQS." Addendum at 42015–42016.

PM–10 nonattainment SIPs are required by section 189(c) to contain quantitative milestones to be achieved every three years and which are consistent with RFP for the area. These quantitative milestones should consist of elements which allow progress to be quantified or measured. Specifically, states should identify and submit quantitative milestones providing for the amount of emission reductions adequate to achieve the NAAQS by the applicable attainment date. *Id.* at 42016.

The 189(d) plan provides a graph showing a RFP line representing total emissions in the Maricopa area after emission reduction credit is applied for the 25 measures described in chapter 6 of the plan which are quantified for the purpose of meeting the section 189(c) requirements. 189(d) plan, figure 8–25; pp. 8–65 through 8–66. The graph shows an annual downward linear trend in emissions from 2007 through 2010, the modeled attainment date in the plan. The plan explains that the appropriate milestone year is 2010. *Id.*

The statutory purpose of RFP is to "ensure attainment" and the quantitative milestones are "to be achieved until the area is redesignated to attainment" under CAA sections 171(1) and 189(c) respectively. As discussed in section III.C above, we are proposing to disapprove the attainment demonstration in the 189(d) plan because, as a result of exceedances of the PM–10 standard recorded at the West 43rd Avenue monitor in 2008, the area cannot attain the standard by 2010 as projected in the plan. As a result, the RFP and milestone demonstrations in the plan do not achieve the statutory purposes of sections 171(1) and 189(c). We are therefore proposing to disapprove these demonstrations under CAA section 110(k)(3) as not meeting the requirements of section 189(c).

F. Contingency Measures

CAA section 172(c)(9) requires that the 189(d) plan provide for the implementation of specific measures to be undertaken if the area fails to make RFP or to attain the PM–10 standard as projected in the plan. That section further requires that such measures are to take effect in any such case without further action by the state or EPA. The CAA does not specify how many contingency measures are necessary nor does it specify the level of emission reductions they must produce.

In guidance we have explained that the purpose of contingency measures is to ensure that additional emission reductions beyond those relied on in the attainment and RFP demonstrations are available if there is a failure to make RFP or to attain by the applicable statutory date. Addendum at 42014–42015. These additional emission reductions will ensure continued progress towards attainment while the SIP is being revised to fully correct the failure. To that end, we recommend that contingency measures for PM–10 nonattainment areas provide emission reductions equivalent to one year's average increment of RFP. *Id.*

In interpreting the requirement that the contingency measures must "take effect without further action by the State or the Administrator," the General Preamble provides the following general guidance: "[s]tates must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review." General Preamble at 13512.[21] Further, "[i]n general, EPA will expect all actions needed to affect full implementation of the measures to occur within 60 days after EPA notifies the State of its failure." *Id.* The Addendum at 42015 reiterates this interpretation.

We have also interpreted section 172(c)(9) to allow states to implement contingency measures before they are triggered by a failure of RFP or attainment as long as those measures are intended to achieve reductions over and beyond those relied on in the attainment and RFP demonstrations. *Id.,* and *see*

[21] EPA elaborated on its interpretation of this language in section 172(c)(9) in the General Preamble in the context of the ozone standard: "The EPA recognizes that certain actions, such as notification of sources, modification of permits, etc., would probably be needed before a measure could be implemented effectively." General Preamble at 13512.

LEAN v. *EPA,* 382 F.3d 575 (5th Cir. 2004).

The 189(d) plan addresses the section 172(c)(9) contingency measure requirement in chapter 8, pp. 8–65 through 8–74. Of the 53 measures in the plan, nine are designated and quantified as contingency measures: Measures #1, #5, #19, #24, #26, #27, #43, #50 and a measure identified as "multiple" which consists of Measures #14, #15 and #17. Chapter 8 of the 189(d) plan includes a discussion of each of these measures along with associated emission reductions for each of the years 2008, 2009 and 2010. Additional information on the emission reductions claimed is in the 189(d) plan TSD, chapter IV. The measures are also individually discussed in chapter 6 of the 189(d) plan.

In calculating the target emission reductions that the contingency measures must meet, the 189(d) plan cites EPA's recommendation that they provide reductions equivalent to one year's average increment of RFP. The plan subtracts the total controlled emissions in 2010 from the total controlled emissions in 2007 and divides this sum by three years to produce an annual average of 4,869 tpy as the target for the contingency measures to meet in each of the years 2008, 2009 and 2010. 189(d) plan, p. 8–67. Table 8–14 in the 189(d) plan lists the projected emission reductions for the nine contingency measures for each of these years and shows emission reductions in excess of the target for each of them. Table 5 below shows the contingency measures in the plan identified by number and reproduces the corresponding projected PM–10 reductions as depicted in table 8–14 in the plan:

TABLE 5—SUMMARY OF PM–10 EMISSIONS REDUCTIONS FOR CONTINGENCY MEASURES

Contingency measures		PM–10 reductions [tons/year]		
No.	Measure title	2008	2009	2010
1	Public education and outreach program	47.6	47.5	48.5
5	Certification program for dust free developments	28.9	21.5	17.6
19	Reduce off-road vehicle use	140.3	174.6	179.1
24	Sweep streets with certified PM–10 certified street sweepers	1,027.7	1,563.1	2,129.2
26	Pave or stabilize existing public dirt roads and alleys	1,488.0	2,313.3	3,723.6
27	Limit speeds to 15 mph on high traffic dirt roads	390.4	390.2	390.2
43	Additional $5M in FY07 MAG TIP for paving roads/shoulders	205.2	820.9	820.9
50	Agricultural Best Management Practices	637.6	608.0	579.7
Multiple	Reduce trackout onto paved roads	1,256.9	1,273.4	1,270.0
Total for All Quantified Contingency Measures		5,222.5	7,212.6	9,158.9
Contingency Measure Reduction Target		4,869	4,869	4,869

As stated above, CAA section 172(c)(9) requires that the plan provide for the implementation of contingency measures to be undertaken if the area fails to attain the PM–10 standard by the applicable attainment date. The Maricopa area cannot attain the PM–10 standard by the projected date in the 189(d) plan because of monitored exceedances of the NAAQS in 2008.[22] As a result, any emission reductions from contingency measures in the 189(d) plan that are intended to take effect upon an EPA finding that the area failed to attain the standard cannot currently be determined to be surplus to the attainment demonstration as required by section 172(c)(9). Therefore we are proposing to disapprove the attainment contingency measures under CAA section 110(k)(3) as not meeting the requirements of section 172(c)(9).

As also stated above, contingency measures are required to be implemented upon a failure of the Maricopa area to meet RFP. The 189(d) plan bases the emission reduction target for these measures on reductions between 2007 and 2010 calculated from the 2005 Periodic Inventory that we have determined to be inaccurate. *See* section III.A above. Thus the emission reduction target for the RFP contingency measures is necessarily also inaccurate.

In addition to the inaccurate emission reduction target for the RFP contingency measures, many of the measures themselves do not meet the requirements of section 172(c)(9). These deficiencies generally fall into three categories: (1) Measures in the form of commitments in resolutions adopted by local or State governmental entities to take legislative or other substantial future action; (2) commitments in such resolutions for which implementation is conditioned on good faith efforts and funding availability and are therefore unenforceable; and (3) measures for which no basis is provided for the emission reductions claimed. While we illustrate these individual deficiencies below by reference to one or more of the 189(d) plan's designated contingency measures, it is important to note that many of the measures are deficient for multiple reasons.

1. Some of the commitments by local governments or State agencies to implement measures that are intended to achieve the required emission reductions in 2008, 2009 and 2010 do not meet the requirement of section 172(c)(9) that such measures are to take effect without further regulatory or legislative action.

For example, Measure #19 is intended to reduce off-road vehicle use in areas with high off-road vehicle activity. For this measure, the 189(d) plan assigns emission reduction credit to the requirement in ARS 9–500.27.A, as submitted in the 189(d) plan, that cities and towns in the Maricopa area adopt, implement and enforce ordinances no later than March 31, 2008 prohibiting the use of such vehicles on unpaved surfaces closed by the landowner. 189(d) plan, p. 8–69; 189(d) plan TSD, p. IV–3. The 189(d) plan includes a number of resolutions adopted by cities and towns committing to adopt such ordinances to address the vehicle use prohibition in the statute. However, because the 189(d) plan was submitted at the end of 2007, the contingency measure, *i.e.,* the vehicle use prohibition, could not be fully

[22] Note that because the modeled attainment demonstration projected attainment by the end of 2010, the 189(d) plan does not address the outside applicable statutory deadline under section 179(d)(3), June 6, 2012. See section III.B above.

implemented throughout the Maricopa area without additional future legislative action on the part of a number of governmental entities.[23]

Furthermore, not only do some of the contingency measure commitments fail to meet the requirement of section 172(c)(9) that such measures are to be implemented with minimal further action, but because they depend on future actions that may or may not occur, it is also impossible to accurately quantify emission reductions from them at the time of plan development and adoption. Thus it would not be possible to determine at the time of plan development and adoption whether in the aggregate the measures designated as contingency would meet or approximate the target of one year's average increment of RFP. This is the case with Measure #19, mentioned above. For that measure, the 189(d) plan claims emission reduction credit assuming that all jurisdictions subject to the 2008 statutory requirement will comply. 189(d) plan TSD, p. IV–3. However, there is no way to determine at the time of the 189(d) plan adoption which, if any, of the multiple jurisdictions would in fact implement such requirements by the statutory deadline.

Another example of this quantification issue is Measure #26 regarding the paving or stabilization of existing public dirt roads and alleys. 189(d) plan, pp. 6–103 and 8–72; 189(d) plan TSD, p. IV–9. This measure includes commitments in resolutions adopted by 11 cities and towns to pave roads from 2007 through 2010 and claims emission reduction credit assuming full compliance. *See* also Measure #5 which quantifies as a contingency measure a requirement in ARS 49–457.02 that ADEQ establish a dust-free development program by September 19, 2007.[24] 189(d) plan TSD, p. 8–69. However, a 2010 report prepared by MAG addressing the 2008 implementation status of the 53 measures in the 189(d) plan states that "[t]his measure was not implemented because ADEQ delayed the certification program indefinitely due to budgetary constraints." Letter from Lindy Bauer, MAG to Jared Blumenfeld, EPA, March 9, 2010, enclosing "2008 Implementation Status of Committed Measures in the MAG 2007 Five Percent Plan for PM–10 for the Maricopa County Nonattainment Areas," February 2010, MAG (2008 Status Report), table 1, p. 4.

See also Measure #24 which includes, among others, a commitment by the Arizona Department of Transportation (ADOT) to require in the contract awarded in January 2008 that contractors use PM–10 certified street sweepers on all State highways in the Maricopa area. 189(d) plan, p. 8–70; 189(d) plan TSD, p. IV–5; ADOT "Resolution to Implement Measures in the MAG 2007 Five Percent Plan for PM–10 for the Maricopa County Nonattainment Area." 189(d) plan, chapter 10, "Commitments for Implementation," volume two. The 2008, 2009 and 2010 emission reductions claimed for Measure #24 assume implementation of the ADOT component of the measure. However, the 2008 Status Report states that "ADOT's current contract * * * does not require the use of PM–10 certified street sweepers * * *." 2008 Status Report, p. 15.

2. In addition to the above issue regarding commitments to take future action, a number of the commitments quantified for credit in the 189(d) plan as contingency measures are in the form of city, town and county resolutions that specifically recognize that the funding or schedules for such actions may be modified depending on the availability of funding or other contingencies. These commitments are also qualified by the statement that the agency making the commitment "agrees to proceed with a good faith effort to implement the identified measures."[25] *See,* e.g., Measure #1 regarding public education and outreach, 189(d) plan, pp. 6–2 through 6–20 and related resolutions in chapter 10, "Commitments for Implementation," volumes one and two. *See* also id., p. 8–67. *See* also Measure #26 regarding the paving or stabilization of existing public dirt roads and alleys, id., pp. 6–103 and 8–72; 189(d) plan TSD, p. IV–7.

The language in the above commitments regarding good faith efforts and funding availability makes the measures that are intended to achieve the required emission reductions virtually impossible to enforce. Section 110(a)(2) of the Act requires that SIPs include "enforceable emission limitations and other control measures" and "a program to provide for the enforcement of the measures" in the plan. As we have explained, "[m]easures are enforceable when they are duly adopted, and specify clear, unambiguous, and measurable requirements. Court decisions made clear that regulations must be enforceable in practice. A regulatory limit is not enforceable if, for example, it is impractical to determine compliance with the published limit." General Preamble at 13568. In the case of most of the contingency measure commitments in the 189(d) plan, the implementation of the underlying measure cannot be ensured because the entity making the commitment can avoid having to implement it by asserting that it made good faith efforts, but failed to do so and/or that implementation did not occur due to insufficient funds.

3. The 189(d) plan provides no methodology or support for the PM–10 emission reductions credited to a number of the contingency measures. For example, the group of Measures #14, #15 and #17 designated in the plan as "multiple" is intended to reduce trackout onto paved roads. 189(d) plan, p. 8–74. The 189(d) plan TSD, p. IV–13, states that "[t]he reduction in trackout emissions in the PM–10 nonattainment area due to the impact of these three committed measures is expected to be at least 15 percent in 2008–2010" and credits these measures with the following emission reductions: 1256.9 tpy in 2008, 1273.4 tpy in 2009 and 1270 tpy in 2010. No information is provided in the 189(d) plan regarding how the 15 percent was determined. Furthermore, the reductions from each measure are not disaggregated so it is impossible to determine the source of the claimed emission reductions or how they were calculated for each measure.

Similarly, for Measure #1, the plan identifies annual emission reductions from seven source categories resulting from public education and outreach in various local jurisdictions but does not explain how these reductions were calculated. 189(d) plan TSD, p. IV–1. *See* also Measure #5 which provides annual emission reduction credits without any supporting information. The 189(d) plan TSD merely states: "[d]ue to the implementation of this program [certification program for dust-free developments to serve as an industry standard], the construction emissions are expected to decline by 0.10% in 2008–2010." 189(d) plan TSD, p. IV–2.

[23] In some cases, *e.g.,* the City of Goodyear, ordinances implementing the commitments in resolutions were also submitted with the 189(d) plan. In others, however, *e.g.,* the City of Apache Junction and the Town of Buckeye, the submitted resolutions include a schedule for the future adoption and implementation of ordinances. ADEQ forwarded these ordinances to EPA in 2008 as supplemental information, but not as SIP submittals. *See* footnote 1. This distinction is significant because here the ordinances are the ultimate regulatory vehicle.

[24] While the 189(d) plan refers to a deadline in ARS 49–457.02 for the establishment of this program, that statutory provision, as submitted with the 189(d) plan, does not contain a deadline.

[25] While EPA has approved the commitments with this language into the Arizona SIP in past plan actions as strengthening the SIP, we did not approve specific emission reduction credits for them.

For the reasons discussed above we are proposing to disapprove under CAA section 110(k)(3) the contingency measures in the 189(d) plan as not meeting the requirements of section 172(c)(9).

G. Transportation Conformity and Motor Vehicle Emissions Budgets

Transportation conformity is required by CAA section 176(c). Our conformity rule (40 CFR part 93, subpart A) requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or the timely achievement of interim milestones.

The 189(d) plan specifies the maximum transportation-related PM–10 emissions allowed in the proposed attainment year, 2010, *i.e.,* the MVEB. 189(d) plan, p. 8–75. This budget includes emissions from road construction, vehicle exhaust, tire and brake wear, dust generated from unpaved roads and re-entrained dust from vehicles traveling on paved roads. This budget is based on the 2010 emissions inventory that was projected from the 2005 Periodic Inventory and reflects emission reductions that the plan expects will result from the control measures. The budget is consistent with the attainment, 5% and RFP demonstrations in the 189(d) plan. However, as explained elsewhere in this proposed rule, the area cannot attain by the end of 2010 as projected in the plan and we are, in addition to the attainment demonstration, proposing to disapprove the plan's emissions inventories, 5% and RFP demonstrations. Therefore we must also propose to disapprove the MVEB.

In order for us to find the emission level or "budget" in the 189(d) plan adequate and subsequently approvable, the plan must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and (5). For more information on the transportation conformity requirement and applicable policies on MVEBs, please visit our transportation conformity Web site at: *http://www.epa.gov/otaq/stateresources/transconf/index.htm.* The 189(d) plan includes the PM–10 MVEB shown in table 6 below.

TABLE 6—189(d) PLAN, MOTOR VEHICLE EMISSIONS BUDGET

(Annual-average emissions in metric tons per day (mtpd))

Year	MVEB
2010	103.3

On March 13, 2008, we announced receipt of the 189(d) plan on the Internet and requested public comment on the adequacy of the motor vehicle emissions budget by April 14, 2008. We did not receive any comments during the comment period. During that time we reviewed the MVEB and preliminarily determined that it met the adequacy criteria in 40 CFR 93.118(e)(4) and (5). We sent a letter to ADEQ and MAG on May 30, 2008 stating that the 2010 motor vehicle PM–10 emissions budget for the Maricopa area in the submitted 189(d) plan was adequate. Our finding was published in the **Federal Register** on June 16, 2008 (73 FR 34013), effective on July 1, 2008.

As explained in the June 16, 2008 **Federal Register** notice, an adequacy review is separate from EPA's completeness and full plan review, and should not be used to prejudge EPA's ultimate approval action for the SIP. Even if we find a budget adequate, the SIP and the associated budget can later be disapproved for reasons beyond those in 40 CFR 93.118(e).

Because we are proposing to disapprove the emission inventories, and the attainment 5% and RFP demonstrations, we are also now proposing to disapprove the 189(d) plan's 2010 PM–10 MVEB. Under 40 CFR 93.118(e)(4)(iv), we review a submitted plan to determine whether the MVEB, when considered together with all other emissions sources, are consistent with applicable requirements for RFP, attainment, or maintenance (whichever is relevant to a given SIP submission). Because we have now concluded that the area cannot attain by 2010 as projected in the 189(d) plan, the MVEB cannot be consistent with the attainment requirement. In addition, because we are proposing to disapprove the 5% and RFP demonstrations, the MVEB is not consistent with the applicable requirements to show 5% annual reductions and RFP. Given the overemphasis in the plan on reducing emissions from construction activities, it is quite possible that more reductions in onroad emissions will be required to meet the applicable requirements. Consequently, we find that the plan and related budget do not meet the requirements for adequacy and approval.

The consequences of plan disapproval on transportation conformity are explained in 40 CFR 93.120. First, if a plan is disapproved by EPA, a conformity "freeze" takes effect once the action becomes effective (usually 30 days after publication of the final action in the **Federal Register**). A conformity freeze means that only projects in the first four years of the most recent conforming Regional Transportation Plan (RTP) and Transportation Improvement Program (TIP) can proceed. *See* 40 CFR 93.120(a). During a freeze, no new RTPs, TIPs or RTP/TIP amendments can be found to conform. The conformity status of these plans would then lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the CAA. *See* 40 CFR 93.120(a)(1). Generally, highway sanctions are triggered 24 months after the effective date of the disapproval of a required SIP revision for a nonattainment area. During a conformity lapse, no new transportation plans, programs, or projects may be found to conform until another SIP revision fulfilling the same CAA requirements is submitted and conformity of this submission is determined.

If EPA were proposing to disapprove the plan for administrative reasons unrelated to the attainment, 5% and RFP demonstrations, EPA could issue the disapproval with a protective finding. *See* 40 CFR 93.120(a)(3). This would avoid the conformity freeze. Because this is not the case, EPA does not believe that a protective finding should be proposed in connection with our proposed disapproval action on the 189(d) plan. Therefore, a conformity freeze will be in place upon the effective date of any final disapproval of the 189(d) plan.

H. Adequate Legal Authority and Resources

Section 110(a)(2)(E)(i) of the Clean Air Act requires that implementation plans provide necessary assurances that the state (or the general purpose local government) will have adequate personnel, funding and authority under state law. Requirements for legal authority are further defined in 40 CFR part 51, subpart L (section 51.230–232) and for resources in 40 CFR 51.280.

States and responsible local agencies must demonstrate that they have the legal authority to adopt and enforce provisions of the SIP and to obtain information necessary to determine compliance. SIPs must also describe the resources that are available or will be

available to the state and local agencies to carry out the plan, both at the time of submittal and during the 5-year period following submittal. These requirements are addressed in chapter 10 of the 189(d) plan. We evaluate these requirements for the plan in general and for those measures for which we are proposing approval or limited approval.

MAG derives its authority to develop and adopt the 189(d) plan and other nonattainment area plans from ARS 49–406 and from a February 7, 1978 letter from the Governor of Arizona [26] designating MAG as responsible for those tasks. ADEQ is authorized to adopt and submit the 189(d) plan by ARS 49–404 and ARS 49–406.

We are proposing for full approval statutes that have been adopted by the Arizona legislature, signed by the Governor and incorporated into the Arizona Revised Statutes. We are also proposing a limited approval of regulations authorized and mandated by Arizona statute. *See* section III.B above. Because the requirements in these statutes and regulations are directly imposed by State law, no further demonstration of legal authority to adopt emission standards and limitations is needed under CAA section 110(a)(2)(E)(i) and 40 CFR part 51, subpart L.

Section 51.230 of 40 CFR also requires that the State have the authority to "[e]nforce applicable laws, regulations, and standards, and seek injunctive relief." ARS 49–462, 49–463 and 49–464 provide the general authorities adequate to meet these requirements. We note that EPA, in undertaking enforcement actions under CAA section 113, is not constrained by provisions it approves into SIPs that circumscribe the enforcement authorities available to state and local governments.

Several of the State statutory provisions proposed for full approval and the regulations proposed for limited approval are direct mandates to the regulated community and require ADEQ to implement and enforce programs in whole or in part. *See, e.g.,* ARS 49–457, 49–457.01, 49–457.03 and 49–457.04. There is no description in the 189(d) plan of the resources available to the State to implement and enforce these statutory and regulatory provisions. Thus it is not possible for EPA to ascertain whether the State has adequate personnel and funding under CAA section 110(a)(2)(E)(i) and EPA's related regulations to carry out these State statutes.

Many of the Arizona statutory provisions proposed for approval are directives to local governmental entities to take action. For example, ARS 49–474.05 requires specified local jurisdictions to develop extensive dust control programs. Developing such programs will require resources and legal authority at the local level. However, we are not proposing approval of such programs at this time. This action is merely proposing approval of the statutory mandate to develop the program. Therefore, for these statutory provisions, a demonstration that adequate authority and resources are available is not required.

Section 110(a)(2)(E)(iii) requires SIPs to include necessary assurances that where a state has relied on a local or regional government, agency or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision. We have previously found that Arizona law provides such assurances. 60 FR 18010, 18019 (April 10, 1995).

For the reasons discussed above, we propose to find that the requirements of section 110(a)(2)(E) and related regulations have been met with respect to legal authority. However, we propose to find that the 189(d) plan does not demonstrate that ADEQ has adequate personnel and funding to implement the State statutes and regulations proposed for full or limited approval for which the State has implementation and enforcement responsibility and authority.

IV. Summary of Proposed Actions

EPA is proposing to approve in part and disapprove in part, the 189(d) plan for the Maricopa County (Phoenix) PM–10 nonattainment area as follows:

A. EPA is proposing to disapprove pursuant to CAA section 110(k)(3) the following elements of the "MAG 2007 Five Percent Plan for PM–10 for the Maricopa County Nonattainment Area":

(1) The 2005 baseline emissions inventory and the projected emission inventories as not meeting the requirements of CAA sections 172(c)(3);

(2) The attainment demonstration as not meeting the requirements of CAA sections 189(d) and 179(d)(3);

(3) The 5% demonstration as not meeting the requirements of CAA sections 189(d);

(4) The reasonable further progress and milestone demonstrations as not meeting the requirements of CAA section 189(c);

(5) The contingency measures as not meeting the requirements of CAA sections 172(c)(9); and

(6) The 2010 MVEB as not meeting the requirements of CAA section 176(c) and 40 CFR 93.118(e)(4).

B. EPA is proposing a limited approval and disapproval of AAC R18–2–610 and AAC R18–2–611 as submitted in the "MAG 2007 Five Percent Plan for PM–10 for the Maricopa County Nonattainment Area" pursuant to CAA section 110(k)(3). EPA is proposing a limited approval because these regulations strengthen the SIP and a limited disapproval because they do not fully meet the requirements of CAA sections 110(a) and 189(b)(1)(B) for enforceable BACM for agricultural sources of PM–10 in the Maricopa area.

C. EPA is proposing to approve pursuant to CAA section 110(k)(3) the following sections of the Arizona Revised Statutes as submitted in the "MAG 2007 Five Percent Plan for PM–10 for the Maricopa County Nonattainment Area" as strengthening the SIP: ARS 9–500.04, ARS 9–500.27, ARS 11–877, ARS 28–6705, ARS 49–457, ARS 49–457.01, ARS 49–457.02, ARS 49–457.03, ARS 49–457.04, ARS 49–474.01, ARS 49–474.05, and ARS 49–501.

D. EPA is proposing to approve pursuant to CAA section 110(k)(3) the "Agricultural Best Management Practices Guidance Booklet and Pocket Guide" as submitted on May 6, 2010.

E. Effect of Finalizing the Proposed Disapproval Actions

If we finalize disapprovals of the emissions inventories, attainment demonstration, RFP and milestone demonstrations, 5% demonstration and contingency measures, the offset sanction in CAA section 179(b)(2) will be applied in the Maricopa area 18 months after the effective date of any final disapproval. The highway funding sanctions in CAA section 179(b)(1) will apply in the area 6 months after the offset sanction is imposed. Neither sanction will be imposed if Arizona submits and we approve prior to the implementation of the sanctions SIP revisions meeting the relevant requirements of the CAA. *See* 40 CFR 52.31 which sets forth in detail the sanctions consequences of a final disapproval.

If EPA takes final action on the 189(d) plan as proposed, Arizona will need to develop and submit a revised plan for the Maricopa area that again addresses applicable CAA requirements, including section 189(d). While EPA is proposing to approve many of the measures relied on in the submitted 189(d) plan,

[26] Letter from Wesley Bolin, Governor of Arizona, to Douglas M. Costle, Administrator of EPA, February 7, 1978, found in the 189(d) plan, chapter 10, "Commitments for Implementation," Volume one, "Maricopa Association of Governments."

additional emission reductions will be needed. In pursuing such reductions, we expect Arizona to investigate all potential additional controls for source categories in the Maricopa area that contribute to PM–10 exceedances. This investigation should include, but not be limited to, analysis of BACM controls in other geographic areas. We also note that CAA section 179(d)(2) provides EPA the authority to prescribe specific additional controls for areas, such as the Maricopa area, that have failed to attain the NAAQS.

If we finalize a limited disapproval of AAC R18–2–610 and 611, the offset sanction in CAA section 179(b)(2) will be applied in the Maricopa area 18 months after the effective date of the final limited disapproval. The highway funding sanctions in CAA section 179(b)(1) will apply in the area 6 months after the offset sanction is imposed. Neither sanction will be imposed if Arizona submits and we approve prior to the implementation of the sanctions a measure for the control of agricultural sources meeting the requirements of CAA sections 110(a) and 189(b)(1)(B).

In addition to the sanctions, CAA section 110(c)(1) provides that EPA must promulgate a Federal implementation plan addressing any full or limited disapproved elements of the plan, as set forth above, two years after the effective date of a disapproval should we not be able to approve replacements submitted by the State.

Finally, if we take final action disapproving the 189(d) plan, a conformity freeze takes effect once the action becomes effective (usually 30 days after publication of the final action in the **Federal Register**). A conformity freeze means that only projects in the first four years of the most recent RTP and TIP can proceed. During a freeze, no new RTPs, TIPs or RTP/TIP amendments can be found to conform.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals or disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the State is already imposing. Therefore, because the proposed Federal SIP partial approval/partial disapproval and limited approval/limited disapproval actions do not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the partial approval/partial disapproval and limited approval/limited disapproval actions proposed do not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve and disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132 (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 proposes to approve or disapprove a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, 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, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. 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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a state rule implementing a Federal standard.

H. Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (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. The Executive Order has informed the development and implementation of EPA's environmental justice program and policies. Consistent with the Executive Order and the associated Presidential Memorandum, the Agency's environmental justice policies promote environmental protection by focusing attention and Agency efforts on addressing the types of environmental harms and risks that are prevalent among minority, low-income and Tribal populations.

This action will not have disproportionately high and adverse human health or environmental effects on minority, low-income or Tribal populations because the partial approval/partial disapproval and limited approval/limited disapproval actions proposed increase 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.

I. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: September 3, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2010–22616 Filed 9–8–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9198–7]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List; Intent for Partial Deletion of the Denver Radium Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is issuing a Notice of Intent to Delete each of the 11 operable units, with the exception of groundwater contamination associated with Operable Unit 8, of the Denver Radium Superfund Site (Site), located in the City and County of Denver, Colorado, from the National Priorities List (NPL) and requests public comments on this proposed action. Groundwater associated with Operable Unit 8 will remain on the NPL. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an Appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Colorado, through the Colorado Department of Public Health and Environment, have determined that all appropriate response actions at these identified parcels under CERCLA, other than operations and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

This partial deletion pertains to each of the 11 operable units of the Denver Radium Superfund Site. Groundwater contamination associated with Operable Unit 8 will remain on the NPL and is not being considered for deletion at this time.

DATES: Comments must be received by October 12, 2010.

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

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *E-mail: dalton.john@epa.gov.*
- *Fax:* 303–312–7110 (Attention: John Dalton, Public Affairs and Involvement).
- *Mail:* John Dalton, Public Affairs and Involvement (8OCPI), U.S. EPA

Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6633.

• *Hand delivery:* Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

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

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at: U.S. Environmental Protection Agency Region 8 Records Center, 1595 Wynkoop Street, Denver, CO 80202, Hours: M–F, 8 a.m. to 4 p.m., Colorado Department of Public Health and the Environment, 4300 Cherry Creek Drive South, Denver, CO 80246, Hours: M–F, 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Rebecca Thomas, Project Manager (8EPR–SR), U.S. EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6552, *thomas.rebecca@epa.gov.*

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" Section of today's **Federal Register,** we are publishing a direct final Notice of Partial Deletion for each of the 11 operable units, with the exception of groundwater contamination associated with Operable Unit 8, of the Denver Radium Superfund Site without prior Notice of Intent for Partial Deletion because EPA views this as a noncontroversial revision and anticipates no adverse comment. We have explained our reasons for this partial deletion in the preamble to the direct final Notice of Partial Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this partial deletion action, we will not take further action on this Notice of Intent for Partial Deletion. If we receive adverse comment(s), we will withdraw the direct final Notice of Partial Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Partial Deletion based on this Notice of Intent for Partial Deletion. We will not institute a second comment period on this Notice of Intent for Partial Deletion. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Partial Deletion which is located in the Rules section of this **Federal Register.**

List of Subjects in 40 CFR Part 300

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

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

Dated: August 31, 2010.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2010–22488 Filed 9–8–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2009–0041] [MO 92210–0–008]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Jemez Mountains Salamander (*Plethodon neomexicanus*) as Endangered or Threatened With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12–month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12–month finding on a petition to list the Jemez Mountains salamander (*Plethodon neomexicanus*) as an endangered or threatened species and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing the Jemez Mountains salamander as endangered or threatened throughout its range is warranted. Currently, however, listing the Jemez Mountains salamander is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12–month petition finding, we will add the Jemez Mountains salamander to our candidate species list. We will develop a proposed rule to list the Jemez Mountains salamander as our priorities allow. We will make any determination on critical habitat during development of the proposed rule. In the interim period, we will address the status of the candidate taxon through our annual Candidate Notice of Review (CNOR).

DATES: The finding announced in this document was made on September 9, 2010.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS-R2-ES-2009-0041. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours by contacting the U.S. Fish and Wildlife Service, New Mexico Ecological Services Office, 2105 Osuna NE, Albuquerque, NM 87113. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Wally Murphy, Field Supervisor, New Mexico Ecological Services Office (see **ADDRESSES**); by telephone at 505-346-2525; or by facsimile at 505-346-2542. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Federal Lists of Threatened and Endangered Wildlife and Plants that contains substantial scientific or commercial information indicating that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding we determine that the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12–month findings in the **Federal Register**.

Previous Federal Actions

We initially considered the Jemez Mountains salamander (*Plethodon neomexicanus*) for listing under the Act in the early 1980s (General Accounting Office 1993, p. 30). In December 1982, we published a notice of review classifying the salamander as a Category 2 species (47 FR 58454, December 30, 1982). Category 2 status included those taxa for which information in the Service's possession indicated that a proposed listing rule was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support a proposed rule.

On February 21, 1990, we received a petition to list the salamander as threatened. Subsequently, we published a positive 90–day finding, indicating that the petition contained sufficient information to suggest that listing may be warranted (55 FR 38342; September 18, 1990). In the Candidate Notice of Review (CNOR) published on November 21, 1991, we announced the salamander as a Category 1 species with a "declining" status (56 FR 58814). Category 1 status included those species for which the Service had on file substantial information regarding the species' biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species. The "declining" status indicated decreasing numbers, increasing threats, or both.

On May 30, 1991, the Service, the U.S. Forest Service (USFS), and the New Mexico Department of Game and Fish (NMDGF) signed a Memorandum of Agreement outlining actions to be taken to protect the salamander and its habitat on the Santa Fe National Forest lands, including the formation of a team of agency biologists to immediately implement the Memorandum of Agreement and to develop a management plan for the species. The management plan was to be incorporated into the Santa Fe National Forest Plan. On April 3, 1992, we published a 12–month finding that listing the salamander was not warranted because of the conservation measures and commitments within the Memorandum of Agreement (57 FR 11459). In the November 15, 1994, CNOR, we included the salamander as a Category 2 species, with a trend status of "improving" (59 FR 58982). A status of "improving" indicated those species known to be increasing in numbers or whose threats to their continued existence were lessening in the wild.

In the CNOR published on February 28, 1996, we announced a revised list of animal and plant taxa that were regarded as candidates for possible addition to the List of Endangered and Threatened Wildlife and Plants (61 FR 7596). The revised candidate list included only former Category 1 species. All former Category 2 species were dropped from the list in order to reduce confusion about the conservation status of those species, and to clarify that the Service no longer regarded them as candidates for listing. Because the salamander was a Category 2 species, it was no longer recognized as a candidate species as of the February 28, 1996, CNOR.

In January 2000, the New Mexico Endemic Salamander Team (NMEST), a group of interagency biologists representing NMDGF, the Service, the U.S. Geological Survey, and the Santa Fe National Forest, finalized a Cooperative Management Plan for the salamander on lands administered by the Santa Fe National Forest (Cooperative Management Plan), and the agencies signed an updated Conservation Agreement that superseded the Memorandum of Agreement. The stated purpose of the Conservation Agreement and the Cooperative Management Plan was to provide for the long-term conservation of salamanders by reducing or removing threats to the species and by proactively managing their habitat (NMEST 2000 Conservation Agreement, p. 1). In a Decision Notice and Finding of No Significant Impact for the Forest Plan Amendment for Managing Special Status Species Habitat, signed on December 8, 2004, the Cooperative Management Plan was incorporated into the Santa Fe National Forest Plan.

On October 15, 2008, we received a petition dated October 9, 2008, from WildEarth Guardians requesting that we list the Jemez Mountains salamander (*Plethodon neomexicanus*) (salamander) as endangered or threatened under the Act, and designate critical habitat. On August 11, 2009, we published a 90–day finding that the petition presented substantial information that listing the salamander may be warranted and that initiated a status review of the species (74 FR 40132). On December 30, 2009, WildEarth Guardians filed suit against the Service for failure to issue a 12–month finding on the petition (*WildEarth Guardians* v. *Salazar,* No. 09-1212 (D.N.M.)). Under a stipulated settlement agreement, the 12–month finding is due to the **Federal Register** by September 8, 2010. This notice constitutes our 12–month finding for the petition to list the Jemez Mountains salamander as endangered or threatened.

Species Information

The salamander is uniformly dark brown above, with occasional fine gold to brassy coloring with stippling dorsally (on the back and sides) and is sooty gray ventrally (underside). The salamander is slender and elongate, and it possesses foot webbing and a reduced fifth toe. This salamander is strictly terrestrial and is a member of the family Plethodontidae. The salamander does not use standing surface water for any life stage. Respiration occurs through the skin, which requires a moist microclimate for gas exchange.

Taxonomy and Species Description

The salamander was originally reported as *Spelerpes multiplicatus* (=*Eurycea multiplicata*) in 1913 (Degenhardt *et al.* 1996, p. 27); however, it was described and recognized as a new and distinct species (*Plethodon neomexicanus*) in 1950 (Stebbins and Riemer, pp. 73-80). No subspecies are recognized.

It is a member of the Plethodontidae family. Two species of plethodontid salamanders are endemic (native and restricted to a particular region) to New Mexico: the Jemez Mountains salamander and the Sacramento Mountains salamander (*Aneides hardii*). Unlike all other North American plethodontid salamanders, these two species are geographically isolated from all other species of *Plethodon* and *Aneides*.

Distribution

The distribution of plethodontid salamanders in North America has been highly influenced by past changes in climate and associated Pleistocene glacial cycles. In the Jemez Mountains, the lack of glacial landforms indicates that alpine glaciers did not develop here, but the abundance of evidence from exposed rock surfaces that have been quickly broken up by frost action may reflect near-glacial conditions during the Wisconsin Glacial Episode (Allen 1989, p. 11). Conservatively, the salamander has likely occupied the Jemez Mountains for at least 10,000 years, but this could be as long as 1.2 million years, colonizing the area subsequent to volcanic eruption.

The salamander is restricted to the Jemez Mountains in northern New Mexico, in Los Alamos, Rio Arriba, and Sandoval Counties, around the rim of the collapsed caldera (large volcanic crater), with some occurrences on topographic features (e.g., resurgent domes) on the interior of the caldera. The majority of salamander habitat is located on federally managed lands including USFS, Valles Caldera National Preserve (VCNP), National Park Service (Bandelier National Monument), and Los Alamos National Laboratory, with some habitat located on tribal land and private lands (NMEST 2000, p. 1). The species predominantly occurs at an elevation between 2,200 and 2,900 meters (m) (7,200 and 9,500 feet (ft)) (Degenhardt *et al.* 1996, p. 28), but has been found as low as 2,133 m (6,998 ft) (Ramotnik 1988, p. 78) and as high as 3,350 m (10,990 ft) (Ramotnik 1988, p. 84).

We divided known salamander distributional data into 5 units (Unit 1-Western; Unit 2-Northern; Unit 3-East-South-Eastern; Unit 4-Southern; and Unit 5-Central) to provide clarity in describing and analyzing the potential threats that may differ across the species' range. We developed these units based on the best information available to us, but some of the unit boundaries are based on incomplete occupancy information. These units reflect where surveys have occurred and generally follow breaks in topography. For example, there are areas (e.g., VCNP) where few surveys have been conducted and occupancy may not be uniform. Because the salamander has been found to occupy a wide variety of sites, we do not know the extent of geographic or genetic connectivity between localities. The VCNP is located west of Los Alamos, New Mexico, and is owned by the U.S. Department of Agriculture (part of the National Forest System), but run by a nine-member Board of Trustees: the Supervisor of Bandelier National Monument, the Supervisor of the Santa Fe National Forest, and seven other members with distinct areas of experience or activity appointed by the President of the United States (Valles Caldera Trust 2005, pp. 1-11). Prior to Federal ownership in 2000, the VCNP was privately held.

Habitat

The terrestrial salamander predominantly inhabits mixed conifer forest, consisting primarily of Douglas fir (*Pseudotsuga menziesii*), blue spruce (*Picea pungens*), Engelman spruce (*P. engelmannii*), white fir (*Abies concolor*), limber pine (*Pinus flexilis*), Ponderosa pine (*P. ponderosa*), Rocky Mountain maple (*Acer glabrum*), and aspen (*Populus tremuloides*) (Degenhardt *et al.* 1996, p. 28; Reagan 1967, p. 17). The species can also be found in stands of pure Ponderosa pine and in spruce-fir and aspen stands, but these forest types have not been adequately surveyed. Predominant understory includes Rocky Mountain maple (*Acer glabrum*), New Mexico locust (*Robinia neomexicana*), oceanspray (*Holodiscus sp.*), and various shrubby oaks (*Quercus spp.*) (Degenhardt *et al.* 1996, p. 28; Reagan 1967, p. 17). Salamanders are generally found in association with decaying coniferous logs, and in areas with abundant white fir, Ponderosa pine, and Douglas fir as the predominant tree species (Ramotnik 1988, p. 17; Reagan 1967, pp. 16-17). Salamanders use decaying coniferous logs considerably more often than deciduous, likely due to the physical features (e.g., blocky chunks with cracks and spaces) that form as coniferous logs decay (Ramotnik 1988, p. 53). Still, the species may be found beneath some deciduous logs and excessively decayed coniferous logs, because these can provide surface habitat and cover (Ramotnik 1988, p. 53).

Biology

The salamander is strictly terrestrial and does not possess lungs. The salamander does not use standing surface water for any life stage. Respiration occurs through the skin, which requires a moist microclimate for gas exchange. The salamander spends much of its life underground; it can be found at the surface from July through September, when relative environmental conditions are warm and wet. When active at the surface, the species is usually found under decaying logs, rocks, bark, moss mats, or inside decomposing stumps. The salamander's underground habitat appears to be deep, fractured, sub-surface rock in areas with high soil moisture (NMEST 2000, p. 2) where the geologic and moisture constraints likely limit the distribution of the species. Soil pH (acidity) may limit distribution as well. It is unknown whether the species forages or carries on any other activity below ground, although it is presumed that eggs are laid and hatch beneath the surface.

The surface microhabitat temperature for 577 Jemez Mountains salamanders ranged from 6.0 to 17.0 degrees Celsius (°C) (43 to 63 degrees Fahrenheit (°F)), with a mean of 12.7 °C (54.9 °F) (Williams 1972, p. 18). Significantly more salamanders were observed under logs where temperatures are closest to the mean temperature (12.5 °C (54.5 °F)) than inside logs where temperatures deviated the most from the mean temperature (13.3 °C (55.9 °F)) (Williams 1972, p. 19). Changes to microhabitat temperatures are discussed under Factors A and E, below.

Sexual maturity is attained at 3 to 4 years in females and 3 years in males (Williams 1976, pp. 31, 35). Reproduction in the wild has not been observed; however, based on observed physiological changes, reproduction is believed to occur above ground between mid-July and mid-August (Williams 1976, pp. 31-36). Based on examination of 57 female salamanders in the wild and one clutch of eggs laid in a laboratory setting, Williams (1978, p. 475) concluded that females likely lay 7 or 8 eggs every other year or every third year. Eggs are thought to be laid underground the spring after mating occurs (Williams 1978, p. 475). Fully-formed salamanders hatch from the eggs. The lifespan of the salamander in the wild is unknown; however, based on reproductive information that indicates the species is not sexually mature until age 3 or 4 years and that it only lays eggs every 2 or 3 years, and considering the estimated lifespan of other terrestrial plethodontid salamanders, we estimate that the species likely lives more than 10 years.

Salamander prey from above ground foraging is diverse in size and type, with ants, mites, and beetles being most

important in the salamander's diet (Cummer 2005, p. 43). Cummer (2005, pp. 45-50) found that specialization on invertebrate species was unlikely, but there was likely a preferential selection of prey.

Overview of Survey Data

Standardized survey protocols have been used for the salamander since 1987 (NMDGF 2000, p. 2), but the number and location of surveys have been variable and opportunistic. Survey methods involve searching under potential cover objects (e.g., logs, rocks, bark, moss mats) and inside decomposing coniferous logs when environmental conditions are likely best for detecting surface-active salamanders, generally May through September, when summer monsoon rains occur. Unfortunately, methods for determining locations to survey salamanders over the past 20 years have not been systematic, and though we have conducted a comprehensive review, the data have not been consistently available to allow comparison of the status of the salamander over its entire range.

Three survey protocols have been in use since 1987 (NMEST 2000b, pp. 27-29). Protocol A (presence or absence) has been used when attempting to determine whether an area is occupied (NMEST 2000b, p. 27). Following this protocol, surveys cease after 2 "person-hours" of effort (e.g., one person searching for 2 hours or two people searching for 1 hour) or when the first salamander is observed, whichever comes first. Because the salamander utilizes underground habitat and an unknown number of individuals may be active at the surface, repeated surveys may be necessary to determine occupancy of a locality (NMEST 2000b, p. 27).

Protocol B (population levels and trends) has been used for comparing plots, monitoring trends through time, or evaluating how salamander localities fluctuate in response to environmental variables (NMEST 2000b, p. 28). For this protocol, a survey is conducted for 2 person-hours, with all salamanders tallied.

Protocol C (detailed environmental data) collects microhabitat data to characterize potential salamander habitat (NMEST 2000b, p. 28). This protocol involves collecting data on important habitat features within a 50 m (160 ft) by 2 m (6.6 ft) transect, in addition to surveying for salamanders under cover objects.

The rangewide population size of the salamander is also unknown. Monitoring the absolute abundance of plethodontid salamanders is inherently difficult because of the natural variation associated with surface activity (Hyde and Simons 2001, p. 624), which ultimately affects the probability of detecting a salamander. The probability of detection varies over space and time and is highly dependent upon the environmental and biological parameters that drive surface activity (Hyde and Simons 2001, p. 624). Given the known bias of detection probabilities and the inconsistent survey effort across years, population size estimates using existing data cannot be made accurately.

Despite our inability to assess the rangewide population of the salamander in a comprehensive manner, the survey data are useful to understand that persistence of the salamander in localities may vary across the range of the species. For example, some localities where the salamander was once considered abundant or common (e.g., many parts of Unit 2, the Type Locality or the location where the salamander was originally found (Unit 4), and VCNP-Old Beaver Pond (Unit 5)), either the salamander no longer persists, or it persists at very low numbers. Alternatively, there are also three localities (Redondo Border, VCNP (Unit 5), and North East Slope VCNP (northern part of Unit 3)) where the salamander continues to be relatively abundant compared to most currently occupied sites. However, the numbers in these relatively abundant areas are far less than historic reports for the type locality, where 659 individuals were captured in a single year (1970), 394 of them in a single month (Williams 1976, p. 26). We know of no location where salamander abundance is similar to that observed in 1970. Overall, a few localized areas appear to be stable; however, there appears to be a decreasing trend within areas (decrease in numbers of salamanders observed during surveys) and a possible rangewide declining trend (an increase in the number of areas where salamanders were once present and have not been observed in recent surveys). The apparent declining trend is evident in Units 1 and 3, where we have the best survey information. Because it appears that the species is relatively long-lived, has relatively low reproductive output, has limited dispersal ability, and a small home range, it is likely that the apparent decreasing and declining trends both within localized areas and across the landscape represent actual declines in salamanders over the past 20 to 30 years.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (U.S.C. 1533 *et seq.*) and implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In considering what factors might constitute threats to the species, we must look beyond the exposure of the species to a factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and, during the subsequent status review, we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species may warrant listing as endangered or threatened as those terms are defined in the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the information in the petition and our files is substantial. The information must include evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act.

In making this finding, information pertaining to the salamander in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

Factor A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Under Factor A, we considered whether the Jemez Mountains salamander is threatened by the following: fire exclusion and severe wildland fires; forest composition and structure conversions; post-fire rehabilitation; forest and fire management (fire use, fire suppression, mechanical treatment of hazardous fuels, and forest silvicultural practices

(timber harvest, salvage logging, forest thinning, and forest restoration projects)); dams and mining; private (residential) development; geothermal development; roads, trails, and habitat fragmentation; recreation; and livestock grazing.

Fire Exclusion and Severe Wildland Fires

Fire exclusion and wildfire threaten the salamander. In the Jemez Mountains, the results of over 100 years of fire suppression and fire exclusion (along with cattle grazing and other stressors) have altered forest composition and structure and increased the threat of wildfire in Ponderosa pine and mixed conifer forests in semi-arid western interior forests (Belsky and Blumenthal 1997, p. 318). Fire has been an important process in the Jemez Mountains for at least several thousand years (Allen 1989, p. 69), indicating the salamander evolved with fire. Frequent, low-intensity, surface fires and patchy, small scale, high-intensity fires in the Jemez Mountains historically maintained salamander habitat. These fires spread widely through the grassy understory fuels, or erupted on very small scales. The natural fire intervals prior to the 1900s ranged from 5 to 25 years across the Jemez Mountains (Allen 2001, p. 4). Dry mixed conifer forests burned on average every 12 years, whereas wet mixed conifer forests averaged every 20 years. Historically, patchy surface fires within mixed conifer forests would have thinned stands and created natural fuel breaks that would limit the extent of fires. Still, in very dry years, there is evidence of fires occurring across entire watersheds, but they did not burn with high severity over entire mountain sides (Jemez Mountains Adaptive Planning Workshop Session II Final Notes 2010, p. 7). Aspen stands are evidence of historic patchy crown fires that represent the relatively small-scale, stand-replacing fires that have historically occurred in the Jemez Mountains, which are also associated with significantly dry years (Margolis *et al.* 2007, p. 2236).

These historic fire patterns were interrupted in the late 1800s through the elimination of fine fuels as a result of livestock overgrazing and managed fire suppression. This interruption and exclusion of fire promoted the development of high forest stand densities with heavy accumulations of dead and downed fuel, and growth of ladder fuels (the dense mid-story trees that favor development of crown fires) (Allen 2001, pp. 5-6). In fact, fire exclusion in this area converted historically low- to moderate-severity fire regimes with small, patchy fires to high-severity, large-scale, stand-replacing fires that have the potential to significantly destroy or degrade salamander habitat (USFS 2009a, pp. 8-9). The disruption of the natural cycle of fire and subsequent accumulation of continuous fuels within the coniferous forests on south and north-facing slopes has increased the chances of a severe wildfire affecting large areas of salamander habitat within the Jemez Mountains (e.g., see USFS 2009a, 2009b).

Prescribed fire at VCNP has been limited, with only one burn in 2004 that was described as creating a positive vegetation response (ENTRIX 2009, p. 97). A prescribed fire plan is expected to be developed (ENTRIX 2009, p. 97), as there is concern for severe wildland fires to occur (Parmenter 2009, cited in Service 2010). The planned Scooter Peak prescribed burn between the VCNP and Bandelier National Monument is a fuel reduction project in occupied salamander habitat, but is small in scale (approximately 960 acres (ac) (390 hectares (ha)) (ENTRIX 2009, p. 2). Although future thinning of secondary growth may somewhat lessen the risk of severe wildland fires in areas, these efforts are not likely at a sufficient geographic scale to lessen the overall threat to the salamander.

The frequency of large-scale, high-severity, stand-replacing wildland fires has increased in the latter part of the 20th century in the Jemez Mountains. This increase is due to landscape-wide buildup of woody fuels associated with removal of grassy fuels from extreme year-round livestock overgrazing in the late 1800s, and subsequent fire suppression (Allen 1989, pp. 94-97; 2001, pp. 5-6). The majority of wildfires over the past 20 years has exhibited crown fire behavior and burned in the direction of the prevailing south or southwest winds (USFS 2009a, p. 17). The first severe wildland fire in the Jemez Mountains was the La Mesa Fire in 1977, burning 15,400 ac (6,250 ha). Subsequent fires included the Buchanon Fire in 1993 (11,543 ac (4,671 ha)), the Dome Fire in 1996 (16,516 ac (6,684 ha)), the Oso Fire in 1997 (6,508 ac (2,634 ha)), the Cerro Grande Fire in 2000 (42,970 ac (17,390 ha)), and the Lakes Fire Complex (Lakes and BMG Fires) in 2002 (4,026 ac (1,629 ha)) (Cummer 2005, pp. 3-4). Over the past 15 years, severe wildland fires have burned about 36 percent of modeled or known salamander habitat on USFS lands (USFS 2009, p. 1). Following the Cerro Grande Fire, the General Accounting Office reported that these conditions are common in much of the western part of the United States turning areas into a "virtual tinderbox" (General Accounting Office 2000, p. 15). The threat of severe wildland fires to salamander habitat remains high due to the tons of dead and down fuel, overcrowded tree conditions leading to poor forest health, and dense thickets of small-diameter trees. There is a 36 percent probability of having at least one large fire of 4,000 ac (over 1,600 ha) every year for the next 20 years in the southwest Jemez Mountains (USFS 2009a, p. 19). Moreover, the probability of exceeding this estimated threshold of 4,000 ac (1,600 ha) burned in the same time period is 65 percent (USFS 2009a, p. 19). As an example of the severe fire risk, the Thompson Ridge-San Antonio area, in Unit 1, has extensive ladder fuels and surface fuels estimated at over 20 tons per acre, and the understory in areas contains over 800 dense sapling trees per acre within the mixed conifer and Ponderosa pine stands (USFS 2009a, pp. 24-25). The canyon topography aligns with south winds and steep slopes, making this area more susceptible to crown fire (USFS 2009a, pp. 24-25).

Increases in soil and microhabitat temperatures, which generally increase with increasing burn severity, can have profound effects on salamander behavior and physiology, and thus their ability to persist subsequent to severe wildland fires. Following the Cerro Grande Fire, soil temperatures were recorded under potential salamander cover objects in areas occupied by the salamander (Cummer and Painter 2007, pp. 26-37). Soil temperatures in areas of high severity burn exceeded the salamander's thermal tolerance, which would have resulted in the death of any salamanders present (Spotila 1972, p. 97; Cummer and Painter 2007, pp. 28-31). Even in moderate and high-severity burned areas where fires did not result in the death of salamanders, the microhabitat conditions, such as those occurring during the Cerro Grande Wildfire, would limit the timing and duration that the salamanders could be surface active (feeding and mating). Moreover, elevated temperatures lead to increases in oxygen consumption, heart rate, and metabolic rate, resulting in decreased body water and body mass (Whitford 1968, pp. 247-251). Physiological stress from elevated temperatures may also increase susceptibility to disease and parasites. Effects from temperature increases are discussed in greater detail under Factor E.

Severe wildland fires typically increase soil pH, which could affect the

salamander. In one study of the Jemez Mountains salamander, soil pH was the single best indicator of relative abundance of salamanders at a site (Ramotnik 1988, pp. 24-25). Sites with salamanders had a pH of 6.6 (± 0.08) and sites without salamanders had a pH of 6.2 (± 0.06). In another species of a terrestrial plethodontid salamander, the red-backed salamander (*Plethodon cinereus*), soil pH influences and limits its distribution and occurrence as well as its oxygen consumption rates and growth rates (Wyman and Hawksley-Lescault 1987, p. 1823). Similarly, Frisbie and Wyman (1991, p. 1050) found the disruption of sodium balance by acidic conditions in three species of terrestrial salamanders. A low pH substrate can also reduce body sodium, body water levels, and body mass (Frisbie and Wyman 1991, p. 1050). Changes in soil pH following wildfire likely impact the salamander either by making the habitat less suitable or through physiological stress.

Several regulatory attempts have been made to address and correct the altered ecological balance of New Mexico's forests resulting from a century of fire suppression, logging, and livestock grazing. Congress enacted the Community Forest Restoration Act to promote healthy watersheds and reduce the threat of large, high-intensity wildfires; insect infestation; and disease in the forests in New Mexico (H.R. 2389, Public Law 106-393). The subsequent Omnibus Public Land Management Act, also called the "Forest Landscape Restoration Act" (Title, IV, Public Law III-II, 2009), established a national program that encourages ecological, economic, and social sustainability and utilization of forest restoration byproducts to benefit local rural economies and improve forest health. As a result, the Santa Fe National Forest is preparing the Southwest Jemez Mountains Landscape Assessment that, if funded, may reduce the threat of severe wildland fire in Units 1 and 4 of the salamander's range over the next 10 years (USFS 2009, p. 2). However, funding of this project is not certain, nor is it likely to address the short-term risk of severe wildland fire; thus, the efficacy of this program is unsure.

We are not aware of any recently completed or currently funded large-scale projects to address the risk of severe wildland fire on the Jemez Ranger District of the Santa Fe National Forest. Thinning and burning activities in the Southwest Jemez Restoration Assessment area have ranged from 12 ac (5 ha) to about 7,100 ac (2,900 ha) since 1989 (USFS 2009f, pp. 16-18). Still, most of these activities have focused on Ponderosa pine, with precommercial thinning (removing trees less than 9 inches (in) (23 centimeters (cm)) in diameter at breast height (dbh)) occurring on only 6,000 ac (2,400 ha) since 1986 (USFS 2009f, p. 18). Many of the forest stands remain densely stocked, creating multi-tiered fuels that add to crown fire risk. As such, the limited scale of these thinning and burning activities has not reduced the overall risk of severe crown fire in the area (e.g., see USFS 2009, 2009a, 2009b). The existing risk of wildfire on the VCNP and surrounding areas is uncharacteristically high and is a significant departure from historic conditions over 100 years ago (VCNP 2010, p. 3.1; Allen 1989, pp. ii-346; 2001, pp. 1-10). Therefore, it is highly probable that the overall risk of severe wildland fire will not be significantly reduced or eliminated on USFS lands, National Park Service lands, the VCNP, or surrounding lands in the foreseeable future.

Since 1977, these severe wildland fires have significantly degraded important features of salamander habitat including removal of tree canopy and shading, increases of soil temperature, decreases of soil moisture, increased pH, loss or reduction of soil organic matter, reduced porosity, and short-term creation of water-repelling soils. These and other effects limit the amount of available surface habitat and the timing and duration when salamanders can be surface active, which negatively impacts salamander behavior (e.g., foraging and mating). For these reasons, severe wildland fires have led to a reduction in the quality and quantity of the available salamander habitat rangewide. For this reason, the USFS believes, and we concur, that habitat loss from extensive, stand-replacing wildland fire threatens the salamander (USFS 2009c, p. 1). These effects will likely continue into the foreseeable future because we do not anticipate large-scale changes to funding or initiation of projects that would significantly alleviate the currently high risk of wildfire. Therefore, we believe that fire exclusion and suppression has substantially affected the salamander and this trend is expected to continue.

Forest Composition and Structure Conversions

Changes in forest composition and structure threaten the salamander by directly altering soil moisture, soil temperature, soil pH, relative humidity, and air temperature. With an increase of small-diameter trees on the Jemez Mountains, there is an increase in demand for water required for evapotranspiration, which in turn can lead to increased drying of the soil. Limited water leads to drought-stressed trees, and increases their susceptibility to burning, insects, and disease. This is especially true on south-facing slopes, where less moisture is available or during times of earlier snowmelt. Furthermore, reduced soil moisture may disrupt surface activities of salamanders (e.g., foraging) or alter prey availability. The degree of these impacts is currently unknown; however, alteration of forest composition and structure contribute to increased risk of forest die-offs from disease and insects throughout the range of the salamander (USFS 2002, pp. 11-13; 2009d, p. 1; 2009a, pp. 8-9; 2010, pp. 1-11; Allen 2001, p. 6). We find that the interrelated contributions from changes in vegetation to large-scale, high-severity wildfire and forest die-offs are of a significant magnitude across the range of the species (e.g., see "Fire Exclusion and Severe Wildland Fires" section, above), and in addition to continued predicted future changes to forested habitat within the range of the species, threaten the salamander.

Preliminary data collected from the VCNP indicates that an increase in the amount of tree canopy cover in an area influences the amount of snow that is able to reach the ground, and can decrease the amount of soil moisture and infiltration (Enquist *et al.* 2009, p. 8). On the VCNP, 95 percent of coniferous forests have thick canopy cover with heavy understory fuels (VCNP 2010, pp. 3.3-3.4; USFS 2009a, p. 9). In these areas, snow accumulates in the tree canopy over winter, and in the spring can quickly evaporate without reaching or infiltrating the soil. For this reason, recent increases in canopy cover, resulting from fire exclusion and suppression, could be having significant drying effects on salamander habitat and threaten the salamander now and in the foreseeable future.

Post-fire Rehabilitation

Post-fire management practices are often needed to restore forest dynamics (Beschta *et al.* 2004, p. 957). In 1971, USFS was given formal authority by Congress for Burn Area Emergency Rehabilitation (BAER) (Robichaud *et al.* 2000, p. 1) and integrated the evaluation of fire severity, funding request procedures, and treatment options. Treatment options implemented by USFS and BAER teams include hillslope treatments (grass seeding, contour-felled logs, mulch, and other methods to reduce surface runoff and keep post-fire soil in place, such as tilling, temporary fencing, erosion control fabric, straw wattles, lopping, and scattering of slash) and channel treatments (straw bale

check dams, log check dams, rock dams, and rock cage dams (gabions)) (Robichaud *et al.* 2000, pp. 11-21). Rehabilitation actions following the Cerro Grande fire in salamander habitat included heavy equipment and bulldozer operation, felling trees for safety reasons, mulching with straw and placement of straw bales, cutting and trenching trees (contour felling and securing on slope), hand and aerial seeding, and aerial hydromulch (wet mulch with fertilizer and seed) (USFS 2001, p. 1). Some contour felling is likely beneficial for the salamander post-fire because it can slow erosion and, in cases where surface rocks are not present or present in low numbers, the logs can also provide immediate cover. Following the Cerro Grande Fire, the BAER Team recommended felling large-diameter Douglas fir logs and cutting four disks off each log (rounds) to provide immediate cover for salamanders before summer rains (Interagency BAER Team 2000, p. 87; USFS 2001, p. 1). It remains unknown if these measures are effective, but they probably benefit the salamander in the short term. Alternatively, some post-fire treatments (e.g., grass seeding, tilling, erosion control fabrics, and removal of surface rocks to build rock dams) likely negatively impact the salamander. The most common BAER treatment is grass seeding dropped from aircraft (Robichaud *et al.* 2000, p. 11). This treatment is inexpensive, rapidly increases water infiltration, and stabilizes soil (Robichaud *et al.* 2000, p. 11). Nonnative grasses are typically seeded because they are fast-growing and have extensive fibrous roots (Robichaud *et al.* 2000, p. 11). Nevertheless, these nonnative grasses have created thick mats that are impenetrable to the salamander because the species has short legs and cannot dig tunnels. The existing spaces in the soil fill with extensive roots, altering the sub-surface habitat in a manner that is unusable to the salamander. Finally, grass seeds can also contain fertilizer that is broadcast over large areas of habitat (e.g., hydromulch used in post-fire treatments for the Cerro Grande Fire). Fertilizers can contain nitrate, which is toxic to amphibians at certain levels (Rouse *et al.* 1999, p. 799). While the effects of seeding with nonnative grasses and the use of fertilizers on salamanders have not been specifically studied, this action has likely caused widespread adverse impacts to the salamander. Because this action is a common post-fire treatment, it will likely continue to negatively impact salamander localities from both past and future treatments.

In summary, some post-fire treatments could benefit the salamander, such as some contour felling of logs. Additional measures, such as cutting and scattering rounds, can also benefit the salamander. However, other post-fire treatments negatively impact the salamander. Small-scale impacts could occur from removing rocks from habitat to build rock dams, and large-scale impacts include grass seeding and associated chemicals. We conclude that while the effects of high-severity, stand-replacing wildfire, also referred to as severe wildland fires, are the most significant threat to the salamander, actions taken subsequent to the wildfires could determine whether the salamander will persist in or return to those areas. We therefore find that post-fire rehabilitation treatments are currently a threat to the salamander, and are expected to continue in the future.

Fire Use

Fire use includes the combination of wildland fire use (the management of naturally ignited wildland fires to accomplish specific resource management objectives) and prescribed fire (any fire ignited by management actions to meet specific objectives) applications to meet natural resource objectives (USFS 2010b, p. 1). Fire use can benefit the salamander in the long term by reducing the risk of severe wildland fires and by returning the natural fire cycle to the ecosystem. Alternatively, other practices such as broadcast burning (i.e., conducting prescribed fires over large areas) consume ground litter that helps to create moist conditions and stabilize soil and rocky slopes. Depending on time of year, fire use can also impact the salamander if the species is active on the surface, which is typically from July to September. Conditions for salamander surface activity (wet) are often not conducive to fire. Prescribed fire in the Jemez Mountains is often planned for the fall (when the salamanders are not active), because low wind and increased moisture during this time allow more control, lowering chances of the fire's escape. Because fire historically occurred prior to July (i.e., pre-monsoon rains), the majority of fires likely preceded surface activity. Prescribed fires conducted after September, when salamanders typically return to their underground retreats, would be similar to a natural fire regime in the spring with low direct impacts because most salamanders are subsurface. However, it is unknown what the indirect impacts to the salamander would be by altering the time of year when fire is present on the landscape.

Other impacts to the salamander from fire use can include digging fire lines, targeting the reduction of large decomposing logs, and chemical use (such as flares and fire retardant) in salamander habitat. Some impacts to the salamander can be avoided through seasonal timing of prescribed burns and modifying objectives (e.g., leaving large diameter logs, greater canopy cover) and techniques (e.g., not using flares or chemicals) of the prescribed fire in salamander habitat (Cummer 2005, pp. 2-7). As part of the Southwest Jemez Restoration Project proposal, the Santa Fe National Forest has set specific goals pertaining to the salamander including reduction of the risk of high-intensity wildfire in salamander habitat and retention of a moisture regime that will sustain high-quality salamander habitat (USFS 2009a, p. 11). The Santa Fe National Forest intends to minimize impacts to the salamander and to work towards its recovery (USFS 2009, p. 4), but specific actions or recommendations to accomplish this goal have not yet been determined. If the salamander is not considered, fire use could make its habitat less suitable (warmer; drier; fewer large, decomposing logs) and kill or injure salamanders that are surface active. Alternatively, the species may benefit if seasonal restrictions and maintaining key habitat features (e.g., large logs and sufficient canopy cover to maintain moist microhabitats) are part of managing the fire. Given the current condition of forest composition and structure, the risks of severe wildland fire on a large geographic scale will take a long-term planning strategy. Fire use is critical to the long-term protection of the salamander's habitat, although some practices are not beneficial to the species and may threaten the salamander.

Fire Suppression Activities

Similarly, fire suppression activities both protect and negatively impact the salamander or its habitat. For example, fire suppression actions that occurred in salamander habitat during the Cerro Grande Fire included hand line construction, backfiring with the capacity of burning off heavy ground cover, fire retardant drops, and bulldozer line (USFS 2001, p. 1). Water dropping from helicopters is another fire suppression technique used in the Jemez Mountains, where water is collected from accessible streams, ponds, or stock tanks. By dropping surface water into terrestrial habitat, there is a significant increased risk of

spreading aquatic pathogens into terrestrial habitats (see Factor C, Disease).

Fire retardants and fire fighting foams are addressed under Factor E. Fire suppression actions including the use of fire retardants, water dropping, backfiring, and fire line construction likely impact the salamander; however, the magnitude of impacts from fire suppression remains unknown, and we do not have enough information at this time to determine if fire suppression actions threaten the salamander. However, these activities improve the chances of quick fire suppression and would be relatively smaller in scale and could have fewer impacts than a severe wildland fire. Therefore, we do not find that fire suppression activities are a threat to the salamander, nor do we expect them to become a threat in the future.

Mechanical Treatment of Hazardous Fuels

Mechanical treatment of hazardous fuels refers to the process of grinding or chipping vegetation (trees and shrubs) to meet forest management objectives. When these treatments are used, resprouting vegetation often grows back in a few years, if the area is not maintained through prescribed fire. Mechanical treatment may include the use of heavy equipment or manual equipment to cut vegetation (trees and shrubs) and to scrape slash and other debris into piles for burning or mastication. Mastication equipment uses a cutting head attached to an overhead boom to grind, chip, or crush wood into smaller pieces and is able to treat vegetation on slopes up to 35 to 45 percent while generally having little ground impact (soil compaction or disturbance). The debris is left on the ground where it decomposes and provides erosion protection or it is burned after drying out.

Mechanical treatment of hazardous fuels such as manual or machine thinning (chipping and mastication) may cause localized disturbances to the forest structure that can impact the salamander. For example, removal of overstory tree canopy or ground cover within salamander habitat may cause desiccation of soil or rocky substrates. Additionally, tree-felling or use of heavy equipment has the potential to disturb the substrate, resulting in destabilization of talus and compaction of soil, which may reduce sub-surface interstices used by salamanders as refuges or for their movements. Similarly, if salamanders are surface active, any of these activities could crush salamanders present under surface cover objects (through use of heavy equipment or heavy foot traffic).

Also of concern is soil compaction from the use of heavy equipment. The masticator largely operated on skid trails (temporary trails used to transport trees, logs, or other forest products), and mastication did not increase soil compaction, because the machinery traveled on trails covered with masticated materials (wood chips, etc.), which more evenly distributed the weight of the machinery and reduced soil compaction (Moghaddas and Stephens 2008, p. 3104). Activities that compact soil, remove excessive canopy cover, or are conducted while salamanders are surface active would be detrimental to the salamander and its habitat. If mechanical treatment and hazardous fuels activities are conducted in a manner that minimizes impacts to the salamander while reducing the risk of severe wildland fire, the salamander could ultimately benefit from the reduction in the threat of severe wildland fire and the improvement in the structure and composition of the forest. While mechanical treatments likely impact a few individual salamanders, we do not have enough information at this time to determine whether mechanical treatments threaten the species.

Forest Silvicultural Practices

Forest silvicultural practices (the care and cultivation of forest trees) threaten the salamander. Many areas of the landscape in the Jemez Mountains has been fragmented by past commercial (trees greater than 9 in (23 cm) dbh) and pre-commercial (trees less than 9 in (23 cm) dbh) timber harvesting. Much of the forests of the Jemez Mountains lack large-diameter trees and have become overgrown with small-diameter trees. Salamander localities are found generally within the intact stands of mature forest, but can still be found in areas where evidence of logging exists. We assessed whether timber harvest (logging) or salvage logging threaten the salamander.

From 1935 to 1972, logging (particularly clear-cut logging) was conducted on VCNP (ENTRIX 2009, p. 164). These timber activities resulted in about 50 percent of VCNP being logged, with over 1,600 kilometers (km) (1,000 miles (mi)) of 1960s era logging roads (ENTRIX 2009, p. 164) being built in winding and spiraling patterns around hills (ENTRIX 2009, pp. 59-60). On the VCNP, 95 percent of forest stands contain dense thickets of small-diameter trees (VCNP 2010, pp. 3.3-3.4). This multi-tiered forest structure is similar to surrounding areas and provides ladder fuels that favor the development of crown fires (Allen 2001, pp. 5-6; USFS 2009a, p. 10). Additionally, all forest types on the VCNP contain very few late-stage mature trees greater than 16 in (41 cm) dbh (less than 10 percent of the overall cover) (VCNP 2010, pp. 3.4, 3.6-3.23). The lack of large trees is an artifact of intense logging, mostly from clear-cutting practices in the 1960s (VCNP 2010, p. 3.4), and we believe this to be similar for surrounding forests. Clear-cutting degrades forest floor microhabitats by eliminating shading and leaf litter, increasing soil surface temperature, and reducing moisture (Petranka 1998, p. 16).

In a comparison of four logged sites and five unlogged sites in Jemez Mountains salamander habitat, Ramotnik (1986, p. 8) reports that a total of 47 salamanders were observed at four of the five unlogged sites, while no salamanders were observed on any of the logged sites. It is unclear whether salamanders were observed at the sites prior to logging, but significant differences in habitat features (soil pH, litter depth, and log size) between the logged and unlogged sites are reported. On the unlogged sites, salamanders were associated with cover objects that were closer together and more decayed, and that had a higher canopy cover, greater moss and lichen cover, and lower surrounding needle cover, compared to cover objects on logged sites (Ramotnik 1986, p. 8). Cover objects on logged sites were less decomposed and accessible by the salamanders, had a shallower surrounding litter depth, and were associated with a more acidic soil than were cover objects on the unlogged sites (Ramotnik 1986, p. 8).

Consistent with the findings of Ramotnik (1986, p. 8), deMaynadier and Hunter (1995; in Olson *et al.* 2009, p. 6) reviewed 18 studies and found that salamander abundance after timber harvest was 3.5 times greater on controls than in clear-cut areas. Furthermore, Petranka *et al.* (1993; in Olson *et al.* 2009, p. 6) found that *Plethodon* abundance and richness in mature forest were five times higher than those in recent clear cuts, and they estimated that it would take as much as 50 to 70 years for clearcut populations to return to pre-clearcut levels. In the Jemez Mountains, historic clearcut logging practices likely led to significant habitat loss for the salamander with effects that continue today.

The majority of salamander habitat has been heavily logged, which has resulted in changes in stand structure and a paucity of large-diameter trees. This lack of large-diameter trees means

that there is a limited source for future large, decomposing logs needed for high-quality salamander habitat. Ramotnik (1986, p. 12) reports that logs with salamanders present were significantly larger and wetter than those without salamanders. Further, most salamanders were found in well decomposed logs. In a similar plethodontid salamander, large logs provide refuge from warmer temperatures and resiliency from impacts that can warm and dry habitat (Kluber *et al.* 2009, p. 31).

On the VCNP, only minor selective logging has occurred since 1972, and it is expected that some thinning of second growth forests will continue to occur to prevent severe wildfires. However, no commercial logging is proposed or likely in the foreseeable future (Parmenter 2009b, cited in Service 2010). Although commercial timber harvest on the Santa Fe National Forest has declined appreciably since 1988 (Fink 2008, pp. 9, 19), the effects from historical logging and associated roads will continue to threaten the salamander and are expected to continue in the foreseeable future.

Salvage cutting (logging) removes dead, dying, damaged, or deteriorating trees while the wood is still merchantable (Wegner 1984, p. 421). Sanitation cutting, similar to salvage, removes the same kinds of trees as well as those susceptible to attack, but for the purpose of reducing the spread of biotic pests (Wegner 1984, p. 421). Both types of cutting are used in salamander habitat, and are referred to as "salvage logging." Salvage logging is a common response to forest disturbance (Lindenmayer *et al.* 2008, p. 4) and, in salamander habitat, is most likely to occur after a forest die-off resulting from fire, disease, insects, or drought. The purposes for salvage logging in the Jemez Mountains have included firewood for local use, timber for small and large mills, salvage before economic decay, creation of diverse healthy and productive timber stands, management of stands to minimize insect and disease losses (USFS 1996, p. 4), and recovery of the timber value of fire-killed trees (USFS 2003, p. 1). When conducted in salamander habitat, it can further reduce the quality of the habitat remaining after the initial disturbance by removing or reducing the shading afforded by dead standing trees (Moeur and Guthrie 1984, p. 140) and future salamander cover objects (removal of trees precludes their recruitment to the forest floor), and by interfering with habitat recovery (Lindenmayer *et al.* 2008, p. 13).

Recent salvage logging within the range of the salamander occurred following the Lakes and BMG Wildfire. The USFS stated that mitigation measures for the Lakes and BMG Wildfire Timber Salvage Project would further protect the salamander and enhance salamander habitat by immediately providing slash and down logs (USFS 2003, pp. 4-5). Mitigation for the salvage logging project included conducting activities during winter to avoid soil compaction, and providing for higher snag retention (by leaving all Douglas fir trees (16 percent fire-killed trees) and 10 percent of other large snags) to provide future down log habitat (USFS 2003, p. 29). These mitigation measures were developed in consultation with NMEST in an effort to minimize impacts to salamander from salvage logging; however, NMEST recommended that salvage logging be excluded from occupied salamander habitat because it was not clear that even with the additional mitigations that it would meet the conservation objectives of the Cooperative Management Plan (NMEST 2003, p. 1). The mitigation measures would likely benefit the salamander in the short term if conducted without salvage logging. It is not known if mitigation measures offset the impacts of salvage logging in salamander habitat; however, Lindenmayer *et al.* (2008, p. 13) reports that salvage logging interferes with natural ecological recovery and may increase the likelihood and intensity of subsequent fires. We believe that removal of trees limits the amount of future cover and allows additional warming and drying of habitat. The potential for large-scale forest die-offs from wildfire, insect outbreak, disease, or drought is high in the Jemez Mountains (see Factors A and E), which may result in future salvage logging in salamander habitat in the foreseeable future. We believe that salvage logging in salamander habitat further diminishes habitat quality and may be a determining factor of salamander persistence subsequent to forest die-off.

Some timber harvest activities likely pose no threat to the salamander. For example, removal of hazard trees may have minimal disturbance to surrounding soils or substrates, especially if removal is conducted when the species is not surface-active (i.e., seasonal restrictions). This type of localized impact may affect a few individuals but is not likely to affect a population or be considered a threat. Likewise, precommercial thinning (removal of trees less than 9 in (22.9 cm) dbh) or shrub and brush removal (without the use of herbicides) to control vegetation, and without disturbing or compacting large areas of the surrounding soils, likely could be conducted without adverse effects on the salamander.

In summary, current commercial logging levels are very low and do not threaten the salamander. Because most of the high-quality, large-diameter trees have been removed from the Jemez Mountains, we believe that commercial logging levels will remain low for the foreseeable future. Nevertheless, impacts from past commercial logging activities continue to have detrimental effects to the salamander and its habitat. These past activities removed large-diameter trees, removed forest canopy, created roads, compacted soil, and disturbed other important habitat features. These effects of historic logging include the warming and drying of habitat, and no source for future large cover objects (decomposing logs) that contribute to habitat complexity and resiliency. Salvage logging further diminishes salamander habitat subsequent to disturbance. Therefore, we conclude that the salamander continues to be threatened by forest silvicultural practices, including salvage logging, and we expect that these practices and the resulting threats to the species will continue in the future.

Dams

Following the 2000 Cerro Grande Fire, water retention dams were constructed within potential salamander habitat to minimize soil erosion within burned areas (NMDGF 2001, p. 1; NMEST 2002, pp.1-2; Kutz 2002, p. 1). Surveys were not conducted prior to construction, and we do not know if the areas were occupied by salamanders, but the areas are in the vicinity of occupied salamander habitat. Because these types of structures were installed to slow erosion subsequent to wildfire, additional dams or flood control features could be constructed within salamander habitat in the foreseeable future following severe wildland fires. Some individual salamanders may be killed or injured by this activity; however, the impact to the species and habitat from construction of retention dams would be relatively minor. For this reason, we do not consider the construction of dams to currently be a significant threat to the salamander, nor do we expect dam construction to be a threat to the species in the future.

Mining

Pumice mining activities (e.g., Copar Pumice Company, the Copar South Pit Pumice Mine, and the El Cajete Pumice Mine) have been evaluated for impacts to the salamander (USFS 1995, pp. 1-14;

1996, pp. 1-3). Pumice mines are located within areas of volcanic substrate that are unlikely to support salamanders (USFS 2009c, p. 2). However, associated infrastructure from expansion of the El Cajete Mine, such as access roads and heavy equipment staging areas, may have the potential to be located in potential salamander habitat. Although no decision on authorizing the extension to the El Cajete Mine has been made (USFS 2009. p. 2), these activities would be small in scale and not likely considered a threat to the species, either currently or in the future.

Private (Residential) Development

Private property development threatens the salamander. Although the majority of salamander habitat is located on Federally managed lands, private land contains substantially sized, contiguous areas of salamander habitat. Additionally, some areas with salamander habitat on the Santa Fe National Forest could be developed for private use (as proposed in USFS 1997, pp. 1-4; USFS 1998, pp. 1-2). Development can destroy and fragment habitat through the construction of homes and associated infrastructure (e.g., roads, driveways, and buildings), making those areas unusable to salamanders and likely resulting in mortalities to salamanders within those areas. These activities have reduced the quantity and quality of salamander habitat primarily within the southern part of Unit 1, the central and eastern parts of Unit 3, and large inholdings in Unit 4. As the human population continues to increase in New Mexico, we believe development will likely continue to directly affect the salamander within these units in the foreseeable future. These activities will likely be in the form of new housing and associated roads and infrastructure. Because development occurs, or is likely to occur, in part of the range of the salamander, and because we anticipate the continuing loss and degradation of habitat in these areas, we determine that private property development currently threatens the salamander, and this threat will continue in the future.

Geothermal Development

Geothermal development does not threaten the salamander. A large volcanic complex in the Jemez Mountains is the only known high-temperature geothermal resource in New Mexico (Fleischmann 2006, p. 27). Geothermal energy was explored for possible development on the VCNP between 1959 and 1983 (USFS 2007, p. 126). In July 1978, the U.S. Department of Energy, Union Oil Company of California (Unocal), and the Public Service Company of New Mexico began a cooperative geothermal energy project (USFS 2007, p. 126). The demonstration project drilled 20 exploratory wells over the next 4 years. One of the geothermal development locations was south of Redondo Peak on the VCNP, and the canyon in this area was occupied by the salamander (Sabo 1980, pp. 2-4). An Environmental Impact Statement analyzed a variety of alternatives, including placement of transmission towers and lines (U.S. Department of Energy cited in Sabo 1980, pp. 2-5). Nevertheless, the project ended in January 1982, because Unocal's predictions concerning the size of geothermal resources were not met. Out of the 40 wells drilled in the Valles Caldera in the Redondo Creek and Sulphur Springs areas, only a few yielded sufficient resources to be considered production wells (USFS 2007, p. 126). In some cases, primarily in Unit 5, this occurred in salamander habitat and concrete well pads were built. Although the geothermal resources are found within the range of the salamander in the Jemez Mountains, extraction of large quantities of hot fluids from these rocks has proven difficult and not commercially viable (USFS 2007, p. 127). As such, we are not aware of any current or future plans to construct large or small-scale geothermal power production projects within salamander habitat. Moreover, in 2006, the mineral rights on the VCNP were condemned, including geothermal resources (VallesCaldera.com 2010, p. 1). For these reasons, geothermal development does not present a current or foreseeable threat to the salamander.

Roads, Trails, and Habitat Fragmentation

Roads, trails, and habitat fragmentation have had significant detrimental impacts that threaten the salamander now and in the foreseeable future. Construction of roads and trails has historically eliminated or reduced the quality or quantity of salamander habitat, reducing blocks of native vegetation to isolated fragments and creating a matrix of native habitat islands that have been altered by varying degrees from their natural state. Allen (1989, pp. 46, 54, 163, 216-242, and 302) collected and analyzed changes in road networks (railroads, paved roads, improved roads, dirt roads, and primitive roads) in the Jemez Mountains from 1935 to 1981. Landscape-wide road density increased 11.75 times from 0.382 km (0.237 mi) of road per square km (0.386 square mi) in 1935 to 4.490 km (2.790 mi) of road per square km in 1981, and in surface area of the map area from 0.131 percent (247 ha; 610 ac) to 1.667 percent (3,132 ha; 7,739 ac) (Allen 1989, pp. 236-240). Allen (1989, p. 240) reports that of 8,443 km (5,246 mi) of roads in the Jemez Mountains in 1981, 74 percent was mapped on USFS lands (3,607 km; 2,241 mi) and private lands (2,649 km; 1,646 mi). These roads generally indicate past logging activity (Allen 1989 p. 236). Ongoing effects of roads and their construction on the VCNP may exceed the effects of the timber harvests for which the roads were constructed (Balmat and Kupfer 2004, p. 46). The majority of roads within the range of the salamander are unpaved, and the compacted soil typically has very low infiltration rates that generate large amounts of surface runoff (Robichaud *et al.* 2010, p. 80). Increasing runoff and decreasing infiltration has led to the drying of adjacent areas of salamander habitat.

The construction of roads and trails degrades habitat by compacting soil and eliminating interstitial spaces on the surface and sub-surface. Furthermore, roads and trails reduce or eliminate important habitat features (e.g., lowering canopy cover or drying of soil) and prevent gene flow (Saunders *et al.* 1991, p. 25; Burkey 1995, pp. 527, 528; Frankham *et al.* 2002, p. 310; Noss *et al.* 2006, p. 219). Vehicular and off-highway vehicle (OHV) use of roads and trails can kill or injure salamanders. Roads are known to fragment terrestrial salamander habitat and act as partial barriers to movement (deMaynadier and Hunter 2000, p. 56; Marsh *et al.* 2005, p. 2004). We find that the establishment of roads and trails will likely continue to impact the salamander and its habitat, increasing the risk of extirpation of some localities.

Road clearing and maintenance activities can also cause localized adverse impacts to the salamander from scraping and widening roads and shoulders or maintaining drainage ditches or replacing culverts. These activities may kill or injure individuals through crushing by heavy equipment. Existing and newly constructed roads or trails fragment habitat, accelerating extirpation of localities, especially when movement between suitable habitat is not possible (Burkey 1995, p. 540; Frankham *et al.* 2002, p. 314). Isolated populations or patches are vulnerable to random events, which could easily destroy part of or an entire salamander locality, or decrease a locality to such a low number of individuals that the risk of extirpation from human disturbance, natural catastrophic events, or genetic

and demographic problems (e.g., loss of genetic diversity, uneven male to female ratios) would increase greatly (Shaffer 1987, p. 71; Burkey 1995, pp. 527, 528; Frankham *et al.* 2002, pp. 310-324).

Terrestrial salamanders are impacted by edge effects, typically adjacent to roads and areas of timber harvest, because microclimate conditions within forest edges often exhibit higher air and soil temperatures, lower soil moisture, and lower humidity, compared to interior forested areas (Moseley *et al.* 2009, p. 426). Moreover, by creating edge effects, roads can reduce the quality of adjacent habitat by increasing light and wind penetration, exposure to pollutants, and the spread of invasive species (Marsh *et al.* 2005, pp. 2004-2005). Due to the physiological nature of terrestrial salamanders, they are sensitive to these types of microclimate alterations, particularly to changes to temperature and moisture (Moseley *et al.* 2009, p. 426). Generally, more salamanders are observed with increasing distance from some edge types, which is attributed to reduced moisture and microhabitat quality (Moseley *et al.* 2009, p. 426).

Road construction on New Mexico State Highway 126 around the town of Seven Springs in 2007-2008 occurred in occupied salamander habitat in Unit 1. Measures were implemented by the USFS reduce the impact of these road construction activities on salamanders including limiting construction to times when salamanders would not be active on the surface and felling of approximately 300 trees in the project area to replace large woody debris used as salamander habitat. However, at least 24 ac (9.7 ha) of salamander habitat were directly impacted by this project (USFS 2009c, p. 2), which resulted in the destruction and fragmentation of occupied salamander habitat. Continued maintenance of State Highway 126 in the future will likely involve the use of salts for road de-icing, and increase the exposure of adjacent areas to chemicals and pollution from vehicular traffic. Fragmentation of parts of Unit 1 and subsequent edge effects have reduced the quality and quantity of salamander habitat.

In 2007, the NMEST concluded that impacts from OHVs and motorcycles were variable depending on their location relative to salamander habitat. Since the width of a trail is generally smaller than a road, canopy cover typically remains over trails. In some cases (e.g., flat areas without deeply cut erosion), the trails do not likely impede salamander movement. Alternatively, severe erosion caused by heavy trail use in some places formed trenches approximately 2 ft wide by 2 to 3 ft deep (0.6 m wide by 0.6 to 0.9 m deep), which would likely prevent salamander movement, fragment local populations, and trap salamanders that fall into the trenches. Often, the most severely impacted areas from OHVs had been the best salamander habitat prior to OHV use, because they were located on steep, north-facing slopes, with loose rocky soils that are easily eroded.

In November 2005, the USFS issued the Travel Management Rule that requires designation of a system of roads, trails, and areas for motor vehicle use by vehicle class and, if appropriate, by time of year (70 FR 68264; November 9, 2005). As part of this effort, the USFS inventoried and mapped roads and motorized trails, and is currently completing a Draft Environmental Impact Statement to change the usage of some of the current system within the range of the salamander. The Santa Fe National Forest is attempting to minimize the amount of authorized roads or trails in known occupied salamander habitat and will likely prohibit the majority of motorized cross-country travel within the range of the species (USFS 2009c, p. 2). Nevertheless, by closing some areas to OHV use, the magnitude of impacts in areas open to OHV use in salamander habitat will be greater (NMEST 2008, p. 2). We acknowledge that some individual salamanders may be killed or injured by vehicles and OHVs and that OHV use impacts salamander habitat. However, we believe the Santa Fe National Forest is attempting to minimize impacts to the salamander and its habitat. Furthermore, we believe that the revised travel management regulations will reduce the impact of motorized vehicles on the salamander and its habitat by providing a consistent policy that can be applied to all classes of motor vehicles, including OHVs. We conclude that OHV and motorcycle use threatens the salamander if left unmanaged, but with the implementation of the forthcoming management of motorized trails on the Santa Fe National Forest, the threat will be greatly reduced.

In summary, the extensive roads that currently exist in the Jemez Mountains have significantly impacted the salamander and its habitat due to death and injury of salamanders; fragmentation and population isolation; habitat loss; habitat modification from edges; and in some cases, increased exposure to chemicals, salts, and pollution. Roads associated with private development are most likely to be constructed in the future in portions of Units 3 and 4, which has the most private land. However, new roads may also be constructed through Federal lands within the salamander's range. Roads and trails have significantly fragmented habitat and likely reduced persistence of existing salamander localities. Therefore, we conclude that roads, trails, and the resulting habitat fragmentation currently present a threat to the salamander, and this threat will continue in the future.

Recreation

Recreational activities threaten the salamander now and in the foreseeable future. The Jemez Mountains are heavily used for dispersed recreational activities that have the potential to impact the species, including camping, hiking, mountain biking, hunting, and skiing; OHV use is addressed above. There is overlap of the Jemez National Recreation Area, a 57,650 ac (23,330 ha) area of the southwestern Jemez Mountains, and salamander Units 1 and 4. It is estimated that nearly 1.6 million people visit the Jemez National Recreation Area for recreational opportunities each year (Jemez National Recreation Area 2002, p. 2). Despite an existing average road density of approximately 2.5 mi (4.0 km) of road per square mile (2.6 square km) on the Jemez National Recreation Area, off road use continues to occur resulting in new roads being created or decommissioned roads being reopened (Jemez National Recreation Area 2002, pp. 10, 11). Using current population and travel trends, the potential visitation demand on the VCNP is between 250,000 and 400,000 visits per year (Entrix 2009, p. 93). Of this projection, the VCNP is expected to realize 120,000 visitors per year by the year 2020 (Entrix 2009, p. 94). To put this in context, from 2002 to 2007 the VCNP averaged about 7,600 visitors per year (Entrix 2009, p. 13). Bandelier National Monument, which has a smaller proportion of salamander habitat, overlaps with the southern portion of Unit 3, and attracts an average annual visitation of over 250,000 people (Entrix 2009, p. 92). Fenton Lake State Park in Unit 1 also contains salamander habitat. The park received over 120,000 visitors on its 70 ac (28 ha) containing hiking trails and a fishing lake (Entrix 2009, p. 92).

Campgrounds and associated parking lots and structures have likely impacted the salamander through modification of small areas of habitat from soil compaction and vegetation removal. Similarly, compaction of soil from hiking or mountain biking trails has modified a relatively small amount of habitat. The majority of these trails likely do not act as barriers to

movement nor create edge effects similar to roads because they are narrow and do not reduce canopy cover. However, similar to OHV trails, deeply eroded mountain bike trails could act as barriers and entrap salamanders.

The Pajarito Ski Area in Los Alamos County was established in 1957 and expanded through 1994. Ski runs were constructed within salamander habitat. A significant amount of high-quality habitat (north-facing mountain with mixed conifer forests and many salamander observations) was destroyed with construction of the ski areas and the runs and roads have fragmented and created a high proportion of edge areas. Nevertheless, surveys conducted in 2001 in two small patches of forested areas between ski runs detected salamanders (Cummer *et al.* 2001, pp. 1, 2). Most areas between runs remain unsurveyed. However, because of the large amount of habitat destroyed, the extremely small patch sizes that remain, and relatively high degree of edge effects, the salamander will likely not persist in these areas in the long term.

Adjacent to the downhill ski runs are cross country ski trails. These trails are USFS lands, but maintained by a private group. In 2001, trail maintenance and construction with a bulldozer was conducted by the group in salamander habitat during salamander surface activity period (NMEST 2001, p. 1). Trail maintenance was reported as leveling all existing ski trails with a bulldozer, that involved substantial soil disturbance, cutting into slopes as much as 2 ft (0.6 m), filling other areas in excess of 2 ft (0.6 m), widening trails, and downing some large trees (greater than 10 in (25.4 cm) dbh), ultimately disturbing approximately 2 to 5 ac (1 to 2 ha) of occupied salamander habitat (Sangre de Christo Audubon Society 2001, pp. 2-3). This type of trail maintenance while salamanders are surface active could result in direct impacts to salamanders, and further fragment and dry habitat. We do not know if there are future plans to modify or expand the existing ski area.

The Jemez Mountains are currently heavily used for recreational activities, and as human populations in New Mexico continue to expand, there will likely be an increased demand in the foreseeable future for recreational opportunities in the Jemez Mountains. Large-scale recreational projects in salamander habitat would threaten the salamander. Therefore, we conclude that recreational activities currently threaten the salamander, and will continue to be a threat in the future.

Livestock Grazing

Historical livestock grazing changed the Jemez Mountains ecosystem by removing understory grasses, contributing to altered fire regimes, altered vegetation composition and structure, and increased soil erosion. Livestock grazing generally does not occur within salamander habitat because cattle concentrate outside of forested areas where grass and water are more abundant. We have no information that indicates livestock grazing is directly or indirectly threatening the salamander or its habitat. However, small-scale habitat modification, such as livestock trail establishment or trampling, in occupied salamander habitat is possible. The USFS and VCNP manage livestock to maintain fine grassy fuels and should not limit low-intensity fires in the future. Indirect effects from livestock activities may include the risk of aquatic disease transmission from earthen stock ponds that create areas of standing surface water. Earthen stock tanks are often utilized by tiger salamanders (*Ambystoma tigrinum*), which are known to be vectors for disease (i.e., they can carry and spread disease) (Davidson *et al.* 2003, pp. 601-607). Earthen stock tanks can also concentrate tiger salamanders, increasing chances of disease. Some tiger salamanders use adjacent upland areas and may transmit disease to the Jemez Mountains salamander in areas where they co-occur. However, we do not have enough information to draw conclusions on the extent or role tiger salamanders may play in disease transmission. Although some small-scale habitat modification is possible, livestock are managed to maintain a grassy forest understory, and the connection between earthen stock tanks for livestock and aquatic disease transmission is unclear. Therefore, we conclude that livestock grazing is not a current threat to the salamander, nor do we believe it will be in the future.

Summary

In summary, the salamander and its habitat are threatened by historical and current fire management practices; severe wildland fire; forest composition and structure conversions; post-fire rehabilitation; forest management (including silvicultural practices); private (residential) development; roads, trails, and habitat fragmentation; and recreation. Due to the limited extent of habitat occupied by the salamander, the severity and magnitude of the threat of severe wildland fire, and ongoing impacts from the existing extensive road network and previous logging practices, we have determined that the present or threatened destruction, modification, or curtailment of habitat and range represents a current significant threat to the salamander, and will continue to be so in the future.

Factor B. Overutilization For Commercial, Recreational, Scientific, or Educational Purposes

Overutilization does not threaten the salamander now or in the foreseeable future, but has likely caused salamander extirpation at the most abundant location known historically. Between 1960 and 1999, nearly 1,000 salamanders were collected from the wild for scientific or educational purposes. The majority (738 salamanders) were collected between 1960 and 1979 (Painter 1999, p. 1). Since 1999, very few salamanders have been collected, and all were collected under a valid permit issued by either NMDGF or USFS. This species is difficult to maintain in captivity, and we know of no salamanders in the pet trade or in captivity for educational or scientific purposes.

In 1967, salamanders were only known from seven localities (Reagan 1967, p. 13). Only one of these localities (the "Type Locality") was considered to have an abundant salamander population (Reagan 1967, p. 8). The species was originally described using specimens collected from this type locality within Unit 4 (Stebbins and Reimer 1950, pp. 73-80). Reagan (1967, p. 11) collected 165 salamanders from this locality between 1965 and 1967, whereas Williams collected an additional 67 of 659 salamanders found at this locality in 1970 (1972, p. 11). Although surveys have been conducted at this locality since the 1990s, no salamanders have been found, suggesting that salamanders in the area have likely been extirpated from overcollection. We are not aware of any other localities where the species has been extirpated from overcollection. Nevertheless, it is apparent that repeated collections of individuals can lead to extirpation. Still, we believe this is no longer a threat because collections are stringently regulated through permits issues by NMDGF and the USFS (see Factor D below). Additionally, due to these measures, we do not believe that collection will be a threat in the future.

Survey techniques can alter salamander habitat by disturbing and drying the areas underneath the objects that provide cover, and destroying decaying logs by searching inside them. Surveyors are now trained to replace cover objects as they were found and to

leave part of every log intact; however, impacts still occur. When surveys are dispersed and there are multiple intervening years, impacts are likely lessened; however, when a location is repeatedly surveyed, habitat quality is diminished. We are aware of only a few locations that have received impacts from repeated surveys (e.g., Activity Plots).

We do not have any recent evidence of risks to the salamander from overutilization for commercial, recreational, scientific, or educational purposes, and we have no reason to believe this factor will become a threat to the species in the future. Therefore, based on a review of the available information, we find that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to the salamander now or in the foreseeable future.

Factor C. Disease or Predation

The petition did not present any information indicating that disease or predation threatens the salamander. Additionally, we have no information in our files that indicates that disease or predation are a threat to the salamander currently or likely to become a threat in the future.

The amphibian pathogenic fungus *Batrachochytrium dendrobatidis* (*Bd*) was found in a wild-caught salamander in 2003 (Cummer *et al.* 2005, p. 248). *Batrachochytrium dendrobatidis* causes the disease chytridiomycosis, whereby the *Bd* fungus attacks keratin in amphibians. In adult amphibians, keratin primarily occurs in the skin. The symptoms of chytridiomycosis can include sloughing of skin, lethargy, morbidity, and death. Chytridiomycosis has been linked with worldwide amphibian declines, die-offs, and extinctions, possibly in association with climate change (Pounds *et al.* 2006, p. 161). In New Mexico, *Bd* has caused significant population declines and local extirpations in the federally threatened Chiricahua leopard frog (*Lithobates [Rana] chiricahuensis*) (USFWS 2007, p. 14). It is also implicated in the decline of other leopard frogs and the disappearance of the boreal toad (*Bufo boreas*) from the State (NMDGF 2006, p. 13). Prior to the detection of *Bd* in the salamander, *Bd* was considered an aquatic pathogen (Longcore *et al.* 1999, p. 221; Cummer *et al.* 2005, p. 248). The salamander does not have an aquatic life stage and is strictly terrestrial; thus the mode of transmission of *Bd* remains unknown. It is possible that the fungus was transported by other amphibian species that utilize the same terrestrial habitat. Both the tiger salamander and the boreal chorus frog (*Pseudacris maculata*) are amphibians that have aquatic life stages and share terrestrial habitat with the salamander. In California, *Bd* has been present in wild populations of another strictly terrestrial salamander since 1973, without apparent population declines (Weinstein 2009, p. 653).

Cummer (2006, p. 2) reported that noninvasive skin swabs on 66 Jemez Mountains salamanders, 14 boreal chorus frogs, and 24 tiger salamanders from the Jemez Mountains were all negative for *Bd*. The observation of *Bd* in the salamander indicates that the species may be susceptible. However, virulence relative to the salamander remains unknown. Although *Bd* can be highly infectious and lethal, we have no information to suggest that the disease threatens the salamander currently or in the future. We intend to monitor the prevalence of *Bd* in the salamander using noninvasive skin swabs. Therefore, we do not find that disease or predations is currently a threat to the salamander, nor do we find it likely they will be so in the future.

Factor D. Inadequacy of Existing Regulatory Mechanisms

One of the primary threats to the salamander is the loss, degradation, and fragmentation of habitat. As described below, existing regulatory mechanisms are not sufficient to protect the salamander or its habitat. New Mexico State law provides limited protection to the salamander. The salamander was reclassified by the State of New Mexico from threatened to endangered in 2005 (NMDGF 2005, p. 2). This designation provides protection under the New Mexico Wildlife Conservation Act of 1974 (i.e., State Endangered Species Act) (19 NMAC 33.6.8), but only prohibits direct take of species, except under issuance of a scientific collecting permit. The New Mexico Wildlife Conservation Act defines "take" or "taking" as harass, hunt, capture, or kill any wildlife or attempt to do so (17 NMAC 17.2.38). In other words, New Mexico State status as an endangered species only conveys protection from collection or intentional harm to the animals themselves. New Mexico State statutes do not address habitat protection, indirect effects, or other threats to these species. There is no formal consultation process to address the habitat requirements of the species or how a proposed action may affect the needs of the species. Because most of the threats to the species are from effects to habitat, protecting individuals will not ensure their long-term conservation and survival.

The New Mexico State statutes require the NMDGF to develop a recovery plan that will restore and maintain habitat for the species. Although the species does not have a finalized recovery plan, NMDGF has the authority to consider and recommend actions to mitigate potential adverse effects to the salamander during its review of development proposals. There is no requirement to follow the recommendations as seen during the construction and realignment of Highway 126, when NMDGF made recommendations, but none of the measures recommended were incorporated into the project design to limit impacts to the salamander or its habitat (New Mexico Game Commission 2006, pp. 12–13) (see *Factor A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range* section, above).

The NMEST Cooperative Management Plan and Conservation Agreement were completed in 2000 (see *Previous Federal Actions* section above). The goal of these non-regulatory documents was to "...provide guidance for the conservation and management of sufficient habitat to maintain viable populations of the species" (NMEST 2000, p. i.). However, they have been ineffective in preventing the ongoing loss of salamander habitat, and they are not expected to prevent further declines of the species. As discussed elsewhere, the intent of the agreement was to protect the salamander and its habitat on lands administered by the USFS; however, there have been projects that have negatively affected the species (e.g., State Highway 126 project) (WildEarth Guardians 2008, pp. 28–54). The Cooperative Management Plan and Conservation Agreement have been unable to prevent ongoing loss of habitat, and they are not expected to prevent further declines of the species. They do not provide adequate protection for the salamander or its habitat.

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) and the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*), the USFS is directed to prepare programmatic-level management plans to guide long-term resource management decisions. Under this direction, the salamander has been on the Regional Forester's Sensitive Species List since 1990 (USFS 1990). The Regional Forester's Sensitive Species List policy is applied to projects implemented under the 1982 National Forest Management Act Planning Rule (49 FR 43026, September 30, 1982). All

existing Plans continue to operate under the 1982 Planning Rule and all of its associated implementing regulations and policies.

The intent of the Regional Forester's sensitive species designation is to provide a proactive approach to conserving species, to prevent a trend toward listing under the Act, and to ensure the continued existence of viable, well-distributed populations. The USFS policy (FSM 2670.3) states that Biological Evaluations must be completed for sensitive species and signed by a journey-level biologist or botanist. The Santa Fe National Forest will continue developing biological evaluation reports and conducting analyses under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) for each project that will affect the salamander or its habitat. The Santa Fe National Forest is also preparing the Southwest Jemez Mountains Landscape Assessment that, if funded, may reduce the threat of severe wildland fire in Units 1 and 4 of the salamander's range over the next 10 years (USFS 2009c, p. 2). At this time, funding of this project is not certain, nor is it likely to address short-term risk of severe wildland fire. While the Regional Forester's sensitive species designation provides for consideration of the salamander during planning of activities, it does not preclude activities that may harm salamanders or their habitats on the Santa Fe National Forest.

Finally, populations of salamanders have been observed on Tribal lands, Los Alamos National Laboratory lands, the VCNP, and private lands. Los Alamos National Laboratory has committed to, whenever possible, retaining trees in order to maintain greater than 80 percent canopy cover, and avoiding activities that either compact soils or dry habitat (Los Alamos National Laboratory 2010, p. 7).

In summary, the salamander currently does not receive adequate regulatory protection through the USFS sensitive species designation, State regulations, or the guidelines provided in the Cooperative Management Plan and Conservation Agreement. Outside of the limited protection from collection and intentional harm through the New Mexico Wildlife Conservation Act, there are no State or Federal regulations providing specific protections for the salamander or its habitat on these areas.

The existing regulatory mechanisms are inadequate to ensure the species' long-term conservation and survival because they do not specifically prevent threats to its habitat. We believe this lack of effective regulatory protection will affect the overall ability of the species to persist into the future. In light of this information, we conclude that the existing regulatory mechanisms have been ineffective and inadequate at preventing actions that threaten the salamander and its habitat, and this is expected to continue into the foreseeable future.

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Under Factor E, we considered whether the Jemez Mountains salamander is threatened by chemical use and climate conditions.

Chemical Use

There is a potential for the salamander to be impacted by chemical use. Chemicals are used to suppress wildfire and for noxious weed control. Because the salamander has permeable skin, and breathes and carries out physiological functions with its skin, it may be susceptible if it comes in contact with fire retardants or herbicides. Many of these chemicals have not been assessed for effects to amphibians, and none have been assessed for effects to terrestrial amphibians. Therefore, we do not have enough information to determine whether chemical use threatens the salamander.

Prior to 2006 (71 FR 42797; July 28, 2006), fire retardant used by the USFS contained sodium ferrocyanide, which is highly toxic to fish and amphibians (Pilliod *et al.* 2003, p. 175). Fire retardant was used in salamander habitat for the Cerro Grande Fire (Unit 3), but we do not know the quantity or location of this effort (USFS 2001, p. 1). While sodium ferrocyanide is no longer used by USFS to suppress wildfire, similar retardants and foams may still contain ingredients that are toxic to the salamander. Beginning in 2010, the USFS will begin phasing out the use of ammonium sulfate because of its toxicity to fish and replacing it with ammonium phosphate (USFS 2009e, p. 1), which still may have adverse effects to the salamander. One of the ingredients of ammonium phosphate (a type of salt) appeared to have the greatest likelihood of adverse effects to terrestrial species assessed (birds and mammals) through ingestion (USFS/LABAT Environmental 2007, pp. 24-27), and in amphibians, salts can disrupt osmoregulation (regulation of proper water balance and osmotic or fluid pressure within tissues and cells). Currently, we do not have enough information to determine whether the chemicals within fire retardants or foams threaten the salamander. However, we will continue to evaluate whether these chemicals may be a threat to this species.

The USFS is in the process of completing an Environmental Impact Statement regarding the use of herbicides to manage noxious or invasive plants (Orr 2010, p. 2). Chemicals that could be used include 2,4,D; Clopyralid; Chorsulfuron; Dicamba; Glyphosate; Hexazinone; Imazapic; Imazapyr; Metasulfuron Methyl; Sulfometuron Methyl; Picloram; and Triclopyr (Orr 2010, p. 2). We reviewed the ecological risk assessments for these chemicals at *http://www.fs.fed.us/foresthealth/pesticide/risk.shtml*, but found few studies and data relative to amphibians. We found a single study for Sulfometuron Methyl conducted on the African clawed frog (*Xenopus laevis*) (an aquatic frog not native to the United States). This study resulted in alterations in limb and organ development and metamorphosis (Klotzbach and Durkin 2004, pp. 4-6, 4-7). The use of chemicals listed above by hand-held spot treatments or road-side spraying (Orr 2010, p. 2) in occupied salamander habitat could result in impacts to the salamander. Because of the lack of toxicological studies of these chemicals, we do not know if there is a threat to the salamander. However, we will continue to evaluate whether these chemicals are a threat to the salamander.

Climate Conditions

Climate conditions have contributed to the status of the salamander now and will continue to in the foreseeable future. Habitat drying affects salamander physiology, behavior, and persistence; will affect the occurrence of natural events such as fire, drought, and forest die-off; and will increase the risk of disease and infection. Trends in climate change and drought conditions have contributed to temperature increases in the Jemez Mountains, with a corresponding decrease in precipitation. Because the salamander is terrestrial, constrained in range, and isolated to the higher elevations of the Jemez Mountains, continued temperature increases and precipitation decreases could threaten the viability of the species over its entire range.

Climate simulations of Palmer Drought Severity Index (PSDI) (a calculation of the cumulative effects of precipitation and temperature on surface moisture balance) for the Southwest for the periods of 2006–2030 and 2035–2060 show an increase in drought severity with surface warming. Additionally, drought still increases during wetter simulations because of the effect of heat-related moisture loss

(Hoerling and Eicheid 2007, p. 19). Annual mean precipitation is likely to decrease in the Southwest as well as the length of snow season and snow depth (International Panel on Climate Change (IPCC) 2007b, p. 887). Most models project a widespread decrease in snow depth in the Rocky Mountains and earlier snowmelt (IPCC 2007b, p. 891). Exactly how climate change will affect precipitation is less certain, because precipitation predictions are based on continental-scale general circulation models that do not yet account for land use and land cover change effects on climate or regional phenomena. Consistent with recent observations in climate changes, the outlook presented for the Southwest and New Mexico predict warmer, drier, drought-like conditions (Seager *et al.* 2007, p. 1181; Hoerling and Eischeid 2007, p. 19).

McKenzie *et al.* (2004, p. 893) suggest, based on models, that the length of the fire season will likely increase further and that fires in the western United States will be more frequent and more severe. In particular, they found that fire in New Mexico appears to be acutely sensitive to summer climate and temperature changes and may respond dramatically to climate warming.

Plethodontid salamanders have a low metabolic rate and relatively large energy stores (in tails) that provide the potential to survive long periods between unpredictable bouts of feeding (Feder 1983, p. 291). Despite these specializations, terrestrial salamanders must have sufficient opportunities to forage and build energy reserves for use during periods of inactivity. As salamander habitat warms and dries, the quality and quantity of habitat decreases along with the amount of time that salamanders could be surface active. Wiltenmuth (1997, pp. ii-122) concluded that the Jemez Mountains salamanders likely persist by utilizing moist microhabitats and they may be near their physiological limits relative to water balance and moist skin. During field evaluations, the species appeared to be in a dehydrated state. If the species has difficulty maintaining adequate skin moisture (e.g., see Wiltenmuth 1997, pp. ii-122), it will likely spend less time being active. As a result, energy storage, reproduction, and long-term persistence would be reduced.

Wiltenmuth (1997, p. 77) reported rates of dehydration and rehydration were greatest for the Jemez Mountains salamander compared to the other salamanders, and suggested greater skin permeability. While the adaptation to relatively quickly rehydrate and dehydrate may allow the salamander to more quickly rehydrate when moisture becomes available, it may also make it more susceptible and less resistant to longer dry times because it also quickly dehydrates. Dehydration affects the salamander by increasing heart rate, oxygen consumption, and metabolic rate (Whitford 1968, p. 249), thus increasing energy demand, limiting movements (Wiltenmuth 1997, p. 77), increasing concentration and storage of waste products (Duellman and Trueb 1986, p. 207), decreasing burst locomotion (stride length, stride frequency, and speed) (Wiltenmuth 1997, p.45), and sometimes causing death. Moisture-stressed salamanders prioritize hydration over all else, thereby reducing salamander survival and persistence. Additional impacts from dehydration could include increased predation because burst locomotion is impaired (which reduces ability to escape) and increased susceptibility to pathogens resulting from depressed immunity from physiological stress of dehydration. Any of these factors, alone or in combination, could lead either to the reduction or extirpation of salamander localities, especially in combination with the threats of habitat-altering activities, as discussed under Factor A. The IPCC (2007, pp. 12, 13) predicts that changes in the global climate system during the 21st century will very likely be larger than those observed during the 20th century. For the next 2 decades, a warming of about 0.2 °C (0.4 °F) per decade is projected (IPCC 2007, p. 12). The Nature Conservancy of New Mexico analyzed recent changes in New Mexico's climate. Parts I and II of a three-part series have been completed. In Part I, the time period 1961–1990 was used as the reference condition for analysis of recent departures (1991–2005; 2000–2005). This time period is consistent with the baseline used by National Oceanic and Atmospheric Administration and the IPCC for presenting 20th-century climate anomalies and generating future projections (Enquist and Gori 2008, p. 9). In Part II, trends in climate water deficit (an indicator of biological moisture stress, or drying), snowpack, and timing of peak stream flows were assessed for the period of 1970–2006 (Enquist *et al.* 2008, p. iv). The Nature Conservancy of New Mexico concludes the following regarding climate conditions in New Mexico and the Jemez Mountains:

(1) Over 95 percent of New Mexico has experienced mean temperature increases; warming has been greatest in the Jemez Mountains (Enquist and Gori 2008, p. 16);

(2) 93 percent of New Mexico's watersheds have experienced increasing annual trends in moisture stress during 1970–2006, that is, they have become relatively drier (Enquist *et al.* 2008, p. iv);

(3) Snowpack has declined in 98 percent of sites analyzed in New Mexico; the Jemez Mountains has experienced significant declines in snowpack (Enquist *et al.* 2008, p. iv);

(4) Between 1980–2006, the timing of peak run-off from snowmelt occurred 2 days earlier than in the 1951–1980 period (Enquist *et al.* 2008, pp. 9, 25);

(5) The Jemez Mountains have experienced warmer and drier conditions during the 1991–2005 time period (Enquist and Gori 2008, pp. 16, 17, 23); and

(6) The Jemez Mountains ranked highest of 248 sites analyzed in New Mexico in climate exposure—a measure of mean temperature and mean precipitation departures (Enquist and Gori 2008, pp. 10, 22, 51-58).

Although the extent of warming likely to occur is not known with certainty at this time, the IPCC (2007a, p. 5) has concluded that the summer season will experience the greatest increase in warming in the Southwest (IPCC 2007b, p. 887). Temperature has strong effects on amphibian immune systems and may be an important factor influencing susceptibility of amphibians to pathogens (e.g., see Raffel *et al.* 2006, p. 819); thus increases in temperature in the Jemez Mountains have the potential to increase the salamander's susceptibility to disease and pathogens. As noted, we have no information that indicates disease threatens the salamander currently or in the future, but we intend to evaluate this further.

Climate Conditions Summary

In summary, we find that current and future effects from warmer climate conditions in the Jemez Mountains could reduce the amount of suitable salamander habitat, reduce the time period when the species can be surface active, and increase the moisture demands and subsequent physiological stress on salamanders. Warming and drying trends in the Jemez Mountains currently threaten the species, and these threats are projected to continue into the foreseeable future.

Finding

As required by the Act, we conducted a review of the status of the species and considered the five factors in assessing whether the salamander is endangered or threatened throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future

threats faced by the salamander. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with salamander experts and other Federal, State, and tribal agencies.

On the basis of the best scientific and commercial information available, we find that the petitioned action to list the Jemez Mountains is warranted, due to a combination of risk of historical and current fire management practices, severe wildland fire, forest composition and structure conversions, post-fire rehabilitation treatments, forest management (including silvicultural practices), private residential development, roads, trails, habitat fragmentation, and recreation. The salamander may also be threatened by disease and chemical use. Some of these threats may be exacerbated by the current and projected effects of climate change, and we have determined that the current and projected effects from climate change directly threaten the salamander. The loss of one of the largest known populations, the documented modification of the habitat from fire exclusion, and severe wildland fire places this species at great risk. Cumulative threats to the salamander are not being adequately addressed through existing regulatory mechanisms. Because of the limited distribution of this endemic species and its lack of mobility, threats are likely to render the species at risk of extinction in the foreseeable future. We will make a determination on the status of the species as endangered or threatened when we prepare a proposed listing determination. However, as explained in more detail below, an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and progress is being made to add or remove qualified species to or from the Lists of Endangered and Threatened Wildlife and Plants.

We reviewed the available information to determine if the existing and foreseeable threats render the species at risk of extinction now such that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act is warranted. We determined that issuing an emergency regulation temporarily listing the species is not warranted for this species at this time because, within the current distribution of the species throughout its range, there are at least some populations of the salamander that exist in relatively natural conditions that are unlikely to change in the short term. However, if at any time we determine that emergency listing of the salamander is warranted, we will initiate an emergency listing.

The Service adopted guidelines on September 21, 1983 (48 FR 43098), to establish a rational system for allocating available appropriations to the highest priority species when adding species to the Lists of Endangered or Threatened Wildlife and Plants or reclassifying threatened species to endangered status. The system places greatest importance on the immediacy and magnitude of threats, but also factors in the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera, full species, and subspecies (or equivalently, distinct population segments of vertebrates). As a result of our analysis of the best available scientific and commercial information, we assigned the Jemez Mountains salamander a listing priority number (LPN) of 2, based on our finding that the species faces imminent and high-magnitude threats from the present or threatened destruction, modification, or curtailment of its habitat and the inadequacy of existing regulatory mechanisms. The salamander and its habitat are threatened by historical and current fire management practices; severe wildland fire; forest composition and structure conversions; post-fire rehabilitation; forest management (including silvicultural practices); private (residential) development; roads, trails, and habitat fragmentation; and recreation. Due to the limited extent of habitat occupied by the salamander, the severity and magnitude of the threat of severe wildland fire, and ongoing impacts from the existing extensive road network and previous logging practices, we have determined that the present or threatened destruction, modification, or curtailment of habitat and range represents a current significant threat to the salamander. Existing regulatory mechanisms are inadequate to ensure the species' long-term conservation and survival because they do not specifically prevent threats to its habitat. One or more of the threats discussed above is occurring or is expected to occur throughout the entire range of this species. These threats are ongoing and, in some cases (e.g., loss of habitat through forest management), considered irreversible. While we conclude that listing the Jemez Mountains salamander is warranted, an immediate proposal to list this species is precluded by other higher priority listings, which we address below.

Significant Portion of the Range

The Act defines an endangered species as one "in danger of extinction throughout all or a significant portion of its range," and a threatened species as one "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The term "significant portion of its range" is not defined by the statute. For the purposes of this finding, a significant portion of a species' range is an area that is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

If an analysis of whether a species is endangered or threatened in a significant portion of its range is appropriate, we engage in a systematic process that begins with identifying any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose in analyzing portions of the range that are not reasonably likely to be significant and endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (i) the portions may be significant and (ii) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that are unimportant to the conservation of the species, such portions will not warrant further consideration.

On the basis of an analysis of factors that may threaten the Jemez Mountains salamander, we have determined that listing is warranted throughout its range. Therefore, it is not necessary to conduct further analysis with respect to the significance of any portion of its range at this time. We will further analyze whether threats may be disproportionate and warrant further consideration as a significant portion of the species' range when we develop a proposed listing determination.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and competing demands for those resources. Thus, in any given fiscal year (FY),

multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90–day and 12–month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual determinations on prior "warranted but precluded" petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. For example, during the past several years, the cost (excluding publication costs) for preparing a 12–month finding, without a proposed rule, has ranged from approximately $11,000 for one species with a restricted range and involving a relatively uncomplicated analysis to $305,000 for another species that is wide-ranging and involving a complex analysis.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds which may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105-163, 105th Congress, 1st Session, July 1, 1997).

Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress also put a critical habitat subcap in place in FY 2002 and has retained it each subsequent year to ensure that some funds are available for other work in the Listing Program: "The critical habitat designation subcap will ensure that some funding is available to address other listing activities" (House Report No. 107 - 103, 107th Congress, 1st Session, June 19, 2001). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In FY 2007, we were able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In FY 2009, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. In FY 2010, we are using some of the critical habitat subcap funds to fund actions with statutory deadlines.

Thus, through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress also recognized that the availability of resources was the key element in deciding, when making a 12–month petition finding, whether we would prepare and issue a listing proposal or instead make a "warranted but precluded" finding for a given species. The Conference Report accompanying Public Law 97-304, which established the current statutory deadlines and the warranted-but-precluded finding, states (in a discussion on 90–day petition findings that by its own terms also covers 12–month findings) that the deadlines were "not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise."

In FY 2010, expeditious progress is that amount of work that can be achieved with $10,471,000, which is the amount of money that Congress appropriated for the Listing Program (that is, the portion of the Listing Program funding not related to critical habitat designations for species that are already listed). However these funds are not enough to fully fund all our court-ordered and statutory listing actions in FY 2010, so we are using $1,114,417 of our critical habitat subcap funds in order to work on all of our required petition findings and listing determinations. This brings the total amount of funds we have for listing actions in FY 2010 to $11,585,417. Our process is to make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. The $11,585,417 is being used to fund work in the following categories: compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. In 2009, the responsibility for listing foreign species under the Act was transferred from the Division of Scientific Authority, International Affairs Program, to the Endangered Species Program. Starting in FY 2010, a portion of our funding is being used to work on the actions described above as they apply to listing actions for foreign species. This has the potential to further reduce funding available for domestic listing actions, although there are currently no foreign species issues included in our high-priority listing actions at this time. The allocations for each specific listing action are identified in the Service's FY 2010 Allocation Table (part of our administrative record).

In FY 2007, we had more than 120 species with an LPN of 2, based on our

September 21, 1983, guidance for assigning an LPN for each candidate species (48 FR 43098). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high vs. moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, distinct population segment, or significant portion of the range)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). Because of the large number of high-priority species, we further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, comprised a group of approximately 40 candidate species (''Top 40''). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for these 40 candidates, we are applying the ranking criteria to the next group of candidates with an LPN of 2 and 3 to determine the next set of highest priority candidate species.

To be more efficient in our listing process, as we work on proposed rules for these species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, available staff resources are also a factor in determining high-priority species provided with funding. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, since as listed species, they are already afforded the protection of the Act and implementing regulations.

We assigned the Jemez Mountains salamander an LPN of 2, based on our finding that the species faces immediate and high magnitude threats from the present or threatened destruction, modification, or curtailment of its habitat; predation; and the inadequacy of existing regulatory mechanisms. One or more of the threats discussed above are occurring in each known population in the United States. These threats are ongoing and, in some cases (e.g., nonnative species), considered irreversible. Under our 1983 Guidelines, a ''species'' facing imminent high-magnitude threats is assigned an LPN of 1, 2, or 3 depending on its taxonomic status. Because the Jemez Mountains salamander is a species, we assigned it an LPN of 2 (the highest category available for a species). Therefore, work on a proposed listing determination for the Jemez Mountains salamander is precluded by work on higher priority candidate species; listing actions with absolute statutory, court ordered, or court-approved deadlines; and final listing determinations for those species that were proposed for listing with funds from previous fiscal years. This work includes all the actions listed in the tables below under expeditious progress.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add or remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the Lists under the Recovery program, which is funded by a separate line item in the budget of the Endangered Species Program. As explained above in our description of the statutory cap on Listing Program funds, the Recovery Program funds and actions supported by them cannot be considered in determining expeditious progress made in the Listing Program.) As with our ''precluded'' finding, expeditious progress in adding qualified species to the Lists is a function of the resources available and the competing demands for those funds. Given that limitation, we find that we are making progress in FY 2010 in the Listing Program. This progress included preparing and publishing the following determinations:

TABLE 1: FY 2010 COMPLETED LISTING ACTIONS

Publication Date	Title	Actions	FR Pages
10/08/2009	Listing *Lepidium papilliferum* (Slickspot Peppergrass) as a Threatened Species Throughout Its Range	Final Listing Threatened	74 FR 52013-52064
10/27/2009	90-day Finding on a Petition To List the American Dipper in the Black Hills of South Dakota as Threatened or Endangered	Notice of 90–day Petition Finding, Not substantial	74 FR 55177-55180
10/28/2009	Status Review of Arctic Grayling *(Thymallus arcticus*) in the Upper Missouri River System	Notice of Intent to Conduct Status Review	74 FR 55524-55525
11/03/2009	Listing the British Columbia Distinct Population Segment of the Queen Charlotte Goshawk Under the Endangered Species Act: Proposed rule.	Proposed Listing Threatened	74 FR 56757-56770
11/03/2009	Listing the Salmon-Crested Cockatoo as Threatened Throughout Its Range with Special Rule	Proposed Listing Threatened	74 FR 56770-56791
11/23/2009	Status Review of Gunnison sage-grouse *(Centrocercus minimus*)	Notice of Intent to Conduct Status Review	74 FR 61100-61102

TABLE 1: FY 2010 COMPLETED LISTING ACTIONS—Continued

Publication Date	Title	Actions	FR Pages
12/03/2009	12-Month Finding on a Petition to List the Black-tailed Prairie Dog as Threatened or Endangered	Notice of 12–month petition finding, Not warranted	74 FR 63343-63366
12/03/2009	90-Day Finding on a Petition to List Sprague's Pipit as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	74 FR 63337-63343
12/15/2009	90-Day Finding on Petitions To List Nine Species of Mussels From Texas as Threatened or Endangered With Critical Habitat	Notice of 90–day Petition Finding, Substantial	74 FR 66260-66271
12/16/2009	Partial 90-Day Finding on a Petition to List 475 Species in the Southwestern United States as Threatened or Endangered With Critical Habitat	Notice of 90–day Petition Finding, Not substantial and Subtantial	74 FR 66865-66905
12/17/2009	12–month Finding on a Petition To Change the Final Listing of the Distinct Population Segment of the Canada Lynx To Include New Mexico	Notice of 12–month petition finding, Warranted but precluded	74 FR 66937-66950
1/05/2010	Listing Foreign Bird Species in Peru and Bolivia as Endangered Throughout Their Range	Proposed ListingEndangered	75 FR 605-649
1/05/2010	Listing Six Foreign Birds as Endangered Throughout Their Range	Proposed ListingEndangered	75 FR 286-310
1/05/2010	Withdrawal of Proposed Rule to List Cook's Petrel	Proposed rule, withdrawal	75 FR 310-316
1/05/2010	Final Rule to List the Galapagos Petrel and Heinroth's Shearwater as Threatened Throughout Their Ranges	Final Listing Threatened	75 FR 235-250
1/20/2010	Initiation of Status Review for *Agave eggersiana* and *Solanum conocarpum*	Notice of Intent to Conduct Status Review	75 FR 3190-3191
2/09/2010	12–month Finding on a Petition to List the American Pika as Threatened or Endangered	Notice of 12–month petition finding, Not warranted	75 FR 6437-6471
2/25/2010	12-Month Finding on a Petition To List the Sonoran Desert Population of the Bald Eagle as a Threatened or Endangered Distinct Population Segment	Notice of 12–month petition finding, Not warranted	75 FR 8601-8621
2/25/2010	Withdrawal of Proposed Rule To List the Southwestern Washington/Columbia River Distinct Population Segment of Coastal Cutthroat Trout *(Oncorhynchus clarki clarki*) as Threatened	Withdrawal of Proposed Rule to List	75 FR 8621-8644
3/18/2010	90-Day Finding on a Petition to List the Berry Cave salamander as Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 13068-13071
3/23/2010	90-Day Finding on a Petition to List the Southern Hickorynut Mussel *(Obovaria jacksoniana*) as Endangered or Threatened	Notice of 90–day Petition Finding, Not substantial	75 FR 13717-13720
3/23/2010	90-Day Finding on a Petition to List the Striped Newt as Threatened	Notice of 90–day Petition Finding, Substantial	75 FR 13720-13726
3/23/2010	12-Month Findings for Petitions to List the Greater Sage-Grouse *(Centrocercus urophasianus*)as Threatened or Endangered	Notice of 12–month petition finding,Warranted but precluded	75 FR 13910-14014
3/31/2010	12-Month Finding on a Petition to List the Tucson Shovel-Nosed Snake *(Chionactis occipitalis klauberi*) as Threatened or Endangered with Critical Habitat	Notice of 12–month petition finding,Warranted but precluded	75 FR 16050-16065

TABLE 1: FY 2010 COMPLETED LISTING ACTIONS—Continued

Publication Date	Title	Actions	FR Pages
4/5/2010	90-Day Finding on a Petition To List Thorne's Hairstreak Butterfly as or Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 17062-17070
4/6/2010	12–month Finding on a Petition To List the Mountain Whitefish in the Big Lost River, Idaho, as Endangered or Threatened	Notice of 12–month petition finding, Not warranted	75 FR 17352-17363
4/6/2010	90-Day Finding on a Petition to List a Stonefly *(Isoperla jewetti*) and a Mayfly *(Fallceon eatoni*) as Threatened or Endangered with Critical Habitat	Notice of 90–day Petition Finding, Not substantial	75 FR 17363-17367
4/7/2010	12-Month Finding on a Petition to Reclassify the Delta Smelt From Threatened to Endangered Throughout Its Range	Notice of 12–month petition finding,Warranted but precluded	75 FR 17667-17680
4/13/2010	Determination of Endangered Status for 48 Species on Kauai and Designation of Critical Habitat	Final ListingEndangered	75 FR 18959-19165
4/15/2010	Initiation of Status Review of the North American Wolverine in the Contiguous United States	Notice of Initiation of Status Review	75 FR 19591-19592
4/15/2010	12-Month Finding on a Petition to List the Wyoming Pocket Gopher as Endangered or Threatened with Critical Habitat	Notice of 12–month petition finding, Not warranted	75 FR 19592-19607
4/16/2010	90-Day Finding on a Petition to List a Distinct Population Segment of the Fisher in Its United States Northern Rocky Mountain Range as Endangered or Threatened with Critical Habitat	Notice of 90–day Petition Finding, Substantial	75 FR 19925-19935
4/20/2010	Initiation of Status Review for Sacramento splittail *(Pogonichthys macrolepidotus)*	Notice of Initiation of Status Review	75 FR 20547-20548
4/26/2010	90-Day Finding on a Petition to List the Harlequin Butterfly as Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 21568-21571
4/27/2010	12-Month Finding on a Petition to List Susan's Purse-making Caddisfly *(Ochrotrichia susanae*) as Threatened or Endangered	Notice of 12–month petition finding, Not warranted	75 FR 22012-22025
4/27/2010	90–day Finding on a Petition to List the Mohave Ground Squirrel as Endangered with Critical Habitat	Notice of 90–day Petition Finding, Substantial	75 FR 22063-22070
5/4/2010	90-Day Finding on a Petition to List Hermes Copper Butterfly as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 23654-23663
6/1/2010	90-Day Finding on a Petition To List *Castanea pumila* var. *ozarkensis*	Notice of 90–day Petition Finding, Substantial	75 FR 30313-30318
6/1/2010	12–month Finding on a Petition to List the White-tailed Prairie Dog as Endangered or Threatened	Notice of 12–month petition finding, Not warranted	75 FR 30338-30363
6/9/2010	90-Day Finding on a Petition To List van Rossem's Gull-billed Tern as Endangered orThreatened.	Notice of 90–day Petition Finding, Substantial	75 FR 32728-32734
6/16/2010	90-Day Finding on Five Petitions to List Seven Species of Hawaiian Yellow-faced Bees as Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 34077-34088
6/22/2010	12-Month Finding on a Petition to List the Least Chub as Threatened or Endangered	Notice of 12–month petition finding,Warranted but precluded	75 FR 35398-35424
6/23/2010	90-Day Finding on a Petition to List the Honduran Emerald Hummingbird as Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 35746-35751

TABLE 1: FY 2010 COMPLETED LISTING ACTIONS—Continued

Publication Date	Title	Actions	FR Pages
6/23/2010	Listing *Ipomopsis polyantha* (Pagosa Skyrocket) as Endangered Throughout Its Range, and Listing *Penstemon debilis* (Parachute Beardtongue) and *Phacelia submutica* (DeBeque Phacelia) as Threatened Throughout Their Range	Proposed ListingEndangeredProposed Listing Threatened	75 FR 35721-35746
6/24/2010	Listing the Flying Earwig Hawaiian Damselfly and Pacific Hawaiian Damselfly As Endangered Throughout Their Ranges	Final ListingEndangered	75 FR 35990-36012
6/24/2010	Listing the Cumberland Darter, Rush Darter, Yellowcheek Darter, Chucky Madtom, and Laurel Dace as Endangered Throughout Their Ranges	Proposed ListingEndangered	75 FR 36035-36057
6/29/2010	Listing the Mountain Plover as Threatened	Reinstatement of Proposed ListingThreatened	75 FR 37353-37358

Our expeditious progress also includes work on listing actions that we funded in FY 2010 but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high-priority listing actions. These actions include work primarily on species with an LPN of 2, and selection of these species is partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, as compared to preparing separate proposed rules for each of them in the future.

Actions funded in FY 2010 but not yet completed	
Species	Action
Actions Subject to Court Order/Settlement Agreement	
6 Birds from Eurasia	Final listing determination
Flat-tailed horned lizard	Final listing determination
Mountain plover	Final listing determination
6 Birds from Peru	Proposed listing determination
Sacramento splittail	Proposed listing determination
Gunnison sage-grouse	12–month petition finding
Wolverine	12–month petition finding
Arctic grayling	12–month petition finding
Agave eggergsiana	12–month petition finding
Solanum conocarpum	12–month petition finding
Mountain plover	12–month petition finding
Thorne's Hairstreak Butterfly	12–month petition finding
Hermes copper butterfly	12–month petition finding
Actions with Statutory Deadlines	
Casey's june beetle	Final listing determination
Georgia pigtoe, interrupted rocksnail, and rough hornsnail	Final listing determination
African penguin	Final listing determination
3 Foreign bird species (Andean flamingo, Chilean woodstar, St. Lucia forest thrush)	Final listing determination

Actions funded in FY 2010 but not yet completed	
Species	Action
5 Penguin species	Final listing determination
Southern rockhopper penguin – Campbell Plateau population	Final listing determination
5 Bird species from Colombia and Ecuador	Final listing determination
7 Bird species from Brazil	Final listing determination
Queen Charlotte goshawk	Final listing determination
Salmon-crested cockatoo	Proposed listing determination
Black-footed albatross	12–month petition finding
Mount Charleston blue butterfly	12–month petition finding
Mojave fringe-toed lizard[1]	12–month petition finding
Pygmy rabbit (rangewide)[1]	12–month petition finding
Kokanee – Lake Sammamish population[1]	12–month petition finding
Delta smelt (uplisting)	12–month petition finding
Cactus ferruginous pygmy-owl[1]	12–month petition finding
Northern leopard frog	12–month petition finding
Tehachapi slender salamander	12–month petition finding
Coqui Llanero	12–month petition finding
White-sided jackrabbit	12–month petition finding
Dusky tree vole	12–month petition finding
Eagle Lake trout[1]	12–month petition finding
29 of 206 species	12–month petition finding
Desert tortoise – Sonoran population	12–month petition finding
Gopher tortoise – eastern population	12–month petition finding
Amargosa toad	12–month petition finding
Pacific walrus	12–month petition finding
Wrights marsh thistle	12–month petition finding
67 of 475 southwest species	12–month petition finding
9 Southwest mussel species	12–month petition finding
14 parrots (foreign species)	12–month petition finding
Berry Cave salamander[1]	12–month petition finding
Striped Newt[1]	12–month petition finding
Fisher – Northern Rocky Mountain Range[1]	12–month petition finding
Mohave Ground Squirrel[1]	12–month petition finding
Puerto Rico Harlequin Butterfly	12–month petition finding
Western gull-billed tern	12–month petition finding
Ozark chinquapin *(Castanea pumila* var. *ozarkensis*)	12–month petition finding
HI yellow-faced bees	12–month petition finding
Southeastern pop snowy plover & wintering pop. of piping plover[1]	90–day petition finding

Actions funded in FY 2010 but not yet completed	
Species	Action
Eagle Lake trout[1]	90–day petition finding
Smooth-billed ani[1]	90–day petition finding
Bay Springs salamander[1]	90–day petition finding
32 species of snails and slugs[1]	90–day petition finding
Calopogon oklahomensis[1]	90–day petition finding
White-bark pine	90–day petition finding
42 snail species (Nevada & Utah)	90–day petition finding
Red knot *roselaari* subspecies	90–day petition finding
Peary caribou	90–day petition finding
Plain bison	90–day petition finding
Giant Palouse earthworm	90–day petition finding
Mexican gray wolf	90–day petition finding
Spring Mountains checkerspot butterfly	90–day petition finding
Spring pygmy sunfish	90–day petition finding
San Francisco manzanita	90–day petition finding
Bay skipper	90–day petition finding
Unsilvered fritillary	90–day petition finding
Texas kangaroo rat	90–day petition finding
Spot-tailed earless lizard	90–day petition finding
Eastern small-footed bat	90–day petition finding
Northern long-eared bat	90–day petition finding
Prairie chub	90–day petition finding
10 species of Great Basin butterfly	90–day petition finding
6 sand dune (scarab) beetles	90–day petition finding
Golden-winged warbler	90–day petition finding
Sand-verbena moth	90–day petition finding
Aztec (beautiful) gilia	90–day petition finding
Arapahoe snowfly	90–day petition finding
High Priority Listing Actions[3]	
19 Oahu candidate species[3] (16 plants, 3 damselflies) (15 with LPN = 2, 3 with LPN = 3, 1 with LPN =9)	Proposed listing
17 Maui-Nui candidate species[3] (14 plants, 3 tree snails) (12 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8)	Proposed listing
Sand dune lizard[3] (LPN = 2)	Proposed listing
2 Arizona springsnails[3] *(Pyrgulopsis bernadina* (LPN = 2), *Pyrgulopsis trivialis* (LPN = 2))	Proposed listing
2 New Mexico springsnails[3] *(Pyrgulopsis chupaderae* (LPN = 2), *Pyrgulopsis thermalis* (LPN = 11))	Proposed listing
2 mussels[3] (rayed bean (LPN = 2), snuffbox No LPN)	Proposed listing
2 mussels[3] (sheepnose (LPN = 2), spectaclecase (LPN = 4),)	Proposed listing

Actions funded in FY 2010 but not yet completed	
Species	Action
Ozark hellbender[2] (LPN = 3)	Proposed listing
Altamaha spinymussel[3] (LPN = 2)	Proposed listing
8 southeast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), and tapered pigtoe (LPN = 11))	Proposed listing

[1] Funds for listing actions for these species were provided in previous FYs.
[2] We funded a proposed rule for this subspecies with an LPN of 3 ahead of other species with LPN of 2, because the threats to the species were so imminent and of a high magnitude that we considered emergency listing if we were unable to fund work on a proposed listing rule in FY 2008.
[3] Funds for these high-priority listing actions were provided in FY 2008 or 2009.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

The Jemez Mountains salamander will be added to the list of candidate species upon publication of this 12–month finding. We will continue to monitor the status of this species as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed listing action for the Jemez Mountains salamander will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of all references is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Authors

The primary authors of this rule are the staff members of the New Mexico Ecological Services Office.

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 23, 2010.

Wendi Weber,

Acting Deputy Director, Fish and Wildlife Service.

[FR Doc. 2010–22455 Filed 9–8–10; 8:45 am]

BILLING CODE 4310–55–S

Notices

Federal Register

Vol. 75, No. 174

Thursday, September 9, 2010

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

Forest Service

Hood/Willamette Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Action of meeting.

SUMMARY: The Hood/Willamette Resource Advisory Committee (RAC) will meet on Thursday, September 30, 2010. The meeting and field trip is scheduled to begin at 10 a.m. and will conclude at approximately 3 p.m. The meeting will be held at McKenzie River Ranger District Office; 57600 McKenzie Highway; McKenzie Bridge, Oregon; (541) 822–3381. The tentative agenda includes: (1) Public forum; (2) Recommended changes for 2011 projects; and (3) Field Trip to review Title II Projects. The Public Forum is tentatively scheduled to begin at 10:05 a.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the September 30th meeting by sending them to Connie Athman at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Connie Athman; Mt. Hood National Forest; 16400 Champion Way; Sandy, Oregon 97055; (503) 668–1672.

Dated: August 31, 2010.

Gary L. Larsen,

Forest Supervisor

[FR Doc. 2010–22165 Filed 9–8–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, September 30, 2010. The purpose of this meeting is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2008.

DATES: The meeting will be held September 30, 2010 at 6 p.m.

ADDRESSES: The meeting will be held at the Ketchikan—Misty Fiords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to Diane Daniels, RAC Coordinator at *ddaniels@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Diane Daniels, RAC Coordinator Ketchikan—Misty Fiords Ranger District, Tongass National Forest, (907) 228–4105.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: August 31, 2010.

Jeff DeFreest,

District Ranger.

[FR Doc. 2010–22320 Filed 9–8–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sitka Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sitka Resource Advisory Committee will meet in Sitka, Alaska, October 8, 2010. The purpose of this meeting is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2008.

DATES: The meeting will be held October 8, 2010 at 5 p.m.

ADDRESSES: The meeting will be held at the Sitka Forest Service Office, 204 Siginaka Way, Sitka, Alaska. Send written comments to Sitka Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 204 Siginaka Way, Sitka, AK 99835, or electronically to Lisa Hirsch, RAC Coordinator at *lisahirsch@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Lisa Hirsch, RAC Coordinator Sitka Ranger District, Tongass National Forest, (907) 747–4214.

SUPPLEMENTARY INFORMATION: The meeting is open to the public.

Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: August 31, 2010.

Carol A. Goularte,

District Ranger.

[FR Doc. 2010–22380 Filed 9–8–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Kern and Tulare Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Call for proposals.

SUMMARY: The Kern and Tulare Counties Resource Advisory Committee (RAC) will be accepting applications for projects to recommend for funding under Title II of the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343). The application can be downloaded from the Secure Rural Schools Web site: *http://www.fs.fed.us/srs/index.shtml* or the Sequoia National Forest Web site: *http://www.fs.fed.us/r5/sequoia/projects/rural-schools/index.html.* Completed applications can be submitted electronically, by mail, or in person. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343)

and in compliance with the Federal Advisory Committee Act.

DATES: Applications will be accepted until September 16, 2010 by mail and in person at the meeting to be held September 23, 2010. Meetings will also be held September 29, October 28, and November 18, 2010. All meetings will begin at 5 p.m.

ADDRESSES: The September 29 and October 28 meetings will be held at the Sequoia National Forest Headquarters, 1839 South Newcomb Street, Porterville, California. The September 23 and November 18 meetings will be held at the County of Kern Administrative Office, 1115 Truxtun Avenue, Bakersfield, California.

Applications or written comments should be sent to Priscilla Summers, Western Divide Ranger District, 32588 Highway 190, Springville, California 93265. Application or comments may also be sent via e-mail to *psummers@fs.fed.us,* or via facsimile to 559–539–2067.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Western Divide Ranger District, 32588 Highway 190, Springville, CA 93265. Visitors are encouraged to call ahead to 559–539–2607 to facilitate entry into the building and access to the record.

FOR FURTHER INFORMATION CONTACT: Penelope Shibley, RAC Coordinator, Kernville Ranger Station, P.O. Box 9, Kernville, CA 93238; (760) 376–3781; or e-mail: *pshibley@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call 559–781–6650 between 8 a.m. and 4:30 p.m., Pacific Daylight Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. Committee discussions are limited to Forest Service staff and committee members. At the September 23 meeting, the following business will be conducted: (1) Introduction of all committee members, replacement members, and Forest Service personnel; (2) approve minutes of the last meeting; (3) accept and hear project proposals; and (4) receive public comment. At the September 29 meeting, the following business will be conducted: (1) Introductions of all committee members, replacement members, and Forest Service personnel; (2) approve minutes of the last meeting; (3) review and evaluate proposals; and (4) receive public comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

September 1, 2010.

Tina J. Terrell,

Forest Supervisor.

[FR Doc. 2010–22452 Filed 9–8–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–822]

Certain Frozen Warmwater Shrimp from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 15, 2010, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from Thailand. This review covers 165 producers/exporters of the subject merchandise to the United States.[1] The POR is February 1, 2008, through January 31, 2009.[2]

Based on our analysis of the comments received, we have made certain changes in the margin calculations for Marine Gold Products Limited (Marine Gold), Pakfood Public Company Limited and its affiliates, Asia Pacific (Thailand) Company, Limited, Chaophraya Cold Storage Company Limited, Okeanos Company Limited, Okeanos Food Company, Limited, and Takzin Samut Company, Limited (collectively, Pakfood), and Andaman Seafood Co., Ltd. (Andaman), Wales & Co. Universe Limited, Chanthaburi Frozen Food Co., Ltd. (CFF), Chanthaburi Seafoods Co., Ltd. (CSF), Intersia Foods Co., Ltd. (formerly Y2K Frozen Foods Co., Ltd.), Phatthana Seafood Co., Ltd. (PTN), Phatthana Frozen Food Co., Ltd. (PFF), S.C.C. Frozen Seafood Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd. (TFC), Thai International Seafoods Co., Ltd. (TIS), and Sea Wealth Frozen Food Co., Ltd. (Sea Wealth) (collectively, the Rubicon Group). The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

FOR FURTHER INFORMATION CONTACT: Kate Johnson or David Goldberger, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers 165 producers/exporters. The respondents which the Department selected for individual review are Marine Gold, Pakfood, and the Rubicon Group. The respondents which were not selected for individual review are listed in the "Final Results of Review" section of this notice.

On March 15, 2010, the Department published in the **Federal Register** the preliminary results of the 2008–2009 administrative review of the antidumping duty order on shrimp from Thailand. *See Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results of Antidumping Duty Administrative Review and Final Results of Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 12188 (March 15, 2010) (*Preliminary Results*).

We invited parties to comment on the preliminary results. In April 2010, we received case briefs from the domestic producers of the subject merchandise (*i.e.*, the Ad Hoc Shrimp Trade Action Committee), the respondents selected for individual review, Marine Gold, Pakfood, and the Rubicon Group, the American Shrimp Processors Association and the Louisiana Shrimp Association (hereafter, the domestic processors), and Xian-Ning Seafood Co., Ltd., Ongkorn Cold Storage Co., Ltd., Kongphop Frozen Foods Co., Ltd., May Ao Foods Co., Ltd., and May Ao Co., Ltd., who are producers/exporters that were not selected for individual review. Rebuttal briefs were received from the domestic producers, the domestic processors, Marine Gold, Pakfood, and the Rubicon Group. On April 14, 2010, Marine Gold requested that a public

[1] This figure excludes twenty companies for which we are rescinding the review due to the fact that they made no shipments of the subject merchandise during the period of review (POR). *See* "Partial Rescission of Review" section, below.

[2] Because of the partial revocation of the antidumping duty order, effective January 16, 2009, the POR is February 1, 2008, through January 15, 2009, for Thai I-Mei Frozen Foods Co., Ltd. (Thai I-Mei) and the Rubicon Group. *See Implementation of the Findings of the WTO Panel in United States—Antidumping Measure on Shrimp from Thailand: Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Thailand,* 74 FR 5638, 5639 (January 30, 2009) (*Section 129 Determination*); *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Changed Circumstances Review and Notice of Revocation in Part,* 74 FR 52452 (October 13, 2009).

hearing be held in this proceeding. On April 20, 2010, Marine Gold withdrew its hearing request.

In June 2010 we extended the deadline for the final results, due no later than September 13, 2010. *See Certain Frozen Warmwater Shrimp from Thailand: Notice of Extension of Time Limit for the Final Results of the 2008–2009 Administrative Review*, 75 FR 34976 (June 21, 2010).

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[3] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn *(Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp *(Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

[3] "Tails" in this context means the tail fan, which includes the telson and the uropods.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Period of Review

The POR is February 1, 2008, through January 31, 2009. *See* Footnote 2.

Partial Rescission of Review

In the Preliminary Results, we stated our intention to rescind the review with respect to the following companies, which reported to the Department that they had no shipments during the POR:

(1) American Commercial Transport, Inc.

(2) Ampai Frozen Food Co., Ltd.

(3) Euro-Asian International Seafoods Co., Ltd.

(4) F.A.I.T. Corporation Limited

(5) Far East Cold Storage, Ltd.

(6) Grobest Frozen Foods Co., Ltd.

(7) Inter-Oceanic Resources Co., Ltd.

(8) Leo Transport Corporation, Ltd.

(9) Lucky Unions Foods Co., Ltd.

(10) MKF Interfood (2004) Co., Ltd.

(11) Siam Canadian Foods Co., Ltd.

(12) Siam Ocean Frozen Foods Co., Ltd.

(13) Sky Fresh Co., Ltd.

(14) Songkla Canning (PCL)

(15) Suree Interfoods Co., Ltd.

(16) Thai Excel Foods Co., Ltd.

(17) Thai Union Manufacturing Co., Ltd.

(18) Thai Yoo Ltd., Part.

(19) V. Thai Food Product Co., Ltd.

(20) Wann Fisheries Co., Ltd.

Since the *Preliminary Results* we have received no comments regarding our stated intention to rescind the review for each of the firms listed above. Therefore, the Department is rescinding this review with respect to the 20 firms listed above.

Cost of Production

As discussed in the *Preliminary Results*, we conducted an investigation to determine whether Marine Gold, Pakfood, and the Rubicon Group made comparison market sales of the foreign like product during the POR at prices below their costs of production (COP) within the meaning of section 773(b) of the Act. For all three respondents, we performed the cost test for these final results following the same methodology as in the *Preliminary Results.*

We found 20 percent or more of each respondent's sales of a given product during the reporting period were at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in "substantial quantities" within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(1)–(2) of the Act.

Therefore, for purposes of these final results, we continue to find that Marine Gold, Pakfood, and the Rubicon Group made below-cost sales not in the ordinary course of trade. Consequently, we disregarded these sales for each respondent and used the remaining sales as the basis for determining normal value pursuant to section 773(b)(1) of the Act. For those U.S. sales of subject merchandise for which there were no comparison market sales in the ordinary course of trade, we compared constructed export prices or export prices, as appropriate, to constructed value in accordance with section 773(a)(4) of the Act.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum (the Decision Memo), which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, Room 1117, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/*. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes in the margin calculations for Marine Gold, Pakfood, and the Rubicon Group. These changes are discussed in the relevant sections of the Decision Memo.

Final Results of Review

We determine that weighted-average dumping margins exist for the respondents for the period February 1, 2008, through January 31, 2009, as follows:

Manufacturer/exporter	Percent margin
Marine Gold Products Limited	1.63
Pakfood Public Company Limited/Asia Pacific (Thailand) Company Limited/Chaophraya Cold Storage Company Limited/Okeanos Company Limited/Okeanos Food Company, Limited/and Takzin Samut Company Limited (collectively, Pakfood)	1.11
Andaman Seafood Co., Ltd./Chanthaburi Frozen Food Co., Ltd./Chanthaburi Seafoods Co., Ltd./Intersia Foods Co., Ltd. (formerly Y2K Frozen Foods Co., Ltd.)/Phatthana Seafood Co., Ltd./Phatthana Frozen Food Co., Ltd./S.C.C. Frozen Seafood Co., Ltd./ Sea Wealth Frozen Food Co. Ltd./Thailand Fishery Cold Storage Public Co., Ltd./Thai International Seafoods Co., Ltd./Wales & Co. Universe Limited (collectively, the Rubicon Group)	4.39

The review-specific average rate applicable to the following companies is 2.61 percent: [4]

Manufacturer/Exporter

A. Wattanachai Frozen Products Co., Ltd.
A.S. Intermarine Foods Co., Ltd.
ACU Transport Co., Ltd.
Anglo-Siam Seafoods Co., Ltd.
Apex Maritime (Thailand) Co., Ltd.
Apitoon Enterprise Industry Co., Ltd.
Applied DB Ind.
Asian Seafood Coldstorage (Sriracha)
Asian Seafoods Coldstorage Public Co., Ltd.
Asian Seafoods Coldstorage (Suratthani) Co., Limited
Asian Seafoods Coldstorage (Suratthani) Co.
Assoc. Commercial Systems
B.S.A. Food Products Co., Ltd.
Bangkok Dehydrated Marine Product Co., Ltd.
Bright Sea Co., Ltd.
C.P. Merchandising Co., Ltd.
C.P. Mdse
C.P. Retailing and Marketing Co., Ltd.
C.Y. Frozen Food Co., Ltd.
Chaivaree Marine Products Co., Ltd.
Chaiwarut Co., Ltd.
Charoen Pokphand Foods Public Co., Ltd.
Chonburi LC
Chue Eie Mong Eak Ltd. Part.
Core Seafood Processing Co., Ltd.
Crystal Frozen Foods Co., Ltd. and/or Crystal Seafood
Daedong (Thailand) Co. Ltd.
Daiei Taigen (Thailand) Co., Ltd.
Daiho (Thailand) Co., Ltd.
Dynamic Intertransport Co., Ltd.
Earth Food Manufacturing Co., Ltd.
Findus (Thailand) Ltd.
Fortune Frozen Foods (Thailand) Co., Ltd.
Frozen Marine Products Co., Ltd.
GSE Lining Technology Co., Ltd.
Gallant Ocean (Thailand) Co., Ltd.
Gallant Seafoods Corporation
Global Maharaja Co., Ltd.
Golden Sea Frozen Foods
Golden Sea Frozen Foods Co., Ltd.
Good Fortune Cold Storage Co., Ltd.
Good Luck Product Co., Ltd.
Gulf Coast Crab Intl.
H.A.M. International Co., Ltd.
Haitai Seafood Co., Ltd.
Handy International (Thailand) Co., Ltd.
Heng Seafood Limited Partnership
Heritrade Co., Ltd.
HIC (Thailand) Co., Ltd.
High Way International Co., Ltd.
I.T. Foods Industries Co., Ltd.
Inter-Pacific Marine Products Co., Ltd.
K Fresh
K.D. Trading Co., Ltd.
K.F. Foods
K.L. Cold Storage Co., Ltd.
K & U Enterprise Co., Ltd.
Kiang Huat Sea Gull Trading Frozen Food Public Co., Ltd.
Kingfisher Holdings Ltd.
Kibun Trdg
Klang Co., Ltd.
Kitchens of the Ocean (Thailand) Ltd.
Kongphop Frozen Foods Co., Ltd.
Kosamut Frozen Foods Co., Ltd.
Lee Heng Seafood Co., Ltd.
Li-Thai Frozen Foods Co., Ltd.
Maersk Line
Magnate & Syndicate Co., Ltd.
Mahachai Food Processing Co., Ltd.
May Ao Co., Ltd.
May Ao Foods Co., Ltd.
Merit Asia Foodstuff Co., Ltd.
Merkur Co., Ltd.
Ming Chao Ind Thailand
N&N Foods Co., Ltd.
Namprik Maesri Ltd. Part.
Narong Seafood Co., Ltd.
Nongmon SMJ Products
N.R. Instant Produce Co., Ltd.
Ongkorn Cold Storage Co., Ltd.
Pacific Queen Co., Ltd.
Penta Impex Co., Ltd.
Pinwood Nineteen Ninety Nine
Piti Seafoods Co., Ltd.
Premier Frozen Products Co., Ltd.
Preserved Food Specialty Co., Ltd.
Queen Marine Food Co., Ltd.
Rayong Coldstorage (1987) Co., Ltd.
S&D Marine Products Co., Ltd.
S&P Aquarium
S&P Syndicate Public Company Ltd.
S. Chaivaree Cold Storage Co., Ltd.
SCT Co., Ltd.
S. Khonkaen Food Industry Public Co., Ltd. and/or S. Khonkaen Food Ind. Public
SMP Food Product Co., Ltd.
Samui Foods Company Limited
Sea Bonanza Food Co., Ltd.
SEA NT'L CO., LTD.
Seafoods Enterprise Co., Ltd.
Seafresh Fisheries
Seafresh Industry Public Co., Ltd.
Search & Serve
Shianlin Bangkok Co., Ltd.
Siam Food Supply Co., Ltd.
Siam Intersea Co., Ltd.
Siam Marine Products Co. Ltd.
Siam Union Frozen Foods
Siamchai International Food Co., Ltd.
Smile Heart Foods Co. Ltd.
Southport Seafood
Star Frozen Foods Co., Ltd.
STC Foodpak Ltd.
Suntechthai Intertrading Co., Ltd.

[4] This rate is based on the weighted average of the margins calculated for those companies selected for individual examination, excluding *de minimis* margins or margins based entirely on facts available, as discussed below.

Surapon Nichirei Foods Co., Ltd.
Surapon Seafoods Public Co., Ltd./ Surapon Foods Public Co., Ltd.
Surapon Seafood
Surat Seafoods Co., Ltd.
Suratthani Marine Products Co., Ltd.
T.S.F. Seafood Co., Ltd.
Tanaya International Co., Ltd.
Tanaya Intl.
Teppitak Seafood Co., Ltd.
Tey Seng Cold Storage Co., Ltd.
Tep Kinsho Foods Co., Ltd.
Thai-Ger Marine Co., Ltd.
Thai Agri Foods Public Co., Ltd.
Thai I–Mei Frozen Foods Co., Ltd.
Thai Mahachai Seafood Products Co., Ltd.
Thai Ocean Venture Co., Ltd.
Thai Patana Frozen
Thai Prawn Culture Center Co., Ltd.
Thai Royal Frozen Food Co. Ltd.
Thai Spring Fish Co., Ltd.
Thai Union Frozen Products Public Co., Ltd.
Thai Union Seafood Co., Ltd.
Thai World Imports & Exports
The Siam Union Frozen Foods Co., Ltd.
The Union Frozen Products Co., Ltd.
Trang Seafood Products Public Co., Ltd.
Transamut Food Co., Ltd.
Tung Lieng Trdg.
United Cold Storage Co., Ltd.
Xian-Ning Seafood Co., Ltd.
Yeenin Frozen Foods Co., Ltd.
YHS Singapore Pte.
ZAFCO TRDG.

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

For those sales where the respondents reported the entered value of their U.S. sales, we have calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. For those sales where the respondents did not report the entered value of their U.S. sales, we have calculated importer-specific or customer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. With respect to the respondents' U.S. sales of shrimp with sauce, for which no entered value was reported, we have included the total quantity of the merchandise with sauce in the denominator of the calculation of the importer-specific or customer-specific rate because CBP will apply the per-unit duty rate to the total quantity of merchandise entered, including the sauce weight. To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer-specific or customer-specific *ad valorem* ratios based on the estimated entered value.

For the companies which were not selected for individual review, we have calculated an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual review excluding any which are *de minimis* or determined entirely on facts available. *See Certain Frozen Warmwater Shrimp From Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 47551 (September 16, 2009).

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the LTFV investigation if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for each specific company listed above [5] will be the rates shown above, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 5.34 percent, the all-others rate made effective by the *Section 129 Determination.* These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/ destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these final results of review in accordance

[5] Effective January 16, 2009, there is no longer a cash deposit requirement for certain producers/ exporters in accordance with the *Implementation of the Findings of the WTO Panel in United States Antidumping Measure on Shrimp from Thailand: Notice of Determination under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Thailand,* 74 FR 5638 (January 30, 2009) (*Section 129 Determination*). These producers/exporters are as follows: Andaman Seafood Co., Ltd., Chanthaburi Frozen Food Co., Ltd., Chanthaburi Seafoods Co., Ltd., Intersia Foods Co., Ltd. (formerly Y2K Frozen Foods Co., Ltd.), Phatthana Seafood Co., Ltd., S.C.C. Frozen Seafood Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd., Thai International Seafoods Co., Ltd., Wales & Co. Universe Limited, and Thai I–Mei Frozen Foods Co., Ltd.

with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

General Comments:

Comment 1: *Offsetting of Negative Margins*

Comment 2: *Using CBP Data for Respondent Selection*

Comment 3: *Date of Sale Methodology*

Comment 4: *Calculation of the Review-Specific Average Rate*

Comment 5: *Use of Forward Exchange Rates*

Company-Specific Comments:

Marine Gold

Comment 6: *Revision of Cooked Form Model Matching Product Characteristic*

Comment 7: *Home Market Viability*

Comment 8: *Arm's-Length Nature of Thai Warehousing Expenses*

Pakfood

Comment 9: *Home Market Billing Adjustments*

Comment 10: *Adjusting Gross Unit Prices to Account for Glaze*

Comment 11: *Treatment of Expenses Related to Cancelled Sale*

Comment 12: *Reporting of* "*Presentation*" *Product Characteristic*

Comment 13: *Using Period-Specific Costs in the Sales-Below-COP Test*

The Rubicon Group

Comment 14: *Assessment of Antidumping Duties on Rubicon Group Imports*

Comment 15: *CEP Offset*

Comment 16: *The Rubicon Group's Sales Reconciliations*

Comment 17: *Reporting of Gross Unit Price Exclusive of Sauce Value*

Comment 18: *Rebates Claimed in the Comparison Market*

Comment 19: *Rebates Claimed in the U.S. Market*

Comment 20: *U.S. Warehousing Expenses*

Comment 21: *U.S. Indirect Selling Expenses*

Comment 22: *Major Input Rule for Shrimp Costs*

Comment 23: *Inclusion of Certain Non-Operational Expenses in General and Administrative Ratio*

[FR Doc. 2010–22376 Filed 9–8–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY75

Incidental Taking of Marine Mammals; Taking of Marine Mammals Incidental to the Explosive Removal of Offshore Structures in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that NMFS has issued a one-year Letters of Authorization (LOA) to take marine mammals incidental to the explosive removal of offshore oil and gas structures (EROS) in the Gulf of Mexico.

DATES: These authorizations are effective from September 3, 2010 through September 2, 2011.

ADDRESSES: The application and LOA are available for review by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3235 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–713–2289.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (who has delegated the authority to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term "take" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill any marine mammal.

Authorization for incidental taking, in the form of an annual LOA, may be granted by NMFS for periods up to five years if NMFS finds, after notice and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat (i.e., mitigation), and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating rounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of marine mammals incidental to EROS were published on June 19, 2008 (73 FR 34875), and remain in effect through July 19, 2013. For detailed information on this action, please refer to that **Federal Register** notice. The species that applicants may take in small numbers during EROS activities are bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphins (*Stenella frontalis*), pantropical spotted dolphins (*Stenella attenuata*), Clymene dolphins (*Stenella clymene*), striped dolphins (*Stenella coeruleoalba*), spinner dolphins (*Stenella longirostris*), rough-toothed dolphins (*Steno bredanensis*), Risso's dolphins (*Grampus griseus*), melon-headed whales (*Peponocephala electra*), short-finned pilot whales (*Globicephala macrorhynchus*), and sperm whales (*Physeter macrocephalus*).

Pursuant to these regulations, NMFS has issued an LOA to EOG Resources, Inc. Issuance of the LOA is based on a finding made in the preamble to the final rule that the total taking by these activities (with monitoring, mitigation, and reporting measures) will result in no more than a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on subsistence uses. NMFS also finds that the applicant will meet the requirements contained in the implementing regulations and LOA, including monitoring, mitigation, and reporting requirements.

Dated: September 2, 2010.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–22504 Filed 9–8–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 1009010421–0421–01]

National Defense Stockpile Market Impact Committee Request for Public Comments on the Potential Market Impact of Proposed Stockpile Disposals for Fiscal Year 2012

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee, co-chaired by the Departments of Commerce and State, is seeking public comments on the potential market impact of the proposed disposal levels of excess materials for the Fiscal Year (FY) 2012 Annual Materials Plan.

DATES: To be considered, written comments must be received by October 12, 2010.

ADDRESSES: Address all comments concerning this notice to Michael Vaccaro, U.S. Department of Commerce, Bureau of Industry and Security, Office of Strategic Industries and Economic Security, 1401 Constitution Avenue, NW., Room 3876, Washington, DC 20230, fax: (202) 482–5650 (Attn: Michael Vaccaro), e-mail: *MIC@bis.doc.gov;* or Peter Secor, U.S. Department of State, Bureau of Economic and Business Affairs, Office of International Energy and Commodity Policy, Washington, DC 20520, fax: (202) 647–8758 (Attn: Peter Secor), or e-mail: *SecorPF@state.gov.*

FOR FURTHER INFORMATION CONTACT: David Newsom, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, Telephone: (202) 482–7417.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended (50 U.S.C. 98, *et seq.*), the Department of Defense, as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h–1) formally established a Market Impact Committee (the "Committee") to "advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * *." The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, the Treasury, and Homeland Security, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to consult with industry representatives that produce, process, or consume the materials contained in the stockpile.

In Attachment 1, the Defense National Stockpile Center (DNSC) lists the proposed quantities that are enumerated in the stockpile inventory for the FY 2012 Annual Materials Plan. The Committee is seeking public comments on the potential market impact of the sale of these materials. Public comments are an important element of the Committee's market impact review process.

The quantities listed in Attachment 1 are not disposal or sales target quantities, but rather a statement of the proposed maximum disposal quantity of each listed material that may be sold in a particular fiscal year by the DNSC. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time of the offering as well as on the quantity of each material approved for disposal by Congress.

Submission of Comments

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of these commodities. All comments must be submitted to the address indicated in this notice. All comments submitted through e-mail must include the phrase "Market Impact Committee Notice of Inquiry" in the subject line.

The Committee encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on October 12, 2010. The Committee will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured.

All comments submitted in response to this notice will be made a matter of public record and will be available for public inspection and copying. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public record. The Committee will seek to protect such information to the extent permitted by law.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia.* This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482–1900 for assistance.

Dated: September 2, 2010.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

ATTACHMENT 1—PROPOSED FY 2012 ANNUAL MATERIALS PLAN

Material	Unit	Quantity	Footnote
Beryl Ore	ST	1	(1)
Beryllium Metal	ST	60	
Chromium, Ferro	ST	100,000	(1)
Chromium, Metal	ST	500	
Cobalt	LB Co	1,000,000	(1)
Columbium Metal Ingots	LB Cb	22,000	(1)
Germanium	Kg	8,000	
Manganese, Ferro	ST	100,000	
Manganese, Metallurgical Grade	SDT	100,000	(1)
Platinum	Tr Oz	9,000	(1)

ATTACHMENT 1—PROPOSED FY 2012 ANNUAL MATERIALS PLAN—Continued

Material	Unit	Quantity	Footnote
Platinum—Iridium	Tr Oz	1,000	(1)
Talc	ST	1,000	(1)
Tantalum Carbide Powder	LB Ta	4,000	(1)
Tin	MT	4,000	(1)
Tungsten Metal Powder	LB W	300,000	(1)
Tungsten Ores & Concentrates	LB W	8,000,000	
Zinc	ST	8,500	(1)

[1] Actual quantity will be limited to remaining inventory.

[FR Doc. 2010–22409 Filed 9–8–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XY85

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 and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Non-Commercial Fisheries Advisory Committee which may make recommendations on fishery management issues in the Western Pacific Region.

DATES: The Non-Commercial Fisheries Advisory Committee meeting will be held on September 23, 2010. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The Non-Commercial Fisheries Advisory Committee will meet at the Council Office, 1164 Bishop St. Suite 1400, Honolulu, HI, 96813, telephone: (808) 522–8220; and by teleconference (1–888) 482–3560, Access Code: 5228220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: In addition to the agenda items listed here, the Non-Commercial Fisheries Advisory Committee may receive reports and make recommendations on emerging fishery issues in the Western Pacific Region. A public comment period will be provided in the agenda. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for Non-Commercial Fisheries Advisory Committee Meeting:

2 p.m. - 4 p.m. Thursday, September 23, 2010 (Hawaii Time)

1. Introductions
2. Update on Council Recreational Fisheries Activities
3. Marine Recreational Information Program Update
4. Issues with the National Saltwater Angler Registry-Exemptions for Hawaii Charter and Non-Commercial Bottomfish Fisheries
5. Data Collection Options
   A. Main Hawaiian Islands Non-commercial Bottomfish Fishery
   B. Other Recreational Fisheries in the Western Pacific
6. Public Comments
7. Discussion and Recommendations
8. Other Business

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 3, 2010.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–22491 Filed 9–8–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committees

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a joint meeting, the Census Advisory Committees (CACs) on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations. The Committees will address issues related to the 2010 Decennial Census, including the Integrated Communications Campaign, 2010 Partnerships, and other decennial activities. The five Census Advisory Committees on Race and Ethnicity will meet in plenary and concurrent sessions on October 6–8, 2010. Last-minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments.

DATES: October 6–8, 2010. On October 6, the meeting will begin at approximately 1 p.m. and end at approximately 5 p.m. On October 7, the meeting will begin at approximately 8:30 a.m. and end at approximately 5:30 p.m. On October 8, the meeting will begin at approximately 8:30 a.m. and end at approximately 2 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, *Jeri.Green@census.gov,* Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–6590. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The CACs on the African American Population, the American Indian and Alaska Native

Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations comprise nine members each. The Committees provide an organized and continuing channel of communication between the representative race and ethnic populations and the Census Bureau. The Committees provide an outside-user perspective and advice on research and design plans for the 2010 Decennial Census, the American Community Survey, and other related programs particularly as they pertain to an accurate count of these communities. The Committees also assist the Census Bureau on ways that census data can best be disseminated to diverse race and ethnic populations and other users. The Committees are established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10(a)(b)).

All meetings are open to the public. A brief period will be set aside at the meeting for public comment on October 8. However, individuals with extensive questions or statements must submit them in writing to Ms. Jeri Green at least three days before the meeting. Seating is available to the public on a first-come, first-served basis.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer as soon as possible, preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301–763–9906 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: September 2, 2010.

Robert M. Groves,

Director, Bureau of the Census.

[FR Doc. 2010–22534 Filed 9–8–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the NOAA Science Advisory Board. The members will discuss and provide advice on issues outlined in the agenda below.

DATES: The meeting is scheduled for: Monday, September 20, 2010 from 12–2 p.m. Eastern Time.

ADDRESSES: Conference call. Public access is available at: NOAA, SSMC 3, Room 3404, and 1315 East-West Highway, Silver Spring, Md.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–713–1459, E-mail: *Cynthia.Decker@noaa.gov*)

SUPPLEMENTARY INFORMATION: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Matters To Be Considered: The agenda for the meeting is as follows:

Date and Time: Monday, September 20, 2010; 12–2 p.m. Eastern Time.

Agenda:

1. Discussion of Science Advisory Board working group comments on the National Weather Service draft strategic plan and decision on final comments to be transmitted to NOAA.

2. Discussion on ways to revitalize the Data Archive and Access Requirements Working Group.

3. Discussion of the upcoming teleconference meeting of the Ocean Exploration Advisory Working Group.

4. Update from the subcommittee formed at the July 2010 SAB meeting to discuss possible changes in operations of SAB working groups.

Dated: September 3, 2010.

Mark E. Brown,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–22502 Filed 9–8–10; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: September 9, 2010.

FOR FURTHER INFORMATION CONTACT: Jeffrey Pedersen or David Edmiston, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2769 or (202) 482–0989, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2005, the Department of Commerce (Department) published in the **Federal Register** the antidumping duty order on wooden bedroom furniture from the People's Republic of China (PRC). *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China,* 70 FR 329 (January 4, 2005). On January 11, 2010, the Department published a notice of opportunity to request an administrative review of the wooden bedroom furniture order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 1333 (January 11, 2010).

The Department received multiple timely requests for an administrative review of the wooden bedroom furniture order and on March 4, 2010, in accordance with section 751(a) of Tariff Act of 1930, as amended (the Act), published in the **Federal Register** a notice of the initiation of an administrative review of that order. *See Initiation of Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture From the People's Republic of China,* 75 FR 9869 (March 4, 2010) (*Initiation Notice*). The administrative review was initiated with respect to 171 companies or groups of companies, and covers the period from January 1, 2009, through December 31, 2009.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an

administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. Because all requesting parties withdrew their respective requests for an administrative review of the following entities within 90 days of the date of publication of the notice of initiation, the Department is rescinding this review with respect to these entities, in accordance with 19 CFR 351.213(d)(1):

- Alexandre International Corp., Southern Art Development Limited, Alexandre Furniture (Shenzhen) Co., Ltd., Southern Art Furniture Factory
- Art Heritage International, Ltd., Super Art Furniture Co., Ltd., Artwork Metal and Plastic Co., Ltd., Jibson Industries, Ltd., Always Loyal International
- Billy Wood Industrial (Dong Guan) Co., Ltd., Great Union Industrial (Dongguan) Co., Ltd., Time Faith Limited
- Brother Furniture Manufacture Co., Ltd.
- C.F. Kent Co., Inc.
- C.F. Kent Hospitality, Inc.
- Changshu HTC Import & Export Co., Ltd.
- Chuan Fa Furniture Factory
- Contact Co., Ltd.
- Decca Furniture Ltd.
- Denny's Furniture Associates Corp.
- Denny's International Co., Ltd.
- Der Cheng Furniture Co., Ltd.
- Der Cheng Wooden Works
- Dongguan Chunsan Wood Products Co., Ltd., Trendex Industries Ltd.
- Dongguan Golden Fortune Houseware Co., Ltd.
- Dongguan Hua Ban Furniture Co., Ltd.
- Dongguan Hung Sheng Artware Products Co., Ltd., Coronal Enterprise Co., Ltd.
- Dongguan Kingstone Furniture Co., Ltd., Kingstone Furniture Co., Ltd.
- Dongguan Lung Dong Furniture Co., Ltd., Dongguan Dong He Furniture Co., Ltd.
- DongGuan Sundart Timber Products Co., Ltd.
- Dongguan Yihaiwei Furniture Limited
- Dongying Huanghekou Furniture Industry Co., Ltd.
- Ever Spring Furniture Company Ltd., S.Y.C. Family Enterprise Co., Ltd. (Ever Spring)
- Evershine Enterprise Co.
- Fine Furniture (Shanghai) Ltd.
- Fortune Glory Industrial Ltd. (H.K. Ltd.), Tradewinds Furniture Ltd. (successor-in-interest to Nanhai Jiantai Woodwork Co., Ltd.)
- Fujian Putian Jinggong Furniture Co. Ltd.
- Fuzhou Huan Mei Furniture Co., Ltd.
- Gainwell Industries Limited
- Green River Wood (Dongguan) Ltd.
- Guangdong Gainwell Industrial Furniture Co., Ltd.
- Guangdong Yihua Timber Industry Co., Ltd.
- Guangzhou Maria Yee Furnishings Ltd., Pyla HK, Ltd., Maria Yee, Inc.
- Hang Hai Woodcraft's Art Factory
- Hong Kong Jingbi Group
- Jiangmen Kinwai Furniture Decoration Co., Ltd.
- Jiangmen Kinwai International Furniture Co., Ltd.
- Jiangsu Dare Furniture Co., Ltd.
- Jiangsu Xiangsheng Bedtime Furniture Co., Ltd.
- Jiangsu Yuexing Furniture Group Co., Ltd.
- Jiant Furniture Co., Ltd.
- Jiedong Lehouse Furniture Co., Ltd.
- King's Way Furniture Industries Co., Ltd., Kingsyear Ltd.
- Kuan Lin Furniture (Dong Guan) Co., Ltd., Kuan Lin Furniture Factory, Kuan Lin Furniture Co., Ltd.
- Kunshan Lee Wood Product Co., Ltd.
- Kunshan Summit Furniture Co., Ltd.
- Langfang Tiancheng Furniture Co., Ltd.
- Leefu Wood (Dongguan) Co. Ltd., King Rich International, Ltd.
- Locke Furniture Factory, Kai Chan Furniture Co., Ltd., Kai Chan (Hong Kong) Enterprise Limited, Taiwan Kai Chan Co., Ltd.
- Longrange Furniture Co., Ltd.
- MoonArt Furniture Group
- MoonArt International Inc.
- Nanjing Jardine Enterprise Ltd.
- Nantong Dongfang Orient Furniture Co., Ltd.
- Nantong Wangzhuang Furniture Co. Ltd.
- Nathan International Ltd., Nathan Rattan Factory
- Ningbo Fubang Furniture Industries Limited
- Ningbo Furniture Industries Company Limited a.k.a. Ningbo Furniture Industries Limited a.k.a. Ningbo Hengrun Furniture Co., Ltd.
- Ningbo Techniwood Furniture Industries Limited
- Northeast Lumber Co., Ltd.
- Passwell Corporation, Pleasant Wave Limited
- Perfect Line Furniture Co., Ltd.
- Prime Wood International Co., Ltd., Prime Best International Co., Ltd., Prime Best Factory, Liang Huang (Jiaxing) Enterprise Co., Limited
- Putian Jinggong Furniture Co., Ltd.
- Qingdao Liangmu Co., Ltd.
- Restonic (Dongguan) Furniture Ltd. Restonic Far East (Samoa) Ltd.
- Rizhao Sanmu Woodworking Co., Ltd.
- Rui Feng Woodwork Co. Ltd., Rui Feng Lumber Development Co., Ltd., Dorbest Ltd., Rui Feng Woodwork (Dongguan) Co., Ltd., Rui Feng Lumber Development (Shenzhen) Co., Ltd.
- Sen Yeong International Co. Ltd.
- Sheh Hau International Trading Ltd.
- Senyuan Furniture Group
- Shanghai Hospitality Product Mfg., Co., Ltd.
- Shanghai Jian Pu Export & Import Co., Ltd.
- Shanghai Kent Furniture Co., Ltd.
- Shanghai Maoji Imp And Exp Co., Ltd.
- Shanghai Season Industry & Commerce Co., Ltd.
- Shanghai Zhiyi (Jiashun) Furniture Co., Ltd.
- Shanghai Zhiyi Furniture and Decoration Co. Ltd.
- Shaoxing Mengxing Furniture Co., Ltd.
- Sheng Jing Wood Products (Beijing) Co., Ltd. Telstar Enterprises Ltd.
- Shenzhen Forest Furniture Co., Ltd.
- Shenzhen Jiafa High Grade Furniture Co., Ltd., Golden Lion International Trading Ltd.
- Shenzhen New Fudu Furniture Co., Ltd.
- Shenzhen Wonderful Furniture Co., Ltd.
- Shing Mark Enterprises Co., Ltd., Carven Industries Limited (BVI), Carven Industries Limited (HK), Dongguan Zhenxin Furniture Co., Ltd., Dongguan Yongpeng Furniture Co., Ltd.
- Shun Feng Furniture Co., Ltd.
- Songgang Jasonwood Furniture Factory, Jasonwood Industrial Co., Ltd. S.A.
- Starwood Furniture Manufacturing Co., Ltd.
- Starwood Industries Ltd.
- Strongson Furniture (Shenzhen) Co., Ltd., Strongson Furniture Co., Ltd., Strongson (HK) Co.
- Sundart International, Ltd.
- Sunforce Furniture (Hui-Yang) Co., Ltd., Sun Fung Wooden Factory, Sun Fung Company, Shin Feng Furniture Co., Ltd., Stupendous International Co., Ltd., (Sunforce)
- Superwood Co., Ltd., LianJian Zongyu Art Products Co. Ltd.
- Techniwood (Macao Commercial Offshore) Limited
- Techniwood Industries Ltd., Ningbo Furniture Industries Limited, Ningbo Hengrun Furniture Company Limited
- Tianjin Fortune Furniture Co., Ltd.
- Tianjin Phu Shing Woodwork Enterprise Co., Ltd.

- Tradewinds International Enterprise Ltd.
- Transworld (Zhangzhou) Furniture Co., Ltd.
- Tube-Smith Enterprise (Zhangzhou) Co., Ltd., Tube-Smith Enterprise (Haimen) Co., Ltd., Billionworth Enterprises Ltd.
- U–Rich Furniture (Zhangzhou) Co. Ltd., U–Rich Furniture Ltd.
- Wan Bao Chen Group Hong Kong Co. Ltd.
- Winny Universal, Ltd., Zhongshan Winny Furniture Ltd., Winny Overseas, Ltd.
- Woodworth Wooden Industries (Dong Guan) Co., Ltd.
- World Design International Co., Ltd.
- Xiamen Yongquan Sci-Tech Development Co., Ltd.
- Xingli Arts & Crafts Factory of Yangchun
- Yuexing Group Co., Ltd.
- Zhang Zhou Sanlong Wood Product Co., Ltd.
- Zhangjiagang Daye Hotel Furniture Co. Ltd.
- Zhangzhou Guohui Industrial & Trade Co. Ltd.
- Zhejiang Shaoxing Huaweimei Furniture Co., Ltd.
- Zhong Shan Heng Fu Furniture Co.
- Zhongshan Fengheng Furniture Co., Ltd.
- Zhongshan Fookyik Furniture Co., Ltd.
- Zhongshan Golden King Furniture Industrial Co., Ltd.
- Zhongshan Yiming Furniture Co., Ltd.
- Zhoushan For-Strong Wood Co., Ltd.

Rescission of the Fairmont Group

Dongguan Sunrise Furniture Co., Taicang Sunrise Wood Industry Co., Ltd., Shanghai Sunrise Furniture Co., Ltd., Fairmont Designs, Meizhou Sunrise Furniture Co., Ltd. (collectively, the Fairmont Group) withdrew its request for an administrative review after the 90-day deadline established by 19 CFR 351.213(d)(1). However, 19 CFR 351.213(d)(1) further states that the Secretary may extend this time limit if the Secretary finds it reasonable to do so. Although the Fairmont Group withdrew its review request after the 90-day deadline, the Department finds it reasonable to extend the deadline for parties to withdraw their request for review with respect to the Fairmont Group because the Department has not yet committed substantial resources to reviewing the Fairmont Group in the instant review and because all parties who requested the review have subsequently withdrawn their requests. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review of the antidumping duty order, with respect to the Fairmont Group.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies listed above which had a separate rate granted in a previously completed segment of this proceeding that was in effect during the instant review period, antidumping duties shall be assessed on entries subject to the separate rate at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions for such companies directly to CBP 15 days after the publication of this notice in the **Federal Register**. For any of the companies listed above that do not currently have a separate rate (and thus remain a part of the PRC-wide entity), the Department will issue assessment instructions upon the completion of this administrative review. The companies from the above list for which the Department will not issue assessment instructions until the completion of the instant review are as follows:

- C.F. Kent Co., Inc.
- C.F. Kent Hospitality, Inc.
- Contact Co., Ltd.
- Denny's Furniture Associates Corp.
- Denny's International Co., Ltd.
- Der Cheng Furniture Co., Ltd.
- Der Cheng Wooden Works
- DongGuan Sundart Timber Products Co., Ltd.
- Evershine Enterprise Co.
- Fujian Putian Jinggong Furniture Co., Ltd.
- Gainwell Industries Limited
- Guangdong Gainwell Industrial Furniture Co., Ltd.
- Hong Kong Jingbi Group
- Jiant Furniture Co., Ltd.
- MoonArt Furniture Group
- MoonArt International Inc.
- Nanjing Jardine Enterprise Ltd.
- Nantong Wangzhuang Furniture Co., Ltd.
- Ningbo Fubang Furniture Industries Limited
- Ningbo Furniture Industries Company Limited a.k.a. Ningbo Furniture Industries Limited a.k.a. Ningbo Hengrun Furniture Co., Ltd.
- Ningbo Techniwood Furniture Industries Limited
- Northeast Lumber Co., Ltd.
- Senyuan Furniture Group
- Shanghai Hospitality Product Mfg., Co., Ltd.
- Shanghai Kent Furniture Co., Ltd.
- Shanghai Season Industry & Commerce Co., Ltd.
- Shanghai Zhiyi (Jiashun) Furniture Co., Ltd.
- Shanghai Zhiyi Furniture and Decoration Co., Ltd.
- Shaoxing Mengxing Furniture Co., Ltd.
- Sundart International, Ltd.
- Techniwood (Macao Commercial Offshore) Limited
- Tradewinds International Enterprise Ltd.
- World Design International Co., Ltd.
- Yuexing Group Co., Ltd.
- Zhejiang Shaoxing Huaweimei Furniture Co., Ltd.
- Zhong Shan Heng Fu Furniture Co.
- Zhongshan Fengheng Furniture Co., Ltd.
- Zhongshan Yiming Furniture Co., Ltd.

In addition, pursuant to an injunction issued in *Dorbest Ltd.* v. *United States,* CIT No. 05–0003, on June 3, 2008, the Department must continue to suspend liquidation of entries exported by Dorbest Limited., Rui Feng Woodwork (Dongguan) Co., Ltd., and Rui Feng Lumber Development (Shenzen) Co., Ltd. on or after January 1, 2008, pending a conclusive court decision.

The review will continue with respect to all other entities identified in the *Initiation Notice*.

Notification to Importers

This notice serves as a final reminder to importers whose entries will be liquidated as a result of this rescission notice, of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders (APOs)

This notice also serves as a reminder to parties subject to APOs of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: September 12, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–22480 Filed 9–8–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

President's Export Council, Subcommittee on Export Administration; Notice of Recruitment of Private-Sector Members; Date Extension

Summary: The President's Export Council Subcommittee on Export Administration (PECSEA) advises the U.S. Government on matters and issues pertinent to implementation of the provisions of the Export Administration Act and the Export Administration Regulations, as amended, and related statutes and regulations. These issues relate to U.S. export controls as mandated by law for national security, foreign policy, non-proliferation, and short supply reasons. The PECSEA draws on the expertise of its members to provide advice and make recommendations on ways to minimize the possible adverse impact export controls may have on U.S. industry. The PECSEA provides the Government with direct input from representatives of the broad range of industries that are directly affected by export controls.

The PECSEA is composed of high-level industry and Government members representing diverse points of view on the concerns of the business community. PECSEA industry representatives are selected from firms producing a broad range of goods, software, and technologies presently controlled for national security, foreign policy, non-proliferation, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

PECSEA members are appointed by the Secretary of Commerce and serve at the Secretary's discretion. The membership reflects the Department's commitment to attaining balance and diversity. PECSEA members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members can be permitted access to relevant classified information needed in formulating recommendations to the President and the U.S. Government. The PECSEA meets 4 to 6 times per year. Members of the Subcommittee will not be compensated for their services.

The PECSEA is seeking private-sector members with senior export control expertise and direct experience in one or more of the following industries: Machine tools, semiconductors, commercial communication satellites, high performance computers, telecommunications, aircraft, pharmaceuticals, and chemicals.

To Apply: Please send a short biographical sketch to Ms. Yvette Springer at *Yspringer@bis.doc.gov.* For more information, please contact Ms. Springer on 202–482–2813.

Deadline: This Notice of Recruitment has been extended until October 6, 2010.

Dated: September 3, 2010.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2010–22457 Filed 9–8–10; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Chief of Naval Operations (CNO) Executive Panel will deliberate on the findings and proposed recommendations of the Technical Diversity Subcommittee to the CNO. The meeting will consist of discussions of current and future Navy strategy, plans, and policies regarding the utilization of technically diverse systems, primarily associated with information management systems.

DATES: The meeting will be held on September 30, 2010, from 9:30 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in CNA conference room, located at 4825 Mark Center Drive, Alexandria, VA 22311–1846.

FOR FURTHER INFORMATION CONTACT: Ms. Bree Hartlage, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311–1846, 703–681–4907.

SUPPLEMENTARY INFORMATION: Individuals or interested groups may submit written statements for consideration by the CNO Executive Panel at any time or in response to the agenda of a scheduled meeting. All requests must be submitted to the Designated Federal Officer at the address detailed below.

If the written statement is in response to the agenda mentioned in this meeting notice then the statement, if it is to be considered by the Panel for this meeting, must be received at least five days prior to the meeting in question.

The Designated Federal Officer will review all timely submissions with the CNO Executive Panel Chairperson, and ensure they are provided to members of the CNO Executive Panel before the meeting that is the subject of this notice.

To contact the Designated Federal Officer, write to Executive Director, CNO Executive Panel (N00K), 4825 Mark Center Drive, 2nd Floor, Alexandria, VA 22311–1846.

Dated: September 1, 2010.

D.J. Werner

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–22453 Filed 9–8–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 8, 2010.

ADDRESSES: 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. Please

note that written comments received in response to this notice will be considered public records.

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, Regulatory Information 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.

Dated: September 3, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title of Collection: Teacher Incentive Fund Application Package.

OMB Control Number: 1810–0700.

Agency Form Number(s): N/A.

Frequency of Responses: On occasion.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies (SEAs) or Local Educational Agencies (LEAs).

Total Estimated Number of Annual Responses: 120.

Total Estimated Number of Annual Burden Hours: 29,760.

Abstract: The Teacher Incentive Fund (TIF) is a competitive grant program. The purpose of the TIF program is to support projects that develop and implement performance-based compensation systems (PBCSs) for teachers and principals in order to increase educator effectiveness and student achievement in high-need schools. Furthermore, the American Recovery and Reinvestment Act of 2009 requires the Department's Institute of Education Sciences to conduct a rigorous national evaluation, utilizing randomized controlled methodology to the extent feasible, to compare the differentiated effectiveness incentive component of the PBCS to a 1 percent across-the-board annual bonus in the national evaluation schools.

Requests for 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 4386. 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.

[FR Doc. 2010–22484 Filed 9–8–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Advisory Commission on Asian Americans and Pacific Islanders

AGENCY: U.S. Department of Education, President's Advisory Commission on Asian Americans and Pacific Islanders.

ACTION: Notice of an open meeting.

SUMMARY: The notice sets forth the schedule and agenda of the meeting of the President's Advisory Commission on Asian Americans and Pacific Islanders (Commission). The notice also describes the functions of the Commission. Notice of the meeting is required by section 10 (a) (2) of the Federal Advisory Committee Act and intended to notify the public of its opportunity to attend.

Date: September 20, 2010.

Time: 9 a.m.–5:30 p.m. EDT.

Date: September 21, 2010.

Time: 9 a.m.–5:30 p.m. EDT.

ADDRESSES: The Commission will meet at 901 E Street, NW., Washington, DC, Phone: 202–453–7277.

FOR FURTHER INFORMATION CONTACT: Shelly W. Coles, White House Initiative on Asian Americans and Pacific Islanders, 400 Maryland Avenue, SW., Washington, DC 20202; telephone: (202) 453–7277, fax: 202–453–5632.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Asian Americans and Pacific Islanders is established under Executive Order 13515, dated October 14, 2009. Per E.O. 13515, the Commission shall provide advice to the President, through the Secretaries of Education and Commerce, as Co-Chairs of the Initiative, on: (i) The development, monitoring, and coordination of executive branch efforts to improve the quality of life of AAPIs through increased participation in Federal programs in which such persons may be underserved; (ii) the compilation of research and data related to AAPI populations and subpopulations; (iii) the development, monitoring, and coordination of Federal efforts to improve the economic and community development of AAPI businesses; and (iv) strategies to increase public and private-sector collaboration, and community involvement in improving the health, education, environment, and well-being of AAPIs. This notice is appearing less than 15 days before the date of the meeting because of issues related to scheduling the meeting.

Agenda

The purpose of the meeting is review the Executive Order establishing the Commission and the Interagency Working Group, and to determine and discuss key strategies to help meet the Commission meet its responsibilities as outlined in E.O. 13515.

Additional Information

Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, or material in alternative format) should notify Shelly Coles at (202) 453–7277, no later than Tuesday, September 14, 2010. We will attempt to meet requests for accommodations after this date, but, cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all Commission proceedings and are available for public inspection at the office of the White House Initiative on Asian Americans and Pacific Islanders, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202, Monday–Friday during the hours of 8:30 a.m. to 5 p.m.

Electronic Access to This Document: You may 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) on the internet at the following site: *http://www.ed.gov/news/fedregister/index.html.* To use PDF you must have Adobe Acrobat Reader,

which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1800; or in the Washington, DC area at 202–512–0000.

Kiran Ahuja,

Executive Director, White House Initiative on Asian Americans and Pacific Islanders.

[FR Doc. 2010–22494 Filed 9–8–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection request (ICR) with the Office of Management and Budget (OMB) concerning the *Occupational Radiation Protection Program,* OMB Control Number 1910–5105. The Office of Worker Safety and Health Policy ensures that adequate policies are in place for the protection of workers at DOE sites and operations. The Office of Worker Safety and Health Policy uses the information collected from the contractors to evaluate the adequacy of DOE policies for the protection of workers from exposure to ionizing radiation. Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 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.

DATES: Comments regarding this proposed information collection must be received on or before November 8, 2010. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to Dr. Judith D. Fouke, Office of Worker Safety and Health Policy (HS–11), U.S. Department of Energy, Office of Health, Safety and Security, 1000 Independence Ave., SW., Washington, DC 20585, by fax at (301) 903–7773 or by e-mail at *judy.foulke@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to the person listed above in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.* 1910–5105; (2) *Information Collection Request Title: Occupational Radiation Protection Program;* (3) *Type of Review:* Renewal; (4) *Purpose:* The recordkeeping and reporting requirements that comprise this information collection will permit DOE and its contractors to provide management control and oversight over health and safety programs concerning worker exposure to ionizing radiation; (5) *Annual Estimated Number of Respondents:* 34; (6) *Annual Estimated Number of Total Responses:* 0; (7) *Annual Estimated Number of Burden Hours:* 41,500; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $4,150,000.

Statutory Authority: Title 10, Code of Federal Regulations, part 835, subpart h.

Issued in Washington, DC, on August 27, 2010.

Lesley A. Gasperow,

Director, Office of Resource Management, Office of Health, Safety and Security.

[FR Doc. 2010–22525 Filed 9–8–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Contractor Legal Management Requirements, OMB Control Number 1910–5115. The proposed collection provides information necessary to aid contractors and DOE personnel in making determinations regarding the reasonableness of all outside legal costs, including the costs of litigation.

DATES: Comments regarding this collection must be received on or before October 12, 2010. 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, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503, and to Anne Broker, GC–12, U.S. Department of Energy, Office of Conflict Prevention and Resolution, 1000 Independence Avenue, SW., Washington, DC 20585 or by fax at 202–586–4116 or by e-mail at *anne.broker@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Anne Broker, GC–12, U.S. Department of Energy, Office of Conflict Prevention and Resolution, 1000 Independence Avenue, SW., Washington, DC 20585 or by fax at 202–586–4116 or by e-mail at *anne.broker@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* 1910–5115; (2) *Information Collection Request Title:* Contractor Legal Management Requirements; (3) *Type of Request:* Renewal; (4) *Purpose:* The collection of this information continues to be necessary to provide a basis for DOE decisions on requests, from applicable contractors, for reimbursement of litigation and other legal expenses; (5) *Annual Estimated Number of Respondents:* 36; (6) *Annual Estimated Number of Total Responses:* 36; (7) *Annual Estimated Number of Burden Hours:* 515; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* None. The costs incurred by the DOE contractors in providing the information collection in this package are recovered in their contract fees and payments.

Statutory Authority: These requirements are promulgated under authority in section 161 of the Atomic Energy Act of 1954, 42 U.S.C. 2201; the Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.,* and the National Nuclear Security Administration Act, 50 U.S.C. 2401, *et seq.*

Issued in Washington, DC on September 2, 2010.

Kathleen M. Binder,

Director, Office of Conflict Prevention and Resolution, Office of General Counsel.

[FR Doc. 2010–22509 Filed 9–8–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Ultra Deepwater Advisory Committee

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of open meeting cancellation.

SUMMARY: This notice announces cancellation of an open meeting of the Ultra Deepwater Advisory Committee. The Committee was organized pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) (the Act). This notice is provided in accordance with the Act.

DATES: This notice is to cancel the meeting that was to be held on Wednesday, September 8, 2010, 8:30 a.m.–5 p.m.

ADDRESSES: The meeting being cancelled was to be held at: Sugar Land Marriott Town Square, 16090 City Walk, Sugar Land, Texas 77479–6539.

FOR FURTHER INFORMATION CONTACT: Elena Melchert, U.S. Department of Energy, Office of Oil and Gas, Washington, DC 20585; telephone (202) 586–5600. Additional information will be available at *http://fossil.energy.gov/programs/oilgas/advisorycommittees/UltraDeepwater.html.*

Issued in Washington, DC, on September 3, 2010.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2010–22540 Filed 9–3–10; 4:15 pm]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

September 01, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1130–000.

Applicants: Mississippi River Transmission Corp.

Description: Annual Report of Penalty Revenue Credits of Mississippi River Transmission Corporation.

Filed Date: 08/31/2010.

Accession Number: 20100831–5086.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1131–000.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits tariff filing per 154.204: Alto compressor wheeling fuel use to be effective 10/1/2010.

Filed Date: 08/31/2010.

Accession Number: 20100831–5108.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1132–000.

Applicants: Fayetteville Express Pipeline LLC.

Description: Fayetteville Express Pipeline LLC submits Statement of Negotiated Rates, Version 1.0.0 and its Non-Conforming Agreements Version 1.0.0, to be effective 10/1/2010.

Filed Date: 08/31/2010.

Accession Number: 20100831–5116.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1133–000.

Applicants: Sea Robin Pipeline Company, LLC.

Description: Sea Robin Pipeline Company, LLC submits tariff filing per 154.204: Hurricane Surcharge Filing to be effective 10/1/2010.

Filed Date: 08/31/2010.

Accession Number: 20100831–5118.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1134–000.

Applicants: Questar Pipeline Company.

Description: Questar Pipeline Company submits tariff filing per 154.203: Baseline to be effective 8/31/2010.

Filed Date: 08/31/2010.

Accession Number: 20100831–5126.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1135–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per 154.501: 2010 Cash In/Cash Out Report to be effective N/A.

Filed Date: 08/31/2010.

Accession Number: 20100831–5135.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1136–000.

Applicants: Guardian Pipeline, L.L.C.

Description: Guardian Pipeline, L.L.C. submits tariff filing per 154.203: Guardian Baseline Filing to be effective 8/31/2010.

Filed Date: 08/31/2010.

Accession Number: 20100831–5142.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1137–000.

Applicants: Cimarron River Pipeline, LLC.

Description: Cimarron River Pipeline, LLC submits tariff filing per 154.402: ACA 2010 to be effective 10/1/2010.

Filed Date: 08/31/2010.

Accession Number: 20100831–5143.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1138–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company LLC submits its Annual Cash In/Cash Out Report for the period of April 1, 2009 through June 30, 2010.

Filed Date: 08/31/2010.

Accession Number: 20100831–5145.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1139–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits Fifty Third Revised Sheet 66 *et al.* to its FERC Gas Tariff, Fifth Revised Volume 1 to be effective 9/1/10.

Filed Date: 08/31/2010.

Accession Number: 20100831–0203.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1140–000.

Applicants: Williston Basin Interstate Pipeline Company.

Description: Williston Basin Interstate Pipeline Company submits Seventy-Sixth Revised Sheet 15 *et al.* to its FERC Gas Tariff, Second Revised Volume 1 to be effective 10/1/10.

Filed Date: 08/31/2010.

Accession Number: 20100831–0205.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1141–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: Natural Gas Pipeline Company of America LLC submits amendment to an existing negotiated rate Storage Rate Schedule NNS agreement with Marathon Oil Company.

Filed Date: 08/31/2010.

Accession Number: 20100831–0206.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1142–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: Florida Gas Transmission Company, LLC submits tariff filing per 154.204: Winter Fuel Filing to be effective 10/1/2010.

Filed Date: 08/31/2010.

Accession Number: 20100831–5157.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1143–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: Natural Gas Pipeline Company of America LLC submits amendments to existing negotiated rate Storage Rate Schedule NSS agreements between Natural and Niska Gas Storage on file on with Commission.
Filed Date: 08/31/2010.
Accession Number: 20100831–0207.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1144–000.
Applicants: Colorado Interstate Gas Company.
Description: Colorado Interstate Gas Company submits tariff filing per 154.403(d)(2): Quarterly FL&U 10/1/10 to be effective 10/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5168.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1145–000.
Applicants: Southern Natural Gas Company.
Description: Southern Natural Gas Company submits tariff filing per 154.203: Order No. 587–U Compliance to be effective 11/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5177.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1146–000.
Applicants: Southern LNG Inc.
Description: Southern LNG Inc. submits tariff sections to implement Version 1.9 of the North American Energy Standards Board pursuant to Order No. 587–U, to be effective 11/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5185.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1147–000.
Applicants: Elba Express Company, L.L.C.
Description: Elba Express Company, L.L.C. submits tariff filing per 154.203: Order No. 587–U Compliance to be effective 11/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5189.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1148–000.
Applicants: CenterPoint Energy Gas Transmission Company.
Description: CenterPoint Energy Gas Transmission Company submits tariff filing per 154.204: September 1 Negotiated Rates to be effective 9/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5199.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1149–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: Maritimes & Northeast Pipeline, L.L.C. submits tariff filing per 154.204: MNUS Phase IV Filing to be effective 9/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5200.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1150–000.
Applicants: Kinder Morgan Interstate Gas Transmission LLC.
Description: Kinder Morgan Interstate Gas Transmission LLC submits tariff filing per 154.204: NAESB 1.9 to be effective 11/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5201.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1151–000.
Applicants: TransColorado Gas Transmission Company LLC.
Description: TransColorado Gas Transmission Company LLC submits tariff filing per 154.204: NAESB 1.9 to be effective 11/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5202.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1152–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: Florida Gas Transmission Company, LLC submits tariff filing per 154.203: Implement Quality Settlement to be effective 9/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5204.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1153–000.
Applicants: Rockies Express Pipeline LLC.
Description: Rockies Express Pipeline LLC submits tariff filing per 154.204: NAESB 1.9 to be effective 11/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5212.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1154–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: Maritimes & Northeast Pipeline, L.L.C. submits tariff filing per 154.204: Order 587–U Compliance Filing (NAESB Version 1.9 Standards) to be effective 11/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5214.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1155–000.
Applicants: MoGas Pipeline LLC.
Description: MoGas Pipeline LLC submits tariff filing per 154.203: Settlement Compliance Filing to be effective 9/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5225.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1156–000.
Applicants: MoGas Pipeline LLC.
Description: MoGas Pipeline LLC submits tariff filing per 154.204: ACA Filing to be effective 10/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5226.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1157–000.
Applicants: Southeast Supply Header, LLC.
Description: Southeast Supply Header, LLC submits tariff filing per 154.204: Order 587–U Compliance Filing (NAESB Version 1.9 Standards) to be effective 11/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5227.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1158–000.
Applicants: MoGas Pipeline LLC.
Description: MoGas Pipeline LLC submits their Annual Fuel Adjustment Filing, to be effective 10/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5004.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1159–000.
Applicants: ANR Storage Company.
Description: ANR Storage Company submits tariff filing per 154.204: NAESB 1.9 Standards to be effective 11/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5021.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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 St., NE., Washington, DC 20426.

The filings in the above proceedings 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–22419 Filed 9–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

September 02, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1181–000.

Applicants: Horizon Pipeline Company, L.L.C.

Description: Horizon Pipeline Company, L.L.C. submits tariff filing per 154.203: Order No. 587–U Compliance Filing to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5069.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1182–000.

Applicants: SG Resources Mississippi, L.L.C.

Description: SG Resources Mississippi, L.L.C. submits tariff filing per 154.203: SG Resources Mississippi, L.L.C.—Order No. 587–U Compliance Filing to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5070.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1183–000.

Applicants: Nautilus Pipeline Company, L.L.C.

Description: Nautilus Pipeline Company, L.L.C. submits tariff filing per 154.203: Order 587–U Compliance to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5071.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1184–000.

Applicants: Mississippi Canyon Gas Pipeline, L.L.C.

Description: Mississippi Canyon Gas Pipeline, L.L.C. submits tariff filing per 154.203: Order 587–U Compliance to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5072.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1185–000.

Applicants: Tennessee Gas Pipeline Company.

Description: Tennessee Gas Pipeline Company submits tariff filing per 154.203: NAESB V1.9 to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5073.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1186–000.

Applicants: Garden Banks Gas Pipeline, LLC.

Description: Garden Banks Gas Pipeline, LLC submits tariff filing per 154.203: Order 587–U Compliance to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5074.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1187–000.

Applicants: Tres Palacios Gas Storage LLC.

Description: Tres Palacios Gas Storage LLC submits tariff filing per 154.203: Tres Palacios Gas Storage LLC—Order No. 587–U Compliance Filing to be effective N/A.

Filed Date: 09/01/2010.

Accession Number: 20100901–5075.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1188–000.

Applicants: Cheniere Creole Trail Pipeline, L.P.

Description: Cheniere Creole Trail Pipeline, L.P. submits tariff filing per 154.203: NAESB Compliance Filing to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5076.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1189–000.

Applicants: Northwest Pipeline GP.

Description: Northwest Pipeline GP submits tariff filing per 154.203: Northwest Pipeline GP—NAESB Version 1.9 Compliance Filing to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5077.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1190–000.

Applicants: Panhandle Eastern Pipe Line Company, LP.

Description: Panhandle Eastern Pipe Line Company, LP submits tariff filing per 154.203: NAESB Version 1.9 Compliance to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5078.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1191–000.

Applicants: MarkWest New Mexico, L.L.C.

Description: MarkWest New Mexico, L.L.C. submits tariff filing per 154.203: MarkWest New Mexico—NAESB Version 1.9 Filing to be effective 11/1/2010.

Filed Date: 09/01/2010

Accession Number: 20100901–5080.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1192–000.

Applicants: Trunkline Gas Company, LLC.

Description: Trunkline Gas Company, LLC submits tariff filing per 154.203: NAESB Version 1.9 Compliance to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5082.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1193–000.

Applicants: MarkWest Pioneer, L.L.C.

Description: MarkWest Pioneer, L.L.C. submits tariff filing per 154.203: MarkWest Pioneer—NAESB Version 1.9 Filing to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5085.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1194–000.

Applicants: Colorado Interstate Gas Company.

Description: Penalties Assessed Informational for the 12 month period ending June 30, 2010 of Colorado Interstate Gas Company.

Filed Date: 08/31/2010.

Accession Number: 20100831–5249.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1195–000.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits tariff filing per 154.203: Order No. 587–U Compliance to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5086.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1196–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: Florida Gas Transmission Company, LLC submits tariff filing per 154.203: NAESB Version 1.9 Compliance to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5087.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1197–000.

Applicants: Mojave Pipeline Company.

Description: Mojave Pipeline Company submits tariff filing per 154.203: Order No. 587–U Compliance to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5088.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1198–000.

Applicants: Cheyenne Plains Gas Pipeline Company, L.L.L.

Description: Cheyenne Plains Gas Pipeline Company, L.L.C. submits tariff filing per 154.203: Order 587–U Compliance Filing to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5092.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1199–000.

Applicants: Trunkline LNG Company, LLC.

Description: Trunkline LNG Company, LLC submits tariff filing per 154.203: NAESB Version 1.9 Compliance to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5097.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1200–000.

Applicants: Wyoming Interstate Company, L.L.C.

Description: Wyoming Interstate Company, L.L.C. submits tariff filing per 154.203: Order No. 587–U Compliance Filing to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5101.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1201–000.

Applicants: MarkWest Pioneer, L.L.C.

Description: MarkWest Pioneer, L.L.C. submits tariff filing per 154.403(d)(2): MarkWest Pioneer—Quarterly FRP Filing (September 1, 2010) to be effective 10/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5107.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1202–000.

Applicants: Southwest Gas Storage Company.

Description: Southwest Gas Storage Company submits tariff filing per 154.203: NAESB Version 1.9 Compliance to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5108.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1203–000.

Applicants: Colorado Interstate Gas Company.

Description: Colorado Interstate Gas Company submits tariff filing per 154.203: Order No. 587–U Compliance to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5111.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1204–000.

Applicants: Sea Robin Pipeline Company, LLC.

Description: Sea Robin Pipeline Company, LLC submits tariff filing per 154.203: NAESB Version 1.9 Compliance to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5116.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1205–000.

Applicants: Young Gas Storage Company, Ltd.

Description: Young Gas Storage Company, Ltd. submits tariff filing per 154.203: Order No. 587–U Compliance to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5117.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1206–000.

Applicants: Kinder Morgan Illinois Pipeline, LLC.

Description: Kinder Morgan Illinois Pipeline, LLC submits tariff filing per 154.203: Order No. 587–U Compliance Filing to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5119.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1207–000.

Applicants: Gulf Crossing Pipeline Company, LLC.

Description: Gulf Crossing Pipeline Company, LLC submits tariff filing per 154.204: NAESB 1.9 to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5122.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1208–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: ETC to Texla to be effective 9/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5124.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1209–000.

Applicants: Trailblazer Pipeline Company, LLC.

Description: Trailblazer Pipeline Company, LLC submits First Revised Sheet No. 174 *et al.* to FERC Gas Tariff, Fifth Revised Volume No. 1 pursuant to Order No. 587–U Compliance Filing, to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5133.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1210–000.

Applicants: Dominion South Pipeline Company, LP.

Description: Dominion South Pipeline Company, LP submits tariff filing per 154.203: DSP–NAESB Compliance to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5134.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1211–000.

Applicants: Dominion Cove Point LNG, LP.

Description: Dominion Cove Point LNG, LP submits tariff filing per 154.203: DCP–NAESB Compliance to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5135.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1212–000.
Applicants: Dominion Transmission, Inc.
Description: Dominion Transmission, Inc. submits tariff filing per 154.203: DTI–NAESB Compliance to be effective 11/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5136.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1213–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Enerquest to Trans Louisiana to be effective 9/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5137.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1214–000.
Applicants: Transwestern Pipeline Company, LLC.
Description: Transwestern Pipeline Company, LLC submits tariff filing per 154.203: NAESB 1.9 to be effective 11/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5141.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1215–000.
Applicants: Black Marlin Pipeline Company.
Description: Black Marlin Pipeline Company submits tariff filing per 154.203: NAESB v1.9 to be effective 9/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5142.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1216–000.
Applicants: Hardy Storage Company, LLC.
Description: Hardy Storage Company, LLC submits tariff filing per 154.203: NAESB V 1.9 to be effective 9/17/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5143.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1217–000.
Applicants: Bluewater Gas Storage, LLC.
Description: Bluewater Gas Storage, LLC submits tariff filing per 154.203: Bluewater Gas Storage, LLC—Order No. 587–U Compliance Filing to be effective 11/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5145.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1218–000.
Applicants: Rendezvous Pipeline Company, LLC.
Description: Rendezvous Pipeline Company, LLC submits tariff filing per 154.203: NAESB Version 1.9 Filing to be effective 11/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5146.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1219–000.
Applicants: Petal Gas Storage, L.L.C.
Description: Petal Gas Storage, LLC submits Eighth Revised Sheet 7 *et al.* of its FERC Gas Tariff, Original Volume 1 to be effective 11/1/10.
Filed Date: 09/01/2010.
Accession Number: 20100901–0216.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1220–000.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission, LLC submits Third Revised Sheet 1300 *et al.* to FERC Gas Tariff, Third Revised Volume 1 to be effective 11/1/10.
Filed Date: 09/01/2010.
Accession Number: 20100901–0217.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1221–000.
Applicants: CenterPoint Energy Gas Transmission Company.
Description: CenterPoint Energy Gas Transmission Company submits tariff filing per 154.203: NAESB Compliance Filing (Version 1.9) to be effective 11/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5148.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1222–000.
Applicants: Honeoye Storage Corporation.
Description: Honeoye Storage Corporation submits Fourth Revised Sheet 15 *et al.* to FERC Gas Tariff, Original Volume 1 to be effective 11/1/10.
Filed Date: 09/01/2010.
Accession Number: 20100901–0218.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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 St., NE., Washington, DC 20426.

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Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. 2010–22422 Filed 9–8–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

September 2, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1223–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Natural Gas Pipeline Company of America LLC submits First Revised Sheet 405 *et al.* to FERC Gas

Tariff, Seventh Revised Volume 1 to be effective 11/1/10.

Filed Date: 09/01/2010.

Accession Number: 20100901–0219.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1224–000.

Applicants: MoGas Pipeline LLC.

Description: MoGas Pipeline LLC submits tariff filing per 154.203: NAESB Compliance Filing to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5153.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1225–000.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline of America LLC submits Original Sheet 35C.19 *et al.* of its FERC Gas Tariff, Seventh Revised Volume 1 to be effective 9/1/10.

Filed Date: 09/01/2010.

Accession Number: 20100901–0222.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1226–000.

Applicants: Clear Creek Storage Company, L.L.C.

Description: Clear Creek Storage Company, L.L.C. submits tariff filing per 154.203: NAESB 1.9 Compliance Filing to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5154.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1227–000.

Applicants: Williston Basin Interstate Pipeline Co.

Description: Williston Basin Interstate Pipeline Company submits Fifth Revised Sheet 254 *et al.* to FERC Gas Tariff, Second Revised Volume 1 to be effective 11/1/10.

Filed Date: 09/01/2010.

Accession Number: 20100901–0220.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1228–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: Midcontinent Express Pipeline LLC submits tariff filing per 154.203: Order No. 587–U Compliance Filing to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5156.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1229–000.

Applicants: High Island Offshore System, L.L.C.

Description: High Island Offshore System, LLC submits Sixth Revised Sheet 92 *et al.* to FERC Gas Tariff, Third Revised Volume 1 to be effective 11/1/10.

Filed Date: 09/01/2010.

Accession Number: 20100901–0221.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1230–000.

Applicants: Cimarron River Pipeline, LLC.

Description: Cimarron River Pipeline, LLC submits tariff filing per 154.203: NAESB Version 1.9 Compliance Filing (Order No. 587–U) to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5157.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1231–000.

Applicants: KO Transmission Company.

Description: KO Transmission Company submits Fifth Revised Sheet 50 *et al.* to its FERC Gas Tariff, Original Volume 1 to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–0223.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1232–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, L.P. submits tariff filing per 154.203: FERC Order 587–U NAESB Version 1.9 to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5159.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1233–000.

Applicants: Pine Prairie Energy Center, LLC.

Description: Pine Prairie Energy Center, LLC submits tariff filing per 154.203: Pine Prairie Energy Center, LLC—Order No. 587–U Compliance Filing to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5160.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1234–000.

Applicants: Discovery Gas Transmission LLC.

Description: Discovery Gas Transmission LLC submits tariff filing per 154.203: NAESB V 1.9 to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5162.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1235–000.

Applicants: Empire Pipeline, Inc.

Description: Empire Pipeline, Inc. submits tariff filing per 154.203: ACA Compliance Filing to be effective 10/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5163.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1236–000.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits tariff filing per 154.203: NAESB V 1.9 filing to be effective 9/17/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5164.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1237–000.

Applicants: Alliance Pipeline L.P.

Description: Alliance Pipeline L.P. submits tariff filing per 154.203: NAESB version 1.9 tariff filing to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5165.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1238–000.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gulf Transmission Company submits tariff filing per 154.203: NAESB Version 1.9 to be effective 9/17/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5167.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1239–000.

Applicants: Stingray Pipeline Company, L.L.C.

Description: Update Event Surcharge of Stingray Pipeline Company, L.L.C.

Filed Date: 09/01/2010.

Accession Number: 20100901–5169.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1240–000.

Applicants: Vector Pipeline L.P.

Description: Vector Pipeline L.P. submits tariff filing per 154.203: NAESB 1.9 Compliance Filing to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5168.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1241–000.

Applicants: Pine Needle LNG Company, LLC.

Description: Pine Needle LNG Company, LLC submits tariff filing per 154.203: Pine Needle Order No. 587–U Compliance (NAESB Version 1.9) to be effective 11/1/2010.

Filed Date: 09/01/2010.
Accession Number: 20100901–5175.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1242–000.
Applicants: Kern River Gas Transmission Company.
Description: Kern River Gas Transmission Company submits tariff filing per 154.203: NAESB 1.9 to be effective 11/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5191.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1243–000.
Applicants: Questar Pipeline Company.
Description: Questar Pipeline Company submits tariff filing per 154.203: NAESB 1.9 Order 587–U Compliance to be effective 11/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5199.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1244–000.
Applicants: Kinder Morgan Louisiana Pipeline LLC.
Description: Kinder Morgan Louisiana Pipeline LLC submits tariff filing per 154.203: Order No. 587–U Compliance Filing to be effective 11/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5204.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1245–000.
Applicants: Questar Overthrust Pipeline Company.
Description: Questar Overthrust Pipeline Company submits tariff filing per 154.203: NAESB 1.9 Order 587–U Compliance to be effective 11/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5207.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1246–000.
Applicants: Questar Southern Trails Pipeline Company.
Description: Questar Southern Trails Pipeline Company submits tariff filing per 154.203: NAESB 1.9 Compliance filing to be effective 11/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5209.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1247–000.
Applicants: National Fuel Gas Supply Corporation.
Description: National Fuel Gas Supply Corporation submits tariff filing per 154.203: NAESB Version 1.9 to be effective 11/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5210.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1248–000.
Applicants: Central Kentucky Transmission Company.
Description: Central Kentucky Transmission Company submits tariff filing per 154.203: NAESB V 1.9 to be effective 9/17/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5212.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1249–000.
Applicants: Tres Palacios Gas Storage LLC.
Description: Tres Palacios Gas Storage LLC submits tariff filing per 154.203: Tres Palacios Gas Storage LLC—Compliance Filing Order No. 587–U to be effective 11/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5215.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1250–000.
Applicants: CenterPoint Energy—Mississippi River Transmission.
Description: CenterPoint Energy—Mississippi River Transmission Corporation submits tariff filing per 154.203: NAESB Compliance Filing (Version 1.9) to be effective 11/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5218.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1251–000.
Applicants: White River Hub, LLC.
Description: White River Hub, LLC submits tariff filing per 154.203: NAESB 1.9 Order 587–U Compliance to be effective 11/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5219.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1252–000.
Applicants: Monroe Gas Storage Company, LLC.
Description: Monroe Gas Storage Company, LLC submits tariff filing per 154.203: NAESB Compliance Filing to be effective 11/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5222.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1253–000.
Applicants: Cameron Interstate Pipeline, LLC.
Description: Cameron Interstate Pipeline, LLC submits tariff filing per 154.203: NAESB Compliance Filing to be effective 11/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5223.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1254–000.
Applicants: Crossroads Pipeline Company.
Description: Crossroads Pipeline Company submits tariff filing per 154.203: NAESB V 1.9 to be effective 9/17/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5224.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1255–000.
Applicants: Liberty Gas Storage, LLC.
Description: Liberty Gas Storage, LLC submits tariff filing per 154.203: NAESB Compliance Filing to be effective 11/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5237.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1256–000.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Transmission Company submits tariff filing per 154.501: Cash out to be effective N/A.
Filed Date: 09/01/2010.
Accession Number: 20100901–5235.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1257–000.
Applicants: Empire Pipeline, Inc.
Description: Empire Pipeline, Inc. submits tariff filing per 154.203: Empire NAESB V 1.9 to be effective 11/1/2010.
Filed Date: 09/02/2010.
Accession Number: 20100902–5033.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–22423 Filed 9–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 3

September 01, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1017–001.

Applicants: Florida Gas Transmission Company, LLC.

Description: Florida Gas Transmission Company, LLC submits tariff filing per 154.203: Baseline Correction to be effective 7/30/2010.

Filed Date: 08/31/2010.

Accession Number: 20100831–5141.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–147–004.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America LLC submits First Revised Sheet 16 *et al.* to its FERC Gas Tariff, Seventh Revised Volume 1.

Filed Date: 08/31/2010.

Accession Number: 20100831–0204.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–779–003.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc. submits tariff filing per 154.203: DTI—Volume No. 1B Baseline Compliance Filing, to be effective 8/31/2010 under RP10–779. Filing Type: 580.

Filed Date: 08/31/2010.

Accession Number: 20100831–5028.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–896–001.

Applicants: Granite State Gas Transmission, Inc.

Description: Motion of Maine Public Advocate Office under RP10–896.

Filed Date: 08/31/2010.

Accession Number: 20100831–5161.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1044–001.

Applicants: MIGC LLC.

Description: MIGC LLC submits their Baseline Tariff of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective 8/2/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5001.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–963–001.

Applicants: Granite State Gas Transmission, Inc.

Description: Granite State Gas Transmission, Inc. submits tariff filing per 154.203: Version 1.9 Compliance to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5058.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

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This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–22421 Filed 9–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

September 01, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1160–000.

Applicants: Dauphin Island Gathering Partners.

Description: Dauphin Island Gathering Partners submits the Ninth Revised Sheet 7 to FERC Gas Tariff, First Revised Volume 1 effective 10/1/10.

Filed Date: 08/31/2010.

Accession Number: 20100901–0202.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1161–000.

Applicants: National Grid LNG, LP.

Description: National Grid LNG, LP submits the First Revised Sheet 58 *et al.* to FERC Gas Tariff, Fourth Revised Volume 1 effective 11/1/10.

Filed Date: 08/31/2010.

Accession Number: 20100901–0203.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1162–000.

Applicants: Blue Lake Gas Storage Company.

Description: Blue Lake Gas Storage Company submits tariff filing per 154.204: NAESB Version 1.9 Compliance to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5022.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1163–000.

Applicants: Great Lakes Gas Transmission Limited Par.

Description: Great Lakes Gas Transmission Limited Partnership

submits tariff filing per 154.204: NAESB 1.9 to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5025.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1164–000.

Applicants: Gas Transmission Northwest Corporation.

Description: Gas Transmission Northwest Corporation submits tariff filing per 154.204: NAESB 1.9 to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5026.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1165–000.

Applicants: North Baja Pipeline, LLC.

Description: North Baja Pipeline, LLC submits tariff filing per 154.204: NAESB 1.9 to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5027.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1166–000.

Applicants: Northern Border Pipeline Company.

Description: Northern Border Pipeline Company submits tariff filing per 154.204: NAESB 1.9 to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5028.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1167–000.

Applicants: Tuscarora Gas Transmission Company.

Description: Tuscarora Gas Transmission Company submits tariff filing per 154.204: NAESB 1.9 to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5029.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1168–000.

Applicants: Trans-Union Interstate Pipeline, L.P.

Description: Trans-Union Interstate Pipeline, L.P. submits tariff filing per 154.203: Trans-Union FERC Gas Tariff to be effective 9/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5030.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1169–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: NAESB 1.9 to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5031.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1170–000.

Applicants: Panther Interstate Pipeline Energy, LLC.

Description: Panther Interstate Pipeline Energy, LLC submits Tariff Record 19 Version 1.9 to FERC Gas Tariff, First Revised Volume No 1, be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5032.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1171–000.

Applicants: Ozark Gas Transmission, L.L.C.

Description: Ozark Gas Transmission, L.L.C. submits tariff filing per 154.204: Order No. 587–U Compliance Filing (NAESB Version 1.9 Standards) to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5034.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1172–000.

Applicants: NGO Transmission, Inc.

Description: NGO Transmission, Inc. submits tariff filing per 154.203: NGO Transmission—NAESB Version 1.9 Filing to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5035.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1173–000.

Applicants: T.W. Phillips Pipeline Corp.

Description: T.W. Phillips Pipeline Corp. submits tariff filing per 154.203: NAESB Compliance Filing to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5036.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1174–000.

Applicants: Fayetteville Express Pipeline LLC.

Description: Fayetteville Express Pipeline LLC submits tariff filing per 154.203: NAESB Version 1.9 Compliance to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5037.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1175–000.

Applicants: Gulfstream Natural Gas System, L.L.C.

Description: Gulfstream Natural Gas System, L.L.C. submits tariff filing per 154.204: Order 587–U Compliance Filing (NAESB Version 1.9 Standards) to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5038.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1176–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Southern Star Central Gas Pipeline, Inc. submits tariff filing per 154.204: NAESB 1.9 to be effective 10/20/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5039.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1177–000.

Applicants: Cheniere Creole Trail Pipeline, L.P.

Description: Cheniere Creole Trail Pipeline, L.P. submits tariff filing per 154.204: ACA Compliance Filing to be effective 10/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5050.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1178–000.

Applicants: Colorado Interstate Gas Company.

Description: Operational Purchases and Sales Report for the 12 month period ending June 30, 2010 of Colorado Interstate Gas Company.

Filed Date: 08/31/2010.

Accession Number: 20100831–5247.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1179–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Texla Energy Management, Inc. Capacity Release/Neg Rate Filing to be effective 9/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5063.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1180–000.

Applicants: Transcontinental Gas Pipe Line Company,

Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.203: Order No. 587–U Compliance (NAESB Version 1.9) to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5066.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern

time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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 St., NE., Washington, DC 20426.

The filings in the above proceedings 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 e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–22420 Filed 9–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings 3

September 02, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1009–001.

Applicants: Carolina Gas Transmission Corporation.

Description: Carolina Gas Transmission Corporation submits tariff filing per 154.203: Order 587–U Compliance Filing (NAESB vs. 1.9) to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5147.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1043–001.

Applicants: Southern Natural Gas Company.

Description: (doc-less) Motion to Intervene of Dalton BD of Water, Light & Sinking Fund.

Filed Date: 09/01/2010.

Accession Number: 20100901–5055.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1083–001.

Applicants: Eastern Shore Natural Gas Company.

Description: Eastern Shore Natural Gas Company submits tariff filing per 154.203: Compliance Filing—Order No. 587–U to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5206.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–960–003.

Applicants: B–R Pipeline Company.

Description: B–R Pipeline Company submits tariff filing per 154.203: NAESB Version 1.9 compliance to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5166.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–961–003.

Applicants: USG Pipeline Company.

Description: USG Pipeline Company submits tariff filing per 154.203: NAESB Version 1.9 Compliance to be effective 11/1/2010.

Filed Date: 09/01/2010.

Accession Number: 20100901–5208.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–922–001.

Applicants: Venice Gathering System, L.L.C.

Description: Venice Gathering System, L.L.C. submits tariff filing per 154.205(b): Errata Filing for NAESB 1.8 to be effective 7/1/2010.

Filed Date: 09/02/2010.

Accession Number: 20100902–5035.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–22424 Filed 9–8–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2010–0373; FRL–9199–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Aerospace Manufacturing and Rework Facilities (Renewal), EPA ICR Number 1687.08, OMB Control Number 2060–0314

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 October 12, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2010–0373 to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail 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, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail 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 June 2, 2010 (75 FR 30813), 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–2010–0373, 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) 566–1752.

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, 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 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 the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for Aerospace Manufacturing and Rework Facilities (Renewal)

ICR Numbers: EPA ICR Number 1687.08, OMB Control Number 2060–0314.

ICR Status: This ICR is schedule to expire on November 30, 2010. 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 National Emission Standards for Hazardous Air Pollutants (NESHAP) for Aerospace Manufacturing and Rework Facilities were proposed on June 6, 1994, and promulgated on September 1, 1995.

This standard applies to owners and operators of new, reconstructed, and existing aerospace manufacturing and rework facilities where the total hazardous air pollutants (HAP) emitted are greater than or equal to 10 tons per year of any one HAP; or where the total HAP emitted are greater than or equal to 25 tons per year of any combination of HAP. Operations covered include: cleaning, primer and top coat application, depainting, chemical milling maskant application, and handling and storage of waste. This information will be used by enforcement agencies to verify that sources subject to the standard are meeting the emission reductions mandated by the Clean Air Act.

Owners/operators of aerospace manufacturing and rework facilities are required to submit initial notification, performance tests, and periodic reports. Respondents 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. Semiannual reports are also required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NESHAP.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintain reports and records. 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 GG 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.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 262 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 purpose 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: Aerospace manufacturing and rework facilities.

Estimated Number of Respondents: 136.

Frequency of Response: Initially, semiannually, and occasionally.

Estimated Total Annual Hour Burden: 141,010.

Estimated Total Annual Cost: $13,430,729, which includes $13,294,729 in labor costs, no capital/

startup costs, and $136,000 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the number of affected facilities as compared to the previous ICR. There is a change in the number of responses which is due to a more accurate accounting.

However, there is a small decrease in the estimated labor burden hours, as currently identified in the OMB Inventory of approved Burdens. The decrease is not due to any program changes. The change in the labor burden hours occurred because the previous ICR rounded their calculations, and this renewal did not. There is an increase in the cost estimates as compared to the previous ICR. The change in the cost estimates was caused by the updated labor rates, which resulted in an increase in the labor costs.

Dated: September 2, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–22483 Filed 9–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9198–8]

National Drinking Water Advisory Council's Climate Ready Water Utilities Working Group Meeting Announcement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is announcing the fifth and final in-person meeting of the Climate Ready Water Utilities (CRWU) Working Group of the National Drinking Water Advisory Council (NDWAC). The purpose of this meeting is to review and discuss final changes to the Working Group's report and finalize the document.

DATES: The fifth in-person CRWU Working Group meeting will take place on September 23, 2010, from 9 a.m. to 5:30 p.m., Eastern Daylight Time (EDT) and on September 24, 2010, from 8:30 a.m. to 1 p.m., EDT.

ADDRESSES: The meeting will take place at the Hilton Alexandria Old Town, which is located at 1767 King Street, Alexandria, Virginia 22314, in Salon A.

FOR FURTHER INFORMATION CONTACT: Interested participants from the public should contact Lauren Wisniewski, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water, Water Security Division (Mail Code 4608T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please contact Lauren Wisniewski at *wisniewski.lauren@epa.gov* or call 202–564–2918. CRWU Working Group meeting agendas and summaries are available at: *http://www.water.epa.gov/aboutow/ogwdw/ndwac/index.cfm#current.*

SUPPLEMENTARY INFORMATION:

Agenda: At previous meetings, the CRWU Working Group developed a draft *Report to the National Drinking Water Advisory Council* that addresses the Working Group's charge. The report includes an executive summary and sections on findings, recommendations, an adaptive response framework, needed resources, and incentives. In this meeting, the Working Group will discuss any final changes to the report and aim to finalize the document by the conclusion of the meeting. If time permits, there may also be a few presentations on related inter-agency climate efforts. To obtain a copy of the draft report or other meeting materials, please e-mail Lauren Wisniewski at *wisniewski.lauren@epa.gov.*

Public Participation: There will be an opportunity for public comment during the CRWU Working Group meeting. Oral statements will be limited to five (5) minutes, and it is preferred that only one person present the statement on behalf of a group or organization. Any person who wishes to file a written statement can do so before or after the CRWU Working Group meeting. Written statements received prior to the meeting will be distributed to all members of the Working Group before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the CRWU Working Group members for their information. For information on access or services for individuals with disabilities, please contact Lauren Wisniewski at 202–564–2918 or by e-mail at *wisniewski.lauren@epa.gov.* To request accommodation of a disability, please contact Lauren Wisniewski, preferably, at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: September 2, 2010.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2010–22463 Filed 9–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9199–3]

Science Advisory Board Staff Office; Notification of a Clean Air Scientific Advisory Committee (CASAC) NO_X & SO_X Secondary NAAQS Review Panel Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the Clean Air Scientific Advisory Committee NO_X and SO_X Secondary National Ambient Air Quality Standards (NAAQS) Review Panel (CASAC Panel) to peer review EPA's *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for NO_X and SO_X: Second External Review Draft (September 2010).*

DATES: The Panel meeting will be held Wednesday, October 6, 2010 from 8:30 a.m. to 5 p.m. and Thursday, October 7, 2010 from 8:30 a.m. to 1 p.m. (Eastern Time).

ADDRESSES: The October 6 and 7, 2010 public meeting will take place at the Marriott at Research Triangle Park, 4700 Guardian Drive, Durham, NC, 27703, telephone (919) 941–6200.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to submit a written or brief oral statement or wants further information concerning the October 6 and 7, 2010 meeting may contact Dr. Angela Nugent, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 564–2218; fax (202) 565–2098; or e-mail at *nugent.angela@epa.gov.* General information concerning the CASAC and the CASAC documents can be found on the EPA Web site at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION:

Background: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463 5 U.S.C., App. 2, notice is hereby given that the CASAC NO_X & SO_X Secondary NAAQS Review Panel will hold a public meeting to provide advice on the policy implications of welfare standards for NO_X and SO_X. The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an

independent scientific advisory committee. CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six "criteria" air pollutants, including NO_X and SO_X. EPA is in the process of reviewing welfare effects for NO_X and SO_X as defined in the CAA include, but are not limited to, effects on soils, water, wildlife, vegetation, visibility, weather, and climate, as well as effects on materials, economic values, and personal comfort and well-being.

The CASAC NO_X & SO_X Secondary NAAQS Review Panel has provided advice and review of EPA's review of the secondary NAAQS for NO_X and SO_X since 2008. Information about these activities can be found on the CASAC Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/WebProjectsbyTopicCASAC* Open View. Most recently, the CASAC NO_X & SO_x Secondary NAAQS Review Panel held a meeting on April 1 and 2, 2010, at the request of EPA's Office of Air and Radiation to review EPA's draft document entitled *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for NO_X and SO_X: First External Review Draft (March 2010)* (75 FR 10479–10481). CASAC provided EPA with an advisory report reviewing that draft document on June 22, 2010 [*Review of the Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for NO_X and SO_X: First Draft (March 2010)* (EPA–CASAC–10–014)], available at *http://yosemite.epa.gov/sab/sabproduct.nsf/33219585C42C55218525777A006DE787/$File/EPA-CASAC-10-014-unsigned.pdf.*

EPA has revised the draft Policy Assessment in light of CASAC's comments and has requested review of a second draft. The panel will meet on October 6 and 7, 2010 to review the second draft Policy Assessment.

Technical Contacts: Any questions concerning EPA's *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for NO_X and SO_X: Second External Review Draft (September 2010)* should be directed to Dr. Byran Hubbell, OAR, at 919–541–0621 or *hubbell.bryan@epa.gov.*

Availability of Meeting Materials: EPA–OAR's *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for NO_X and SO_X: Second External Review Draft (September 2010)* will be accessible at *http://www.epa.gov/ttn/naaqs/standards/no2so2sec/index.html.* The agenda and other materials for the CASAC meetings will be posted on the CASAC Web site at *http://www.epa.gov/casac.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a Federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a Federal advisory committee to consider as it develops advice for EPA. They should send their comments directly to the Designated Federal Officer for the relevant advisory committee. *Oral Statements:* To be placed on the public speaker list for the October 6 and 7, 2010 meeting, interested parties should notify Dr. Angela Nugent, DFO, by e-mail no later than October 1, 2010. *Written Statements:* Written statements should be received in the SAB Staff Office by October 1, 2010 so that the information may be made available to the CASAC Panel for its consideration prior to this meeting. Written statements should be supplied to the appropriate DFO in the following formats: one hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Nugent at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: September 1, 2010.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–22485 Filed 9–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9198–9]

Drinking Water Strategy Contaminants as Group(s)—Notice of Public Stakeholder Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On March 22, 2010, the Environmental Protection Agency (EPA) Administrator Lisa P. Jackson announced the Drinking Water Strategy, a new vision to expand public health protection for drinking water by going beyond the traditional framework. The Drinking Water Strategy includes the following four principles: Addressing some contaminants as group(s) rather than one at a time so that enhancement of drinking water protection can be achieved cost-effectively; fostering development of new drinking water technologies to address health risks posed by a broad array of contaminants; using the authority of multiple statutes to help protect drinking water; and partnering with States to share more complete data from monitoring at public water systems.

The purpose of this notice is to announce that EPA will be holding a public meeting on September 21, 2010, to engage stakeholders on the first of the four principles, addressing contaminants as group(s). EPA plans to discuss approaches to regulate contaminants as groups and potential contaminant groups, share advantages and disadvantages of various groups, identify issues needing further attention, and discuss potential solutions. EPA invites the public and stakeholders to participate in this information exchange on addressing contaminants as group(s).

DATE AND LOCATION: The public meeting will be held on Tuesday, September 21, 2010 (8:30 a.m. to 5 p.m., Eastern Daylight Savings Time), at the EPA East Building, Room 1153, 1201 Constitution Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Shari Bauman, Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC 4607M),

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 at (202) 564–0293 or *bauman.shari@epa.gov.* For more information about the Drinking Water Strategy, visit: *http://water.epa.gov/lawsregs/rulesregs/sdwa/dwstrategy/index.cfm.*

SUPPLEMENTARY INFORMATION:

Registration: Individuals planning on participating in the Stakeholder Meeting must register for the meeting by contacting Kate Zimmer of RESOLVE by email to *kzimmer@resolv.org* no later than September 17, 2010.

Special Accommodations: For information on access or accommodations for individuals with disabilities, please contact Jini Mohanty at (202) 564–5269 or by e-mail at *mohanty.jini@epa.gov.* Please allow at least five business days prior to the meeting to give EPA time to process your request.

Dated: September 2, 2010.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2010–22470 Filed 9–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9199–1]

Notice of Availability of Final NPDES General Permits MAG910000 and NHG910000 for Discharges From Remediation Activities in the Commonwealth of Massachusetts (Including Both Commonwealth and Indian Country Lands) and the State of New Hampshire: The Remediation General Permit (RGP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of final NPDES General Permits MAG910000 And NHG910000.

SUMMARY: The Director of the Office of Ecosystem Protection, EPA—New England, is providing a notice of availability of the final National Pollutant Discharge Elimination System (NPDES) general permits for discharges from remediation activities to certain waters of the Commonwealth of Massachusetts (including both Commonwealth and Indian country lands) and the State of New Hampshire. These General Permits will replace the existing Remediation General Permits, which will expire on September 9, 2010. The notice of availability of the draft NPDES general permits for remediation activity discharges was published in the **Federal Register** on April 26, 2010 (FR–10–014) and the public notice period ran from April 26, 2010 to May 26, 2010. Comments on the draft General Permits were received during the public notice period and have been addressed in a Response to Comments document, available with the final permits.

The final General Permits establish Notice of Intent (NOI) requirements, effluent limitations, standards, prohibitions, and management practices for remediation facilities discharging treated contaminated groundwater.

Owners and/or operators of facilities with remediation discharges, including those currently authorized to discharge under the expiring General Permits, will be required to submit an NOI to be covered by the General Permits to both EPA—New England and the appropriate state agency. After EPA and the State have reviewed the NOI, the facility will receive a written notification from EPA of permit coverage and authorization to discharge under the General Permit. The eligibility requirements for coverage under the General Permits are discussed in detail under Part I.B.2., and Appendix V. The reader is strongly urged to review these sections to determine eligibility. An individual permit may be necessary if the discharger cannot meet the terms and conditions or eligibility requirements of the RGP.

DATES: The general permits shall be effective on September 10, 2010 and will expire at midnight, five (5) years from the effective date on September 9, 2015. In accordance with 40 CFR Part 23, these permit shall be considered issued for the purpose of judicial review two (2) weeks after the **Federal Register** Publication. Under section 509(b) of the Clean Water Act, judicial review of these general permits can be conducted by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this permit may not be challenged at a later date in civil or criminal proceedings to enforce these requirements. In addition, these permits may not be challenged in other agency proceedings.

ADDRESSES: The required notification information to obtain permit coverage is provided in the general permits. This information shall be submitted to both EPA and the appropriate state. Notification information may be sent via regular or overnight mail to EPA at EPA–Region 1, Office of Ecosystem Protection, OEP06–1, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109–3912 or e-mailed to *NPDES.Generalpermits@epa.gov*. Notification information shall be submitted to the appropriate State agency at the addresses listed in Appendix V of the General Permits.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the final General Permits may be obtained between the hours of 9 a.m. and 5 p.m. Monday through Friday, excluding holidays, from Victor Alvarez at *Alvarez.Victor@epa.gov* or (617) 918–1572. The general permits may be viewed at the EPA Web site *http://www.epa.gov/region1/npdes/rgp.html.* To obtain a paper copy of the general permits, please contact Mr. Alvarez using the contact information provided above. A reasonable fee may be charged for copying requests.

Dated: August 30, 2010.

Ira W. Leighton,

Acting Regional Administrator, Region 1.

[FR Doc. 2010–22474 Filed 9–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9199–4]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("CAA"), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement to address a lawsuit filed by Environmental Integrity Project and Environment Maryland (collectively "Plaintiffs") in the United States District Court for the District of Columbia: *Environmental Integrity Project, et al.* v. *Jackson,* No. 1:09–cv–02322–RMU (D.D.C.). Plaintiffs filed a deadline suit to compel the Administrator to respond to an administrative petition seeking EPA's objection to a CAA Title V operating permit issued by the Maryland Department of the Environment to the Luke paper Company, a subsidiary of New Page Corporation ("Luke Paper") for a pulp and paper mill in Luke, Maryland. Under the terms of the proposed settlement agreement, EPA has agreed to respond to the petition by October 18, 2010.

DATES: Written comments on the proposed settlement agreement must be received by *October 12, 2010.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2010–0745, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Leslie Darman, Office of General Counsel (Mail Code 2355A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5452; fax number (202) 564–5477; e-mail address: *darman.leslie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

This proposed settlement agreement would resolve a lawsuit alleging that the Administrator failed to perform a nondiscretionary duty to grant or deny, within 60 days of submission, an administrative petition to object to a CAA Title V permit issued by the Maryland Department of the Environment to Luke Paper for a pulp and paper mill in Luke, Maryland. Under the terms of the proposed settlement agreement, EPA has agreed to respond to the petition by October 18, 2010.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this settlement agreement should be withdrawn, the terms of the settlement agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How can I get a copy of the settlement agreement?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2010–0745) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official 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 appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: September 2, 2010.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. 2010–22460 Filed 9–8–10; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 2010–0035]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB review and comments request.

Form Title: Application for Short-Term Express Export Credit Insurance Policy.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The Application for Short-Term Express Export Credit Insurance Policy will be used to determine the eligibility of the applicant and the transaction for Export-Import Bank assistance under its insurance program. Export-Import Bank customers will be able to submit this form on paper or electronically.

This is a new application form for use by small U.S. businesses with limited export experience. Companies that are eligible to use the Express policy will need to answer approximately 20 questions and sign an acknowledgement of the certifications that appear on the reverse of the application form. This program does not provide discretionary credit authority to the U.S. exporter, and therefore the financial and credit information needs are minimized. This new form incorporates the recently updated standard Certification and Notices section as well as two questions about the amount of U.S. employment to be supported by this policy.

DATES: Comments should be received on or before November 8, 2010 to be assured of consideration.

ADDRESSES: Comments maybe submitted electronically on *http://www.regulations.gov* or by mail to Michele Kuester, Export-Import Bank of the United States, 811 Vermont Ave., NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 10–02 Application for Short-Term Express Export Credit Insurance Policy.

OMB Number: 3048-xxxx.

Type of Review: New.

Need and Use: The Application for Short-Term Express Export Credit Insurance Policy will be used to determine the eligibility of the applicant and the transaction for Export-Import Bank assistance under its insurance program.

Annual Number of Respondents: 500.

Estimated Time per Respondent: 75 hours.

Government Annual Burden Hours: 50 hours.

Frequency of Reporting or Use: Once.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2010–22412 Filed 9–8–10; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

SUMMARY: The Advisory Committee was established by Public Law 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

TIME AND PLACE: Tuesday, September 21, 2010 from 1 p.m. to 4 p.m. The meeting will be held at Ex-Im Bank in the Main Conference Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

AGENDA: Agenda items include a legislative update and Bank response to the recommendations made by the Advisory Committee to the Competitiveness Report to Congress.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If you plan to attend, a photo ID must be presented at the guard's desk as part of the clearance process into the building, and you may contact Susan Houser to be placed on an attendee list. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to September 14, 2010, Susan Houser, Room 1273, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3232 or e-mail: *susan.houser@exim.gov.*

FOR FURTHER INFORMATION CONTACT: For further information, contact Susan Houser, Room 1273, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3232.

Jonathan Cordone,

Senior Vice President and General Counsel.

[FR Doc. 2010–22383 Filed 9–8–10; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 2, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. 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 Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 8, 2010. 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: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214 or email judith–b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0971.

Title: Section 52.15, Request for "For Cause" Audits and State Commission's Access to Numbering Resource Application Information.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit.

Number of Respondents and Responses: 2,105 respondents; 63,015 responses.

Estimated Time Per Response: .1667 hours – 3 hours.

Frequency of Response: On occasion reporting 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 153, 154, 201–205, 207–209, 218, 225 – 227, 251–252, 271 and 332.

Total Annual Burden: 10,515 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission requires state commissions to treat carriers' applications for initial or growth numbering resources as well as their forecast and utilization data as confidential. Carrier numbering resource applications and audits of carrier compliance will be treated as confidential and will be exempt from public disclosure under 5 U.S.C. 552(b)(4). In those instances where a state "open records" statute prevents the state from providing confidential protection for such sensitive carrier information the Commission will work with the state commission to enable it to obtain access to such information in a manner that addresses the state's need for this information and also protects the confidential nature of the carrier's sensitive information.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this comment period to obtain the full three year clearance from them. There is no change in the reporting and/or third party disclosure requirements.

To ensure that the numbering resources of the North American Numbering Plan are used efficiently, the Commission authorized "for cause" audits as part of its comprehensive audit plan to verify carrier compliance with Federal rules, under 47 CFR 52.15, and orders and industry guidelines. It also provided state commissions with access to copies of carrier's applications for numbering resources. To request a "for cause" audit, the North American Numbering Plan Administrator (NANPA), the Pooling Administrator or a state commission must draft a request to the auditor stating the reason for the request, such as misleading or inaccurate data, and attach supporting documentation. Requests for copies of carriers' applications for numbering resources are made directly to the carriers by the state commissions.

The information collected will be used by the FCC, state commissions, and NANPA and the Pooling Administrator to verify the validity and accuracy of carrier data and to assist state commissions in carrying out their numbering responsibilities, such as area code relief.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–22466 Filed 9–8–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 3, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. 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 Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 8, 2010. 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: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214 or email judith–b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1092.

Title: Interim Procedures for Filing Applications Seeking Approval for Designated Entity Reportable Eligibility Events and Annual Reports.

Form Nos.: FCC Forms 609–T and 611–T.

Type of Review: Extension of a currently approved collection.

Respondents: 1,100 respondents; 2,750 responses.

Number of Respondents and Responses: Business or other for–profit, not–for–profit institutions, and state, local or tribal government.

Estimated Time Per Response: .50 hours – 6 hours.

Frequency of Response: On occasion and annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 4(i), 308(b), 309(j)(3) and 309(j)(4).

Total Annual Burden: 7,288 hours.

Total Annual Cost: $1,494,625.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: In general, there is no need for confidentiality. On a case by case basis, the Commission may be required to withhold from disclosure certain information about the location, character, or ownership of a historic property, including traditional religious sites.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management

and Budget (OMB) after this comment period to obtain the three year clearance from them. There is no change in the reporting requirements. There is no change in the Commission's burden estimates.

FCC Form 609–T is used by Designated Entities (DEs) to request prior Commission approval pursuant to Section 1.2114 of the Commission's rules for any reportable eligibility event. The data collected on the form is used by the FCC to determine whether the public interest would be served by the approval of the reportable eligibility event.

FCC Form 611–T is used by DE licensees to file an annual report, pursuant to Section 1.2110(n) of the Commission's rules, related to eligibility for designated entity benefits.

The information collected will be used to ensure that only legitimate small businesses reap the benefits of the Commission's designated entity program. Further, this information will assist the Commission in preventing companies from circumventing the objectives of the designated entity eligibility rules by allowing us to review: 1) the FCC 609–T applications seeking approval for "reportable eligibility events" and 2) the FCC Form 611–T annual reports to ensure that licensees receiving designated entity benefits are in compliance with the Commission's policies and rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–22465 Filed 9–8–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

September 1, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. 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 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 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 currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 8, 2010. 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: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via email to Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov and Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0932.

Title: Application for Authority to Make Changes in a Class A TV Broadcast Station, FCC Form 301–CA.

Form Number: FCC 301–CA.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for–profit; Not–for–profit institutions; State, local or tribal government.

Number of Respondents and Responses: 400 respondents and 400 responses.

Estimated Time per Response: 7 hours.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement; Third party disclosure requirement.

Total annual burden: 2,800 hours.

Total annual costs: $2,799,200.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i), 307, 308, 309 and 319 of the Communications Act of 1934, as amended and the Community Broadcasters Protection Act of 1999.

Nature and Extent of Confidentiality: Confidentiality is not required for this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The FCC 301–CA is to be used in all cases by a Class A television station licensees seeking to make changes in the authorized facilities of such station. The FCC 301–CA requires applicants to certify compliance with certain statutory and regulatory requirements. Detailed instructions provide additional information regarding Commission rules and policies.

Class A applicants are also subject to third party disclosure requirement of Section 73.3580 which requires local public notice in a newspaper of general circulation of the filing of all applications for major changes in facilities. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three–week period. A copy of this notice must be placed in the public inspection file along with the application.

The FCC 301–CA is designed to track the standards and criteria which the Commission applies to determine compliance and to increase the reliability of applicant certifications. They are not intended to be a substitute for familiarity with the Communications Act and the Commission's regulations, policies, and precedent.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–22428 Filed 9–8–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

August 31, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other

Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. 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 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 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 currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 12, 2010. 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: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page http://reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called "Currently Under Review", (3) click on the downward–pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information or copies of the information collection(s), contact Judith B. Herman, OMD, 202–418–0214 or email judith–b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0192.

Title: Section 87.103, Posting Station License.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit, not–for–profit institutions, and state, local or tribal government.

Number of Respondents and Responses: 43,896 respondents; 43,896 responses.

Estimated Time per Response: .25 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 U.S.C. sections 301 and 303.

Total Annual Burden: 10,974 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) during this comment period to obtain the full three year clearance from them. There is no change in the recordkeeping requirement. There is a 5,976 hour burden reduction. This is due to 23,904 fewer respondents subject to the requirement. Therefore, the total annual burden hours have been reduced.

The recordkeeping requirement in Section 87.103 is necessary to demonstrate that all transmitters in the Aviation Service are properly licensed in accordance with the requirements of Section 301 of the Communications Act of 1934, as amended, No. 2020 of the International Radio Regulation and Article 30 of the Convention on International Civil Aviation.

The information is used by FCC personnel during inspections and investigations to insure the particular station is licensed and operated in compliance with applicable rules, statutes, and treaties. In the case of aircraft stations, the information may be utilized for similar purposes by appropriate representatives of foreign governments when the aircraft is operated in foreign nations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–22467 Filed 9–8–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 3, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. 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 Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 8, 2010. 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: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at

Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, Office of Managing Director, 202–418–0214 or email judith–b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0972.

Title: Multi–Association Group (MAG) Plan Order, Parts 54 and 69 Filing Requirements for Regulation of Interstate Services of Non–Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers.

Form Nos.: FCC Forms 507, 508 and 509.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit and not–for–profit institutions.

Number of Respondents and Responses: 1,258 respondents; 10,849 responses.

Estimated Time Per Response: 1 hour to 90 hours.

Frequency of Response: Quarterly, annual, one time, every three year reporting requirements; and third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 1 – 4, 10, 154(i), 154(j), 201–205, 254, and 403.

Total Annual Burden: 46,877 hours.

Total Annual Cost: $48,900.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission does not request that respondents submit confidential information to the Commission. If the respondents believe they have information that is confidential, they may request confidential treatment of their information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this comment period to obtain the full, three–year clearance from them. There is no change in the Commission's reporting and/or third party disclosure requirements. The Commission is reporting a 6,426 hourly increase adjustment and a $3,705 increase in annual costs.

Following the passage of the Telecommunications Act of 1996, the Commission adopted interstate access charge and universal service support reforms. The reforms were designed to establish a "pro–competitive, deregulatory national policy framework" for the United States telecommunications industry, and to carry out the universal service policies embodied in the1996 Act.

Specifically, the Commission aligned the interstate access rate structure more closely with the manner in which costs are incurred, and created a universal service support mechanism for rate–of–return carriers (Interstate Common line Support (ICLS)) to replace implicit support in interstate access charges with explicit support that is portable to all eligible telecommunications carriers.

By merging Long Term Support (LTS) with ICLS, the Commission made the universal service mechanisms simpler and more transparent, while ensuring that rate–of–return carriers maintain existing levels of universal service support.

To administer the ICLS mechanism, the Universal Service Administrative Company (USAC) must collect certain data. Specifically, the Administrator must collect from each rate–of–return carrier projected cost and revenue data for the July 1 – July 30 funding year to accurately distribute prospective ICLS to those carriers.

The Administrator must also collect from each rate–of–return carrier actual cost and revenue data for the prior calendar year in order to accurately calculate the final ICLS for which the carrier is eligible and perform true–ups against the prospective ICLS. In order to fulfill its obligation to prevent waste, fraud, and abuse in the universal service program, the Administrator must also collect from selected carriers additional cost and revenue data for the purpose of validating the actual cost and revenue data filed by rate–of–return carriers.

The Commission will use the information collected to determine whether and to what extent non–price cap or rate–of–return carriers providing the data are eligible to receive universal service support. The Commission will use the tariff data to make sure that rates are just and reasonable, as required by section 201(b) of the 1996 Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–22469 Filed 9–8–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 3, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. 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 Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 8, 2010. 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: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, Office of Managing Director, 202–418–0214 or email judith–b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0984.

Title: Section 90.35(b)(2), Industrial/Business Pool and Section 90.175(b)(1), Frequency Coordinator Requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit.

Number of Respondents and Responses: 7,341 respondents, 7,341 responses.

Estimated Time Per Response: 1 hour.

Frequency of Response: One time reporting 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 154(i), 161, 303(g), 303(r), and 332(c)(7).

Total Annual Burden: 7,341 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this comment period to obtain the full three year clearance from them. There is no change to the one time reporting and/or third party disclosure requirements. There is no change in the Commission's burden estimates.

Sections 90.35 and 90.175 require third party disclosures by applicants proposing to operate a land mobile radio station. If they have service contours that overlap an existing land mobile station they are required to obtain written concurrent of the frequency coordinator associated with the industry for which the existing station license was issued, or the written concurrence of the licensee of the existing station.

This requirement will be used by Commission personnel in evaluating the applicant's need for such frequencies and to minimize the interference potential to other stations operating on the proposed frequencies.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–22468 Filed 9–8–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 10–157; FCC 10–147]

Eddie Floyd, Licensee of FM Translator Station K273AF, Carson City, NV, Facility ID No. 13529; Application of Eddie Floyd and Wilks License Company-Reno LLC for Assignment of License, File No. BALFT–20070904ACU; Application of Eddie Floyd for Modification of License, File No. BMLFT–20071218ABH

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document designates a hearing to determine whether Eddie Floyd is qualified to be and remain the licensee of FM Translator Station K273AF, Carson City, NV, or whether his license should be revoked and the pending applications for consent to assignment and modification of the license should be dismissed. Mr. Floyd's qualifications are under review based on his felony conviction relating to money laundering and his apparent failure to inform the Commission about such misconduct in the pending applications. The document also provides notice of apparent liability against Mr. Floyd for failure to disclose such information in the pending applications.

DATES: Each party to the proceeding (except for the Chief, Enforcement Bureau), in person or by counsel, shall file with the Commission, by September 13, 2010, a written appearance stating that the party will appear on the date fixed for hearing and present evidence on the issues specified herein.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gary Schonman, gary.schonman@fcc.gov, Enforcement Bureau, Investigations and Hearings Division, (202) 418–1795.

SUPPLEMENTARY INFORMATION: This is a summary of the Order to Show Cause, Hearing Designation Order and Notice of Apparent Liability, FCC 10–147, adopted and released on August 5, 2010. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskette, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis of the Order

A. Background

1. Walter Edward Floyd, aka Eddie Floyd, has been licensee of Station K273AF since August 14, 2001. On December 29, 2006, Floyd entered a guilty plea in United States District Court, District of Nevada to one count of violating 18 U.S.C. 1956(a)(1)(B)(I), involving money laundering, and one count of violating 18 U.S.C. 2, aiding and abetting a felony crime, both felonies. According to a Memorandum of Plea Negotiation, from approximately April 19, 2002 to March 24, 2004, Floyd provided real property located in Doyle, California, to an individual by the name of Daren Mabunda for the purpose of cultivating marijuana. *See United States* v. *Walter Edward Floyd,* Criminal No. 3:06–CR–21–RLH, Memorandum of Plea Negotiation, (dated Dec. 22, 2006; entered Dec. 29, 2006, U.S. District Court, District of Nevada). Floyd drafted a fictitious lease for the real property to cover payments by Mabunda to Floyd for the marijuana operation. Between April 22, 2002, and August 18, 2003, Floyd received payments from Mabunda totaling $37,500, which Floyd deposited in his bank accounts. In December 2003, Floyd gave Mabunda 400,000 shares of stock in a company he owned, "Nevada Matters," in exchange for approximately $110,000. In February 2004, Floyd gave Mabunda an additional 100,000 shares in the company in exchange for $27,500. The court found these payments constituted money laundering by Floyd in the total amount of $175,000. Floyd acknowledged in the Memorandum of Plea Negotiation that all payments he received came from the proceeds of Mabunda's drug trafficking activity, and Floyd engaged in the transactions with Mabunda in order to conceal and disguise the source of the funds. On March 30, 2007, Floyd was sentenced to 48 months in federal prison, to commence on June 1, 2007. *See United States* v. *Walter Edward Floyd,* Criminal No. 3:06–CR–0021–RLH–RAM, Judgment, at 1–2 (Mar. 30, 2007). He was released by the Federal Bureau of Prisons on May 21, 2010, and is currently under the jurisdiction of the

U.S. Probation Office on three years of supervised release.

2. On September 4, 2007, after he began serving his prison sentence, Floyd filed the captioned application on FCC Form 345 seeking Commission consent to the assignment of the license for Station K273AF to Wilks License Company-Reno LLC ("Wilks"). Therein, despite his recent felony conviction, Floyd responded in the affirmative to the following inquiry at Item No. 8:

> Adverse Findings. Licensee/permittee certifies that, with respect to the licensee/permittee and any party to the application, no adverse finding has been made, nor has an adverse final action been taken by an court or administrative body in a civil or criminal proceeding brought under the provisions of any law related to the following: any felony; mass media-related antitrust or unfair competition; fraudulent statements to another government unit; or discrimination.

3. Subsequently, on October 25, 2007, Floyd filed an amendment on FCC Form 345 to his assignment application regarding the rebroadcast of another station. Again, despite his felony conviction, he responded in the affirmative to Item No. 8. Thereafter, on December 18, 2007, Floyd filed the other captioned application on FCC Form 350 in which he proposed to make technical modifications to the facilities of Station K273AF. FCC Form 350 contains an inquiry at Item No. 8 which is substantially similar to the inquiry at Item No. 8 of FCC Form 345. Floyd responded yet a third time in the affirmative, despite his felony conviction. Floyd certified to the Commission under penalty of perjury in each application that the information provided therein was true and correct.

B. Discussion

4. Section 312(a)(2) of the Communications Act of 1934, as amended (the "Act"), provides that the Commission may revoke any license if "conditions com[e] to the attention of the Commission which would warrant it in refusing to grant a license or permit on the original application." In addition, pursuant to section 309(e) of the Act, the Commission is required to designate an application for evidentiary hearing if a substantial and material question of fact is presented regarding whether grant of the application would serve the public interest, convenience, and necessity. The character of the applicant is among those factors that the Commission considers in its review of applications to determine whether the applicant has the requisite qualifications to operate the station for which authority is sought. In assessing character qualifications in broadcast licensing matters, the Commission considers, as relevant, evidence of any conviction for misconduct constituting a felony. The Commission has found that because all felonies are serious crimes, any conviction provides an indication of an applicant's or licensee's propensity to obey the law and to conform to provisions of both the Act and the agency's rules and policies.

5. In the instant case, Floyd's felony conviction relating to money laundering of proceeds from illegal drug trafficking raises serious questions about Floyd's propensity to comply with the Commission's rules and, consequently, his basic character qualifications to be and remain the licensee of Station K273AF. Floyd's felony conviction also raises substantial and material questions whether the public interest would be served by grant of the two applications.

6. The courts have recognized that the FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing. Misrepresentation and lack of candor raise serious concerns as to whether a licensee will be truthful in future dealings with the Commission. Misrepresentation is a false statement of fact made with intent to deceive. Lack of candor is concealment, evasion, or other failure to be fully informative, accompanied by intent to deceive. Intent can be shown in many ways. If a licensee knowingly makes a false statement, that is sufficient proof of intent to deceive. Intent to deceive can also be inferred when one has a clear motive to deceive. Moreover, intent can be found when the surrounding circumstances clearly show the existence of intent to deceive, even if there is no direct evidence of a motive.

7. Floyd's apparent repeated failure to disclose his felony conviction in three filings with the Commission raises very serious questions whether he misrepresented material facts to, and/or was lacking in candor in his dealings with, the Commission, in willful and/or repeated violation of § 1.17 of the Commission's rules. The mere existence of an inaccuracy in any application, without any indication that there was intentional deception, is insufficient to justify consideration of a misrepresentation or lack of candor issue in an evidentiary hearing. In this case, however, as set forth above, Floyd failed to disclose his felony conviction in response to a direct question in three separate Commission applications. In addition, Floyd had a clear motive for not revealing his felony conviction to the Commission—to conceal information that could potentially disqualify him as a Commission licensee and block the proposed sale of Floyd's translator station to Wilks.

8. Floyd should have revealed the existence of his felony conviction in response to the inquiry set forth above in each of his three filings with the Commission. He did not do so, and, instead, certified under penalty of perjury that all of the statements therein were true, complete, correct, and made in good faith even though his filings appear to have satisfied none of these standards. Such apparent false certifications raise additional concerns about Floyd's propensity to deal truthfully with the Commission.

C. Ordering Clauses

9. Accordingly, *It is ordered,* pursuant to sections 312(a) and (c) of the Communications Act of 1934, as amended, and § 1.91(a) of the Commission's rules, Eddie Floyd is hereby ordered to show cause why his license for FM Translator Station K273AF, Carson City, NV, should not be revoked, in a proceeding before an administrative law judge, at a time and place to be specified in a subsequent order, upon the following issues:

> (a) To determine whether Eddie Floyd misrepresented material facts to, and/or engaged in a lack of candor before, the Commission in his responses to inquiries in either one or both of the captioned applications for assignment of license (as originally filed and as amended) and for modification of Station K273AF, in willful and/or repeated violation of § 1.17 of the Commission's rules;
>
> (b) To determine whether Eddie Floyd made false certifications in either one or both of the captioned applications for assignment of license (as originally filed and as amended) and of modification of Station K273AF;
>
> (c) To determine the effect of Eddie Floyd's felony conviction on his qualifications to be and remain a Commission licensee;
>
> (d) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Eddie Floyd is qualified to be a Commission licensee;
>
> (e) To determine whether the license for FM Translator Station K273AF, Carson City, NV, should be revoked.

10. *It is further ordered,* pursuant to sections 309(e) and (k) of the Act, that the captioned applications for assignment of license and of modification of Station K273AF, filed by Eddie Floyd, are designated for a hearing, before an administrative law judge at a time and place to be specified in a subsequent Order, upon the following issue:

> (a) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether either one or both of the captioned

applications for assignment of license and for modification of Station K273AF, filed by Eddie Floyd, should be granted.

11. *It is further ordered* that, in accordance with section 312(d) of the Act, the burden of proceeding with the introduction of evidence and the burden of proof with respect to all issues specified in paragraph 9, above, shall be on the Enforcement Bureau, and, in accordance with section 309(e) of the Act, the burden of proceeding with the introduction of evidence and the burden of proof with respect to the issue specified in paragraph 10, above, shall be on Eddie Floyd.

12. *It is further ordered,* that, irrespective of the resolution of the foregoing issues, it shall be determined, pursuant to section 503(b)(1) of the Act, whether an order of forfeiture should be issued against Eddie Floyd in an amount not to exceed $37,500 for each of the three instances in which Eddie Floyd apparently engaged in willful and/or repeated violations of § 1.17 of the Commission's rules.

13. *It is further ordered* that, in connection with the possible forfeiture liability noted above, this document constitutes notice pursuant to section 503(b)(3) of the Act.

14. *It is further ordered,* that, to avail himself of the opportunity to be heard and the right to present evidence at a hearing in these proceedings, pursuant to §§ 1.91 and 1.221 of the Commission's rules, Eddie Floyd, in person or by attorney, shall file within 30 days of the release of this Order, a written appearance in triplicate stating that he will appear at the hearing and present evidence on matters specified in this Order. If Eddie Floyd fails to file a written notice of appearance within the time specified, or a petition to accept, for good cause shown, such written appearance beyond the expiration of the 30-day time period, the two captioned applications shall be dismissed with prejudice for failure to prosecute and the issue specified in paragraph 10 shall be deemed to be moot. Furthermore, if Eddie Floyd fails to file a timely written notice of appearance, the right to a hearing on all issues specified in paragraph 9, above, shall be deemed to be waived. In the event that a hearing on the issues in paragraph 9 is waived, the Chief Administrative Law Judge (or presiding officer if one has been designated) shall, at the earliest practicable date, issue an order terminating the hearing proceeding and certifying the case to the Commission.

15. *It is further ordered,* that the Chief, Enforcement Bureau is made a party to this proceeding without the need to file a written appearance.

16. *It is further ordered,* that, pursuant to section 309(e) of the Act, Wilks License Company-Reno LLC is deemed a party in interest and shall be permitted to participate in this proceeding, provided, within 30 days of the release of this Order, it files, in triplicate, a written notice of appearance stating its intent to appear at the hearing and present evidence on matters specified herein.

17. *It is further ordered,* that a copy of each document filed in this proceeding by or on behalf of Eddie Floyd and/or Wilks License Company-Reno LLC shall be served on the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554.

18. *It is further ordered,* that a copy of this Order shall be sent by Certified Mail, Return Receipt Requested, and by regular first class mail to Walter Edward Floyd, aka Eddie Floyd, at his address of record: 405 Apple Street, Reno, NV 89502.

19. *It is further ordered,* that a copy of this Order shall be sent by Certified Mail, Return Receipt Requested, and by regular first class mail to Wilks License Company-Reno LLC, at 3775 Mansell Road, Alpharetta, GA 30022, with a copy to Richard Zaragoza, Esq., Pillsbury Winthrop Show Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

20. *It is further ordered,* that the Secretary of the Commission shall cause to have this Order or a summary thereof published in the **Federal Register**.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–22532 Filed 9–8–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2010–N–14]

Submission of information collection for approval From the Office of Management and Budget

AGENCY: Federal Housing Finance Agency.

ACTION: Submission of Information Collection for Approval from the Office of Management and Budget.

SUMMARY: The Federal Housing Finance Agency (FHFA) has submitted the following public information collection requirement(s) to the Office of Management and Budget (OMB) for emergency review, and it has been approved under the Paperwork Reduction Act of 1995, Public Law 104–13. To allow interested persons to comment on this information collection, FHFA is publishing this notice and plans to submit a request for a three-year extension of OMB's approval. Comments regarding this information collection should be addressed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, Fax: 202–395–6974, E-mail: *OIRA_Submission@omb.eop.gov.* Please also submit comments to FHFA using any one of the following methods and include "Comments: Survey of FHLBank Economic Development Programs, No. 2010–N–14" as the subject:

- *E-mail: RegComments@fhfa.gov*;
- *Federal eRulemaking Portal: http://www.regulations.gov*.
- *U.S. Mail/Hand Delivery:* Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, on the FHFA Web site at *http://www.fhfa.gov*. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at 202–414–6924.

DATES: Written comments should be received on or before November 8, 2010, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: For additional information about this information collection, or to obtain a copy with applicable supporting documentation, contact Charles McLean, Associate Director, Office of Housing and Community Investments, 202–408–2537, *Charles.McLean@fhfa.gov*.

Overview of the Information Collection

Title of the Collection: Survey of Federal Home Loan Bank Economic Development Programs.

OMB No.: 2590–0010.

Need and Use of the Information Collection: The Office of Housing and Community Investment (OHCI) of FHFA is conducting research and outreach initiatives to determine ways to enhance the Federal Home Loan Banks' (FHLBanks) capacity to meet the

nation's unmet economic development credit needs. At the conclusion of these processes, OHCI expects to propose for public comment amendments to the Community Investment Cash Advance (CICA) Regulation (12 CFR part 952) in late 2011. Amending the regulation will update the regulatory standards to reflect current community and economic development investment strategies and priorities, and clarify a regulation that may be difficult to apply.

As part of the outreach and after discussion with FHFA, six FHLBanks (Pittsburgh, San Francisco, Atlanta, Boston, Dallas, and Des Moines) will host and conduct open-forum discussions in their districts that will consist of a cross section of FHLBank members and end-users who will provide comments on unmet credit needs and their experiences with current FHLBank economic development products and programs. FHFA will send two surveys electronically to participants prior to the open-forum discussions. The surveys will be returned electronically to FHFA staff. FHFA staff and the meeting facilitators will review the survey results to initiate discussions at the open-forums.

In addition to the outreach meetings at the FHLBanks, OHCI is proposing to host an Economic Development Conference in October 2010. This conference will be attended by OHCI staff, FHLBank staff and approximately 100 individuals representing economic development organizations from all segments of the community development field. Participants will discuss current and future national economic development issues, financing challenges, opportunities in the field, and best practices. FHFA staff will send four surveys electronically. At the conference, OHCI staff will conduct concurrent open-forum discussions and use the survey responses to initiate the discussions. The discussions will center on opportunities and challenges in using FHLBank financing to fund economic development projects and activities that will create jobs and spur economic growth. Information from the discussions at the FHLBanks and at the conference will be used to inform FHFA how the CICA regulation may be enhanced.

Affected Public: Private sector.

Costs: FHFA estimates that there will be no annualized capital/start-up costs for the respondents to collect and submit this information.

Type of Respondents: Federal Home Loan Bank Members, Economic Development Organizations, Economic and Community Development Trade Groups, State and Local Economic Development Authorities, and Economists.

ANNUAL BURDEN ESTIMATES FOR RESPONDENTS

Instrument	Number of respondents	Number of responses per respondent	Average burden per response	Total average burden per response	Total annual burden hours
Survey Questions for Economic Development Organizations (For Aug.—Sep. Open-Forum discussions).	60 (10 per each location)	× 1	× 15 mins	= 900 mins	15 hours (*900 mins/60 mins*)
Survey Questions for FHLBank Member Lenders (For Aug.–Sep. Open-Forum discussions).	60 (10 per each location)	× 1	× 15 mins	= 900 mins	15 hours (*900 mins/60 mins*)
Survey Questions for Economic and Community Development Trade Groups (For Oct. conference).	25	× 1	× 15 mins	= 375 mins	6.25 hours (*375 mins/60 mins*)
Survey Questions for State and Local Economic Development Authorities (For Oct. conference).	25	× 1	× 15 mins	= 375 mins	6.25 hours (375 mins/60 mins)
Survey Questions for Economists (For Oct. conference)	25	× 1	× 15 mins	= 375 mins	6.25 hours (375 mins/60 mins)
Survey Questions for FHLBank Member Lenders (For Oct. conference).	25	× 1	× 15 mins	= 375 mins	6.25 hours (375/60 mins)

Dated: September 1, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–22475 Filed 9–8–10; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 24, 2010.

A. Federal Reserve Bank of Minneapolis, (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Shawn Paul Weinand and Linda Lou Weinand, both of Tonka Bay, Minnesota, to acquire shares of Alliance Bank Shares Corporation, Andover, Minnesota, and thereby indirectly gain shares of 1st Regents Bank, Andover, Minnesota.

Board of Governors of the Federal Reserve System, September 3, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–22437 Filed 9–8–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 24, 2010.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Mason National Bancshares, Mason, Texas, to engage de novo in lending activities through the acquisition of loans pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, September 3, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–22438 Filed 9–8–10; 8:45 am]

BILLING CODE 6210–01–S

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 (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 012067–002.

Title: U.S. Supplemental Agreement to HLC Agreement.

Parties: BBC Chartering & Logistics GmbH & Co. KG; Beluga Chartering GmbH; Chipolbrok; Clipper Project Ltd.; Hyundai Merchant Marine Co., Ltd.; Industrial Maritime Carriers, L.L.C.; Nordana Line A/S; and Rickmers-Linie GmbH & Cie. KG.

Filing Party: Wade S. Hooker, Esq.; 211 Central Park W; New York, NY 10024.

Synopsis: The amendment deletes Universal Africa Lines, Ltd. as a party to the Agreement.

Agreement No.: 012106.

Title: HLAG/HSDG Trans-Atlantic Space Charter Agreement.

Parties: Hamburg Sud and Hapag-Lloyd.

Filing Parties: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, N.W., Suite 1100; Washington, DC 20006.

Synopsis: The agreement authorizes Hapag-Lloyd to charter space to Hamburg Sud in the trade between New York and Antwerp, Belgium.

Dated: September 3, 2010.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–22539 Filed 9–8–10; 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.

Acrocargo Express Inc. (NVO & OFF), 7719 Justin Court, West Hills, CA 91304. Officers: Zhenyu (Angela) Shang, Vice President, (Qualifying Individual), Wen X. Xie, President/CEO/Treasurer/CFO. Application Type: New NVO & OFF License.

Advanced Logistics, Inc. (NVO), 3301 NW 97th Avenue, Miami, FL 33172. Officers: Arturo R. Alvarez, Vice President, (Qualifying Individual), Jose R. Castillo, President/Director. Application Type: QI Change.

All Ways International Shipping & CHB, Inc. (OFF), 6610 Tributary Street, Suite 202, Baltimore, MD 21224. Officers: Antony Lester, President, (Qualifying Individual), Daniel G. Ozdinec, Vice President. Application Type: New OFF License.

Altus Oil & Gas Services, Inc. dba Altus Project Logistics, (NVO & OFF), 525 N. Sam Houston E. Parkway, Suite 408, Houston, TX 77060. Officers: Darrell S. Stafford, Vice President, (Qualifying Individual), Michael P. Ellsworth, Director/President/Treasurer. Application Type: New NVO & OFF License.

Barracuda Global Logistics LLC dba BGLSHIP (NVO & OFF), 417 Stamets Road, Milford, NJ 08848. Officer: James Cafro, Member, (Qualifying Individual), Application Type: New NVO & OFF License.

Car Go Worldwide Inc. (NVO), 172 E. Manville Street, Compton, CA 90220. Officers: Lionel Perera, President, (Qualifying Individual), Nirmala Perera, Vice President. Application Type: New NVO License.

Coast Forwarding, LLC (OFF), 1100 West Town and Country Road, #1365, Orange, CA 92868. Officers: Eddy Y. Kuo, Secretary, (Qualifying Individual), John Picard, President. Application Type: QI Change.

Conceptum Logistics (USA), LLC (NVO & OFF), 2203 Timberloch Place, Suite 238, The Woodlands, TX 77380. Officers: Susan Wahrenberger, Managing Director, (Qualifying Individual), Marc Hapanionek, President/CEO. Application Type: New NVO & OFF License.

Confianca Moving, Inc. dba CWM Logistics (NVO), 14452 South Avalon Blvd., Unit E, Gardena, CA 90248. Officers: Maria R. Cursage, President, (Qualifying Individual), Milton Cursage, Vice President. Application Type: QI Change.

Cortrans Logistics, LLC (NVO & OFF), 5335 Triangle Parkway, #450, Norcross, GA 30092. Officers: William J. Brown, Vice President of Ocean Transportation, Shaemus McNally, Vice President of Ocean, (Qualifying

Individuals). Application Type: QI Change.

G.P. Logistics, Inc. (NVO & OFF), 9910 NW 21st Street, Miami, FL 33172. Officers: Byron E. Keeler, President, (Qualifying Individual), Valentina Keeler, Vice President. Application Type: QI Change.

Knight Brothers Corp. dba Knight Logistics Services (NVO & OFF), 1881 Alpha Road, Apt. #15, Glendale, CA 91208. Officer: Chia W. Lo, CEO/CFO/Secretary, (Qualifying Individual), Application Type: New NVO & OFF License.

Krown USA, LLC (NVO & OFF), 5361 NW 112th Court, Miami, FL 33178. Officers: Irene Chizmar, Manager, (Qualifying Individual), Kevin Smorenburg, Managing Member. Application Type: New NVO & OFF License.

MCL–Multi Container Line, Inc. (NVO), 7700 N. Kendall Drive, Suite 503, Miami, FL 33156. Officers: Stephan Bucher, Vice President, (Qualifying Individual), Daniel Richner, President. Application Type: QI Change.

Providence Shipping Group, Inc. (NVO), 160 Elder Avenue, Imperial Beach, CA 91931. Officers: Jessica A. Drewnowski, VP Chartering & Operations, (Qualifying Individual), Thomas V. Fontana, President/CEO. Application Type: New NVO.

Sierra International Corp. (NVO & OFF), 14931 Gwenchris Court,Paramount, CA 90723. Officers: Sherif Atalla, COO, (Qualifying Individual), Emil Hakim, CEO. Application Type: New NVO & OFF License.

Sino United Link Corporation (NVO), 248 Tiger Lane, Placentia, CA 92870. Officers: Edmond Chen, Secretary/CFO/Treasurer, (Qualifying Individual), Ye Wang, CEO/President. Application Type: New NVO License.

Star Cluster USA Corp. (NVO & OFF), 5651 Old Dixie Highway, Suite 100, Forest Park, CA 30297. Officer: Kyung H. Chang, CEO/CFO/Secretary, (Qualifying Individual), Application Type: New NVO & OFF License.

TTS Worldwide, LLC (NVO), 1764 Quarter Street, West Babylon, NY 11704. Officers: Bernadette Proctor, Vice President, (Qualifying Individual), Robert Cole, President. Application Type: QI Change.

Tyelley Enterprises Inc. (NVO), 117 Cornell Park Avenue, Markham, Ontario L6B 1B6 Canada. Officers: Yi (aka Shirley) Mo, Vice President/Director, (Qualifying Individual), Xiao F. Lu, President/Director. Application Type: New NVO License.

Uni Freight USA Inc. (NVO), 7653 Telegraph Road, Montebello, CA 90640. Officers: Benjamin Lam, Secretary/CFO, (Qualifying Individual), Thomas Chung, President. Application Type: New NVO License.

Your Connexion, Inc. (NVO & OFF), 13280 SW 131 Street, #108, Miami, FL 33186. Officer: Mauricio R. Valencia, President, (Qualifying Individual), Application Type: New NVO & OFF License.

Dated: September 3, 2010.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–22547 Filed 9–8–10; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

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: 001727F.

Name: Lysan Forwarding Company, Inc.

Address: 5210 Yanceyville Road, Browns Summit, NC 27214.

Date Revoked: August 18, 2010.

Reason: Surrendered license voluntarily.

License Number: 019428N.

Name: Delta Trans Logistics, Inc.

Address: 15522 Broadway Center, Gardena, CA 90248.

Date Revoked: August 20, 2010.

Reason: Failed to maintain a valid bond.

License Number: 012142NF.

Name: Seaborne International, Inc. dba Seaborne Express Line.

Address: 8901 S. La Cienega Blvd., Suite 101, Inglewood, CA 90301.

Date Revoked: August 18, 2010.

Reason: Failed to maintain valid bonds.

License Number: 020581NF.

Name: Alpha Sun International, Inc.

Address: 5300 Kennedy Road, Suite C, Forest Park, GA 30297.

Date Revoked: August 20, 2010.

Reason: Surrendered license voluntarily.

License Number: 020736N.

Name: Oceanwind International, Inc. dba OWI dba The Broadwell Group.

Address: 415 S. Prospect Avenue, Suite 211, Redondo Beach, CA 90277.

Date Revoked: August 19, 2010.

Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2010–22550 Filed 9–8–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Subsidized and Transitional Employment Demonstration and Evaluation Project (STEDEP).

OMB No.: New collection.

Billing Accounting Code (BAC): 418409 (CAN G996121).

Description: The Administration for Children and Families (ACF) is proposing an information collection activity as part of the Subsidized and Transitional Employment Demonstration and Evaluation Project. The proposed information collection consists of semi-structured interviews with key respondents involved with subsidized and transitional employment programs. Through this information collection and other study activities, ACF seeks to identify the types of strategies that should be tested within the context of current TANF policies and requirements as well as recent efforts under the American Recovery and Reinvestment Act (ARRA).

Respondents: Experts and stakeholders such as researchers, policy experts, coordinators (e.g. state-level coordinators), subsidized and transitional employment program directors and staffs.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Discussion Guide for Use with Researchers, Policy Experts, and State-level Coordinators	50	1	1	50
Discussion Guide for Use with Program Directors	25	1	2.5	63
Discussion Guide for Use with Program Staff	50	1	2	100
Estimated Total Annual Burden Hours				213

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *OPREinfocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974,Attn: Desk Officer for the Administration for Children and Families.

Dated: September 1, 2010.

Steven M. Hammer,

OPRE Reports Clearance Officer.

[FR Doc. 2010–22317 Filed 9–8–10; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; the Framingham Heart Study (FHS)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 10, 2010, pages 25863–4, and allowed 60-days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: The Framingham Heart Study. *Type of Information Request:* Revision (OMB No. 0925–0216). *Need and Use of Information Collection:* The Framingham Heart Study will conduct examinations and morbidity and mortality follow-up for the purpose of studying the determinants of cardiovascular disease. Examinations will be conducted on the original, offspring, and Omni Cohorts. Morbidity and mortality follow-up will also occur in all of the cohorts (original, offspring, third generation, and Omni). *Frequency of response:* The participants will be contacted annually. *Affected public:* Individuals or households; businesses or other for profit; small businesses or organizations. *Types of Respondents:* Adult men and women; doctors and staff of hospitals and nursing homes. The annual reporting burden is as follows: *Estimated Number of Respondents:* 6,921; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .88; and *Estimated Total Annual Burden Hours Requested:* 6,091. The annualized cost to respondents is estimated at: $222,040. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Individuals (Participants and Informants)	4461	1	1.00	4442
Physicians	2460	1	0.67	1649
Totals	6921	.....	.....	6091

(**Note:** Reported and calculated numbers differ slightly due to rounding.)

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Gina Wei, Division of Cardiovascular Sciences, NHLBI, NIH, Two Rockledge Center, 6701 Rockledge Drive, MSC 7936, Bethesda, MD, 20892–7936, or call non-toll-free number (301) 435–0456, or e-mail your request, including your address to: *weig@nhlbi.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: September 1, 2010.

Suzanne Freeman,

NHLBI Project Clearance Liaison, National Institutes of Health.

Michael Lauer,

Director, DCVS, National Institutes of Health.

[FR Doc. 2010–22472 Filed 9–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–E–0414]

Determination of Regulatory Review Period for Purposes of Patent Extension; REPEL–CV

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for REPEL–CV and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device, REPEL–CV. REPEL–CV, a bioresorbable adhesion barrier, is indicated for reducing the severity of post-operative cardiac adhesions in pediatric patients who are likely to require reoperation via sternotomy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for REPEL–CV (U.S. Patent No. 5,711,958) from SyntheMed, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 17, 2010, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of REPEL–CV represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for REPEL–CV is 4,023 days. Of this time, 3,256 days occurred during the testing phase of the regulatory review period, while 767 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) involving this device became effective*: March 3, 1998. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the act for human tests to begin became effective March 3, 1998.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e)*: January 30, 2007. FDA has verified the applicant's claim that the premarket approval application (PMA) for REPEL–CV (PMA P070005) was initially submitted January 30, 2007.

3. *The date the application was approved*: March 6, 2009. FDA has verified the applicant's claim that PMA P070005 was approved on March 6, 2009.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,742 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by November 8, 2010. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 8, 2011. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see

ADDRESSES) electronic or written comments and written petitions. It is only necessary to send one set of comments. It is no longer necessary to send three copies of mailed comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on regulations.gov may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 13, 2010.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2010–22496 Filed 9–8–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–E–0416]

Determination of Regulatory Review Period for Purposes of Patent Extension; IXIARO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for IXIARO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biologic product IXIARO (Japanese Encephalitis Virus, Vaccine Inactivated, Adsorbed). IXIARO is indicated for active immunization for the prevention of disease caused by Japanese encephalitis virus in persons 17 years of age and older. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for IXIARO (U.S. Patent No. 6,309,650) from Chiel Jedang Corp. and Walter Reed Army Institute of Research, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 17, 2010, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of IXIARO represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for IXIARO is 3,461 days. Of this time, 2,994 days occurred during the testing phase of the regulatory review period, while 467 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: October 10, 1999. The applicant claims October 9, 1999, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 10, 1999, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262)*: December 20, 2007. FDA has verified the applicant's claim that the biologics license application (BLA) for IXIARO (BLA B125280/0) was initially submitted on December 20, 2007.

3. *The date the application was approved*: March 30, 2009. FDA has verified the applicant's claim that BLA B125280/0 was approved on March 30, 2009.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,588 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by November 8, 2010. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 8, 2011. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. It is no longer necessary to send three copies of mailed comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with

the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on regulations.gov may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 13, 2010.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2010–22394 Filed 9–8–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–265]

Development of Set 24 Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (DHHS).

ACTION: Notice.

DATES: Profiles will be available to the public on or about October 17, 2010.

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR) of the Department of Health and Human Services is developing Set 24 Toxicological Profiles. Set 24 Toxicological Profiles consists of one new draft and one updated draft. Electronic access to these documents will be available at the ATSDR Web site: *http://www.atsdr.cdc.gov/toxpro2.html.*

Set 24 Toxicological Profiles

The following toxicological profiles are now being developed:

Toxicological profile	CAS number
Toxaphene	8001–35–2
Trichlorobenzene*	
1,2,3–Trichlorobenzene	87–61–6
1,2,4–Trichlorobenzene	120–82–1
1,3,5–Trichlorobenzene	108–70–3
Trichlorobenzene	12002–48–1

* Denotes new profile.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*) amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances that are most commonly found at facilities on the CERCLA National Priorities List. Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the Priority List of Hazardous Substances (*http://www.atsdr.cdc.gov/cercla/07list.html*). This list names 275 hazardous substances that pose the most significant potential threat to human health as determined by ATSDR and EPA. The availability of the revised list of the 275 priority substances was announced in the **Federal Register** on March 6, 2008 (73 FR 12178). For prior versions of the list of substances, see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744; November 17, 1997 (62 FR 61332); October 21, 1999 (64 FR 56792); October 25, 2001 (66 FR 54014); November 7, 2003 (68 FR 63098); and December 7, 2005 (70FR 70284).

Notice of the availability of drafts of one updated and one new toxicological profile for public review and comment will be published in the **Federal Register** on or about October 17, 2010, with notice of a 90-day public comment period for each profile, starting from the actual release date. Following the close of the comment period, chemical-specific comments will be addressed, and where appropriate, revisions will be incorporated into each profile.

FOR FURTHER INFORMATION CONTACT: Commander Jessilynn B. Taylor, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop F–62, Atlanta, GA 30333; telephone (770) 488–3313; e-mail: *JBTaylor@cdc.gov.*

Dated: September 3, 2010.

Ken Rose,

Associate Director, Office of Policy, Planning and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. 2010–22439 Filed 9–8–10; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0451]

Draft Guidance for Industry on Suicidality: Prospective Assessment of Occurrence in Clinical Trials; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Suicidality: Prospective Assessment of Occurrence in Clinical Trials." The purpose of this guidance is to assist sponsors in prospectively assessing the occurrence of treatment-emergent suicidality in clinical trials of drug and biological products. Specifically, this guidance addresses FDA's current thinking regarding the importance of suicidality assessment in psychiatric and nonpsychiatric drug trials and the general principles for how best to accomplish this assessment during drug development.

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 November 8, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Thomas Laughren, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4114, Silver Spring, MD 20993–0002, 301–796–2260.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Suicidality: Prospective Assessment of Occurrence in Clinical Trials." The purpose of this guidance is to assist sponsors in prospectively assessing the occurrence of treatment-emergent suicidality in clinical trials of drug and biological products. Specifically, this guidance addresses FDA's current thinking regarding the importance of suicidality assessment in psychiatric and nonpsychiatric drug trials and the general principles for how best to accomplish this assessment during drug development.

The principles discussed in this guidance for the prospective assessment of suicidality involve actively querying patients about the occurrence of suicidal thinking and behavior, rather than relying on patients to report such occurrences spontaneously, followed by retrospective classification of events into appropriate categories. This guidance recommends a specific suicidality assessment instrument that can be used to conduct such prospective assessments and offers guidance on the use of alternative instruments. This guidance does not address the complex analytic issues involved in the analysis of the suicidality data that will be derived from prospective assessments of suicidality; these issues will be addressed in separate guidances.

Comments are welcome regarding the recommended approach of carrying out prospective suicidality assessments in all clinical trials for all drugs that are pharmacologically similar to isotretinoin and other tretinoins, beta blockers (especially those entering the brain), reserpine, drugs for smoking cessation, and drugs for weight loss for which possible signals of risk for suicidality have already been identified.

This 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 prospective assessment of suicidality occurrence in clinical trials. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: September 2, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–22404 Filed 9–8–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Neonatal Research Network.

Date: October 5–6, 2010.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Rita Anand, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–496–148, *anandr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–22499 Filed 9–8–10; 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 patentablematerial, 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; Aging and Distal Radius Fracture.

Date: October 7, 2010.

Time: 6 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Aminergic Function in Brain Aging and Alzheimer's Disease.

Date: October 19, 2010.

Time: 12 p.m. to 5 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*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–22503 Filed 9–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; U34 Applications.

Date: October 18, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: D.G. Patel, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; R13 Conference.

Date: October 18, 2010.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: D.G. Patel, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–22527 Filed 9–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Scientific Management Review Board.

The meeting will be open to the public, with attendance limited to space available. Registration is required since space is limited and will begin at 8 a.m. Please visit the conference Web site for information on meeting logistics and to register for the meeting *http://www.circlesolutions.com/ncs/ncsac/index.cfm*. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Children's Study Advisory Committee.

Date: October 14, 2010.

Time: 9 a.m. to 5 p.m.

Agenda: Topics to be discussed will include data acquisition, data management, and informatics systems; and continued discussions regarding qualification and validation of environmental assessments.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Jessica E. DiBari, MHS, Executive Secretary, National Children's Study, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 3A01, Bethesda, MD 20892. (703) 902–1339. *ncs@circlesolutions.com*.

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. For additional information about the Federal Advisory Committee meeting, please contact Circle Solutions at *ncs@circlesolutions.com*.

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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–22476 Filed 9–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Partnerships for Biodefense.

Date: September 29, 2010.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817.

Contact Person: Yong Gao, PhD, Scientific Review Officer, Scientific Review Program, DHHS/NIH/NIAID, 6700B Rockledge Drive, Room 3246, Bethesda, MD 20892, 301–443–8115, *gaol2@niaid.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.

Name of Committee: National Institute of Allergy and Infectious Diseases Special

Emphasis Panel, Centers for AIDS Reseach (CFAR) & Developmental CFAR.

Date: October 19–20, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Erica L. Brown, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2639, *ebrown@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–22524 Filed 9–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; 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 NIH Advisory Board for Clinical Research. The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended to discuss personnel matters, the disclosure of which would constitute a clearly unwarranted invasion of privacy.

Name of Committee: NIH Advisory Board for Clinical Research.

Date: September 27, 2010.

Open: 10 a.m. to 1:15 p.m.

Agenda: Budget planning and updates on selected organizational initiatives.

Place: National Institutes of Health, Building 10, 10 Center Drive, CRC Medical Board Room 4–2551, Bethesda, MD 20892.

Closed: 1:15 p.m. to 2 p.m.

Agenda: To discuss personnel matters.

Place: National Institutes of Health, Building 10, 10 Center Drive, CRC Medical Board Room 4–2551, Bethesda, MD 20892.

Contact Person: Maureen E. Gormley, Executive Secretary, Mark O. Hatfield Clinical Research Center, National Institutes of Health, Building 10, Room 6–2551, Bethesda, MD 20892, (301) 496–2897.

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.

Dated: August 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–22523 Filed 9–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; P30 Review.

Date: October 1, 2010.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Susan L Sullivan, PhD, Scientific Review Officer, National Institute of Deafness and Other Communication Disorders, 6120 Executive Blvd. Ste. 400C, Rockville, MD 20852, 301–496–8683, *sullivas@mail.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; R03—VSL.

Date: October 6, 2010.

Time: 11 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sheo Singh, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Clinical Trials.

Date: October 12, 2010.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Christine A. Livingston, PhD, Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; R03—Chemical Senses.

Date: October 13, 2010.

Time: 3:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Susan L. Sullivan, PhD, Scientific Review Officer, National Institute of Deafness and Other Communication Disorders, 6120 Executive Blvd. Ste. 400C, Rockville, MD 20852, 301–496–8683, *sullivas@mail.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Clinical Trials.

Date: October 14, 2010.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Christine A. Livingston, PhD, Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Clinical Trials.

Date: October 15, 2010.

Time: 11:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Christine A. Livingston, PhD, Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov.*

Name of Committee: Communication Disorders Review Committee; CDRC.

Date: October 20–21, 2010.

Time: October 20, 2010, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814,

Time: October 21, 2010, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Christopher A. Moore, PhD, Scientific Review Officer, National Institute of Health, NIDCD, 6120 Executive Blvd., MSC 7180, Bethesda, MD 20892, 301–496–8683, *moorechristopher@nidcd.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–22473 Filed 9–8–10; 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, Selected Topics in Transfusion Medicine.

Date: September 27–28, 2010.

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: Bukhtiar H. Shah, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892. (301) 806–7314. *shahb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Pain and Chemosensory Systems.

Date: September 29–30, 2010.

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: John Bishop, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892. (301) 408–9664. *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Dermatology.

Date: October 1, 2010.

Time: 2 p.m. to 5 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: Richard Ingraham, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892. 301–496–8551. *ingrahamrh@mail.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group, Neurotechnology Study Section.

Date: October 4, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Savoy Suites, 2505 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Robert C. Elliott, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892. 301–435–3009. *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurotechnology 3.

Date: October 4, 2010.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Savoy Suites, 2505 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Robert C. Elliott, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892. 301–435–3009. *elliotro@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular Neuropharmacology and Signaling Study Section.

Date: October 7–8, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Deborah L. Lewis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892. 301–408–9129. *lewisdeb@csr.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group, Molecular Neurogenetics Study Section.

Date: October 7–8, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Paek-Gyu Lee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5203, MSC 7812, Bethesda, MD 20892. (301) 435–0902. *leepg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurotechnology Overflow.

Date: October 12–13, 2010.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place Savoy Suites, 2505 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Robert C. Elliott, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892. 301–435–3009. *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Shared Instrumentation: Neurotechnology.

Date: October 13, 2010.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Savoy Suites, 2505 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Robert C. Elliott, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892. 301–435–3009. *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Social Science and Population Studies: R03s, R15s, and R21s.

Date: October 14, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Suzanne Ryan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139,

MSC 7770, Bethesda, MD 20892. (301) 435–1712. *ryansj@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function E Study Section.

Date: October 14, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Nitsa Rosenzweig, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892. (301) 435–1747. *rosenzweign@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group, Cardiovascular Differentiation and Development Study Section.

Date: October 14–15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Maqsood A Wani, PhD, DVM, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7814, Bethesda, MD 20892. 301–435–2270.*wanimaqs@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Innate Immunity and Inflammation Study Section.

Date: October 14–15, 2010.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Old Town Alexandria, 1767 King Street, Alexandria, VA 22314.

Contact Person: Tina McIntyre, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892. 301–594–6375. *mcintyrt@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Acute Neural Injury and Epilepsy Study Section.

Date: October 14–15, 2010.

Time: 8 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Seetha Bhagavan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892. (301) 237–9838. *bhagavas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Development Methods of In Vivo Imaging and Bioengineering Research.

Date: October 14–15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Behrouz Shabestari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892. (301) 435–2409. *shabestb@csr.nih.gov.*

Name of Committee: Oncology 1–Basic Translational Integrated Review Group, Molecular Oncogenesis Study Section.

Date: October 14–15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Old Town Alexandria, 901 North Fairfax Street, Alexandria, VA 22314.

Contact Person: Nywana Sizemore, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health,6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892. 301–435–1718. *sizemoren@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Nuclear and Cytoplasmic Structure/Function and Dynamics Study Section.

Date: October 14–15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The St. Regis Washington, DC, 923 16th and K Streets, NW., Washington, DC 20006.

Contact Person: David Balasundaram, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892. 301–435–1022. *balasundaramd@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Pathogenic Eukaryotes Study Section.

Date: October 14–15, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Tera Bounds, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892. 301–435–2306. *boundst@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, International and Cooperative Projects—1 Study Section.

Date: October 14, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Dan D. Gerendasy, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892. 301–594–6830. *gerendad@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Immunity and Host Defense Study Section.

Date: October 14–15, 2010.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Old Town Alexandria, 1767 King Street, Alexandria, VA 22314.

Contact Person: Patrick K. Lai, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892. 301–435–1052. *laip@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Therapeutic Approaches to Genetic Diseases.

Date: October 14, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Michael K Schmidt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2214, MSC 7890, Bethesda, MD 20892. (301) 435–1147. *mschmidt@mail.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Cellular and Molecular Immunology—B Study Section.

Date: October 14–15, 2010.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Magnificent Mile Downtown Chicago, 165 E. Ontario Street, Chicago, IL 60611.

Contact Person: Betty Hayden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892. 301–435–1223. *haydenb@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genetic Variation and Evolution Study Section.

Date: October 14–15, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: David J Remondini, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892. 301–435 –1038. *remondid@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: SAT and BTSS Study Sections.

Date: October 14, 2010.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting.)

Contact Person: Roberto J Matus, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892. (301)435–2204. *matusr@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: September 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–22505 Filed 9–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Institute of Allergy and Infectious Diseases Special Emphasis Panel; Reagent Resource Support Program for AIDS Vaccine Development.

Date: October 12, 2010.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6700B Rockledge Drive, 3147, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Jane K. Battles, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2744, *battlesja@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–22533 Filed 9–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Partnerships for Biodefense.

Date: September 21, 2010.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Yong Gao, PhD, Scientific Review Officer, Scientific Review Program, DHHS/NIH/NIAID, 6700B Rockledge Drive, Room 3246, Bethesda, MD 20892, 301–443–8115,*gaol2@niaid.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.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, NHP Viral RNA Core.

Date: September 27, 2010.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Marriott Atlanta Downtown, 160 Spring Street, NW., Atlanta, GA 30303

Contact Person: Ellen S. Buczko, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2676, *ebuczko1@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–22531 Filed 9–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; 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 Center for Research Resources Special Emphasis Panel; Conference Grants.

Date: October 8, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Office of Review, Democracy I, 6701 Democracy Blvd., 1078, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lee Warren Slice, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, Bethesda, MD 20892, 301–435–0965.

Name of Committee: National Center for Research Resources Special Emphasis Panel.

Date: October 22, 2010.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health/Office of Review, One Democracy Plaza, 6701 Democracy Boulevard, 1080, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Barbara J. Nelson, PhD, Scientific Review Officer, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1080, MSC 4874, Bethesda, MD 20892–4874, 301–435–0806.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards., National Institutes of Health, HHS)

Dated: September 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–22529 Filed 9–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Partnerships for Biodefense.

Date: September 30, 2010.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call).

Contact Person: Yong Gao, PhD, Scientific Review Officer, Scientific Review Program, DHHS/NIH/NIAID, 6700B Rockledge Drive, Room 3246, Bethesda, MD 20892. 301–443–8115. *gaol2@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Nonhuman Primate Major Histocompatibility Complex Gene Discovery and Typing.

Date: October 4, 2010.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call).

Contact Person: Lakshmi Ramachandra, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700–B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616. 301–496–2550. *Ramachandral@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–22528 Filed 9–8–10; 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 patentablematerial, 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; Member Conflict: Eukaryotic Pathogens and their Vectors.

Date: September 27–28, 2010.

Time: 11 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Soheyla Saadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, Msc 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–10–082: Shared Instrumentation: Cell Biology.

Date: September 30–October 1, 2010.

Time: 8:30 a.m. to 5 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: Jonathan Arias, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Gene Discovery and Gene Function.

Date: September 30, 2010.

Time: 3 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: Diane L Stassi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2200, MSC 7890, Bethesda, MD 20892, 301–435–2514, *stassid@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Child Psychopathology and Developmental Disabilities Study Section.

Date: October 4–5, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Jane A Doussard-Roosevelt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Reproductive Sciences and Development.

Date: October 5–6, 2010.

Time: 10:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Krish Krishnan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function D Study Section.

Date: October 6–7, 2010.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

Contact Person: James W. Mack, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Vectors.

Date: October 6, 2010.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Alexander D. Politis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function A Study Section.

Date: October 7, 2010.

Time: 8:30 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: David R. Jollie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *jollieda@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Cognition and Perception Study Section.

Date: October 7–8, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Dupont Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Dana Jeffrey Plude, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–2309, *pluded@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Health Disparities and Equity Promotion Study Section.

Date: October 7, 2010.

Time: 11 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington, 999 Ninth Street, NW., The Capitol Room, Washington, DC 20001.

Contact Person: Delia Olufokunbi Sam, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Healthcare Delivery and Methodologies.

Date: October 14–15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Rouge, 1315 16th Street, NW., Washington, DC 20036.

Contact Person: Delia Olufokunbi Sam, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–10–174: International Research Ethics Education.

Date: October 15, 2010.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Karin F. Helmers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–254–9975, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Clinical and Research Ethics.

Date: October 15, 2010.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Karin F. Helmers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–254–9975, *helmersk@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: September 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–22501 Filed 9–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Eunice Kennedy Shriver National Institute of Child Health and Human Development Special Emphasis Panel; Review of T32 Applications from the University of Michigan and the University of Southern California.

Date: September 30, 2010.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892. 301–435–6680. *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–22497 Filed 9–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Muscle Physiology Review.

Date: September 15, 2010.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Charles H Washabaugh, PhD, Scientific Review Officer, Scientific Review Branch, NIAMS/NIH, 6701 Democracy Blvd., Room 820, MSC 4872, Bethesda, MD 20892–4872, 301–594–4952, *washabac@mail.nih.gov.*

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Centers of Research Translation Grants.

Date: November 30–December 1, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Kan Ma, PhD, Scientific Review Officer, Scientific Review Branch,

NIAMS/NIH, 6701 Democracy Blvd., Room 820, MSC 4872, Bethesda, MD 20892–4872, 301–451–4838, *mak2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–22495 Filed 9–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Part C Early Intervention Services Grant Under the Ryan White HIV/AIDS Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of Non-competitive Award of Part C Funds for the Tutwiler Clinic, Tutwiler, Mississippi.

SUMMARY: HRSA will be awarding non-competitive Part C funds under The Ryan White HIV/AIDS Program to support comprehensive primary care services for persons living with HIV/AIDS, including primary medical care, laboratory testing, oral health care, outpatient mental health and substance abuse treatment, specialty and subspecialty care, referrals for health and support services and adherence monitoring/education services to the Tutwiler Clinic to ensure continuity of critical HIV medical care and treatment services, to clients in Marks, Mississippi, and the surrounding counties.

SUPPLEMENTARY INFORMATION:

Grantee of record: Deporres Delta Ministries, Marks, Mississippi.

Intended recipient of the award: Tutwiler Clinic, Tutwiler, Mississippi.

Amount of the award: $357,159 to ensure ongoing clinical services to the target population.

Authority: Section 2651 of the Public Health Service Act, 42 U.S.C. 300ff–51.

CFDA Number: 93.918

Project period: July 1, 2010 to June 30, 2011. The period of support for this award is from July 1, 2010 to June 30, 2011.

Justification for the Exception to Competition: Critical funding for HIV medical care and treatment services to clients in the Delta area of Mississippi will be continued through a non-competitive award to the Tutwiler Clinic, because it has the fiscal and administrative infrastructure to administer the Part C Grant. The Tutwiler Clinic will contract with the Northeast Mississippi Medical Center, Clarksdale, Mississippi, which will be taking over the clinic, providers, and staff of Deporres Delta Ministries, and continue providing medical care, including HIV care in Marks, Mississippi. The Northeast Mississippi Medical Center is the only available provider of quality HIV services. This is a temporary replacement award. The previous grant recipient serving this population notified HRSA and the HIV/AIDS Bureau (HAB), that it could not continue providing services after June 30, 2010. HRSA and HAB identified the Tutwiler Clinic as the best qualified entity for this temporary grant. The Clinic is contracting with the Northeast Mississippi Medical Center to ensure comprehensive services are provided to the target population, including primary medical care including antiretroviral therapies; prevention education and medication adherence teaching; referrals for mental health, substance abuse and dental services; and on-site medical HIV case management services. The additional funding provided would enhance retaining the targeted population in care.

The Tutwiler Clinic, contracting with the Northeast Mississippi Medical Center, is able to provide critical services with the least amount of disruption to the service population while the service area is re-competed.

This supplement will cover the time period from July 1, 2010, through June 30, 2011. This service area will be included in the upcoming competition for the Part C HIV Early Intervention Services for project periods starting July, 2011.

FOR FURTHER INFORMATION CONTACT: Kathleen Treat, by e-mail *ktreat@hrsa.gov,* or by phone, 301–443–7602.

Dated: September 1, 2010.

Mary K. Wakefield,

Administrator.

[FR Doc. 2010–22500 Filed 9–8–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5383–N–19]

Notice of Proposed Information Collection for Public Comment: Restrictions on Assistance to Noncitizens

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal. HUD is requesting an extension of OMB approval for the applications for the Document Package for Applicant/Tenant's Consent to the Release of Information and the Authorization for the Release of Information/Privacy Act Notice.

DATES: *Comments Due Date:* November 8, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Leroy McKinney, Jr., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone 202–402–5564, (this is not a toll-free number) or e-mail Mr. McKinney at *Leroy.McKinneyJr@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of

information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Restrictions on Assistance to Noncitizens.

OMB Approval Number: 2501–0014.

Form Numbers: HUD–9886, HUD–9886–ARA, HUD–9886–CAM, HUD–9886–CHI, HUD–9886–CRE, HUD–9886–FRE, HUD–9886–HMO, HUD–9886–KOR, HUD–9886–RUS, HUD–9886–SPA, HUD–9886–VIE.

Description of the need for the information and its proposed use: HUD is prohibited from making financial assistance available to other than citizens or persons of eligible immigration status. This is a request for a revision of the current approval for HUD to require a declaration of citizenship or eligible immigration status from individuals seeking certain housing assistance.

Members of Effected Public: Individuals or households, State, Local, or Tribal Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents:

Frequency of Submission: On occasion, annually.

Reporting burden	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
New admissions	4,414	1,322,751		0.16		165,834
Recertifications	4,414	286,288		0.08		22,903

Total Estimated Burden Hours: 188,737.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 31, 2010.

Merrie Nichols-Dixon,

Acting Deputy Assistant Secretary, Office of Policy, Program and Legislative Initiatives.

[FR Doc. 2010–22397 Filed 9–8–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5374–N–16]

Buy American Exceptions Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, an exception was granted to the Greene County Housing Authority, in White Hall, IL, for the purchase and installation of 50-amp range receptacles and thermostats for the conversion from gas to electric modification project.

FOR FURTHER INFORMATION CONTACT: Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20410–4000, telephone number 202–402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act provides that none of the funds appropriated or made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the Federal Register.

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that, on August 26, 2010, upon request of the Green County Housing Authority, HUD granted an exception to the applicability of the Buy American requirements with respect to work, using CFRFC grant funds, based on the fact that the relevant manufactured goods (50-amp range receptacles and thermostats for the conversion from gas to electric modification project) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

Dated: September 1, 2010.

Deborah Hernandez,

General Deputy Assistant, Secretary for Public and Indian Housing.

[FR Doc. 2010–22508 Filed 9–8–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–N–11]

Notice of Availability: Notice of Funding Availability for HUD's Fiscal Year (FY) 2010 Lead-Based Paint Hazard Control Grant Program and Lead Hazard Reduction Demonstration Grant Program

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: HUD announces the availability on its Web site of the applicant information, submission deadlines, funding criteria, and other requirements for the FY2010 Lead-Based Paint Hazard Control Grant Program and Lead Hazard Reduction Demonstration Grant Program NOFA. Approximately $110 million is made available through this NOFA, by the Consolidated Appropriations Act, 2010 (Pub. L. 111–117, approved December 16, 2009). The purpose of these programs is to assist states, Native American Tribes, cities, counties/parishes, or other units of local government undertake comprehensive programs to identify and control lead-based paint hazards in eligible privately owned rental or owner-occupied housing. The Lead Hazard Reduction Demonstration Grant Program is targeted, however, to urban jurisdictions with the greatest lead-based paint hazard control needs.

The notice providing information regarding the application process, funding criteria and eligibility requirements can be found using the Department of Housing and Urban Development agency link on the Grants.gov/Find Web site at *http://www.grants.gov/search/agency.do*. A link to Grants.gov is also available on the HUD Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm*. The Catalogue of Federal Domestic Assistance (CFDA) number for the Lead-Based Paint Hazard Control Program is 14.900. The CFDA number for the Lead Hazard Reduction Demonstration Grant Program is 14.905. Applications must be submitted electronically through Grants.gov.

FOR FURTHER INFORMATION CONTACT: For information concerning the Lead-Based Paint Hazard Control Grant Program and Lead Hazard Reduction Demonstration Grant Program, contact Michelle M. Miller, Director, Programs Division, Office of Healthy Homes and Lead Hazard Control, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8236, Washington DC 20410–3000; telephone number 202–402–5769 (this is not a toll-free number). Persons with speech or hearing impairments may access this telephone number via TTY by calling the toll-free Federal Relay Service during working hours at 800–877–8339.

Dated: September 1, 2010.

Aaron Santa Anna,

Assistant General Counsel for Regulations.

[FR Doc. 2010–22537 Filed 9–8–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5407–N–02]

Notice of HUD–Held Multifamily and Healthcare Loan Sale (MHLS 2010–2)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sale of mortgage loans.

SUMMARY: This notice announces HUD's intention to sell certain unsubsidized multifamily and healthcare mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive, sealed bid sale (MHLS 2010–2). Additionally, HUD may extend the sale to include a supplementary pool of unsubsidized multifamily mortgage loan(s), without FHA insurance, limited to not-for-profit organizations and units of State and Local Government. This notice also describes generally the bidding process for the sale and certain persons who are ineligible to bid.

The Qualification Statement in connection with the sale has the following new provisions and revisions: (1) Part II, Number 7 was revised to reflect that the Purchaser must also meet the requirements in Paragraph I of the Qualification Statement to become a qualified bidder with respect to the relevant Mortgage Loans; (2) Part II, Number 8 and Paragraph M were added to allow a limited partner or non-managing member (which may include a tax credit investor) to qualify to bid on a Mortgage Loan(s) in which Purchaser has made a financial investment; (3) paragraph K was revised to allow Purchaser the option to provide a complete listing or organizational chart of known Related Parties or affiliates which HUD will review, pursuant to its 2530 Previous Participation process, to determine whether a Purchaser is a Qualified Bidder; and (4) Paragraph L was added to descibe the status of, and limitations on bidding for, a Purchaser who has selected box 8.

The Department has notified units of Local Governments of this planned sale and has provided each jurisdiction with the opportunity to purchase assets directly from the Department. It is anticipated that any direct sales of these notes to units of local governments would be offered and closed in the same timeframe as the competitive sale.

The Department is also in the process of working with the California Housing Finance Agency for the direct sale of The Winery, a multifamily loan. It is anticipated that the sale of this asset will take place in the same timeframe as the competitive sale.

DATES: The Bidder's Information Package (BIP) was made available to qualified bidders on August 11, 2010. Bids will only be accepted during the period from 1 p.m. EDT on September 8, 2010 to 1 p.m. EDT on September 9, 2010. HUD anticipates that awards will be made on or before September 10, 2010. Closings are expected to take place between September 15, 2010 and September 22, 2010.

ADDRESSES: To become a qualified bidder and receive the BIP, prospective bidders must complete, execute, and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents are available on the HUD Web site at *http://www.hud.gov/offices/hsg/comp/asset/mfam/mhls.cfm*. Please mail and fax executed documents to KDX Ventures:

KDX Ventures, c/o The Debt Exchange, 133 Federal Street, 10th Floor, Boston, MA 02111, Attention: MHLS 2010–2 Sale Coordinator, Fax: 1–617–531–3499.

FOR FURTHER INFORMATION CONTACT: John Lucey, Deputy Director, Asset Sales Office, Room 3136, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone 202–708–2625, extension 3927. Hearing- or speech-impaired individuals may call 202–708–4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell in MHLS 2010–2 certain unsubsidized mortgage loans (Mortgage Loans) secured by multifamily and healthcare properties located throughout the United States. The Mortgage Loans are comprised primarily of non-performing mortgage loans. A final listing of the Mortgage Loans will be included in the BIP. The Mortgage Loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Mortgage Loans will be stratified for bidding purposes into several mortgage loan pools, which may include a supplementary pool of unsubsidized multifamily mortgage loan(s), without Federal Housing Administration (FHA) insurance, limited to not-for-profit organizations and units of State and Local Government. Each pool will contain Mortgage Loans that generally have similar performance, property type, geographic location, lien position and other characteristics. Qualified bidders may submit bids on one or more

pools of Mortgage Loans or may bid on individual loans. A mortgagor, or related party who is a qualified bidder as set forth in the Qualification Statement and whose loan is current may submit an individual bid on its own Mortgage Loan. A tax credit investor who is a qualified bidder may submit a bid(s) in accordance with the terms set forth in the Qualification Statement.

Interested mortgagors or related parties should review the Qualification Statement to determine whether they may also be eligible to qualify to submit bids on one or more pools of Mortgage Loans or on individual loans in MHLS 2010–2.

The Bidding Process

The BIP will describe in detail the procedure for bidding in MHLS 2010–2. The BIP will also include a standardized non-negotiable loan sale agreement (Loan Sale Agreement). Deposits are calculated based upon each bidder's aggregate bid price. For an aggregate bid price greater than or equal to one hundred thousand dollars ($100,000), each bidder must submit a deposit equal to the greater of: (1) One hundred thousand dollars ($100,000); or (2) ten percent (10%) of its bid price. In the event the bidder's aggregate bid price is less than $100,000, the minimum deposit shall not be less than fifty percent (50%) of its bid price.

HUD will evaluate the bids submitted and determine the successful bids, in terms of the best value to HUD, in its sole and absolute discretion. If a bidder is successful, the bidder's deposit will be non-refundable and will be applied toward the purchase price. Deposits will be returned to unsuccessful bidders. Closings are expected to take place between September 15, 2010 and September 22, 2010.

These are the essential terms of sale. The Loan Sale Agreement, which will be included in the BIP, will contain additional terms and details. To ensure a competitive bidding process, the terms of the bidding process and the Loan Sale Agreement are not subject to negotiation.

Due Diligence Review

The BIP will describe the due diligence process for reviewing loan files in MHLS 2010–2. Qualified bidders will be able to access loan information remotely via a high-speed Internet connection. Further information on performing due diligence review of the Mortgage Loans will be provided in the BIP.

Mortgage Loan Sale Policy

HUD reserves the right to add Mortgage Loans to or remove Mortgage Loans from MHLS 2010–2 at any time prior to the Award Date, without prejudice to HUD's right to include any Mortgage Loans in a later sale. HUD also reserves the right to reject any and all bids, in whole or in part. Mortgage Loans will not be withdrawn after the Award Date except as is specifically provided in the Loan Sale Agreement.

This is a sale of unsubsidized mortgage loans, pursuant to Section 204(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1997, 12 U.S.C. 1715z–11a(a).

Mortgage Loan Sale Procedure

HUD selected a competitive sale as the method to sell the Mortgage Loans. This method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans. HUD's intention to limit a supplementary pool to not-for-profit organizations and units of State and Local Government enables HUD to ensure certain projects maintain affordability after the sale.

Bidder Eligibility

In order to bid in the sale, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Not-for-profit organizations and units of State and Local Government must complete, execute and submit both a Confidentiality Agreement and Qualification Statement for Non-Profits, Units of State and Local Government acceptable to HUD. The following individuals and entities are ineligible to bid on any of the Mortgage Loans included in MHLS 2010–2:

(1) Any employee of HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household;

(2) any individual or entity that is debarred, suspended, or excluded from doing business with HUD pursuant to Title 24 of the Code of Federal Regulations, Part 24, and Title 2 of the Code of Federal Regulations, Part 2424;

(3) any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for or on behalf of HUD in connection with MHLS 2010–2;

(4) any individual who was a principal, partner, director, agent or employee of any entity or individual described in subparagraph 3 above, at any time during which the entity or individual performed services for or on behalf of HUD in connection with MHLS 2010–2;

(5) any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 4 above to assist in preparing any of its bids on the Mortgage Loans;

(6) any individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in MHLS 2010–2;

(7) any mortgagor (or affiliate of a mortgagor) that failed to submit to HUD on or before July 30, 2010, audited financial statements for fiscal years 2005 through 2009 for a project securing a Mortgage Loan;

(8) any individual or entity and any Related Party (as such term is defined in the Qualification Statement) of such individual or entity that is a mortgagor in any of HUD's multifamily housing or healthcare programs and that is in default under such mortgage loan or is in violation of any regulatory or business agreements with HUD, unless such default or violation was cured on or before July 30, 2010. This paragraph does not pertain to a tax credit investor;

(9) any entity or individual that serviced or held any Mortgage Loan at any time during the 2-year period prior to July 30, 2010, is ineligible to bid on such Mortgage Loan or on the pool containing such Mortgage Loan, but may bid on loan pools that do not contain Mortgage Loans that they have serviced or held at any time during the 2-year period prior to July 30, 2010; and

(10) also ineligible to bid on any Mortgage Loan are: (a) Any affiliate or principal of any entity or individual described in the preceding sentence (paragraph 9); (b) any employee or subcontractor of such entity or individual during that 2-year period; or (c) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such Mortgage Loan.

In addition, to be eligible to bid in HUD's supplementary pool of unsubsidized multifamily mortgage loan(s) for sale(s) limited to not-for-profit organizations and units of State and Local Government, a prospective

bidder must qualify as one or more of the following:

(1) An entity that is a nonprofit organization as described in Section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.A. § 501(c)(3)); and/or

(2) an entity that is unit of general local government or State agency.

Prospective bidders should carefully review the Qualification Statement, as revised, to determine whether they are eligible to submit bids on the Mortgage Loans in MHLS 2010–2.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding MHLS 2010–2, including, but not limited to, the identity of any successful bidder and its bid price or bid percentage for any pool of loans or individual loan, upon the closing of the sale of all the Mortgage Loans. Even if HUD elects not to publicly disclose any information relating to MHLS 2010–2, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to MHLS 2010–2 and does not establish HUD's policy for the sale of other mortgage loans.

Dated: August 18, 2010.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2010–22399 Filed 9–8–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5432–N–01]

Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for 2011

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: This document designates "Difficult Development Areas" (DDAs) for purposes of the Low-Income Housing Tax Credit (LIHTC) under Section 42 of the Internal Revenue Code of 1986 (IRC) (26 U.S.C. 42). The United States Department of Housing and Urban Development (HUD) makes new DDA designations annually. The designations of "Qualified Census Tracts" (QCTs) under IRC Section 42 published October 6, 2009, remain in effect.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions, contact Michael K. Hollar, Senior Economist, Economic Development and Public Finance Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8234, Washington, DC 20410–6000; telephone number 202–402–5878, or send an e-mail to *Michael.K.Hollar@hud.gov*. For specific legal questions pertaining to Section 42, contact Branch 5, Office of the Associate Chief Counsel, Passthroughs and Special Industries, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; telephone number 202–622–3040, fax number 202–622–4753. For questions about the "HUB Zones" program, contact Mariana Pardo, Assistant Administrator for Procurement Policy, Office of Government Contracting, Small Business Administration, 409 Third Street, SW., Suite 8800, Washington, DC 20416; telephone number 202–205–8885, fax number 202–205–7167, or send an e-mail to *hubzone@sba.gov*. A text telephone is available for persons with hearing or speech impairments at 202–708–8339. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUD User at 800–245–2691 for a small fee to cover duplication and mailing costs.

Copies Available Electronically: This notice and additional information about DDAs and QCTs are available electronically on the Internet at *http://www.huduser.org/datasets/qct.html*.

SUPPLEMENTARY INFORMATION:

This Document

This notice designates DDAs for each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. The designations of DDAs in this notice are based on final Fiscal Year (FY) 2010 Fair Market Rents (FMRs), FY2010 income limits, and 2000 Census population counts, as explained below. In accordance with the Gulf Opportunity Zone Act of 2005 (GO Zone Act) (Pub. L. 109–135, approved December 21, 2005), as amended by the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, (Pub.L.110–28, approved, May 25, 2007), GO Zone DDAs expire on December 31, 2010. Thus, this notice does not designate GO Zone DDAs.

2000 Census

Data from the 2000 Census on total population of metropolitan areas and nonmetropolitan areas are used in the designation of DDAs. The Office of Management and Budget (OMB) first published new metropolitan area definitions incorporating 2000 Census data in OMB Bulletin No. 03–04 on June 6, 2003, and updated them periodically through OMB Bulletin No. 09–01 on November 20, 2008. The FY2010 FMRs and FY2010 income limits used to designate DDAs are based on these new metropolitan statistical area (MSA) definitions, with modifications to account for substantial differences in rental housing markets (and, in some cases, median income levels) within MSAs.

Background

The U.S. Department of the Treasury (Treasury) and its Internal Revenue Service (IRS) are authorized to interpret and enforce the provisions of the IRC, including the LIHTC found at Section 42. The Secretary of HUD is required to designate DDAs and QCTs by IRC Section 42(d)(5)(B). In order to assist in understanding HUD's mandated designation of DDAs and QCTs for use in administering IRC Section 42, a summary of the section is provided. The following summary does not purport to bind Treasury or the IRS in any way, nor does it purport to bind HUD, since HUD has authority to interpret or administer the IRC only in instances where it receives explicit statutory delegation.

Summary of the Low-Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low-income housing. IRC Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (credit ceiling) is limited by population. Each state is allowed a credit ceiling based on a statutory formula indicated at IRC Section 42(h)(3). States may carry forward unallocated credits derived from the credit ceiling for one year; however, to the extent such unallocated credits are not used by then, the credits go into a national pool to be redistributed to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides IRC Section 42 credits derived from the

credit ceiling, states may also provide IRC Section 42 credits to owners of buildings based on the percentage of certain building costs financed by tax-exempt bond proceeds. Credits provided under the tax-exempt bond "volume cap" do not reduce the credits available from the credit ceiling.

The credits allocated to a building are based on the cost of units placed in service as low-income units under particular minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC; either: (1) 20 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the Area Median Gross Income (AMGI), or (2) 40 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. The term "rent-restricted" means that gross rent, including an allowance for tenant-paid utilities, cannot exceed 30 percent of the tenant's imputed income limitation (*i.e.,* 50 percent or 60 percent of AMGI). The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar-for-dollar. It is taken annually for a term of 10 years and is intended to yield a present value of either: (1) 70 percent of the "qualified basis" for new construction or substantial rehabilitation expenditures that are not federally subsidized (as defined in Section 42(i)(2)), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing buildings or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service after 1987 under procedures specified in IRC Section 42. Individuals can use the credits up to a deduction equivalent of $25,000 (the actual maximum amount of credit that an individual can claim depends on the individual's marginal tax rate). For buildings placed in service after December 31, 2007, individuals can use the credits against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credits against ordinary income tax, and, for buildings placed in service after December 31, 2007, against the alternative minimum tax. These corporations also can deduct losses from the project.

The qualified basis represents the product of the building's "applicable fraction" and its "eligible basis." The applicable fraction is based on the number of low-income units in the building as a percentage of the total number of units, or based on the floor space of low-income units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to a capital account that are incurred prior to the end of the first taxable year in which the qualified low-income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated DDAs or designated QCTs, eligible basis can be increased up to 130 percent from what it would otherwise be. This means that the available credits also can be increased by up to 30 percent. For example, if a 70 percent credit is available, it effectively could be increased to as much as 91 percent.

IRC Section 42 defines a DDA as any area designated by the Secretary of HUD as an area that has high construction, land, and utility costs relative to the AMGI. All designated DDAs in metropolitan areas (taken together) may not contain more than 20 percent of the aggregate population of all metropolitan areas, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all nonmetropolitan areas.

IRC Section 42(d)(5)(B)(v) allows states to award an increase in basis up to 30 percent to buildings located outside of federally designated DDAs and QCTs if the increase is necessary to make the building financially feasible. This state discretion applies only to buildings allocated credits under the state housing credit ceiling and is not permitted for buildings receiving credits in connection with tax-exempt bonds. Rules for such designations shall be set forth in the LIHTC-allocating agencies' qualified allocation plans (QAPs).

Explanation of HUD Designation Methodology

A. Difficult Development Areas

In developing the list of DDAs, HUD compared housing costs with incomes. HUD used 2000 Census population data and the MSA definitions, as published in OMB Bulletin No. 09–01 on November 20, 2008, with modifications, as described below. In keeping with past practice of basing the coming year's DDA designations on data from the preceding year, the basis for these comparisons is the FY2010 HUD income limits for very low-income households (very low-income limits, or VLILs), which are based on 50 percent of AMGI, and final FY2010 FMRs used for the Housing Choice Voucher (HCV) program. In formulating the FY2010 FMRs and VLILs, HUD modified the current OMB definitions of MSAs to account for substantial differences in rents among areas within each new MSA that were in different FMR areas under definitions used in prior years. HUD formed these "HUD Metro FMR Areas" (HMFAs) in cases where one or more of the parts of newly defined MSAs that previously were in separate FMR areas had 2000 Census base 40th-percentile recent-mover rents that differed, by 5 percent or more, from the same statistic calculated at the MSA level. In addition, a few HMFAs were formed on the basis of very large differences in AMGIs among the MSA parts. All HMFAs are contained entirely within MSAs. All nonmetropolitan counties are outside of MSAs and are not broken up by HUD for purposes of setting FMRs and VLILs. (Complete details on HUD's process for determining FY2010 FMR areas and FMRs are available at *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr10.* Complete details on HUD's process for determining FY2010 income limits are available at *http://www.huduser.org/portal/datasets/il/il10/index.html*.)

HUD's unit of analysis for designating metropolitan DDAs, therefore, consists of: entire MSAs, in cases where these were not broken up into HMFAs for purposes of computing FMRs and VLILs; and HMFAs within the MSAs that were broken up for such purposes. Hereafter in this notice, the unit of analysis for designating metropolitan DDAs will be called the HMFA, and the unit of analysis for nonmetropolitan DDAs will be the nonmetropolitan county or county equivalent area. The procedure used in making the DDA calculations follows:

1. For each HMFA and each nonmetropolitan county, a ratio was calculated. This calculation used the final FY2010 two-bedroom FMR and the FY2010 four-person VLIL.

a. The numerator of the ratio was the area's final FY2010 FMR. In general, the FMR is based on the 40th-percentile gross rent paid by recent movers to live in a two-bedroom apartment. In metropolitan areas granted a FMR based on the 50th-percentile rent for purposes of improving the administration of HUD's HCV program (see 71 FR 5068), the 40th-percentile rent was used to ensure nationwide consistency of comparisons.

b. The denominator of the ratio was the monthly LIHTC income-based rent limit, which was calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent-of-AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for HMFAs and for nonmetropolitan counties.

3. The DDAs are those with the highest ratios cumulative to 20 percent of the 2000 population of all metropolitan areas and of all nonmetropolitan areas.

B. Application of Population Caps to DDA Determinations

In identifying DDAs, HUD applied caps, or limitations, as noted above. The cumulative population of metropolitan DDAs cannot exceed 20 percent of the cumulative population of all metropolitan areas, and the cumulative population of nonmetropolitan DDAs cannot exceed 20 percent of the cumulative population of all nonmetropolitan areas.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains those procedures. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio, as described above, was identical (to four decimal places) to the last area selected, and its inclusion resulted in only a minor overrun of the cap. Thus, for both the designated metropolitan and nonmetropolitan DDAs, there may be minimal overruns of the cap. HUD believes the designation of additional areas in the above examples of minimal overruns is consistent with the intent of the IRC. As long as the apparent excess is small due to measurement errors, some latitude is justifiable, because it is impossible to determine whether the 20 percent cap has been exceeded. Despite the care and effort involved in a Decennial Census, the Census Bureau and all users of the data recognize that the population counts for a given area and for the entire country are not precise. Therefore, the extent of the measurement error is unknown. There can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting small variances above the 20 percent limit.

C. Exceptions to OMB Definitions of MSAs and Other Geographic Matters

As stated in OMB Bulletin 09–01, defining metropolitan areas:

"OMB establishes and maintains the definitions of Metropolitan * * * Statistical Areas, * * * solely for statistical purposes. * * * OMB does not take into account or attempt to anticipate any non-statistical uses that may be made of the definitions[.] In cases where * * * an agency elects to use the Metropolitan * * * Area definitions in nonstatistical programs, it is the sponsoring agency's responsibility to ensure that the definitions are appropriate for such use. An agency using the statistical definitions in a nonstatistical program may modify the definitions, but only for the purposes of that program. In such cases, any modifications should be clearly identified as deviations from the OMB statistical area definitions in order to avoid confusion with OMB's official definitions of Metropolitan * * * Statistical Areas."

Following OMB guidance, the estimation procedure for the FY2010 FMRs incorporates the current OMB definitions of metropolitan areas based on the Core-Based Statistical Area (CBSA) standards, as implemented with 2000 Census data, but makes adjustments to the definitions, in order to separate subparts of these areas in cases where FMRs (and in a few cases, VLILs) would otherwise change significantly if the new area definitions were used without modification. In CBSAs where subareas are established, it is HUD's view that the geographic extent of the housing markets are not yet the same as the geographic extent of the CBSAs, but may approach becoming so as the social and economic integration of the CBSA component areas increases.

The geographic baseline for the new estimation procedure is the CBSA Metropolitan Areas (referred to as Metropolitan Statistical Areas or MSAs) and CBSA Non-Metropolitan Counties (nonmetropolitan counties include the county components of Micropolitan CBSAs where the counties are generally assigned separate FMRs). The HUD-modified CBSA definitions allow for subarea FMRs within MSAs based on the boundaries of "Old FMR Areas" (OFAs) within the boundaries of new MSAs. (OFAs are the FMR areas defined for the FY2005 FMRs. Collectively, they include the June 30, 1999, OMB definitions of MSAs and Primary MSAs (old definition MSAs/PMSAs), metropolitan counties deleted from old definition MSAs/PMSAs by HUD for FMR-setting purposes, and counties and county parts outside of old definition MSAs/PMSAs referred to as nonmetropolitan counties). Subareas of MSAs are assigned their own FMRs when the subarea 2000 Census Base FMR differs significantly from the MSA 2000 Census Base FMR (or, in some cases, where the 2000 Census base AMGI differs significantly from the MSA 2000 Census Base AMGI). MSA subareas, and the remaining portions of MSAs after subareas have been determined, are referred to as "HUD Metro FMR Areas (HMFAs)," to distinguish such areas from OMB's official definition of MSAs.

In the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), HMFAs are defined according to county subdivisions or minor civil divisions (MCDs), rather than county boundaries. However, since no part of an HMFA is outside an OMB-defined, county-based MSA, all New England nonmetropolitan counties are kept intact for purposes of designating Nonmetropolitan DDAs.

For the convenience of readers of this notice, the geographical definitions of designated Metropolitan DDAs are included in the list of DDAs.

The Census Bureau provides no tabulations of 2000 Census data for Broomfield County, Colorado, an area that was created from parts of four Colorado counties when the city of Broomfield became a county in November 2001. Broomfield County is made up of former parts of Adams, Boulder, Jefferson, and Weld counties. The boundaries of Broomfield County are similar, but not identical to, the boundaries of the city of Broomfield at the time of the 2000 Census. In OMB metropolitan area definitions and, therefore, for purposes of this notice, Broomfield County is included as part of the Denver-Aurora, CO MSA. Census tracts in Broomfield County include the parts of the Adams, Boulder, Jefferson, and Weld County census tracts that were within the boundaries of the city of Broomfield according to the 2000 Census, plus parts of three Adams County tracts (85.15, 85.16, and 85.28), and one Jefferson County tract (98.25) that were not within any municipality during the 2000 Census but which, according to Census Bureau maps, are within the boundaries of Broomfield County. Data for Adams, Boulder, Jefferson, and Weld counties and their census tracts were adjusted to exclude the data assigned to Broomfield County and its census tracts.

Future Designations

DDAs are designated annually as updated income and FMR data are made public. QCTs are designated periodically as new data become available, or as metropolitan area definitions change.

Effective Date

The 2011 lists of DDAs are effective:

(1) For allocations of credit after December 31, 2010; or

(2) for purposes of IRC Section 42(h)(4), if the bonds are issued and the building is placed in service after December 31, 2010.

If an area is not on a subsequent list of DDAs, the 2011 lists are effective for the area if:

(1) The allocation of credit to an applicant is made no later than the end of the 365-day period after the applicant submits a complete application to the LIHTC-allocating agency, and the submission is made before the effective date of the subsequent lists; or

(2) for purposes of IRC Section 42(h)(4), if:

(a) the bonds are issued or the building is placed in service no later than the end of the 365-day period after the applicant submits a complete application to the bond-issuing agency, and

(b) the submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete by the credit-allocating or bond-issuing agency. A "complete application" means that no more than *de minimis* clarification of the application is required for the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

In the case of a "multiphase project," the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the project received its first allocation of LIHTC. For purposes of IRC Section 42(h)(4), the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the first of the following occurred: (a) The building(s) in the first phase were placed in service, or (b) the bonds were issued.

For purposes of this notice, a "multiphase project" is defined as a set of buildings to be constructed or rehabilitated under the rules of the LIHTC and meeting the following criteria:

(1) The multiphase composition of the project (*i.e.,* total number of buildings and phases in project, with a description of how many buildings are to be built in each phase and when each phase is to be completed, and any other information required by the agency) is made known by the applicant in the first application of credit for any building in the project, and that applicant identifies the buildings in the project for which credit is (or will be) sought;

(2) The aggregate amount of LIHTC applied for on behalf of, or that would eventually be allocated to, the buildings on the site exceeds the one-year limitation on credits per applicant, as defined in the Qualified Allocation Plan (QAP) of the LIHTC-allocating agency, or the annual per-capita credit authority of the LIHTC allocating agency, and is the reason the applicant must request multiple allocations over 2 or more years; and

(3) All applications for LIHTC for buildings on the site are made in immediately consecutive years.

Members of the public are hereby reminded that the Secretary of Housing and Urban Development, or the Secretary's designee, has sole legal authority to designate DDAs and QCTs, by publishing lists of geographic entities as defined by, in the case of DDAs, the several states and the governments of the insular areas of the United States and, in the case of QCTs, by the Census Bureau; and to establish the effective dates of such lists. The Secretary of the Treasury, through the IRS thereof, has sole legal authority to interpret, and to determine and enforce compliance with the IRC and associated regulations, including **Federal Register** notices published by HUD for purposes of designating DDAs and QCTs. Representations made by any other entity as to the content of HUD notices designating DDAs and QCTs that do not precisely match the language published by HUD should not be relied upon by taxpayers in determining what actions are necessary to comply with HUD notices.

The designations of "Qualified Census Tracts" under IRC Section 42, published October 6, 2009 (74 FR 51304), remain in effect. The above language regarding 2011 and subsequent designations of DDAs also applies to the designations of QCTs published October 6, 2009 (74 FR 51304) and to subsequent designations of QCTs.

Interpretive Examples of Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose DDA status. The examples covering DDAs are equally applicable to QCT designations.

(Case A) Project A is located in a 2011 DDA that is NOT a designated DDA in 2012. A complete application for tax credits for Project A is filed with the allocating agency on November 15, 2011. Credits are allocated to Project A on October 30, 2012. Project A is eligible for the increase in basis accorded a project in a 2011 DDA because the application was filed BEFORE January 1, 2012 (the assumed effective date for the 2012 DDA lists), and because tax credits were allocated no later than the end of the 365-day period after the filing of the complete application for an allocation of tax credits.

(Case B) Project B is located in a 2011 DDA that is NOT a designated DDA in 2012 or 2013. A complete application for tax credits for Project B is filed with the allocating agency on December 1, 2011. Credits are allocated to Project B on March 30, 2013. Project B is NOT eligible for the increase in basis accorded a project in a 2011 DDA because, although the application for an allocation of tax credits was filed BEFORE January 1, 2012 (the assumed effective date of the 2012 DDA lists), the tax credits were allocated later than the end of the 365-day period after the filing of the complete application.

(Case C) Project C is located in a 2011 DDA that was not a DDA in 2010. Project C was placed in service on November 15, 2010. A complete application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2011. The bonds that will support the permanent financing of Project C are issued on September 30, 2011. Project C is NOT eligible for the increase in basis otherwise accorded a project in a 2011 DDA, because the project was placed in service BEFORE January 1, 2011.

(Case D) Project D is located in an area that is a DDA in 2011, but is NOT a DDA in 2012. A complete application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2011. Bonds are issued for Project D on April 30, 2012, but Project D is not placed in service until January 30, 2013. Project D is eligible for the increase in basis available to projects located in 2011 DDAs because: (1) One of the two events necessary for triggering the effective date for buildings

described in Section 42(h)(4)(B) of the IRC (the two events being bonds issued and buildings placed in service) took place on April 30, 2012, within the 365-day period after a complete application for tax-exempt bond financing was filed, (2) the application was filed during a time when the location of Project D was in a DDA, and (3) both the issuance of the bonds and placement in service of Project D occurred after the application was submitted.

(Case E) Project E is a multiphase project located in a 2011 DDA that is NOT a designated DDA in 2012. The first phase of Project E received an allocation of credits in 2011, pursuant to an application filed March 15, 2011, which describes the multiphase composition of the project. An application for tax credits for the second phase Project E is filed with the allocating agency by the same entity on March 15, 2012. The second phase of Project E is located on a contiguous site. Credits are allocated to the second phase of Project E on October 30, 2012. The aggregate amount of credits allocated to the two phases of Project E exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP and is the reason that applications were made in multiple phases. The second phase of Project E is, therefore, eligible for the increase in basis accorded a project in a 2011 DDA, because it meets all of the conditions to be a part of a multiphase project.

(Case F) Project F is a multiphase project located in a 2011 DDA that is NOT a designated DDA in 2012. The first phase of Project F received an allocation of credits in 2011, pursuant to an application filed March 15, 2011, which does not describe the multiphase composition of the project. An application for tax credits for the second phase of Project F is filed with the allocating agency by the same entity on March 15, 2013. Credits are allocated to the second phase of Project F on October 30, 2013. The aggregate amount of credits allocated to the two phases of Project F exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP. The second phase of Project F is, therefore, not eligible for the increase in basis accorded a project in a 2011 DDA, since it does not meet all of the conditions for a multiphase project, as defined in this notice. The original application for credits for the first phase did not describe the multiphase composition of the project. Also, the application for credits for the second phase of Project F was not made in the year immediately following the first phase application year.

Findings and Certifications

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(6) of HUD's regulations, the policies and procedures contained in this notice provide for the establishment of fiscal requirements or procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act, except for extraordinary circumstances, and no Finding of No Significant Impact is required.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any policy document that has federalism implications if the document either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This notice merely designates DDAs as required under Section 42 of the IRC, as amended, for the use by political subdivisions of the states in allocating the LIHTC. This notice also details the technical methodology used in making such designations. As a result, this notice is not subject to review under the order.

Dated: September 1, 2010.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2010–22535 Filed 9–8–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0116

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

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 30 CFR part 774, Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights, has been forwarded to the Office of Management and Budget (OMB) for review and reauthorization. The information collection package was previously approved and assigned control number 1029–0116. This notice describes the nature of the information collection activity and the expected burdens.

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 October 12, 2010, 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 Interior Desk Officer, by telefax at (202) 395–6566, or via e-mail to *OIRA_Docket@omb.eop.gov.* Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240, or electronically 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 to *jtrelease@osmre.gov.* You may also review the information collection requests online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

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 for the collection of information for part 774—Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights. OSM is requesting a 3-year term of approval for this information collection.

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 part 774 is 1029–0116 and is referenced in § 774.9.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on May 20, 2010 (75 FR 28277). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection:

Title: 30 CFR Part 774—Revisions; Renewals; and Transfer, Assignment, or Sale of Permit Rights.

OMB Control Number: 1029–0116.

Summary: Sections 506 and 511 of Public Law 95–87 provide that persons seeking permit revisions, renewals, transfer, assignment, or sale of their permit rights for coal mining activities submit relevant information to the regulatory authority to allow the regulatory authority to determine whether the applicant meets the requirements for the action anticipated.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Surface coal mining permit applicants and State regulatory authorities.

Total Annual Responses: 8,888.

Total Annual Burden Hours: 82,018.

Total Non-Wage Burden Costs: $473,800.

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 address listed above. Please refer to OMB control number 1029–0116 in all correspondence.

Before including your address, phone number, e-mail 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: September 1, 2010.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 2010–22315 Filed 9–8–10; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–WSFR–2010–N195] [91400–5420–Survey–7B and 91400–9782–Survey–7B]

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control Number 1018–0088; National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (FHWAR)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: You must send comments on or before October 12, 2010.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-5806 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail) or hope_grey@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 1018-0088.

Title: National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (FHWAR).

Service Form Number(s): None.

Type of Request: Reinstatement with change of a previously approved information collection.

Affected Public: Individuals and households.

Respondent's Obligation: Voluntary.

Frequency of Collection: Household screen interviews and the first detailed sportsperson and wildlife-watcher interviews will be conducted April-June 2011. The second detailed interviews will be conducted September-October 2011. The third and last detailed interviews will be conducted January-March 2012.

Number of Respondents: 59,010 (47,208 + 11,802). The estimated number of respondents reached from a sample of households will be 47,208. About 50 percent, or 23,604, of those respondents will receive a detailed interview. An additional 50 percent of those households where one person is sampled (11,802) will have a second person screened in for interviews.

Activity	Number of household responses	Number of participant responses	Completion time per response	Total burden hours
Screen	47,208		7 minutes	5,508
Screen - Reinterview	789		5 minutes	66
Hunting and Fishing - 1st Interview		7,709	14 minutes	1,799
Hunting and Fishing - 2d Interview		15,418	10 minutes	2,570
Hunting and Fishing - 3d Interview		23,127	15 minutes	5,782
Hunting and Fishing - Reinterview		200	5 minutes	17
Wildlife Watching - 1st Interview		3,854	11 minutes	707
Wildlife Watching - 2d Interview		7,709	11 minutes	1,413
Wildlife Watching - 3d Interview		11,563	11 minutes	2,120
Wildlife Watching - Reinterview		100	5 minutes	8
Totals	47,997	69,680		19,990

Abstract: The information collected for the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (FHWAR) assists Federal and State agencies in administering the Sport Fish and Wildlife Restoration grant programs. The 2011 FHWAR will provide up-to-date information on the uses and demands for wildlife-related

recreation resources, trends in uses of those resources, and a basis for developing and evaluating programs and projects to meet existing and future needs.

We collect the information in conjunction with carrying out our responsibilities under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777M), commonly referred to as the Dingell-Johnson Act, and the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669-669i), commonly referred to as the Pitman-Robertson Act. Under these acts, as amended, we provide approximately $800 million in grants annually to States for projects that support sport fish and wildlife management and restoration, including:

- Improvement of fish and wildlife habitats,
- Fishing and boating access,
- Fish stocking, and
- Hunting and fishing opportunities.

We also provide grants for aquatic education and hunter education, maintenance of completed projects, and research into problems affecting fish and wildlife resources. These projects help to ensure that the American people have adequate opportunities for fish and wildlife recreation.

We conduct the survey about every 5 years. The 2011 FHWAR will be the 12th conducted since 1955. We sponsor the survey at the States' request, which is made through the Association of Fish and Wildlife Agencies. The Census Bureau collects the information using computer-assisted telephone or in-person interviews. The Census Bureau will select a sample of sportspersons and wildlife watchers from a household screen and conduct three detailed interviews during the survey year. The survey collects information on the number of days of participation, species of animals sought, and expenditures for trips and equipment. Information on the characteristics of participants includes age, income, sex, education, race, and residency.

Comments: On February 8, 2010, we published in the **Federal Register** (75 FR 6216) a notice of our intent to request that OMB renew this ICR. In that notice, we solicited comments for 60 days, ending on April 9, 2010. We did not receive any comments.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: September 2, 2010.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 2010–22461 Filed 9–8–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2010–N193; 30120–1113–0000–F6]

Endangered and Threatened Wildlife and Plants; Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

DATES: We must receive any written comments on or before October 12, 2010.

ADDRESSES: Send written comments by U.S. mail to the Regional Director, Attn: Peter Fasbender, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, MN 55111–4056; or by electronic mail to *permitsR3ES@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Peter Fasbender, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Background

We invite public comment on the following permit applications for certain activities with endangered species authorized by section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) and our regulations governing the taking of endangered species in the Code of Federal Regulations (CFR) at 50 CFR 17. Submit your written data, comments, or request for a copy of the complete application to the address shown in **ADDRESSES.**

Permit Applications

Permit Application Number: TE195082.
Applicant: Thomas E. Tomasi, Missouri State University, Springfield, MO.

The applicant requests a permit renewal and amendment to take (capture, temporarily hold, and release) Indiana bats (*Myotis sodalis*) and gray bats (*Myotis grisescens*) in Missouri. Proposed activities include population monitoring, sampling and laboratory experimentation to investigate white-nose syndrome in the interest of enhancement of survival of the species in the wild.

Permit Application Number: TE151109.
Applicant: Ohio Department of Natural Resources, Division of Wildlife, Columbus, OH.

The applicant requests a permit renewal and amendment to take (capture and release; capture and hold in captivity for propagation) American burying beetle (*Nicrophorus americanus*) in Ohio. Propagation of the insects and reintroduction activities are aimed at recovery of the species and enhancement of survival of the species in the wild.

Permit Application Number: TE697830.
Applicant: Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, Twin Cities, MN.

The applicant requests a permit renewal and amendment to take listed species that occur within the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin for activities to recover the species and enhance the survival of the species in the wild. The amendment to the permit adds species listed or proposed for listing since January 2005 when the permit was renewed for its current term.

Permit Application Number: TE20323A.
Applicant: Wisconsin Department of Natural Resources, Madison, WI.

The applicant requests a permit for the potential inadvertent take (injury or mortality) of the eastern massasauga rattlesnake (*Sistrurus catenatus catenatus*) should the species become

Federally-listed in the future. The rattlesnake is currently a Federal candidate species. Take associated with the permit may result from habitat management actions for the species at the Wisconsin Department of Natural Resources' Tiffany State Wildlife Area. These activities are described in the Eastern Massasauga Rattlesnake Candidate Conservation Agreement with Assurances for the Lower Chippewa River Bottoms, Buffalo and Pepin Counties, Wisconsin (EMR CCAA). The EMR CCAA agreement is a 10-year agreement between the U.S. Fish and Wildlife Service and the Wisconsin DNR. The permit application, the EMR CCAA, and the Environmental Assessment applicable to this application are available for review on the Service's Web site at: *http://www.fws.gov/midwest/endangered/lists/candidat.html.* The purpose of the proposed activities is enhancement of the survival of the species in the wild.

Permit Application Number: TE207523.
Applicant: The Nature Conservancy, Lansing, MI.

The applicant requests a permit amendment to take Karner Blue Butterfly (*Lycaeides melissa samuelis*) and Pitcher's thistle (*Cirsium pitcheri*) on lands within the State of Michigan. Take may occur during habitat management activities designed to enhance the available habitat for the species. Proposed activities are expected to increase habitat for both species and are aimed at enhancement of survival of the species in the wild.

Public Comments

We seek public review and comments on these permit applications. Please refer to the permit number when you submit comments. Comments and materials we receive are available for public inspection, by appointment, during normal business hours at the address shown in the **ADDRESSES** section. Before including your address, phone number, e-mail 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.

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)), with the exception of Application Number TE20323A, for which an environmental assessment was prepared.

Lynn M. Lewis,
Assistant Regional Director, Ecological Services, Region 3.

[FR Doc. 2010–22442 Filed 9–8–10; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2010-N201]
[96300-1671-0000-P5]

Endangered Species Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA laws require that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents or comments on or before October 12, 2010.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358-2280; or e-mail *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358-2104 (telephone); (703) 358-2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How Do I Request Copies of Applications or Comment on Submitted Applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see DATES) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. 1531 *et seq.*) require that we invite public comment before final action on these permit applications.

III. Permit Applications

A. Endangered Species

Applicant: Los Angeles Zoo and Botanical Gardens, Los Angeles, CA; PRT-11236A

The applicant requests a permit to import Chinese giant salamander, (*Andria davidianus*), one, captive-bred in Austria for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5–year period.

Applicant: Richard Lawler, Harrisonburg, VA, PRT-20715A

The applicant requests a permit to import biological samples of Verreaux's sifaka (*Propithecus verreauxi*) taken from the wild in the Beza Majafaly Special Reserve, Madagascar, for the purpose of scientific research.

Applicant: Roberto Delgado, Garza Garcia, Mexico; PRT-19421A

The following applicant requests a permit to re-export the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Arizona State University (Stone Lab), Tempe, AZ; PRT-094332

The applicant requests a permit to import biological samples of chimpanzee (*Pan troglodytes*), pygmy chimpanzee (*Pan paniscus*), orangutan (*Pongo pygmaeus*), and gorilla (*Gorilla gorilla*), taken from the wild, or held in captivity, world wide for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5–year period.

Applicant: Milwaukee County Zoological Gardens, Milwaukee, WI; PRT-19713A

The applicant requests a permit to import Western lowland gorilla, (*Gorilla gorilla gorilla*), one, captive-bred at Toronto Zoo for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5–year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Kenneth Petersen, Marshall, TX; PRT-20282A

Applicant: Paul Wieser, Tacoma, WA; PRT-19809A

Applicant: William Garrison, Peoria, AZ; PRT-20084A

Applicant: Matthew McNeil, Chandler, AZ; PRT-20085A

Applicant: John Denman, Mt. Pleasant, TX; PRT-232729

Applicant: Roy Parker, Mt. Pleasant, TX; PRT-227938

Applicant: Kenneth Samford, Gun Barrel, TX; PRT-236659

Dated: September 3, 2010.

Brenda Tapia,

Program Analyst/Data Administrative, Branch of Permits, Division of Management Authority.

[FR Doc. 2010–22405 Filed 9–8– 10; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L14200000–BJ0000–LXSITRST0000]

Eastern States: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Minnesota, stayed.

SUMMARY: On Friday, July 9, 2010, there was published in the **Federal Register**, Volume 75, Number 131, on page 39579 a notice entitled "Eastern States: Filing of Plats of Survey". In said notice was a plat depicting the dependent resurvey of a portion of the South and West boundaries, a portion of the subdivisional lines, and the subdivision of Sections 28–33, and the survey of a tract of land in Section 31 and adjusted record meanders in Sections 31 and 32, in Township 114 North, Range 15 West, of the Fifth Principal Meridian, in the State of Minnesota. These were accepted June 22, 2010.

The official filing of the plat is hereby stayed, pending consideration of all protests.

Dated: August 30, 2010.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2010–22459 Filed 9–8–10; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L14200000–BJ0000–LXSITRST0000]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Wisconsin.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM–Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands surveyed are:

Fourth Principal Meridian, Wisconsin

T. 34 N., R 16 E.

The plat of survey represents the survey of the North and South center line of Section 16, in Township 30 North, Range 16 East, of the Fourth Principal Meridian, in the State of Wisconsin, and was accepted August 5, 2010.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against the survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: September 2, 2010.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2010–22454 Filed 9–8–10; 8:45 am]

BILLING CODE 4310–GJ–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Ground Fault Circuit Interrupters and Products Containing Same* DN 2754; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and 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 (*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 has received a complaint filed on behalf of Leviton Manufacturing Co., Inc. on September 3, 2010. The complaint alleges violations of section 337 of the Tariff Act of 1930 (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 ground fault circuit interrupters and products containing same. The complaint names as respondents Fujian Hongan Electric Co., Ltd. of Fujian 355106, China; General Protecht Group, Inc. of Zhejiangm 325604, China; Shanghai ELE Manufacturing Corporation of Shanghai 201703, China; Zhejiang Trimone Co. Ltd. of Zhejiang 314200, China; Zhejiang Easting House Electric Co. of Zhejiang 314100, China; Frontier Lighting, Inc. of Clearwater, FL; The Designers Edge, Inc. of Bellevue, WA; Orbit Industries, Inc. of Los Angeles, CA; Ready Wholesale Electric and Lighting, Inc., d/b/a Ready Wholesale Electric Supply of Reseda, CA; Sutherland Lumber Company of Kansas City, LLC, d/b/a Sutherlands of Kansas City, MO; W. E. Aubuchon Co., Inc., d/b/a Aubuchon Hardware of Westminister, MA; Westside Wholesale Electric & Lighting, Inc., Westside Electric Wholesale, Inc. and Westside Wholesale, Inc. of Los Angeles, CA and/or Bell, CA; Contractor Lighting & Supply, Inc. of Columbus, OH; Interline Brands, Inc., d/b/a Lighting of Pompano Beach, FL; Royal Pacific Ltd. of Albuquerque, NM; Littman Bros. Energy Supplies, Inc. of Schaumburg, IL; Norcross Electric Supply Company of Duluth, GA; Menard, Inc. of Eau Claire, WI; Garvin Industries, Inc. of Franklin Park, IL; Central Purchasing, LLC of Camarillo, CA; Harbor Freight Tools USA, Inc. of Camarillo, CA; Warehouse-Lighting.com LLC of Muskego, WI; SecurElectric Corporation of Atlanta, GA; G–Techt Global Corporation of Atlanta, GA; Deerso, Inc. of Cape Coral, FL; New Aspen Devices Corporation of Brooklyn, NY; American Ace Supply Inc. of San Francisco, CA; Safety Plus Products, Inc. of McFarland, WI; Ingram Products, Inc. of Jacksonville, FL; and American Electric Depot, Inc. of Fresh Meadows, NY.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2754") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (*see* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

Issued: September 3, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–22486 Filed 9–8–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–734]

Certain Adjustable-Height Beds and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S.

International Trade Commission on August 5, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Invacare Corporation of Elyria, Ohio. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain adjustable-height beds and components thereof by reason of infringement of certain claims of U.S. Patent No. 6,983,495 ("the '495 patent"); U.S. Patent No. 6,997,082 ("the '082 patent"); U.S. Patent No. 7,302,716 ("the '716 patent"); and U.S. Patent No. 7,441,289 ("the '289 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server 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.*

FOR FURTHER INFORMATION CONTACT: Jeffrey T. Hsu, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2579.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 1, 2010, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain adjustable-height beds and components thereof that infringe one or more of claims 1–8, 12–14, 26, and 27 of the '495 patent; claims 1, 2, 5, 10–12, 14, and 18–23 of the '082 patent; claims 1–3, 5, 6, 8, 10, 11, 13, 14, and 18 of the '716 patent; and claims 8 and 9 of the '289 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact on this issue; (3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Invacare Corporation, One Invacare Way, Elyria, OH 44035.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Medical Depot, Inc., d/b/a Drive Medical Design and Manufacturing, 99 Seaview Boulevard, Port Washington, NY 11050.

Shanghai Shunlong Physical Therapy Equipment Co., Ltd., No. 259 Jiugan Road, Songjiang District, Shanghai, China 201601.

(c) The Commission investigative attorney, party to this investigation, is Jeffrey T. Hsu, Esq., Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: September 2, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–22402 Filed 9–8–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–474 (Final) and 731–TA–1176 (Final)]

Drill Pipe and Drill Collars From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–474 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigation No. 731–TA–1176 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized and less-than-fair-value imports from China of drill pipe and drill collars, primarily provided for in subheadings 7304.22, 7304.23, and 8431.43 of the Harmonized Tariff Schedule of the United States.[1]

[1] For purposes of these investigations, the Department of Commerce has defined the subject

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* August 18, 2010.

FOR FURTHER INFORMATION CONTACT: Nathanael Comly (202–205–3174) or Douglas Corkran (202–205–3057), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of drill pipe and drill collars, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed effective December 31, 2009, by VAM Drilling USA Inc., Houston, TX; Rotary Drilling Tools, Beasley, TX; Texas Steel Conversions, Inc., Houston, TX; TMK IPSCO, Downers Grove, IL; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC, Pittsburgh, PA.

Participation in the investigations and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on December 8, 2010, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on January 5, 2011, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 21, 2010. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 27, 2010, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions. Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is December 15, 2010. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is January 12, 2011; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before January 11, 2011. On January 31, 2011, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 2, 2011, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless

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merchandise as steel drill pipe, and steel drill collars, whether or not conforming to American Petroleum Institute ("API") or non-API specifications, whether finished or unfinished (including green tubes suitable for drill pipe), without regard to the specific chemistry of the steel (*i.e.,* carbon, stainless steel, or other alloy steel), and without regard to length or outer diameter. Commerce's scope does not include tool joints not attached to the drill pipe, nor does it include unfinished tubes for casing or tubing covered by any other antidumping or countervailing duty order.

the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: September 2, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–22401 Filed 9–8–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Robotics Technology Consortium, Inc.

Notice is hereby given that, on July 26, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Robotics Technology Consortium ("RTC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 3M Company, St. Paul, MN; AEB, Inc., Windsor, CT; Action Engineering, LLC, Morrison, CO; Alliant Techsystems, Inc., Beltsville, MD; American Android Corp., Princeton, NJ; American GNC Corporation, Simi Valley, CA; Association for Unmanned Vehicle Systems International (AUVSI), Arlington, VA; BEN Technologies Corp., Cambridge, MA; Caterpillar Inc., Peoria, IL; Charles River Analytics, Inc., Cambridge, MA; Coherent Logix, Incorporated, Amstin, TX; Dataspeed Inc., Troy, MI; Delta Tau Data Systems, Inc., Chatsworth, CA; Dragonfly Pictures, Inc., Essington, PA; Edge Robotics Inc., Pittsburgh, PA; Energetics Technology Center, Inc., La Plata, MD; Expertise Applications Inc., San Diego, CA; 101–Integrated Consultants, Inc., San Diego, CA; Integration Innovation Inc., Huntsville, AL; Intraduce Transit, LLC, Birmingham, AL; Kraft TeleRobotics, Inc., Overland Park, KS; L–3 Services Inc., Burlington, MA; Lawrence Technological University, Southfield, MI; Michigan State University, East Lansing, MI; Michigan Technological University, Houghton, MI; MIT Lincoln Laboratory, Lexington, MA; Mountain Top Technologies, Inc., Johnstown, PA; Neya Systems, LLC, Seven Fields, PA; NIITEK, Inc., Dulles, VA; Oakland University, Rochester, MI; Oceaneering Space Systems, Houston, TX; Omnitech Robotics International LLC, Easton, MD; Pegasus Global Strategic Solutions, Reston, VA; Pelican Mapping, Fairfax, VA; Polygon Company, Walkerton, IN; RoPro Design Inc., Beaver, PA; San Diego State University Research Foundation, San Diego, CA; Sensable Technologies, Woburn, MA; Springfield Electric Supply Company, Inc., Springfield, IL; Square One Systems Design, Inc., Jackson, WY; Stealth Composites, LLC, Salt Lake City, UT; Teledyne Scientific & Imaging, LLC, Durham, NC; The George Washington University, Washington, DC; The University of Texas at Arlington, Arlington, TX; University of Detroit Mercy, Detroit, MI; University of Southern California, Marina del Rey, CA; Van Doren Designs, LLC, Southbury, CT; Virtus Advanced Sensors, Pittsburgh, PA; Wayne State University-College of Engineering, Detroit, MI; William Travis Lontz, Auburn, AL; and Workhorse Technologies, LLC, Pittsburgh, PA, have been added as parties to this venture.

Also, Artisan Robotics, Tucson, AZ; Burnham Consulting Inc., Chesterfield, MO; Esys Integration Corporation, Auburn Hills, MI; JADI, Inc., Troy, MI; Mobile Robots Inc., Amherst, NH; Oceana Sensor Technologies, Inc., Virginia Beach, VA; Old Dominion University, Norfolk, VA; Prioria Robotics, Inc., Gainesville, FL; Rababy & Associates, LLC, Spotsylvania, VA; Robotex Incorporated, Palo Alto, CA; Robot Worx, Marion, OH; RPU Technology, Inc., Needham, MA; Scientific Systems Company, Inc., Woburn, MA; Secure Axxess Solutions, LLC, Nashua, NH; Sense Technologies, LLC, Boerne, TX; Technical Products Inc., Ayer, MA; The Charles Stark Draper Laboratory, Cambridge, MA; The University of Texas at Austin, Austin, TX; and Virginia Tech, Blacksburg, VA, have withdrawn as parties to this venture. In addition, Kuchera Defense Systems has changed its name to API Defense, Inc., Windber, PA, and The Droid Works, Inc. has changed its name to CyPhy Works, Inc., Framingham, MA.

No other changes have been made in either the membership or planned activity of this group research additional written membership.

On October 15, pursuant to Section the group research project. Membership in project remains open, and RTC intends to file notifications disclosing all changes. In 2009, RTC filed its original notification 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 30, 2009 (74 FR 62599).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–22215 Filed 9–8–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—LiMo Foundation

Notice is hereby given that, on July 1, 2010, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), LiMo Foundation ("LiMo") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SRS Labs, Santa Ana, CA; Smart Communications, Inc., Makati City, Republic of the Philippines; NTT Data MSE Corporation, Yokohama, Japan; STEricsson AB, Lund, Sweden, have been added as parties to this venture. Specifically, Broadcom Corporation, Irvine, CA; OpenPlug, Sophia Antipolis, France; Packetvideo, San Diego, CA; STEricsson AT Holding AG, Milan, Italy; STEricsson Holding AG, Lund, Sweden, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of this group research project. Membership in this group research project remains open, and LiMo intends to file additional written notifications disclosing all changes in membership.

On March 1, 2007, LiMo filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal**

Register pursuant to section 6(b) of the Act on April 9, 2007 (72 FR 17583).

The last notification was filed with the Department on March 12, 2010. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 13, 2010 (75 FR 27000).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–22213 Filed 9–8–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Institute of Electrical and Electronics Engineers

Notice is hereby given that, on July 22, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Institute of Electrical and Electronics Engineers ("IEEE") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 17 new standards have been initiated and 17 existing standards are being revised. More detail regarding these change can be found at *http://standards.ieee.org/standardswire/sba/06-2010.html.*

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on April 15, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 13, 2010 (75 FR 27001).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–22216 Filed 9–8–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Sensory System for Critical Infrastructure Defect Recognition, Visualization and Failure Prediction

Notice is hereby given that, on July 23, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (the Act"), Sensory System for Critical Infrastructure Defect Recognition, Visualization and Failure Prediction ('Sensory System") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its members. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Louisiana Tech University Research Foundation, Ruston, LA, has been added as a party to this venture. Also, UltraScan, LLC, Ruston, LA, has withdrawn as a member to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Sensory Systems intends to file additional written notifications disclosing all changes in membership.

On April 14, 2009, Sensory System filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 15, 2009 (74 FR 28277).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–22217 Filed 9–8–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1530]

Meeting of the Public Safety Officer Medal of Valor Review Board

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting/conference call of the Public Safety Officer Medal of Valor Review Board to vote on recommendations for the 2009–2010 Medal of Valor nominations, review issues relevant to the nomination review process and upcoming activities and other relevant Board issues related thereto. The meeting/conference call date and time is listed below.

DATES: September 23, 9 a.m. to 2 p.m. EST

ADDRESSES: This meeting will take place at 810 7th Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Gregory Joy, Policy Advisor, Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, NW., Washington, DC 20531, by telephone at (202) 514–1369, toll free (866) 859–2687, or by e-mail at *gregory.joy@usdoj.gov.*

SUPPLEMENTARY INFORMATION: The Public Safety Officer Medal of Valor Review Board carries out those advisory functions specified in 42 U.S.C. 15202. Pursuant to 42 U.S.C. 15201, the President of the United States is authorized to award the Public Safety Officer Medal of Valor, the highest national award for valor by a public safety officer.

The primary purpose of this meeting is to review and vote on recommendations for the 2009–2010 Medal of Valor nominations.

This meeting is open to the public at the offices of the Bureau of Justice Assistance. For security purposes, members of the public who wish to participate must register at least seven (7) days in advance of the meeting/conference call by contacting Mr. Joy. All interested participants will be required to meet at the Bureau of Justice Assistance, Office of Justice Programs; 810 7th Street, NW., Washington, DC and will be required to sign in at the front desk. **Note:** Photo identification will be required for admission. Additional identification documents may be required.

Access to the meeting will not be allowed without prior registration. Anyone requiring special accommodations should contact Mr. Joy at least seven (7) days in advance of the meeting. Please submit any comments or written statements for consideration by the Review Board in writing at least seven (7) days in advance of the meeting date.

James H. Burch, II,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 2010–22506 Filed 9–8–10; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 31, 2010.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of the ICR, with applicable supporting documentation; including, among other things, a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Michel Smyth on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (*see* below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed information collection requirements are necessary for the proper performance 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 collections of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title of Collection: Crawler, Locomotive, and Truck Cranes Standard (29 CFR 1910.180).

OMB Control Number: 1218–0221.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 3,499.

Estimated Total Annual Burden Hours: 30,452.

Estimated Total Annual Costs Burden (excludes hourly wage costs): $0.

Description: The paperwork provisions of this Standard specify requirements for developing, maintaining, and disclosing inspection records for cranes and ropes, as well as disclosing written reports of rated load tests. For additional information, see the related notice published in the **Federal Register** on March 16, 2010 (Vol. 75, FR 20005).

Dated: August 31, 2010.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2010–22431 Filed 9–8–10; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

DATE AND TIME: September 13, 2010, 12 p.m.–2 p.m. Eastern.

PLACE: Chairman Jonathan Young is calling a teleconference meeting of the National Council on Disability.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The agenda for this meeting is two-fold: (1) To discuss end-of-year final budget matters; and (2) to provide the Chairman an opportunity to discuss temporary personal circumstances and leadership considerations in light thereof. The first item on the agenda will be open to the public. The second portion of the agenda will be held in closed executive session pursuant to paragraphs (c)(2),(6), and (9) of the Sunshine Act, and in accordance with a determination made by the NCD Chairman.

Less than one week notice is being given pursuant to and in accordance with paragraph (e)(1) of the Sunshine Act based on a majority vote of the Council taken pursuant to electronic mail voting beginning on September 3. The timing of this meeting was prompted by the congruence of time-sensitive end-of-year budget issues and unforeseen temporary personal circumstances of the NCD Chairman, which prevent meeting any later than September 13. As much notice as possible has been provided given that the temporary personal circumstances requiring short notice did not emerge until September 1.

ACCOMMODATIONS: Those needing reasonable accommodations should notify NCD immediately.

CONTACT PERSON FOR MORE INFORMATION: Mark Quigley, Director of Communications, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004, 202–272–2074 (TTY).

Dated: September 7, 2010.

Joan M. Durocher,

Executive Director.

[FR Doc. 2010–22630 Filed 9–7–10; 4:15 pm]

BILLING CODE 6820–MA–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings

TIME AND DATES: All meetings are held at 2:30 p.m.

Wednesday, September 1; Thursday, September 2; Tuesday, September 7; Wednesday, September 8; Thursday, September 9; Tuesday, September 14; Wednesday, September 15; Thursday, September 16; Tuesday, September 21; Wednesday, September 22; Thursday, September 23; Tuesday, September 28; Wednesday, September 29; Thursday, September 30, 2010.

PLACE: Board Agenda Room, No. 11820,1099 14th St., NW., Washington, DC 20570.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider "the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition * * * of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto." *See also* 5 U.S.C. 552b(c)(10).

Dated: September 3, 2010.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 2010–22605 Filed 9–7–10; 11:15 am]

BILLING CODE 7545–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0294]

Criteria for Nominating Materials Licensees for the U.S. Nuclear Regulatory Commission's Agency Action Review Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to have its senior managers conduct an annual Agency Action Review Meeting (AARM). The AARM is an integral part of the evaluative process used by the agency to ensure the operational safety performance of licensees. As a part of the AARM process, the NRC reviews the agency's actions concerning fuel cycle facilities and other materials licensees (including Agreement State licensees) with significant performance concerns. In 2002, the NRC developed criteria for determining materials licensees that would be discussed at the AARM. The NRC revised the criteria to incorporate NRC's current policies and procedures in 2008. The criteria that is currently used to determine materials licensees that will be discussed at the AARM may be found in Enclosure 2 of SECY–08–0135, "Revision of the Criteria for Identifying Nuclear Materials Licensees for Discussion at the Agency Action Review Meeting," dated September 16, 2008 (ADAMS Accession Number: ML082480564).

Currently, the NRC is considering revisions to this criteria for Identifying Materials Licensees for Discussion at the AARM. A draft revised criterion found in the **SUPPLEMENTARY INFORMATION** below provides an additional criterion to address licensees previously discussed at the AARM. The reason this additional criterion has been added is to allow NRC's senior management to address why the previously identified issues are not being resolved. The NRC is seeking public comment on this revised criterion.

DATES: Please submit comments regarding the proposed criteria, by October 25, 2010. Comments received after this date will be considered if practical to do so, but the NRC staff is able to ensure consideration only for those comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0294 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0294. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy Bladey, Chief, Rules, Announcements and Directives Branch (RADB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The Proposed Criteria for Identifying Materials Licensees for Discussion at the AARM is also available electronically under ADAMS Accession Number ML101900346.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2010–0294.

FOR FURTHER INFORMATION CONTACT: Duane White by telephone at 301–415–6272, E-mail: *Duane.White@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

In 2002, NRC developed a process for providing information to the Commission on significant nuclear materials issues and adverse licensee performance. This process was discussed in SECY–02–0216, "Proposed Process for Providing Information on Significant Nuclear Materials Issues and Adverse Licensee Performance," dated December 11, 2002. As part of this process, the staff developed criteria to determine nuclear material licensees with significant performance problems that would be discussed at the AARM. In 2008, the NRC revised the criteria to provide additional clarification regarding the criteria requirements and to incorporate NRC's current policy and procedures.

Discussion

NRC is preparing to revise the current criteria used to determine material licensees that will be discussed at the AARM. The agency currently identifies material licensees, including fuel cycle and Agreement State licensees, for AARM discussion based on operating performance, inspection results, and judgment of the severity of problems of safety performance. Although the revised AARM criteria will continue to be based upon the same principles as the existing criteria, the staff is proposing to include one additional element (i.e., criterion). This criterion focuses on those licensees previously discussed at the AARM who did not address or were ineffective in correcting their underlying issues.

Current Criteria for Determining Materials Licensees for the AARM

The current criteria for determining materials licensees for the AARM, as described in Enclosure 2 of SECY–08–0135, is as follows: (1) *Strategic Plan*—Licensee has an event that results in the failure to meet a strategic outcome for safety and security in the NRC Strategic Plan (NUREG–1614); (2) *Significant Issue or Event*—Licensee has an issue or event that results in an abnormal occurrence report to Congress (per NRC Management Directive 8.1), or a severity level I or II violation, as described in the NRC Enforcement Policy (including equivalent violations dispositioned by Alternative Dispute Resolution), or a level 3 or higher International Nuclear

Event Scale Report to the International Atomic Energy Agency (per NRC Management Directive 5.12), and there are unique or unusual aspects of the licensee's performance that warrant additional NRC oversight (e.g., a significant event, which requires an incident investigation team (IIT) or augmented inspection team (AIT)); or (3) *Performance Trend*—Licensee has multiple and/or repetitive significant program issues identified over more than one inspection, or inspection period, and the issues are supported by severity level I, II, or III violation, as described in the NRC Enforcement Policy (including equivalent violations dispositioned by Alternative Dispute Resolution). And, there are unique or unusual aspects of the licensee's performance that warrant additional NRC oversight (*e.g.,* oversight panel formed for order implementation).

Proposed Criteria for Determining Materials Licensees for the AARM

The NRC is proposing the following revision to the existing criteria for determining materials licensees with significant performance issues: (1) *Strategic Plan*—Licensee has an event that results in the failure to meet a strategic outcome for safety and security in the NRC Strategic Plan (NUREG–1614); (2) *Significant Issue or Event*—Licensee has an issue or event that results in an abnormal occurrence report to Congress (per NRC Management Directive 8.1), or a severity level I or II violation, as described in the NRC Enforcement Policy (including equivalent violations dispositioned by Alternative Dispute Resolution), or a level 3 or higher International Nuclear Event Scale Report to the International Atomic Energy Agency (per NRC Management Directive 5.12), and there are unique or unusual aspects of the licensee's performance that warrant additional NRC oversight (*e.g.,* a significant event, which requires an IIT or AIT); or (3) *Performance Trend*—Licensee has multiple and/or repetitive significant program issues identified over more than one inspection, or inspection period, and the issues are supported by severity level I, II, or III violation, as described in the NRC Enforcement Policy (including equivalent violations dispositioned by Alternative Dispute Resolution). And, there are unique or unusual aspects of the licensee's performance that warrant additional NRC oversight (*e.g.,* oversight panel formed for order implementation); or (4) *Identified for Discussion at Previous AARM*—Licensee corrective actions did not address or were ineffective in correcting the underlying issues that were previously discussed at the AARM.

You can find NRC's strategic plan (NUREG–1614) and the referenced management directives and enforcement policy on NRC's public document collections Web page at *http://www.nrc.gov/reading-rm/doc-collections/.*

Dated at Rockville, Maryland, this 25th day of August 2010.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Deputy Director, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2010–22481 Filed 9–8–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0288]

Draft Regulatory Guide, DG–1247, "Design-Basis Hurricane and Hurricane Missiles for Nuclear Power Plants" and Supporting Technical Basis Documents NUREG/CR 7004 and 7005

DG–1247 is a proposed new regulatory guide. Issuance and Availability; Correction and Comment Period Extension:

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance; correction and comment period extension.

SUMMARY: On August 31, 2010 (75 FR 53352), the U.S. Nuclear Regulatory Commission (NRC) published a notice of issuance and availability of Draft Regulatory Guide (DG)—1247, "Design-Basis Hurricane and Hurricane Missiles for Nuclear Power Plants." This **Federal Register** Notice did not provide all the information regarding the supporting technical basis documents NUREG/CR 7004 and 7005. Due to this correction the comment period has been extended to November 5, 2010.

FOR FURTHER INFORMATION CONTACT: Robert G. Carpenter, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 251–7483, or e-mail *Robert.Carpenter@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's "Regulatory Guide" series and the supporting technical basis documents, NUREG/CR 7004 and 7005. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, "Design-Basis Hurricane and Hurricane Missiles for Nuclear Power Plants," is temporarily identified by its task number, DG–1247, which should be mentioned in all related correspondence. DG–1247 is a proposed new regulatory guide.

This guide describes a method that the NRC staff considers acceptable to support reviews of applications that the agency expects to receive for new nuclear reactor construction permits or operating licenses under 10 CFR Part 50; design certifications under 10 CFR Part 52, "Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Plants" (Ref. 9); and combined licenses under 10 CFR Part 52 that do not reference a standard design. Specifically, this regulatory guide provides new guidance that the staff of the NRC considers acceptable for use in selecting the design-basis hurricane windspeeds and hurricane-generated missiles that a new nuclear power plant should be designed to withstand to prevent undue risk to the health and safety of the public. This guidance applies to the contiguous United States but does not address the determination of the design-basis hurricane and hurricane missiles for sites located along the Pacific coast or in Alaska, Hawaii, or Puerto Rico; the NRC will evaluate such determinations on a case-by-case basis. This guide also does not identify the specific structures, systems, and components that should be designed to withstand the effects of the design-basis hurricane or should be protected from hurricane-generated missiles and remain functional. Nor does this guide address other externally generated hazards, such as aviation crashes, nearby accidental explosions resulting in blast overpressure levels and explosion-borne debris and missiles, and turbine missiles. NUREG/CR 7004 is the technical basis for regulatory guidance on design-basis hurricane-borne missile speeds and NUREG/CR 7005 is the technical basis for regulatory guidance on design-basis hurricane wind speeds for new nuclear power plants.

II. Further Information

Nuclear power plants must be designed so that they remain in a safe condition under extreme meteorological events, including those that could result in the most extreme wind events (tornadoes and hurricanes) that could reasonably be predicted to occur at the site. Initially, the NRC solely considered such conditions for tornadoes in Regulatory Guide (RG) 1.76, "Design-Basis Tornado for Nuclear Power Plants," issued April 1974. The design-basis tornado windspeeds were chosen so that the probability that a tornado exceeding the design basis would occur was on the order of 10^{-7} per year per nuclear power plant. In March 2007, the NRC issued Revision 1 to RG 1.76, "Design-Basis Tornado and Tornado Missiles for Nuclear Power Plants." Revision 1 to RG 1.76 relied on the Enhanced Fujita Scale which was implemented by the National Weather Service in February 2007. The Enhanced Fujita Scale is a revised assessment relating tornado damage to windspeed which resulted in a decrease in design-basis tornado windspeed criteria in Revision 1 to RG 1.76.

Since design-basis tornado windspeeds were decreased as a result of the analysis performed to update RG 1.76, it was no longer clear that the revised tornado design-basis windspeeds would bound design-basis hurricane windspeeds in all areas of the United States. This prompted an investigation into extreme wind gusts during hurricanes and their relation to design-basis hurricane windspeeds. The NRC commissioned a report, NUREG/CR 7005, that considers peak-gust windspeeds and estimates maximum hurricane windspeeds for hurricanes that originate in the Atlantic and make landfall along the Atlantic and Gulf coasts of the contiguous United States. The NRC staff has determined that the design-basis hurricane windspeeds should correspond to the exceedance frequency of 10^{-7} per year, calculated as a best estimate. This is the same exceedance frequency used to establish the design-basis tornado parameters in Revision 1 to RG 1.76. This exceedance frequency is also consistent with the Standard Review Plan (NUREG–0800) Section 2.2.3 (Evaluation of Potential Accidents) criterion for identifying design-basis events involving hazardous materials or activities on site and in the vicinity of a proposed site.

To ensure the safety of new nuclear power plants in the event of a hurricane strike, NRC regulations require that a nuclear power plant design consider the impact of hurricane-generated missiles, in addition to the direct action of the hurricane wind. Hurricanes are capable of generating missiles from objects lying within the path of the hurricane wind and from debris of nearby damaged structures. To evaluate the resistance of barriers to penetration and gross failure, the hurricane missile velocities must also be defined. The NRC commissioned a report, NUREG/CR 7004, on design-basis hurricane-borne missile velocities. This report describes the method used to calculate velocities associated with several types of missiles considered for different hurricane windspeeds. The selected design-basis hurricane missile spectrum for nuclear power plants is the same as the design-basis tornado missile spectrum presented in RG 1.76. This spectrum includes (1) a massive high-kinetic-energy missile that deforms on impact (an automobile), (2) a rigid missile that tests penetration resistance (a pipe), and (3) a small rigid missile of a size sufficient to pass through any opening in protective barriers (a solid steel sphere).

The hurricane missile analyses presented in NUREG/CR 7004 are based on missile aerodynamic and initial condition assumptions that are similar to those used for the analyses of tornado-borne missile velocities adopted for Revision 1 to RG 1.76. However, the assumed hurricane wind field differs from the assumed tornado wind field in that the hurricane wind field does not change spatially during the missile's flight time but does vary with height above the ground. Because the size of the hurricane zone with the highest winds is large relative to the size of the missile trajectory, the hurricane missile is subjected to the highest windspeeds throughout its trajectory. In contrast, the tornado wind field is smaller, so the tornado missile is subject to the strongest winds only at the beginning of its flight. This results in the same missile having a higher maximum velocity in a hurricane wind field than in a tornado wind field with the same maximum (3-second gust) windspeed. For example, the massive high-kinetic-energy tornado missile (a 1810 kg (4000 lb) automobile) in RG 1.76 is assigned a velocity of 41 m/s (92 mph) in tornado intensity Region I which has a design-basis tornado windspeed of 103 m/s (230 mph). The same missile is assigned a velocity of 68 m/s (152 mph) in a hurricane wind field with the same design-basis windspeed of 103 m/s (230 mph). The 1810 kg automobile missile will have a kinetic energy of 1.5×10^{6} joules in the tornado wind field versus 4.2×10^{6} joules in the hurricane wind field.

The NRC staff would like to point out that the missile speed analyses for both the tornado and hurricane massive high-kinetic-energy missile (the 1810 kg automobile) assume the missile starts its motion with zero initial velocity from an elevation of 40 meters above ground. Forces tending to increase the elevation of the hurricane missile with respect to the ground level (e.g., updrafts) are assumed to be negligible. However, rooftop mechanical (*e.g.,* HVAC) equipment that is kept in place only by gravity connections is a source of heavy deformable debris when displaced during extreme-wind events. Buildings not designed for the hurricane winds can also continue to break up during the buildup of hurricane winds. Failures progress from the exterior building elements inward to the structural members (*e.g.,* trusses, masonry units, beams, and columns). According to Section 7.1.1 (Debris Potential at Safe Room Sites) of the Second Edition (August 2008) of FEMA 361 (Design and Construction Guidance for Community Safe Rooms), the literature on hurricanes as well as tornadoes contains numerous examples of large structural members that have been transported by winds for significant distances by the wind field when a portion of exterior sheathing remains connected and provides an aerodynamic sail area on which the wind can act. An automobile hurricane missile with an initial elevation of 40 meters above ground could be considered a surrogate for such equipment and structures which can be found throughout a nuclear power plant site.

Applications for new power plants will be expected to show that their applicable structures can independently withstand both the total design-basis tornado load and the total design-basis hurricane load as extreme environmental conditions. The staff plans to eventually revise the corresponding sections the Standard Review Plan to indicate that the design-basis hurricane windspeeds and hurricane-generated missiles specified in DG–1247 should be considered as loads to be sustained during extreme environmental conditions.

The NRC staff is soliciting comments on DG–1247 and NUREG/CR 7004 and 7005. Comments may be accompanied by relevant information or supporting data and should mention DG–1247 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

DATES: The comment period closes on November 5, 2010.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0288 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0288. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy Bladey, Chief, Rules, Announcements and Directives Branch (RAD), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RAD at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* DG–1247 is available electronically under ADAMS Accession Number ML100480890. In addition, electronic copies of DG–1247 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.* The regulatory analysis may be found in ADAMS under Accession No. ML102310249.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 1st day of September 2010.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–22490 Filed 9–8–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275–LR and 50–323–LR; ASLBP No. 10–890–01–LR–BD01]

In the Matter of Pacific Gas & Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2); Notice of Hearing (Application for License Renewal)

September 1, 2010.

Atomic Safety and Licensing Board

Before Administrative Judges: Alex S. Karlin, Chairman, Nicholas G. Trikouros, Dr. Paul B. Abramson.

This proceeding concerns the November 23, 2009, application of Pacific Gas & Electric Company (PG&E) to renew Operating License Nos. DPR–80 and DPR–82 for the Diablo Canyon Nuclear Power Plant, Units 1 and 2, near San Luis Obispo, California. PG&E seeks to extend these licenses for an additional twenty years beyond the current expiration dates of November 2, 2024 and August 26, 2025.

On January 21, 2010, the Nuclear Regulatory Commission (NRC) published a notice of opportunity to request a hearing concerning the PG&E license renewal application. 75 FR 3493 (Jan. 21, 2010). On March 22, 2010, the San Luis Obispo Mothers for Peace (SLOMFP), a local public interest group, filed a request for hearing and asserted five contentions challenging various aspects of PG&E's application. On April 8, 2010, this Atomic Safety and Licensing Board was established to conduct this adjudication. *See* 75 FR 20,010 (Apr. 16, 2010). On May 26, 2010, the Board heard oral argument from SLOMFP, PG&E, and the NRC Staff in San Luis Obispo, California, relating to the admissibility of the proposed contentions. On August 4, 2010, the Board issued a memorandum and order granting SLOMFP's request for a hearing and admitting four of its contentions. LBP–10–15, 72 NRC __ (slip op.) (Aug. 4, 2010).

Pursuant to 10 CFR 2.105(e)(2), please take notice that the Atomic Safety and Licensing Board will conduct an evidentiary hearing on SLOMFP's challenge to PG&E's application to renew its licenses. The matters of fact and law to be considered at the hearing are the contentions that have been duly admitted. As of this time, the four admitted contentions are as follows:

Contention EC–1: PG&E's Severe Accident Mitigation Alternatives ("SAMA") analysis fails to satisfy 40 CFR 1502.22 because it fails to consider information regarding the Shoreline fault that is necessary for an understanding of seismic risks to the Diablo Canyon nuclear power plant. Further, that omission is not justified by PG&E because it has failed to demonstrate that the information is too costly to obtain. As a result of the foregoing failures, PG&E's SAMA analysis does not satisfy the requirements of the National Environmental Policy Act ("NEPA") for consideration of alternatives or NRC implementing regulation 10 CFR 51.53(c)(3)(ii)(L).

Contention EC–2: PG&E's Environmental Report is inadequate to satisfy NEPA because it does not address the airborne environmental impacts of a spent fuel pool accident caused by an earthquake adversely affecting DCNPP.[1]

Contention EC–4: The Environmental Report fails to satisfy the National Environmental Policy Act (NEPA) because it does not discuss the cost-effectiveness of measures to mitigate the environmental impacts of an attack on the Diablo Canyon reactor during the license renewal term.[2]

Contention TC–1: The applicant, Pacific Gas & Electric Company (PG&E), has failed to satisfy 10 CFR 54.29's requirement to demonstrate a reasonable assurance that it can and will "manage the effects of aging" in accordance with the current licensing basis. PG&E has failed to show how it will address and rectify an ongoing adverse trend with respect to recognition, understanding, and management of the Diablo Canyon Nuclear Power Plant's design/licensing basis which undermines PG&E's ability to demonstrate that it will adequately manage aging in accordance with this same licensing basis as required by 10 CFR 54.29.

[1] Although the Board has determined that Contention EC–2 otherwise meets the admissibility criteria of 10 CFR 2.309(f)(1), no evidentiary hearing will be held on this contention *unless* the Commission rules that SLOMFP's request for waiver of certain key regulations is warranted under 10 CFR 2.335. That waiver request is now pending before the Commission.

[2] Pursuant to 10 CFR 2.323(f)(1) the Board referred Contention EC–4 to the Commission.

The authority under which the evidentiary hearing will be held is the Atomic Energy Act, 42 U.S.C. 2231, 2239, and 2241. Unless otherwise indicated, the evidentiary hearing on the four admitted contentions will be conducted pursuant to the NRC hearing procedures set forth in 10 CFR Part 2, Subpart L, 10 CFR 2.1200–2.1213. During the course of this adjudicatory proceeding, the Board may also hear oral arguments as provided in 10 CFR 2.331 and may hold various prehearing conferences pursuant to 10 CFR 2.329. These may be held via teleconference, video-conference, and/or in person. Except where certain legally privileged documents or testimony are being heard, all of the proceedings will be open to the public. *See* 10 CFR 2.328. Prior to the evidentiary hearing and to each oral argument or prehearing conference, the Board will issue an order, notice, and/or memorandum that specifies the date, time and place of such event. A copy of any such order, notice and/or memorandum will be made available to the public on the Diablo Canyon "Board Orders" section of the NRC Electronic Hearing Docket found at *http://ehd1.nrc.gov/EHD/.* The public should be aware that new documents are regularly added to this Web site as the parties file pleadings and the Board issues orders or notices. Therefore this Web site should be monitored regularly by interested members of the public. In addition, hard copies of Board orders, notices and/or memoranda are also available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Finally, the public is advised that the Secretary of the Commission will give notice of a hearing (and of other events in the proceeding) to any member of the public who requests it.[3] *See* 10 CFR 2.315(b).

As provided in 10 CFR 2.315(a), any person who is not a party to the proceeding may, in the discretion of this Board, be permitted to submit a written limited appearance statement. Such statements should focus on the admitted contentions. Limited appearance statements do not constitute legal evidence, but they are placed in the docket for the hearing. The limited appearance statement is an opportunity for a member of the public to inform the Board and/or the parties of his or her concerns, issues, and questions and suggestions relating to the matters at issue in the adjudicatory proceeding, *i.e.,* relating to the admitted contentions.

A written limited appearance statement should be sent to the Office of the Secretary using one of the following methods: (1) Mail to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, with a copy to Alex S. Karlin, the Chairman of this Licensing Board at Mail Stop T–3F23, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; (2) e-mail to the Office of the Secretary at *hearing.docket@nrc.gov,* with a copy to the Board Chairman c/o Ashley Prange at *ashley.prange@nrc.gov;* or (3) fax to the Office of the Secretary at 301–415–1101 (facsimile verification number: 301–415–1966), with a copy to the Board Chairman at 301–415–5599 (facsimile verification number: 301–415–7550).

The Board may, at a later time, schedule a meeting where members of the public may provide oral limited appearance statements. If any such session is scheduled, the Board will issue a prior order or notice, which will be posted in the Diablo Canyon Board Orders section of the Electronic Hearing Docket webpage at *http://ehd1.nrc.gov/EHD/.*

The time and date of the evidentiary hearing herein cannot be set at this time. This is because the law specifies that, in scheduling the evidentiary hearing, the Board must "take into consideration the NRC staff's projected schedule for completion of its safety and environmental evaluations to ensure that the hearing schedule does not adversely impact the staff's ability to complete its reviews in a timely manner." 10 CFR 2.332(d). At the moment, the NRC Staff estimates that its Final Safety Evaluation Report will be considered by the NRC Advisory Committee on Reactor Safeguards in July 2011 and that the Staff will issue the Final Supplemental Environmental Impact Statement in August 2011. But the Staff's schedule is subject to change. The evidentiary hearing herein concerning environmental matters is not likely to commence until 3 or 4 months after August 2011. *See* 10 CFR 2.332(d).

Documents relating to this adjudicatory proceeding are available for public inspection in the NRC's Electronic Hearing Docket at *http://ehd1.nrc.gov/EHD/.* Those documents, and some documents relating to the Staff's review of this license application, are also available from the Commission's Public Document Room or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail at *PDR.Resource@nrc.gov.*

It is so *ordered.*

Dated: September 1, 2010.

For the Atomic Safety and Licensing Board.

Alex S. Karlin,

Chairman, Administrative Judge, Rockville, Maryland.

[FR Doc. 2010–22478 Filed 9–8–10; 8:45 am]

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[3] Any such request may be directed to the Secretary of the Commission by electronic mail at *hearing.docket@nrc.gov* or by telephone at 301–415–1677.

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0295]

Withdrawal of Regulatory Guides 1.38, 1.94, and 1.116

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of three Regulatory Guides: Regulatory Guide 1.38, "Quality Assurance Requirements for Packaging, Shipping, Receiving, Storage, and Handling of Items for a Water-Cooled Nuclear Power Plant," dated May 1977; Regulatory Guide 1.94, "Quality Assurance Requirements for Installation, Inspection, and Testing of Structural Concrete, and Structural Steel During the Construction Phase of Nuclear Power Plants," dated April 1976; and Regulatory Guide 1.116, "Quality Assurance Requirements for Installation, Inspection, and Testing of Mechanical Equipment and Systems," dated May 1977.

FOR FURTHER INFORMATION CONTACT: Mark P. Orr, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–251–7495 or e-mail *Mark.Orr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Guide 1.38, "Quality Assurance Requirements for Packaging, Shipping, Receiving, Storage, and Handling of Items for Water-Cooled Nuclear Power Plants," dated May 1977; Regulatory Guide 1.94, "Quality

Assurance Requirements for Installation, Inspection, and Testing of Structural Concrete, and Structural Steel During the Construction Phase of Nuclear Power Plants," dated April 1976; and Regulatory Guide 1.116, "Quality Assurance Requirements for Installation, Inspection, and Testing of Mechanical Equipment and Systems," dated May 1977.

Regulatory Guide 1.38 endorses the American Society of Mechanical Engineers (ASME) American National Standard Institute (ANSI) Standard N45.2.2—1972, "Packaging, Shipping, Receiving, Storage and Handling of Items for Nuclear Power Plants (During the Construction Phase)," dated December 20, 1972.

Regulatory Guide 1.94 endorses the ASME/ANSI Standard N45.2.5—1974, "Supplementary Quality Assurance Requirements for Installation, Inspection, and Testing of Structural Concrete and Structural Steel During the Construction Phase of Nuclear Power Plants," dated July 8, 1974 and American Concrete Institute (ACI) standard 309–72, "Recommended Practices for Consolidation of Concrete," dated October 1, 1972.

Regulatory Guide 1.116 endorses ASME/ANSI Standard N45.2—1975, "Supplementary Quality Assurance Requirements for Installation, Inspection and Testing of Mechanical Equipment and Systems for the Construction Phase of Nuclear Power Plants," dated May 20, 1975; U.S. Atomic Energy Commission (USAEC) Technical Reports WASH 1309, "Guidance on Quality Assurance Requirements During the Construction Phase of Nuclear Power Plants," dated May 10, 1974; and WASH–1284, "Guidance on Quality Assurance Requirements During the Operations Phase of Nuclear Power Plants," dated October 26, 1973.

The standards endorsed by Regulatory Guides 1.38, 1.94, and 1.116 have been superseded and replaced by the ASME/ANSI Standard NQA–1, "Quality Assurance Requirements for Nuclear Facility Applications," which is endorsed by Title 10 of the Code of Federal Regulations (10 CFR) Subsection 50.55a, "Codes and Standards," (10 CFR 50.55a).

The quality assurance requirements in 10 CFR 50.55a paragraphs (b)(1)(iv), "Quality Assurance," (b)(2)(x), "Quality Assurance," and (b)(2)(xxvii)(3)(i), "Quality Assurance" all state that the requirements in specific editions and addenda of NQA–1 are an acceptable method of demonstrating compliance with the quality assurance requirements of Appendix B to 10 CFR part 50, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants." In those cases where the requirements of the licensee's Appendix B quality assurance program are more stringent than those contained in NQA–1, the licensee's quality assurance program applies.

Additional quality assurance guidance for NRC staff, licensees, and applicants may be found in NUREG–0800, "Standard Review Plan," Chapter 17, "Quality Assurance" as well as Regulatory Guide 1.28, "Quality Assurance Program Criteria (Design and Construction)" which was revised and issued in June 2010 to endorse (with additions and modifications) the Part I and Part II requirements of NQA–1–2008 and the NQA 1a–2009 Addenda for the implementation of a QA program during the design and construction phases of nuclear power plants and fuel reprocessing facilities.

II. Further Information

The withdrawal of Regulatory Guides 1.38, 1.94, and 1.116 does not alter any prior or existing licensing commitments based on their use. The guidance provided in these regulatory guides is no longer necessary. Regulatory guides may be withdrawn when their guidance no longer provides useful information, or is superseded by technological, congressional actions, or other events.

Guides are revised for a variety of reasons and the withdrawal of a Regulatory Guide should be thought of as the final revision of the guide. Although a regulatory guide is withdrawn, current licensees may continue to use it, and withdrawal does not affect any existing licenses or agreements. Withdrawal means that the guide should not be used for future NRC licensing activities. Changes to existing licenses would be accomplished using other regulatory products.

Regulatory guides are available for inspection or downloading through the NRC's public Web site under "Regulatory Guides" in the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections.* Regulatory guides are also available for inspection at the NRC's Public Document Room (PDR), Room O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is US NRC PDR, Washington, DC 20555–0001. You can reach the staff by telephone at 301–415–4737 or 800–397–4209, by fax at 301–415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 31st day of August 2010.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–22492 Filed 9–8–10; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Annual Reporting and Disclosure

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of the collection of information for annual reporting and disclosure under 29 CFR part 2520 (OMB control number 1212–0057, expires September 30, 2010), without change. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments must be submitted by October 12, 2010.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to 202–395–6974.

Copies of the collection of information and PBGC's request may also be obtained without charge by writing to the Disclosure Division, Office of General Counsel, at the above address or by visiting the Disclosure Division or calling 202–326–4040 during normal business hours. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Grace Kraemer, Staff Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

The Employee Retirement Income Security Act of 1974 (ERISA) contains

three separate sets of provisions—in Title I (Labor provisions), Title II (Internal Revenue Code provisions), and Title IV PBGC provisions)—requiring administrators of employee benefit pension and welfare plans (collectively referred to as employee benefit plans) to file returns or reports annually with the federal government.

Since enactment of ERISA, PBGC, the Department of Labor (DOL), and the Internal Revenue Service (IRS) (collectively, the Agencies), have worked together (under DOL's leadership) to produce the Form 5500 Annual Return/Report, through which the regulated public can satisfy the combined reporting/filing requirements applicable to employee benefit plans.

On November 16, 2007, the Agencies adopted revisions to the Form 5500 Annual Return/Report, including the establishment of a new Form 5500–SF (Short Form 5500) for certain small plans, in order to update and streamline the annual reporting process in conjunction with establishing a wholly electronic processing system for the receipt of the Form 5500 Annual Return/Reports and conform the forms to the provisions of the Pension Protection Act of 2006 (PPA). A final rule, which was published contemporaneously with the revisions, amended DOL's electronic filing regulation at 29 CFR 2520.104a–2 to provide that the electronic filing requirement is applicable only for plan years beginning on or after January 1, 2009.

On July 17, 2007, PBGC submitted a regular change request to OMB for approval of a three-year renewal period for the information collection requests (ICRs) contained under OMB Control Number 1212–0057. At that time, PBGC and OMB agreed that PBGC would file a non-material, non-substantive change request for the 2008 Form 5500 and Instructions and the 2008 Form 5500–SF and Instructions (Forms and Instructions) (and in 2009 for the 2009 Forms and Instructions) as long as no additional program changes were made. OMB approved the three-year renewal on September 24, 2007.

On November 10, 2008, PBGC submitted a non-material, non-substantive change request with updated cost and hour burden estimates for the 2008 Forms and Instructions, which were approved by OMB on November 10, 2008.

On July 25, 2009, PBGC submitted a non-material, non-substantive change request with updated cost and hour burden estimates for the 2009 and 2010 Forms and Instructions (without the Instructions for the 2010 Schedules SB and MB), which were approved on November 6, 2009 with the understanding that these Instructions would be submitted to OMB when they are available.

On April 16, 2010, PBGC submitted a non-material, non-substantive change request for the 2009 and 2010 Forms and Instructions, to reflect revisions to the Instructions for Schedules SB and MB. This ICR was approved by OMB on April 26, 2010.

On May 20, 2010, PBGC submitted a non-material, non-substantive change request for guidance on the 2009 Instructions for Schedule R (Retirement Plan Information). This ICR was approved by OMB on June 6, 2010.

Thus, OMB has approved PBGCs annual reporting and disclosure collection of information (2008–2010 Forms and Instructions) under control number 1212–0057 through September 30, 2010. PBGC is requesting that OMB extend approval of this collection of information for three years, without change. 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.

PBGC estimates that it will receive 30,300 Form 5500 and Form 5500–SF filings per year under this collection of information. PBGC further estimates that the total annual burden of this collection of information is 1,200 hours and $1,250,000.

Issued in Washington, DC, this 3rd day of September, 2010.

Catherine B. Klion,

Manager,Regulatory and Policy Division,Legislative and Regulatory Department,Pension Benefit Guaranty Corporation.

[FR Doc. 2010–22493 Filed 9–8–10; 8:45 am]

BILLING CODE 7709–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12283 and #12284]

Missouri Disaster Number MO–00041

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Missouri (FEMA–1934–DR), dated 08/17/2010.

Incident: Severe storms, flooding, and tornadoes.

Incident Period: 06/12/2010 through 07/31/2010.

DATES: *Effective Date:* 08/26/2010.

Physical Loan Application Deadline Date: 10/18/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 05/17/2011.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Missouri, dated 08/17/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Knox, Linn, Marion, Monroe, Pike, Ralls, Shelby.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–22298 Filed 9–8–10; 8:45 am]

BILLING CODE 8025–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed 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 237; SEC File No. 270–465; OMB Control No. 3235–0528.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "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 ("OMB") for extension and approval.

In Canada, as in the United States, individuals can invest a portion of their earnings in tax-deferred retirement savings accounts ("Canadian retirement accounts"). These accounts, which operate in a manner similar to individual retirement accounts in the United States, encourage retirement

savings by permitting savings on a tax-deferred basis. Individuals who establish Canadian retirement accounts while living and working in Canada and who later move to the United States ("Canadian-U.S. Participants" or "participants") often continue to hold their retirement assets in their Canadian retirement accounts rather than prematurely withdrawing (or "cashing out") those assets, which would result in immediate taxation in Canada.

Once in the United States, however, these participants historically have been unable to manage their Canadian retirement account investments. Most securities that are "qualified investments" for Canadian retirement accounts are not registered under the U.S. securities laws. Those securities, therefore, generally cannot be publicly offered and sold in the United States without violating the registration requirement of the Securities Act of 1933 ("Securities Act").[1] As a result of this registration requirement, Canadian-U.S. Participants previously were not able to purchase or exchange securities for their Canadian retirement accounts as needed to meet their changing investment goals or income needs.

The Commission issued a rulemaking in 2000 that enabled Canadian-U.S. Participants to manage the assets in their Canadian retirement accounts by providing relief from the U.S. registration requirements for offers of securities of foreign issuers to Canadian-U.S. Participants and sales to Canadian retirement accounts.[2] Rule 237 under the Securities Act[3] permits securities of foreign issuers, including securities of foreign funds, to be offered to Canadian-U.S. Participants and sold to their Canadian retirement accounts without being registered under the Securities Act.

Rule 237 requires written offering documents for securities offered and sold in reliance on the rule to disclose prominently that the securities are not registered with the Commission and are exempt from registration under the U.S. securities laws. The burden under the rule associated with adding this disclosure to written offering documents is minimal and is non-recurring. The foreign issuer, underwriter, or broker-dealer can redraft an existing prospectus or other written offering material to add this disclosure statement, or may draft a sticker or supplement containing this disclosure to be added to existing offering materials. In either case, based on discussions with representatives of the Canadian fund industry, the staff estimates that it would take an average of 10 minutes per document to draft the requisite disclosure statement.

The Commission understands that there are approximately 3811 Canadian issuers other than funds that may rely on rule 237 to make an initial public offering of their securities to Canadian-U.S. Participants.[4] The staff estimates that in any given year approximately 38 (or 1 percent) of those issuers are likely to rely on rule 237 to make a public offering of their securities to participants, and that each of those 38 issuers, on average, distributes 3 different written offering documents concerning those securities, for a total of 114 offering documents.

The staff therefore estimates that during each year that rule 237 is in effect, approximately 38 respondents[5] would be required to make 114 responses by adding the new disclosure statements to approximately 114 written offering documents. Thus, the staff estimates that the total annual burden associated with the rule 237 disclosure requirement would be approximately 19 hours (114 offering documents × 10 minutes per document). The total annual cost of burden hours is estimated to be $6004 (19 hours × $316 per hour of attorney time).[6]

In addition, issuers from foreign countries other than Canada could rely on rule 237 to offer securities to Canadian-U.S. Participants and sell securities to their accounts without becoming subject to the registration requirements of the Securities Act. However, the staff believes that the number of issuers from other countries that rely on rule 237, and that therefore are required to comply with the offering document disclosure requirements, is negligible.

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens 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. Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: September 1, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22451 Filed 9–8–10; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 77. In addition, the offering and selling of securities of investment companies ("funds") that are not registered pursuant to the Investment Company Act of 1940 ("Investment Company Act") is generally prohibited by U.S. securities laws. 15 U.S.C. 80a.

[2] *See* Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts, Release Nos. 33–7860, 34–42905, IC–24491 (June 7, 2000) [65 FR 37672 (June 15, 2000)]. This rulemaking also included new rule 7d–2 under the Investment Company Act, permitting foreign funds to offer securities to Canadian-U.S. Participants and sell securities to Canadian retirement accounts without registering as investment companies under the Investment Company Act. 17 CFR 270.7d–2.

[3] 17 CFR 230.237.

[4] This estimate is based on the following calculation: 3700 equity issuers + 111 bond issuers = 3811 total issuers. *See* World Federation of Exchanges, Number of Listed Issuers, *available at http://www.world-exchanges.org/statistics/annual/2009* (providing numbers of equity and fixed-income issuers on Canada's Toronto Stock Exchange in 2009).

[5] This estimate of respondents only includes foreign issuers. The number of respondents would be greater if foreign underwriters or broker-dealers draft stickers or supplements to add the required disclosure to existing offering documents.

[6] The Commission's estimate concerning the wage rate for attorney time is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA"). The $316 per hour figure for an attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2009,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62815; File No. SR–ISE–2010–86]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rules 413 and 2006

September 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 23, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "SEC" or the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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 ISE Rules 413 (Exemptions from Position Limits) and 2006 (Exemptions from Position Limits) to enable Exchange members to rely on position limit exemptions granted by other options exchanges. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com*, at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov*, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend ISE Rules 413 and 2006 to enable Exchange members to rely on position limit exemptions granted by other options exchanges under specified circumstances. This proposed rule change is based on similar rules of The NASDAQ Stock Market LLC ("Nasdaq"), NASDAQ OMX PHLX ("Phlx") and NYSE Arca.[5]

ISE Rule 413 governs position limit exemptions for equity options and ISE Rule 2006 governs position limit exemptions for index options. These rules include a number of position limit exemptions available to Exchange members. Rules 413 and 2006, however, do not have a provision that recognizes position limit exemptions that are granted to Exchange members by other option exchanges, as provided for in NOM, Phlx and NYSE Arca rules. In light of the desirability to have similar position limit standards, the Exchange proposes to add a similar an exemption to both Rule 413 and Rule 2006.

Specifically, the Exchange proposes to add a new subsection to both ISE Rule 413 and Rule 2006 to address position limit exemptions granted by other options exchanges. This proposed addition will provide that an Exchange member may rely upon any valid exemption from applicable position limits that has been granted by another options exchange for any options contract traded on ISE, provided that such Exchange member provides the Exchange either with a copy of any written exemption issued by another options exchange or with a written description of any exemption issued by another options exchange that is not in writing, where such description contains sufficient detail for Exchange to verify the validity of that exemption with the issuing options exchange. In addition, such Exchange member must fulfill all conditions precedent for such exemption and comply at all times with the requirements of such exemption with respect to trading on the Exchange.

The Exchange notes that position limits tend to be similar across options exchanges, which is desirable in light of cross option exchange membership(s) and multiple listing and trading of similar product(s) on different exchanges. Because Exchange members frequently have membership and/or trading privileges on other options exchanges, it is important that ad hoc position limit exemptions granted by other options exchanges ("exemption grants") are available to Exchange members to the extent that such exemption grants are reduced to writing and verifiable by the Exchange.

These new proposed rules do not give the Exchange the ability to alter the scope of these exemptions but only to recognize the exemption so that the position limit process would be the same across the exchanges.

For example, an Exchange member may go to another options exchange of which it is a member, such as the NYSE Arca or NOM to request a position limit exemption (exemption grant) for option contracts in the SPDRs (SPY). The other exchange provides the exemption grant until expiration in the same month to this particular firm for this particular issue (SPY). Should the same Exchange member want to trade SPY on the ISE to the extent of the exemption grant, the Exchange's proposed rule change would allow it to do so, but only to the extent that the firm provides the Exchange with a copy of the written exemption grant provided by the issuing exchange or, if the exemption is not in writing, to the extent that said Exchange member provides the Exchange with sufficient detail for Exchange regulatory staff to be able to verify the validity of the exemption grant with the issuing options exchange.[6]

The Exchange believes that by adding uniformity and predictability to the position limit process, the proposed rule change should be beneficial to the Exchange members, and their customers. Moreover, the proposed rule change should promote competition by allowing trades across options exchanges that are similar in respect of position limits.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Rules of the Nasdaq Options Market ("NOM") Chapter III, Section 8 and Chapter XIV, Section 8; Phlx 1001 and 1001A; and NYSE Arca 5.17 and 6.8.

[6] Additionally, the Exchange member would have to fulfill all conditions precedent for such exemption grant and comply with the requirements of such exemption with respect to trading on the Exchange.

[7] 15 U.S.C. 78f (b).

[8] 15 U.S.C. 78f (b)(5).

trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by allowing the Exchange to have uniform position limit procedures.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[11] However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing, thereby giving the Exchange a position limit process that can recognize exemptions granted by other exchanges. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will afford Exchange members the benefit of the proposal—the ability to rely on exemptions granted by other exchanges, when appropriately documented—without unnecessary delay. For this reason, the Commission designates the proposed rule change as operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2010–86 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2010–86. This file number should be included on the subject line if e-mail 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 ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2010–86 and should be submitted on or before September 30, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22443 Filed 9–8–10; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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 Exchange has satisfied this requirement.

[12] *Id.*

[13] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62825; File No. SR–NYSEAmex–2010–90]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC To Amend the Exchange Price List

September 1, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 30, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its 2010 Price List for equities to modify the fees it charges for all market at-the-close ("MOC") and limit at-the-close ("LOC") orders executed in the Exchange's closing transaction. For

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

securities with a per share price of $1.00 or more, the fee will increase from $0.0007 per share executed to $0.00085 per share executed. For securities with a per share price below $1.00 per share, the fee will change from (A) the lesser of (i) $0.0007 per share executed and (ii) 0.25% of the total dollar value of the transaction to (B) the lesser of (i) $0.00085 per share executed and (ii) 0.25% of the total dollar value of the transaction. The Exchange also proposes to lower the fee for taking liquidity from the Exchange from $0.0021 per share executed to $0.0013 per share executed for NASDAQ securities with a share price of $1.00 or more that trade on the Exchange pursuant to unlisted trading privileges ("UTP"). The amended pricing will take effect on September 1, 2010. The text of the proposed rule change is available at the Exchange, at *http://www.nyse.com*, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 its 2010 Price List for equities to modify the fees it charges for all MOC and LOC orders executed in the Exchange's closing transaction. For securities with a per share price of $1.00 or more, the fee will increase from $0.0007 per share executed to $0.00085 per share executed. For securities with a per share price below $1.00 per share, the fee will change from (A) the lesser of (i) $0.0007 per share executed and (ii) 0.25% of the total dollar value of the transaction to (B) the lesser of (i) $0.00085 per share executed and (ii) 0.25% of the total dollar value of the transaction. The Exchange notes that The NASDAQ Stock Market LLC ("NASDAQ") recently made a similar filing increasing the fee that it charges for MOC and LOC orders in its closing cross from $0.0007 per share executed to $0.0010 per share executed.[4]

The Exchange also proposes to lower the fee for taking liquidity from the Exchange from $0.0021 per share executed to $0.0013 per share executed for NASDAQ securities with a share price of $1.00 or more that trade on the Exchange pursuant to UTP. This fee reduction for such transactions in NASDAQ securities will apply to all market participants as well as to Designated Market Makers and Supplemental Liquidity Providers. There will be no changes to the rebates for adding liquidity for trades on the Exchange in NASDAQ securities pursuant to UTP.

Finally, because full implementation has now been achieved of the Exchange's recently approved rule changes providing for incorporation of the receipt and execution of odd-lot interest into the round lot market and decommissioning the use of the odd-lot system,[5] the Exchange is taking this opportunity to delete several obsolete references in its 2010 Price List to separate execution pricing for odd lot interest and the odd lot portions of partial round lots.

These changes are intended to be effective immediately for all transactions beginning September 1, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated member organizations will be charged the same amount and access to the Exchange's market is offered on fair and non-discriminatory terms. Further, with respect to the proposed fee change for MOC and LOC orders that are executed in the Exchange's closing transaction, a competing exchange also recently implemented a similar fee change for its market participants, as described above.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[8] of the Act and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2010–90 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–NYSEAmex–2010–90. This file number should be included on the

[4] *See* Securities Exchange Act Release No. 62592 (July 29, 2010), 75 FR 47053 (August 4, 2010) (SR–NASDAQ–2010–095).

[5] *See* Securities Exchange Act Release No. 62578 (July 27, 2010), 75 FR 45185 (August 2, 2010) (SR–NYSEAmex–2010–53).

[6] 15 U.S.C. 78f(b) [sic].

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

subject line if e-mail 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 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the 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–NYSEAmex–2010–90 and should be submitted on or before September 30, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22446 Filed 9–8–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62826; File No. SR–NYSE–2010–63]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Amend the Exchange Price List

September 1, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 30, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its 2010 Price List to modify the fees it charges for all market at-the-close ("MOC") and limit at-the-close ("LOC") orders executed in the NYSE Closing Auction. For stocks with a per share stock price of $1.00 or more, the fee will increase from $0.0007 per share executed to $0.00085 per share executed. For stocks with a per share stock price less than $1.00 per share, the fee will change from (A) the lesser of (i) 0.3% of the total dollar value of the transaction and (ii) $0.0007 per share executed to (B) the lesser of (i) 0.3% of the total dollar value of the transaction and (ii) $0.00085 per share executed. The amended pricing will take effect on September 1, 2010. The text of the proposed rule change is available at the Exchange, at *http://www.nyse.com,* at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 its 2010 Price List to modify the fees it charges for all MOC and LOC orders executed in the NYSE Closing Auction. For stocks with a per share stock price of $1.00 or more, the fee will increase from $0.0007 per share executed to $0.00085 per share executed. For stocks with a per share stock price less than $1.00 per share, the fee will change from (A) the lesser of (i) 0.3% of the total dollar value of the transaction and (ii) $0.0007 per share executed to (B) the lesser of (i) 0.3% of the total dollar value of the transaction and (ii) $0.00085 per share executed. The Exchange notes that The NASDAQ Stock Market LLC recently made a similar filing increasing the fee that it charges for MOC and LOC orders in its closing cross from $0.0007 per share executed to $0.0010 per share executed.[4]

These changes are intended to be effective immediately for all transactions beginning September 1, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[5] in general, and Section 6(b)(4) of the Act,[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated member organizations will be charged the same amount and access to the Exchange's market is offered on fair and non-discriminatory terms. Further, a competing exchange also recently implemented a similar fee change for its market participants, as described above.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [7] of the Act and

[10] 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 No. 62592 (July 29, 2010), 75 FR 47053 (August 4, 2010) (SR–NASDAQ–2010–095).

[5] 15 U.S.C. 78f(b) [sic].

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

subparagraph (f)(2) of Rule 19b–4[8] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2010–63 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–NYSE–2010–63. This file number should be included on the subject line if e-mail 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 website (*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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the 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–NYSE–2010–63 and should be submitted on or before September 30, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22447 Filed 9–8–10; 8:45 am]

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[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62828; File No. SR–FICC–2010–02]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Amend the Rules of the Government Securities Division and the Mortgage-Backed Securities Division To Change the Classification of U.S. Branches or Agencies of Non-U.S. Banks From Foreign to U.S. Members

September 2, 2010.

I. Introduction

On June 24, 2010, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–FICC–2010–02 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change was published for comment in the **Federal Register** on July 19, 2010.[2] No comment letters were received on the proposal. This order approves the proposal.

II. Description

FICC will amend the Rules of its Government Securities Division ("GSD") and Mortgage Backed Securities Division ("MBSD") to classify as U.S. Members those Members of the GSD and MBSD that are U.S. Branches or agencies of non-U.S. Banks ("U.S. Branches"). GSD and MBSD Rules currently classify the membership of such U.S. Branches as "Foreign."

The classification of U.S. Branches as U.S. Members harmonizes FICC's Rules with the other clearing agency subsidiaries of The Depository Trust and Clearing Corporation, The Depository Trust Company ("DTC") and the National Securities Clearing Corporation ("NSCC").[3] FICC also believes the rule change is appropriate because it reflects that U.S. Branches are regulated by a U.S. regulator or a state regulator. This means that the appropriate domestic regulator treats U.S. Branches as U.S. entities for most significant matters, and consequently an insolvency of such a member would be determined by applicable domestic "ring-fence" laws.[4] Under the Rule changes, such members will be treated as domestic members for all purposes under FICC's Rules and Procedures unless FICC states otherwise in its Rules.[5]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act[6] and the rules and regulations thereunder applicable to FICC. In particular, the Commission believes that the amendments FICC is making to its Rules to will provide consistent treatment to all its Members that are regulated by a U.S. or state regulator and that are subject to a domestic insolvency regime are consistent with FICC's obligations under Section 17A(b)(3)(F),[7] which requires, among other things, that the rules of a clearing agency are designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 62478 (July 9, 2010), 75 FR 41908 (July 19, 2010).

[3] DTC and NSCC already classify U.S. branches or agencies of foreign banks as domestic Members. This is reflected in Section 2 of DTC's Policy Statements on the Admission of Participants and in Addendum O of NSCC's Rules titled "Admission of Non-U.S. Entities as Direct NSCC Members."

[4] In the United States, "ring-fencing" refers to the procedure for dealing with branches or agencies of insolvent foreign banks in the United States pursuant to which the federal or state regulator, as applicable, will seize and administer the local assets of an insolvent institution, with a preference for local creditors in a liquidation that is separate from the liquidation of the parent foreign bank as a whole.

[5] Such members will no longer be required to submit annual updates to their foreign legal opinions as currently required by FICC rules for non-U.S. entities unless FICC deems it necessary to address legal risk. Applicants in this category will however continue to be required to submit an initial foreign legal opinion on their home country law with their membership application.

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78q–1(b)(3)(F).

requirements of Section 17A of the Act [8] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–FICC–2010–02) be, and hereby is, approved.[10]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22448 Filed 9–8–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62830; File No. SR–MSRB–2010–07]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Rule G–37, on Political Contributions and Prohibitions on Municipal Securities Business

September 2, 2010.

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 August 25, 2010, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change which consists of an interpretive notice regarding Rule G–37, on political contributions and prohibitions on municipal securities business (referred to hereafter as "proposed rule change"). The MSRB has requested an effective date for the proposed rule change of sixty (60) days after Commission approval of the proposed rule change.

The text of the proposed rule change is available on the MSRB's Web site at *http://www.msrb.org/msrb1/sec.asp,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change consists of an interpretive notice regarding Rule G–37, on political contributions and prohibitions on municipal securities business.[3] Under Rule G–37, certain contributions to elected officials of municipal securities issuers made by brokers, dealers and municipal securities dealers ("dealers"), municipal finance professionals ("MFPs") associated with dealers, and political action committees ("PACs") controlled by dealers and their MFPs ("dealer-controlled PACs") [4] may result in prohibitions on dealers from engaging in municipal securities business with such issuers for a period of two years from the date of any triggering contributions.

Rule G–37 requires dealers to disclose certain contributions to issuer officials, state or local political parties, and bond ballot campaigns, as well as other information, on Form G–37 to allow public scrutiny of such contributions and the municipal securities business of a dealer. In addition, dealers and MFPs generally are prohibited from soliciting others (including affiliates of the dealer or any PACs) to make contributions to officials of issuers with which the dealer is engaging or seeking to engage in municipal securities business, or to political parties of a state or locality where the dealer is engaging or seeking to engage in municipal securities business. Dealers and MFPs are prohibited from circumventing Rule G–37 by direct or indirect actions through any other persons or means.[5]

Due to changes in the financial markets since the adoption of Rule G–37 and recent market turmoil, many dealers have become affiliated with a broad range of other entities in increasingly diverse organizational structures. Some of these affiliated entities (including but not limited to banks, bank holding companies, insurance companies and investment management companies) have formed or otherwise maintain relationships with PACs ("affiliated PACs") and other political organizations, many of which may make contributions to issuer officials. Such relationships raise questions regarding the extent to which affiliated PACs may effectively be controlled by dealers or their MFPs and thereby constitute dealer-controlled PACs whose contributions are subject to Rule G–37. Further, such relationships raise concerns regarding whether the contributions of such affiliated PACs, even if not viewed as dealer-controlled PACs, may be used by dealers or their MFPs to circumvent Rule G–37 as indirect contributions for the purpose of obtaining or retaining municipal securities business. As a result, the MSRB has filed the proposed rule change to provide additional guidance with regard to the potential for affiliated PACs to be viewed as dealer-controlled PACs.

The proposed rule change sets out factors that may result in an affiliated PAC being viewed as controlled by a dealer or an MFP of a dealer and thereby being treated as a dealer-controlled PAC for purposes of Rule G–37. The proposed rule change would: i) provide guidance on when a dealer's affiliated PAC might be viewed as controlled by the dealer for purposes of Rule G–37; and ii) ensure that the industry is

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78s(b)(2).

[10] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule G–37 defines municipal securities business as: (i) The purchase of a primary offering of municipal securities from an issuer on other than a competitive bid basis; (ii) the offer or sale of a primary offering of municipal securities on behalf of an issuer; (iii) the provision of financial advisory or consultant services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis; or (iv) the provision of remarketing agent services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis.

[4] The MSRB has previously stated that the matter of control depends upon whether or not the dealer or the MFP has the ability to direct or cause the direction of the management or policies of the PAC (MSRB Question & Answer No. IV. 24—Dealer Controlled PAC).

[5] Rule G–37(d) provides that no broker, dealer or municipal securities dealer or any municipal finance professional shall, directly or indirectly, through or by any other person or means, do any act which would result in a violation of sections (b) or (c) of the rule. Section (b) relates to the ban on business and Section (c) relates to the prohibition on soliciting and coordinating contributions.

cognizant of prior MSRB guidance concerning indirect contributions under the rule. The proposed rule change notes that, when evaluating whether contributions made by affiliated PACs may be subject to the provisions of Rule G–37, dealers should first determine whether such affiliated PAC would be viewed as a dealer-controlled PAC. If an affiliated PAC is determined to be a dealer-controlled PAC, then its contributions to issuer officials would subject the dealer to the ban on municipal securities business and its contributions to issuer officials, state or local political parties, and bond ballot campaigns would be subject to disclosure under Rule G–37. Even if the affiliated PAC is determined not to be a dealer-controlled PAC, the dealer still must consider whether payments made by the dealer or its MFPs to such affiliated PAC could ultimately be viewed as an indirect contribution under Rule G–37(d) if, for example, the affiliated PAC is being used as a conduit for making a contribution to an issuer official.

Indicators of Control by Dealers and MFPs. Soon after adoption of Rule G–37, the MSRB stated that each dealer must determine whether a PAC is dealer controlled, with any PAC of a non-bank dealer assumed to be a dealer-controlled PAC.[6] The MSRB has also stated that the determination of whether a PAC of a bank dealer[7] is a dealer-controlled PAC would depend upon whether the bank dealer or anyone from the bank dealer department has the ability to direct or cause the direction of the management or the policies of the PAC.[8] Such ability to direct or cause the direction of the management or the policies of a PAC also would be indicative of control of such PAC by a non-bank dealer or any of its MFPs, although it would not be the exclusive indicator of such control. While this guidance establishes basic principles with regard to making a determination of control, it does not set out an exhaustive list of circumstances under which a PAC may or may not be viewed as dealer or MFP controlled. The specific facts and circumstances regarding the creation, management, operation and control of a particular PAC must be considered in making a determination of control with respect to such PAC.

Creation of PAC. The proposed rule change provides that, in general, a dealer or MFP involved in the creation of a PAC would continue to be viewed as controlling such PAC unless and until such dealer or MFP becomes wholly disassociated in any direct or indirect manner with the PAC. Thus, any PAC created by a dealer, acting either in a sole capacity or together with other entities or individuals, would be presumed to be a dealer-controlled PAC. This presumption continues at least as long as the dealer or any MFP of the dealer retains any formal or informal role in connection with such PAC, regardless of whether such dealer or MFP has the ability to direct or cause the direction of the management or policies of the PAC. This presumption also would continue for so long as any non-MFP associated person of the dealer (either an individual, whether or not an MFP, or an affiliated company directly or indirectly controlling, controlled by or under common control with the dealer) has the ability to direct or cause the direction of the management or policies of the PAC. In effect, a dealer could not attempt to treat a PAC it created and then spun off to the control of an affiliated company as not being a dealer-controlled PAC. However, depending on the totality of the facts and circumstances, a PAC originally created by a dealer in which the dealer or its MFPs no longer retain any role, and with respect to which any other affiliates retain only very limited non-control roles, could be viewed as no longer controlled by the dealer.

Similarly, a PAC created by any person associated with the dealer at the time the PAC was created, acting either in a sole capacity or together with other entities or individuals, would be presumed to be controlled by such person under the proposed rule change. Such presumption continues at least for so long as such person retains any formal or informal role in connection with such PAC, regardless of whether any such person has the ability to direct or cause the direction of the management or policies of the PAC. This presumption also would continue for so long as any other person associated with the same dealer as the creator of the PAC has the ability to direct or cause the direction of the management or policies of the PAC. Although such PAC may not be viewed as subject to Rule G–37 as an MFP-controlled PAC when originally created if such person was not then an MFP, if the person creating the PAC, or any other associated person with the ability to direct or cause the direction of the management or policies of such PAC, is or later becomes an MFP, such PAC would be deemed an MFP-controlled PAC.[9]

Management, Funding and Control of PAC. Beyond the role of the dealer, MFP or other person in creating a PAC and maintaining an ongoing association with such PAC, the proposed rule change provides that the ability to direct or cause the direction of the management or the policies of a PAC is also important. Strong indicators of management and control are not mitigated by the fact that such dealer, MFP or other person does not have exclusive, predominant or "majority" control of the PAC, its management, its policies, or its decisions with regard to making contributions. For example, the fact that a dealer or MFP may only have a single vote on a governing board or other decision-making or advisory board or committee of a PAC, and therefore does not have sole power to cause the PAC to take any action, would not obviate the status of such dealer or MFP as having control of the PAC, so long as the dealer or MFP has the ability, alone or in conjunction with other similarly empowered entities or individuals, to direct or cause the direction of the management or the policies of the PAC. In essence, it is possible for a single PAC to be viewed as controlled by multiple different dealers if the control of such PAC is shared among such dealers, although the presumption of control may be rebutted as described below.

The level of funding provided by dealers and their MFPs to a PAC may also be indicative of control pursuant to the proposed rule change. A PAC that receives a majority of its funding from a single dealer (including the collective contributions of its MFPs and employees) or a single MFP is conclusively presumed to be controlled by such dealer or MFP, regardless of the lack of any of the other indicia of control described in this notice. Another important factor is the size or frequency of contributions by a dealer or MFP,[10] viewed in light of the size and frequency of contributions made by other contributors not affiliated in any way with such dealer or MFP. For example, a limited number of small

[6] *See* Rule G–37 Question & Answer No. IV. 24 (May 24, 1994).

[7] MSRB Rule D–8 defines a bank dealer as a municipal securities dealer which is a bank or a separately identifiable department or division of a bank.

[8] *See* Rule G–37 Question & Answer No. IV. 24 (May 24, 1994).

[9] However, a PAC created by an individual acting in his or her formal capacity as an officer, employee, director or other representative of a dealer, regardless of whether such individual is an MFP, would be deemed a dealer-controlled PAC rather than a PAC controlled by the individual.

[10] A dealer or an MFP may make sufficiently large or frequent contributions to a PAC so as to obtain effective control over the PAC, depending on the totality of facts and circumstances.

contributions freely made by employees of a dealer to an affiliated PAC (*i.e.,* not directed by the dealer and not part of an automated or otherwise dealer-organized program of contributions) would not, by itself, automatically raise a presumption of dealer control so long as the collective contributions by the dealer or its employees is not significant as compared to the total funding of the affiliated PAC, subject to consideration of the other relevant facts and circumstances. In addition, contributions made by a dealer or MFP to an affiliated PAC could raise a stronger inference of *de facto* dealer or MFP control than when such contributions were made to non-affiliated PACs.

However, even where a dealer or MFP is not viewed as controlling a PAC under the principles described above, the proposed rule change cautions dealers to remain mindful of the potential for leveraging the contribution activities of affiliated PACs in soliciting municipal securities business in a way that could raise a presumption of dealer or MFP control. For example, an MFP's references to the contributions made by an affiliated PAC during solicitations of municipal securities business could, depending on the facts and circumstances, serve as evidence of coordination of such PAC's activities with the dealer or MFP that could, together with other facts, be indicative of direct or indirect control of the PAC by such dealer or MFP. Such control could be found even in circumstances where the dealer or its MFPs have not made contributions to the affiliated PAC.[11]

Of course, the presumptions described above may be rebutted, depending upon the totality of facts and circumstances. The proposed rule change notes considerations that may serve to rebut such presumptions, which may include whether the dealer or person creating the PAC: (i) Participates with a broad-based group of other entities and/or individuals in creating the PAC, (ii) at no time undertakes any direct or indirect role (and, in the case of a dealer, no person associated with the dealer undertakes any direct or indirect role) in leading the creation of the PAC or in directing or causing the direction of the management or the policies of the PAC, and/or (iii) provides funding for such PAC (and, in the case of a dealer, its associated persons collectively provide funding for such PAC) that is not substantially greater than the typical funding levels of other participants in the PAC who do not undertake a direct or indirect role in leading the creation of the PAC or in directing or causing the direction of the management or the policies of the PAC.

Indirect Contributions Through Bank PACs or Other Affiliated PACs. The proposed rule change reminds dealers that, if an affiliated PAC is determined not to be a dealer-controlled PAC, a dealer must still consider whether payments made by the dealer or its MFPs to such affiliated PAC could be viewed as an indirect contribution that would become subject to Rule G–37 pursuant to section (d) thereof. The proposed rule change reviews prior extensive guidance on such indirect contributions, noting that the MSRB had stated in 1996 that, depending on the facts and circumstances, contributions to a non-dealer associated PAC that is soliciting funds for the purpose of supporting a limited number of issuer officials might result in the same prohibition on municipal securities business as would contributions made directly to the issuer official.[12] The MSRB also noted that dealers should make inquiries of a non-dealer associated PAC that is soliciting contributions in order to ensure that contributions to such a PAC would not be treated as an indirect contribution.[13]

The proposed rule change also notes that the MSRB has previously provided guidance in 2005 with regard to supervisory procedures [14] that dealers should have in place in connection with payments to a non-dealer associated PAC or a political party to avoid indirect rule violations of Rule G–37(d). In such guidance, the MSRB stated that in order to ensure compliance with Rule G–27(c) as it relates to payments to political parties or PACs and Rule G–37(d), each dealer must adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that neither the dealer nor its MFPs are using payments to political parties or non-dealer controlled PACs to contribute indirectly to an official of an issuer.[15] Among other things, dealers might seek to establish procedures requiring that, prior to the making of any contribution to a PAC, the dealer undertake certain due diligence inquiries regarding the intended use of such contributions, the motive for making the contribution and whether the contribution was solicited. Further, in order to ensure compliance with Rule G–37(d), dealers could consider establishing certain information barriers between any affiliated PACs and the dealer and its MFPs.[16] The proposed rule change notes that dealers that have established such information barriers should review their adequacy to ensure that the affiliated entities' contributions, payments or PAC disbursement decisions are neither influenced by the dealer or its MFPs, nor communicated to the dealers and the MFPs.

The MSRB subsequently noted that the 2005 guidance did not establish an obligation to put in place the specific procedures and information barriers described in the guidance so long as the dealer in fact has and enforces other written supervisory procedures reasonably designed to ensure that the conduct of the dealer and its MFPs are in compliance with Rule G–37(d).[17] The proposed rule change provides the example that, when information regarding past or planned contributions of an affiliated PAC is or may be available to or known by the dealer or its MFPs, the dealer might establish and enforce written supervisory procedures that prohibit the dealer or MFP from providing information to issuer personnel regarding past or anticipated affiliated PAC contributions.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,[18] which provides that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

[11] *See* Rule G–37 Question & Answer No. III.7 (September 22, 2005) for a discussion of potential indirect contributions through affiliated PACs.

[12] *See* Rule G–37 Question & Answer No. III.4 (August 6, 1996).

[13] *See* Rule G–37 Question & Answer No. III.5 (August 6, 1996).

[14] Rule G–27, on supervision, provides in section (c) that each dealer shall adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that the conduct of the municipal securities activities of the dealer and its associated persons are in compliance with MSRB rules.

[15] *See* Rule G–37 Question & Answer No. III.7 (September 22, 2005).

[16] The potential information barriers described in the guidance include: (i) A prohibition on the dealer or MFP from recommending, nominating, appointing or approving the management of affiliated PACs; (ii) a prohibition on sharing the affiliated PACs meeting agenda, meeting schedule, or meeting minutes; (iii) a prohibition on identification of prior affiliated PAC contributions, planned PAC contributions or anticipated PAC contributions; (iv) a prohibition on directly providing or coordinating information about prior negotiated municipal securities businesses, solicited municipal securities business, and planned solicitations of municipal securities business; and (v) other such information barriers as the firms deems appropriate to effectively monitor conflicting interest and prevent abuses.

[17] *See* Rule G–37 Interpretive Letter—Supervisory procedures relating to indirect contributions; conference accounts and 527 organizations (December 21, 2006).

[18] 15 U.S.C. 78o–4(b)(2)(C).

trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act because it will help to inhibit practices constituting real and perceived attempts to influence the awarding of municipal securities business through contributions made by or through dealer-affiliated PACs. The MSRB also believes that the proposed rule change will facilitate dealer compliance with Rule G–37 and Rule G–27, on supervision.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

The MSRB has requested an effective date for the proposed rule change of sixty (60) days after Commission approval of the proposed rule change.

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 Comment

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2010–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2010–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2010–07 and should be submitted on or before September 30, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22450 Filed 9–8–10; 8:45 am]

BILLING CODE 8010–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62829; File No. SR–BX–2010–061]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit Concurrent Listing of $2.50 and $1 Strikes on MNX Options

September 2, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 30, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter XIV, Section 10 (Terms of Index Options Contracts) of the Rules of the Boston Options Exchange Group, LLC ("BOX") to allow the Exchange to concurrently list $2.50 and $1 strikes on Mini- Nasdaq-100 Index ("MNX") options, and that certain listing parameters only apply to $1 strikes on MNX options. The text of the proposed rule change is available from the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov*, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to allow BOX to concurrently list $2.50 and $1 strikes on MNX options, and that certain listing parameters only apply to $1 strikes on MNX options. BOX believes that the availability of $2.50 and $1 strike price intervals in MNX option series will provide investors with greater flexibility by allowing them to establish positions that are better tailored to meet their investment objectives.

Since December 2008, BOX has had the ability to list $1 strikes on MNX options.[3] In connection with the proposal to permit $1 strikes for MNX options, BOX established parameters subject to which $1 strikes may be added and delisted. For example, the number of initial series that BOX may add is limited to 11 series.[4] Also, the total number of additional series that may be added for $1 strikes is sixty (60) per expiration month for each series in MNX options.[5]

Similar parameters do not exist with regard to the listing of $2.50 strikes, and BOX now seeks to clarify that the parameters adopted with the proposal to permit $1 strikes for MNX options do not apply to the listing of $2.50 strikes for MNX options.[6] In addition, BOX is proposing to codify a bracketing provision that prohibits the Exchange from listing strike prices with $1 intervals within $0.50 of an existing strike price in the same series. This bracketing provision is identical to an existing provision in effect for the $1 Strike Program, which permits the concurrent listing of $2.50 and $1 strikes.[7]

Finally, the Exchange proposes to change Section 10(c)(5)(iii) providing that BOX shall not list LEAPS on Mini-NDX options at intervals less than $5.00 to provide that BOX shall not list LEAPS on Mini-NDX options at intervals less than $2.50.

BOX has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the concurrent listing and trading of $1 and $2.50 strikes for MNX options.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes that allowing the concurrent listing and trading of $1 and $2.50 strikes for MNX options will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to a rule of another exchange.[12] Therefore, the Commission designates the proposal operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2010–061 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–BX–2010–061. This file number should be included on the subject line if e-mail 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

[3] *See* Securities Exchange Act Release No. 59129 (Dec. 22, 2008), 73 FR 79945 (Dec. 30, 2008) (SR–BSE–2008–57) (rule change permitting $1 strikes for MNX options).

[4] *See* Chapter XIV, Section 10(c)(5)(i) of the BOX Rules.

[5] *See* Chapter XIV, Section 10(c)(5)(ii) of the BOX Rules.

[6] *See* Chapter XIV, Section 10(c)(1) of the BOX Rules.

[7] *See* Supplementary Material .02(c) to Chapter IV, Section 6 of the BOX Rules.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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 Commission has waived the five-day pre-filing requirement in this case.

[12] *See* CBOE Rules 5.5 and 24.9 and Interpretations and Policies .01 (j) to Rule 24.9. *See also* Securities Exchange Act Release No. 34–61270 (Dec. 31, 2009), 75 FR 1444 (Jan. 11, 2010) (SR–CBOE–2009–099).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–BX–2010–061 and should be submitted on or before September 30, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22449 Filed 9–8–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62820; File No. SR–NYSEAmex–2010–86]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Extending the Operation of Its New Market Model Pilot Until the Earlier of Securities and Exchange Commission Approval to Make Such Pilot Permanent or January 31, 2011

September 1, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 26, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 self-regulatory organization. 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 extend the operation of its New Market Model Pilot, currently scheduled to expire on September 30, 2010, until the earlier of Securities and Exchange Commission ("SEC" or "Commission") approval to make such pilot permanent or January 31, 2011. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, on the Commission's website at *http://www.sec.gov*, and *http://www.nyse.com.*

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 extend the operation of its New Market Model Pilot ("NMM Pilot") that was adopted pursuant to its merger with the New York Stock Exchange LLC.[4] The NMM Pilot was approved to operate until October 1, 2009. The Exchange filed to extend the operation of the Pilot to November 30, 2009, March 30, 2010 and September 30, 2010, respectively.[5] The Exchange now seeks to extend the operation of the NMM Pilot, currently scheduled to expire on September 30, 2010, until the earlier of Commission approval to make such pilot permanent or January 31, 2011.

The Exchange notes that parallel changes are proposed to be made to the rules of New York Stock Exchange LLC.[6]

Background[7]

In December 2008, NYSE Amex implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model that it implemented through the NMM Pilot.

As part of the NMM Pilot, NYSE Amex eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.[8] The DMMs, like specialists, have affirmative obligations to make an orderly market, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest. Unlike specialists, DMMs have a minimum quoting requirement[9] in their assigned securities and no longer have a negative obligation. DMMs are also no longer agents for public customer orders.[10]

In addition, the Exchange implemented a system change that allowed DMMs to create a schedule of additional non-displayed liquidity at various price points where the DMM is willing to interact with interest and provide price improvement to orders in the Exchange's system. This schedule is known as the DMM Capital Commitment Schedule ("CCS").[11] CCS

[14] 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] NYSE Euronext acquired The Amex Membership Corporation ("AMC") pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the "Merger"). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC ("Amex"), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC. *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex–2008–62) (approving the Merger). Subsequently NYSE Alternext US LLC was renamed NYSE Amex LLC and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the "Act"). *See* Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR–NYSEALTR–2009–24).

[5] *See* Securities Exchange Act Release No. 60758 (October 1, 2009), 74 FR 51639 (October 7, 2009) (SR–NYSEAmex–2009–65). *See also* Securities Exchange Act Release No. 61030 (November 19, 2009), 74 FR 62365 (November 27, 2009) (SR–NYSEAmex–2009–83). *See also* Securities Exchange Act Release No. 61725 (March 17, 2010), 75 FR 14223 (March 24, 2010) (SR–NYSEAmex–2010–28).

[6] *See* SR–NYSE–2010–61.

[7] The information contained herein is a summary of the NMM Pilot. For a fuller description of the pilot *see* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[8] *See* NYSE Amex Equities Rule 103.

[9] *See* NYSE Amex Equities Rule 104.

[10] *See* NYSE Amex Equities Rule 60; *See also* NYSE Amex Equities Rules 104 and 1000.

[11] *See* NYSE Amex Equities Rule 1000.

provides the Display Book® [12] with the amount of shares that the DMM is willing to trade at price points outside, at and inside the Exchange Best Bid or Best Offer ("BBO"). CCS interest is separate and distinct from other DMM interest in that it serves as the interest of last resort.

The NMM Pilot further modified the logic for allocating executed shares among market participants having trading interest at a price point upon execution of incoming orders. The modified logic rewards displayed orders that establish the Exchange's BBO. During the operation of the NMM Pilot orders, or portions thereof, that establish priority [13] retain that priority until the portion of the order that established priority is exhausted. Where no one order has established priority, shares are distributed among all market participants on parity.

The NMM Pilot was originally scheduled to end operation on October 1, 2009, or such earlier time as the Commission may determine to make the rules permanent. The Exchange filed to extend the operation of the Pilot on three occasions [14] in order to prepare a rule filing seeking permission to make the above described changes permanent. The Exchange is currently still preparing such formal submission but does not expect that filing to be completed and approved by the Commission before September 30, 2010.

Proposal to Extend the Operation of the NMM Pilot

NYSE Amex established the NMM Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers and add a new competitive market participant. The Exchange believes that the NMM Pilot allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the NMM Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the NMM Pilot until January 31, 2011, in order to allow the Exchange time to formally submit a filing to the Commission to convert the pilot rules to permanent rules.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are 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. The Exchange believes that the instant filing is consistent with these principles because the NMM Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. Moreover, the instant filing requesting an extension of the NMM Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the NMM Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process.

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 foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2010–86 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–NYSEAmex–2010–86. This file number should be included on the subject line if e-mail 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 website (*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 on official business

[12] The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the order information, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[13] *See* NYSE Amex Equities Rule 72(a)(ii).

[14] *See supra* note 2 [sic].

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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 Exchange has satisfied this requirement.

days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only informationthat you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–86 and should be submitted on or before September 30, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22445 Filed 9–8–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62819; File No. SR–NYSE–2010–61]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending the Operation of its New Market Model Pilot Until the Earlier of Securities and Exchange Commission Approval To Make Such Pilot Permanent or January 31, 2011

September 1, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 26, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") 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 self-regulatory organization. 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 extend the operation of its New Market Model Pilot, currently scheduled to expire on September 30, 2010, until the earlier of Securities and Exchange Commission ("SEC" or "Commission") approval to make such pilot permanent or January 31, 2011. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, on the Commission's website at *http://www.sec.gov* and *http://www.nyse.com.*

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 extend the operation of its New Market Model Pilot ("NMM Pilot"),[4] currently scheduled to expire on September 30, 2010, until the earlier of Securities and Exchange Commission approval to make such pilot permanent or January 31, 2011.

The Exchange notes that parallel changes are proposed to be made to the rules of the NYSE Amex LLC.[5]

Background[6]

In October 2008, the NYSE implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model. Certain of the enhanced market model changes were implemented through a pilot program.

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.[7] The DMMs, like specialists, have affirmative obligations to make an orderly market, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest. Unlike specialists, DMMs have a minimum quoting requirement[8] in their assigned securities and no longer have a negative obligation. DMMs are also no longer agents for public customer orders.[9]

In addition, the Exchange implemented a system change that allowed DMMs to create a schedule of additional non-displayed liquidity at various price points where the DMM is willing to interact with interest and provide price improvement to orders in the Exchange's system. This schedule is known as the DMM Capital Commitment Schedule ("CCS").[10] CCS provides the Display Book®[11] with the amount of shares that the DMM is willing to trade at price points outside, at and inside the Exchange Best Bid or Best Offer ("BBO"). CCS interest is separate and distinct from other DMM interest in that it serves as the interest of last resort.

The NMM Pilot further modified the logic for allocating executed shares among market participants having trading interest at a price point upon execution of incoming orders. The modified logic rewards displayed orders that establish the Exchange's BBO. During the operation of the NMM Pilot orders, or portions thereof, that establish priority[12] retain that priority until the portion of the order that established priority is exhausted. Where no one order has established priority, shares are distributed among all market participants on parity.

The NMM Pilot was originally scheduled to end operation on October 1, 2009, or such earlier time as the Commission may determine to make the rules permanent. The Exchange filed to extend the operation of the Pilot on

[17] 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 No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46); *See also* Securities Exchange Act Release No. 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100) (extending Pilot to November 30, 2009); *See also* Securities Exchange Act Release No. 61031 (November 19, 2009), 74 FR 62368 (November 27, 2009) (SR–NYSE–2009–113) (extending Pilot to March 30, 2010); *See also* Securities Exchange Act Release No. 61724 (March 17, 2010), 75 FR 14221 (March 24, 2010) (SR–NYSE–2010–25) (extending Pilot to September 30, 2010).

[5] *See* SR–NYSE Amex–2010–86.

[6] The information contained herein is a summary of the NMM Pilot, for a fuller description of the pilots *see supra* note 1 [sic].

[7] *See* NYSE Rule 103.

[8] *See* NYSE Rule 104.

[9] *See* NYSE Rule 60; *See also* NYSE Rules 104 and 1000.

[10] *See* NYSE Rule 1000.

[11] The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the order information, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[12] *See* NYSE Rule 72(a)(ii).

three occasions in order to prepare a rule filing seeking permission to make the above described changes permanent.[13] The Exchange is currently still preparing such formal submission but does not expect that filing to be completed and approved by the Commission before September 30, 2010.

Proposal To Extend the Operation of the NMM Pilot

The NYSE established the NMM Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers and to have its market maker be a new competitive market participant. The Exchange believes that the NMM Pilot allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the NMM Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the NMM Pilot until January 31, 2011, in order to allow the Exchange time to formally submit a filing to the Commission to convert the pilot rules to permanent rules.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are 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. The Exchange believes that the instant filing is consistent with these principles because the NMM Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. Moreover, the instant filing requesting an extension of the Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the NMM Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process.

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 foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2010–61 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–NYSE–2010–61. This file number should be included on the subject line if e-mail 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–NYSE–2010–61 and should be submitted on or before September 30, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22444 Filed 9–8–10; 8:45 am]

BILLING CODE 8010–01–P

[13] *See* Securities Exchange Act Release Nos. 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100) (extending Pilot to November 30, 2009); 61031 (November 19, 2009), 74 FR 62368 (November 27, 2009) (SR–NYSE–2009–113) (extending Pilot to March 30, 2010); and 61724 (March 17, 2010), 75 FR 14221 (March 24, 2010) (SR–NYSE–2010–25) (extending Pilot to September 30, 2010).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least 5 business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice Number: 7153]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy will hold a public

meeting on September 28, 2010, in the conference room of the International Foundation for Electoral Systems, located at 1850 K Street NW., Fifth Floor, Washington, DC 20006. The meeting will begin at 2 p.m. and conclude at 4 p.m. The Commissioners will discuss the findings of a joint research project of the Commission and the University of Texas at Austin on measurement of public diplomacy efforts.

The Advisory Commission was originally established under Section 604 of the United States Information and Exchange Act of 1948, as amended (22 U.S.C. 1469) and Section 8 of Reorganization Plan Numbered 2 of 1977. It was reauthorized pursuant to Public Law 111–70 (2009), 22 U.S.C. 6553.

The Advisory Commission is a bipartisan panel created by Congress to assess public diplomacy policies and programs of the U.S. Government and publicly funded nongovernmental organizations. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current Commission members include William Hybl, who is the Chairman; Jay Snyder of New York; Penne Korth Peacock of Texas; Lyndon Olson of Texas; John Osborn of Pennsylvania; and Lezlee Westine of Virginia.

The public may attend this meeting as seating capacity allows. To attend this meeting and for further information, please contact Carl Chan at (202) 632–2823; E-mail: *acpdpublicmeeting@state.gov*. Any member of the public requesting reasonable accommodation at this meeting should contact Mr. Chan prior to September 23. Requests received after that date will be considered, but might not be possible to fulfill.

Dated: September 2, 2010.

Carl Chan,

Executive Director, ACPD.

[FR Doc. 2010–22522 Filed 9–8–10; 8:45 am]

BILLING CODE 4710–11–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice Changing the Date of the Country Practices Review Hearing

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of change of hearing date.

SUMMARY: On August 11, 2010, a public notice was published in the **Federal Register** on pages 48737–48738 announcing a public hearing to consider country practices petitions received in the 2009 Annual Review under the Generalized System of Preferences (GSP) program. This notice announces a change in the hearing date and location, from September 24, 2010, to September 28, 2010. The hearing will now be held at 1724 F Street, NW., Washington, DC, beginning at 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: Tameka Cooper, GSP Program, Office of the United States Trade Representative, 1724 F Street, NW., Room 601, Washington, DC 20508. The telephone number is (202) 395–6971, the fax number is (202) 395–2961, and the e-mail address is *Tameka_Cooper@ustr.eop.gov.*

Elena Bryan,

Deputy Assistant U.S. Trade Representative for Trade and Development; Interim Chairman, GSP Subcommittee of the Trade Policy Staff Committee; Office of the U.S. Trade Representative.

[FR Doc. 2010–22408 Filed 9–8–10; 8:45 am]

BILLING CODE 3190–W0–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[DOT Docket No. DOT–OST–2010–0074]

The Future of Aviation Advisory Committee (FAAC) Subcommittee on Labor and World-Class Workforce; Notice of Meeting

AGENCY: Office of the Secretary of Transportation, Department of Transportation.

ACTION: The Future of Aviation Advisory Committee (FAAC) Subcommittee on Labor and World-Class Workforce; Notice of Meeting.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary of Transportation, announces a meeting of the FAAC Subcommittee on Labor and World-class Workforce, which will be held at the JetBlue Airways Hangar, John F. Kennedy International Airport, Hangar 81A, South Cargo Road, Jamaica, New York 11430 and via teleconference at (888) 538–5663 (domestic), (210) 276–3097 (international); participant code 7160616. This notice announces the date, time, and location of the meeting, which will be open to the public. The purpose of the FAAC is to provide advice and recommendations to the Secretary of Transportation to ensure the competitiveness of the U.S. aviation industry and its capability to manage effectively the evolving transportation needs, challenges, and opportunities of the global economy. The subcommittee is charged with ensuring the availability and quality of a workforce necessary to support a robust, expanding commercial aviation industry in light of the changing socioeconomic dynamics of the world's technologically advanced economies. Among other matters, the subcommittee will examine three issues affecting the future employment requirements of the aviation industry: (1) The need for science, technology, engineering, and math (STEM) skills in the industry; (2) the creation of a culture of dignity and respect in the workplace; and (3) the impact of Next Generation Air Transportation System on various workforces.

DATES: The meeting will be held on September 23, 2010, from 1 p.m. to 4:30 p.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held at the JetBlue Airways Hangar, John F. Kennedy International Airport, Hangar 81A, South Cargo Road, Jamaica, New York 11430 and via teleconference at (888) 538–5663 (domestic), (210) 276–3097 (international); participant code 7160616.

Public Access: The meeting is open to the public. (See below for registration instructions.)

Public Comments: Persons wishing to offer written comments and suggestions concerning the activities of the advisory committee or subcommittee should file comments in the Public Docket (Docket Number DOT–OST–2010–0074 at *http://www.regulations.gov*) or alternatively through the *FAAC@dot.gov* e-mail. If comments and suggestions are intended specifically for the Subcommittee on Labor and World-class Workforce, the term "Labor/Workforce" should be listed in the subject line of the message. To ensure such comments can be considered by the subcommittee before its September 23, 2010, meeting, public comments must be filed by 5 p.m. EDT on Friday, September 17, 2010.

SUPPLEMENTARY INFORMATION:

Background

Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the FAAC Subcommittee on Labor and World-class Workforce taking place on September 23, 2010, from 1 p.m. to 4:30 p.m. EDT at the JetBlue Airways Hangar, John F. Kennedy International Airport, Hangar 81A, South Cargo Road, Jamaica, New York 11430 and via teleconference at (888) 538–5663 (domestic), (210) 276–

3097 (international); participant code 7160616. Background information may be found at the FAAC Web site, located at *http://www.dot.gov/faac.* The agenda includes—

1. Discussion of topics offered by subcommittee members on the subject of labor and improving the workforce of the aviation industry.

2. Establishment of a plan and timeline for further work.

3. Identification of priority issues for the fourth (October 1, 2010) and fifth (November 15, 2010) subcommittee meetings.

Registration

The meeting can accommodate up to 100 members of the public. Persons desiring to attend must pre-register through e-mail to *FAAC@dot.gov*. The term "Registration: Labor/Workforce" must be listed in the subject line of the message, and admission will be limited to the first 100 persons to pre-register and receive a confirmation of their pre-registration.

The telephone conference can accommodate up to 25 members of the public. Persons desiring to listen to the discussion must preregister through e-mail to *FAAC@dot.gov*. The term "Registration: Labor/Workforce" must be listed in the subject line of the message, and access will be limited to the first 25 persons to preregister and receive a confirmation of their preregistration.

No arrangements are being made for audio or video transmission or for oral statements or questions from the public at the meeting. Minutes of the meeting will be taken and will be posted on the FAAC Web site at *http://www.dot.gov/faac/*.

Request for Special Accommodation

The DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please send a request to *FAAC@dot.gov* with the term "Special Accommodations" listed in the subject line of the message by close of business on Friday, September 17, 2010.

FOR FURTHER INFORMATION CONTACT: Terri L. Williams, Director, Center for Organizational Excellence, Assistant Administrator for Human Resources, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; (202) 267–3456, extension 7472; or Regis P. Milan, Office of Aviation Analysis, U.S. Department of Transportation; Room 86W309, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366–2349.

Issued in Washington, DC, on September 3, 2010.

Pamela Hamilton-Powell,

Designated Federal Official, Future of Aviation Advisory Committee.

[FR Doc. 2010–22425 Filed 9–8–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0270]

Agency Information Collection (IC) Activities; Revision of an Approved IC; Accident Recordkeeping Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to request that the Office of Management and Budget (OMB) approve revision of the Information Collection (IC) entitled, "Accident Recordkeeping Requirements," because FMCSA has obtained more accurate data upon which to base calculation of the paperwork burden of this IC. The FMCSA invites public comment.

DATES: We must receive your comments on or before November 8, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket Number FMCSA–2010–0270 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

Instructions: Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please *see* the Privacy Act heading below.

Docket: For access to the FDMS to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., e.t. Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. We will acknowledge receipt of your written comments if you include a self-addressed, stamped envelope or postcard. Your on-line comments are acknowledged by a printable confirmation message that appears immediately after you submit them on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets, by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316). This information is also available at *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Telephone: 202–366–4325. E-mail: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each IC they conduct, sponsor, or require through regulations. FMCSA has determined that it needs to revise the currently-approved estimate for OMB Control No. 2126–0009, "Accident Recordkeeping Requirements." The regulation underlying this IC is 49 CFR 390.15, "Assistance in investigations and special studies." It requires motor carriers to make all records and information pertaining to specified accidents available to an authorized representative or special agent of the FMCSA upon request, or as part of an inquiry. Interstate motor carriers are required to maintain an Accident Register consisting of specified information about each accident involving their commercial motor vehicles. The information for each accident must include, at a minimum, the following elements: Date of

accident, city or town in which or most near where the accident occurred, the State in which the accident occurred, driver name, number of injuries, number of fatalities, and whether hazardous materials, other than fuel spilled from the fuel tanks of motor vehicles involved in the accident, were released. In addition, the register must contain copies of all accident reports required by State or other governmental entities or insurers. Motor carriers must maintain the required information in the Accident Register for 3 years after the date of the accident.

This IC strengthens FMCSA's ability to assess motor carrier safety performance. These assessments enable FMCSA to direct its enforcement resources to the motor carriers with the weakest safety records, helping those carriers prevent accidents and reduce their severity.

On February 8, 2008, OMB approved FMCSA's estimate for this IC of 32,040 annual burden hours and established an expiration date for this IC of February 28, 2011. Today FMCSA announces its plan to request that OMB approve revision of this estimate to 22,500 annual burden hours.

Title: Accident Recordkeeping Requirements.

OMB Control Number: 2126–0009.

Type of Request: Revision of an ICR.

Respondents: Motor carriers engaged in interstate commerce.

Estimated Number of Respondents: 500,000.

Estimated Number of Responses: 75,000.

Estimated Time per Response: 18 minutes.

Frequency of Response: On occasion.

Expiration Date: February 28, 2011.

Estimated Total Annual Burden: 22,500 hours.

Improved FMCSA accident data provides a more accurate estimate of the total responses to this information collection each year: 75,000. The Agency's previous estimate was 106,800 responses. FMCSA retains its prior estimate that a motor carrier requires approximately 18 minutes, on average, to complete the tasks necessary to comply with § 390.15, *i.e.,* collecting the required information about the accident, entering it into the Accident Register and maintaining it and other documents required by § 390.15. Therefore, the annual burden hours for all motor carriers is 22,500 hours (rounded) (75,000 responses × 18 minutes each divided by 60 minutes per hour).

Definitions: Each of these definitions can be found at 49 CFR 390.5: "Motor carrier": Any person engaged in a business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it. "Commercial motor vehicle": A self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle—(1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight of 10,001 pounds, whichever is greater; or (2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or (3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or (4) Is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of title 49, United States Code, and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103. "Accident": An occurrence involving a Commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in: (i) A fatality; (ii) bodily injury to a person who, as a result of the injury, receives medical treatment away from the scene of the accident; or (iii) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle. The term "accident" does not include: (i) An occurrence involving only boarding or alighting from a stationary motor vehicle or (ii) An occurrence involving only the loading or unloading of cargo.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: September 2, 2010.

Kelly Leone,

Office Director for Information Technology.

[FR Doc. 2010–22456 Filed 9–8–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0210]

Agency Information Collection Activities; Revision of an Approved Information Collection Request: Hazardous Materials Safety Permits

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval and invites public comment. The FMCSA requests approval to revise an existing ICR entitled "Hazardous Materials Safety Permits," due to an increase in the estimated number of annual trips in which permitted hazardous materials (HM) are transported. This ICR requires companies holding permits to develop a communications plan that allows for the periodic tracking of the shipment. A record of the communications that includes the time of the call and location of the shipment may be kept by either the driver (*e.g.,* recorded in the log book) or the company. These records must be kept, either physically or electronically, for at least six months at the company's principal place of business or readily available to the employees at the company's principal place of business. This ICR is being revised due to an increase in the estimated number of annual trips in which permitted HM is transported resulting in change to the total information collection burden for maintaining a daily communication record.

DATES: We must receive your comments on or before November 8, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket Number FMCSA–2010–0210 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Fax:* 202–493–2251.
- *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:* West Building Ground Floor, Room W12–140, 1200

New Jersey Avenue, SE., Washington DC 20590–0001 between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts without change all comments received to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting them on-line.

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 of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Mr. Paul Bomgardner, Hazardous Materials Division, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–493–0027; e-mail *paul.bomgardner@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Transportation (Secretary) is responsible for implementing regulations to issue safety permits for transporting certain hazardous materials in accordance with 49 U.S.C. 5101 *et seq.* The HM Safety Permit regulations (49 CFR part 385) require carriers to complete a "Combined Motor Carrier Identification Report and HM Permit Application" (Form MCS–150B). The HM Safety Permit regulations also require carriers to have a security program. As part of the HM Safety Permit regulations, carriers are required to develop and maintain route plans so that law enforcement officials can verify the correct location of the HM shipment. The FMCSA requires companies holding permits to develop a communications plan that allows for the periodic tracking of the shipment. This information covers the record of communications that includes the time of the call and location of the shipment. The records may be kept by either the driver (*e.g.,* recorded in the log book) or the company. These records must be kept, either physically or electronically, for at least six months at the company's principal place of business or be readily available to employees at the company's principal place of business.

Title: Hazardous Materials Safety Permits.

OMB Control Number: 2126–0030.

Type of Request: Revision of a currently-approved information collection.

Respondents: 1,425 motor carriers that transport permitted HM and complete the Form MCS–150B.

Frequency: On occasion.

Estimated Average Burden per Response: 5 minutes. The communication between motor carriers and their drivers must take place at least two times per day and it is estimated that it will take 5 minutes to maintain a daily communication record for each driver.

Estimated Total Annual Burden Hours: 350,000 hours [4.2 million trips × 5 minutes/60 minutes per record = 350,000].

Public Comments Invited

You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: September 2, 2010.

Kelly Leone,

Director, Office of Information Technology.

[FR Doc. 2010–22464 Filed 9–8–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: NOTAM Realignment User Survey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. In accordance with FAA Order JO 1030.4, ATO SysOps Services SMS Oversight, the FAA ATO System Operations Management, Safety Assurance Group (SAG) is conducting a comprehensive assessment of the Notice to Airmen (NOTAM) Realignment Phase 1 (NRP–1) process to determine if unacceptable hazards exist within the National Airspace System (NAS). Essential to the assessment is a survey of airline and corporate pilots and dispatchers as well as airport operators and general aviation pilots. The SAG survey will be compared with results of a similar survey conducted in 2008 by the FAA Office of Safety (AJS).

DATES: Written comments should be submitted by November 8, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 267–9895, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 2120–XXXX .

Title: NOTAM Realignment User Survey.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Clearance of a new information collection.

Background: Results of the SOSM SAG NOTAM Realignment Phase 1 (NRP–1) Assessment will be used to establish the status of identified hazards and ensure no new hazards have been introduced into the NAS. In addition to on-site visits, the SOSM SAG audit team has prepared three surveys mirroring those sent by the Safety Support and Independent Assessment (SSIA) as part of an investigation conducted in 2008. One survey is directed externally to general aviation pilots, airport operations staff and airline pilots and dispatchers. This Paperwork Reduction Act submission only concerns the external survey directed to users of the National Airspace System (NAS).

Respondents: 150,607 users of the National Airspace System.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: 7 minutes.

Estimated Total Annual Burden: 881 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Public comments invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on September 2, 2010.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–22554 Filed 9–8–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0246]

Notice of Request To Revise a Currently-Approved Information Collection Request: Motor Carrier Safety Assistance Program

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval and invites public comment. The FMCSA requests approval to revise an ICR entitled "Motor Carrier Safety Assistance Program (MCSAP)." The information required consists of grant application preparation, quarterly reports and electronic data documenting the results of driver/vehicle inspections performed by the States. This ICR is being revised due to an increase in the estimated number of State inspections that will be performed annually resulting in change to the estimated burden to perform this activity.

DATES: We must receive your comments on or before November 8, 2010.

ADDRESSES: You may submit comments bearing the Department of Transportation (DOT) Docket Management System (DMS) Docket Number FMCSA–2010–0246 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington DC, 20590–0001 between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or post card or print the acknowledgement page that appears after submitting them on-line.

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 of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo..gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT:

Mr. John E. Kostelnik, Office of Safety Programs, State Programs Division, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue, SE., Washington DC 20590. Telephone: 202–366–5721; e-mail: *Jack.kostelnik@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Motor Carrier Safety Assistance Program.

OMB Control Number: 2126–0010.

Type of Request: Revision of a currently-approved information collection.

Respondents: State MCSAP lead agencies.

Estimated Number of Respondents: 52.

Estimated Time per Response: Grant application preparation: 79.5 hours each; quarterly report preparation: 8 hours each; and inspection and data upload: 1 minute each.

Expiration Date: February 28, 2011.

Frequency of Response: Grant application: 1 annually; quarterly reports: 4 annually; and inspection and data upload: about 3.4 million annually.

Estimated Total Annual Burden: 13,550 hours. The methods used to calculate the hours necessary to prepare grant applications, upload data, and prepare quarterly reports are based on interviews with the State and Federal personnel charged with those responsibilities. The information required to prepare the applications for grants and the subsequent reports is based on general information ordinarily maintained by the States in the general course of business, and only simple computations are required to determine burden hours. The grant applications and reports are submitted by the 50 States, 4 Territories, Puerto Rico, and the District of Columbia. Each entity submits one grant request per year and four quarterly reports. About 3.4 million inspection reports are uploaded each year.

The figures reflect only 20 percent of the total estimated hours to perform the activities, since MCSAP reimburses 80 percent of the eligible costs incurred in the administration of an approved plan as set forth in 49 CFR 350.303, 350.309 and 350.311. Labor hours are estimated and an average hourly rate for professional personnel is applied. The four territories of American Samoa, Guam, U.S. Virgin Islands and the Commonwealth of the Northern Mariana Islands receive 100 percent Federal

funding for their MCSAP activities; therefore they are not included in the computation of burden.

Background: Sections 401 through 404 of the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97–424) established a program of financial assistance to the States to implement programs to enforce:
(a) Federal rules, regulations, standards, and orders applicable to commercial motor vehicle safety; and
(b) compatible State rules, regulations, standards and orders. This grant-in-aid program is known as the Motor Carrier Safety Assistance Program (MCSAP). Section 402(c) of the STAA requires that the Secretary of Transportation (Secretary), on the basis of reports submitted by the States and the Secretary's own inspections, make a continuing evaluation of the manner in which each State is carrying out its approved safety enforcement plan. The STAA's MCSAP provisions are codified at 49 U.S.C. 31102.

The Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178) further revised the MCSAP by broadening its purpose beyond enforcement activities and programs by requiring participating States to assume greater responsibility for improving motor carrier safety. Section 4003 of TEA–21 required States to develop performance-based plans reflecting national priorities and performance goals, revised the MCSAP funding distribution formula, and created a new incentive funding program. As a result, States have greater flexibility in designing programs to address national and State goals of reducing the number and severity of commercial motor vehicle (CMV) accidents.

The Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59) amended 49 U.S.C. 31102(b)(1) to modify and augment the conditions a State must meet to qualify for basic program funds under the MCSAP. The statute requires a State to document in its State Commercial Vehicle Safety Plan (CVSP) its commitment to meet the following additional conditions:

- Deploy technology to enhance the efficiency and effectiveness of CMV safety programs;
- Include, in both the training manual for the licensing examination to drive a non-CMV and the training manual for the licensing examination to drive a CMV, information on best practices for driving safely in the vicinity of noncommercial and commercial motor vehicles;
- Conduct comprehensive and highly visible traffic enforcement and CMV safety inspection programs in high-risk locations and corridors; and
- Except in the case of an imminent or obvious safety hazard, ensure that an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a station, terminal, border crossing, maintenance facility, destination, or other location where a motor carrier may make a planned stop.

Additionally, section 4106 of SAFETEA–LU amended 49 U.S.C. 31102(c) to provide that States may use a portion of MCSAP basic grant funds to conduct documented enforcement of State traffic laws—both laws and regulations designed to promote the safe operation of CMVs and laws and regulations relating to non-CMVs, when necessary to promote the safe operation of CMVs.

In order for FMCSA to evaluate program effectiveness, it is necessary for the State to provide and maintain information concerning past, present and future program activity. The Final Rule that revised Part 350 to implement the changes to the MCSAP made by SAFETEA–LU was published in the **Federal Register** on July 5, 2007 (72 FR 36769) . The State's grant application, known as the CVSP, must contain the information required by 49 CFR 350.201, 350.211 and 350.213. This information is necessary to enable FMCSA to determine whether a State meets the statutory and administrative criteria to be eligible for a grant. It is necessary that a State's work activities and accomplishments be reported so that FMCSA can monitor and evaluate a State's progress under its approved plan and make the determinations and decisions required by 49 CFR 350.205 and 350.207. The FMCSA is required to determine whether each State's efforts meet the intended objectives of its plan. In the event of nonconformity with any approved plan and failure on the part of a State to remedy deficiencies, FMCSA is required to take action to cease Federal participation in that State's plan.

This information collection supports the DOT Strategic Goal of Safety (*i.e.,* reducing commercial truck-related fatalities) by providing financial and technical support to State CMV enforcement efforts.

The FMCSA uses the information in the CVSP to determine whether a State has the necessary resources and authority to undertake the program intended by Congress. After a grant has been awarded to a State, a continuing evaluation of the State's activities is performed to determine whether continued funding is appropriate and if revisions in the State's CVSP should be made. A quarterly report is submitted by the States using Standard Form PPR (SF–PPR) along with a narrative addendum to provide the minimum necessary information to assist in appropriate monitoring of a State's performance, compared to its CVSP, and to permit FMCSA to determine whether the effort of a State is cost efficient and whether Federal assistance should be continued. In addition, inspection data and reports are submitted electronically by the inspecting officer from the field to FMCSA at the time of completion of the inspection.

SAFETEA–LU provides that States may conduct traffic enforcement activities against non-CMVs to promote the safe operation of CMVs. The States have been routinely conducting traffic enforcement activities on CMVs and been reimbursed, provided an appropriate inspection was conducted at the time. Previously, non-CMV traffic enforcement was not an eligible MCSAP activity for reimbursement so the States have not captured activity levels for this type of enforcement. The number of non-CMV enforcement activities conducted by the States has been relatively minimal since SAFETEA–LU limits the amount of MCSAP grant funding that can be used for non-CMV traffic enforcement activities to no more than five percent of the basic amount a State receives annually.

The quarterly report is created by the State and submitted to FMCSA using inspection data and other information. The collection of uniform data permits analysis and comparison of State programs and facilitates program administration and reporting (*e.g.,* comparison of the data from a single State to the national average, equipment violation and out-of-service trends, etc.).

The FMCSA routinely uses quarterly report information to measure individual and collective State program accomplishment and to assist with future program development.

Description of MCSAP forms:

a. *Form MCSAP–1,* Motor Carrier Safety Assistance Program: Use of the MCSAP–1 form is being discontinued. States will be required to submit their grant applications electronically using grants.gov beginning in Fiscal Year 2011. The SF–424 form (OMB No. 4040–0004), available via grants.gov, will be used in place of the previously approved MCSAP–1 form.

b. *Form MCSAP–2,* Grant Agreement: The MCSAP–2 form is the grant agreement that specifies the total

amount of the State Program, the State and Federal participating shares, the period of the grant, and the signatures of the responsible State official and the FMCSA Division Administrator.

c. *Form MCSAP–2A,* Grant Amendment for Fiscal Year____: The MCSAP–2A form is used to modify the terms of the grant. It is used to increase or decrease the amount of the grant, or to extend the period of the grant. It contains the signatures of the responsible State official and the FMCSA Division Administrator.

In addition, the following documents are provided as part of the CVSP package:

a. *State Training Plan (optional format):* This document is a request for commercial vehicle training courses. It is used by the FMCSA's National Training Center to more effectively schedule training courses to meet the needs of State enforcement agencies.

b. *State Certification:* The CVSP must contain a State Certification signed by the Governor, the State Attorney General, or other specially designated State official. The Certification includes conditions that must be met by the State to receive MCSAP grant funds.

Virtually all (99%) of the information required by the grant is submitted electronically. This includes over 3.4 million inspection reports, which are uploaded electronically from laptop computers at inspection sites in the field to FMCSA annually. The near-universal use of laptops for submitting these inspection reports has resulted in a dramatic reduction in the time burden. The annual CVSPs require signed certifications by State personnel and these certification documents are not, therefore, electronically transmitted.

The FMCSA is the only Federal agency authorized to enforce safety regulations applicable to commercial trucks and buses in interstate commerce. The type of information to be gathered from the States through this information collection is unique to MCSAP. No duplication was identified through the rulemaking process to implement relevant sections of SAFETEA–LU.

Under MCSAP grants are extended to the States predicated on annual submission of CVSPs. The FMCSA has determined that although monthly or bimonthly reports are not needed, a semiannual report would not be sufficiently frequent to allow for timely evaluation and changes in State program direction. Therefore, quarterly reports were determined to be the most appropriate, considering burden and Federal need. If the reports were submitted less frequently, FMCSA would be unable to exercise appropriate oversight and administration of the program as envisioned by the Congress.

Public comments invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: September 2, 2010.

Kelly Leone,

Director, Office of Information Technology.

[FR Doc. 2010–22462 Filed 9–8–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0273]

Notice of Request for Information (RFI): Training Certification for Drivers of Longer Combination Vehicles

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval and invites public comment. The FMCSA requests OMB approval to revise an ICR entitled, "Training Certification for Drivers of Longer Combination Vehicles." This ICR is necessary because the training certificates drivers are required to present to prospective employers serve as proof the drivers have successfully completed the training to operate Longer Combination Vehicles (LCVs) safely on the Nation's highways. Motor carriers are required to maintain a copy of the training certification in each LCV driver's qualification file, which may be reviewed by Federal or State enforcement officials. This ICR is being revised due to an anticipated increase in the estimated number of LCV drivers submitting training certificates to employers resulting in change to the estimated information collection burden for this training task.

DATES: We must receive your comments on or before November 8, 2010.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2010–0273 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. 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.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov, and follow the online instructions for accessing the dockets, or go to the street address listed above.

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 Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316, or you may visit *http://edocket.access.gpo.gov/2008/pdfE8-794.pdf.*

Public participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the "help" section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–4325; e-mail *tom.yager@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 4007(b) of the Motor Carrier Act of 1991 (Title IV of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914, 2152; 49 U.S.C. 31307) requires the Secretary of Transportation to establish Federal minimum training requirements for drivers of LCVs. The responsibility for implementing the statutory requirement was subsequently delegated to FMCSA (49 CFR 1.73). The FMCSA, in a final rule entitled, "Minimum Training Requirements for Longer Combination Vehicle (LCV) Operators and LCV Driver-Instructor Requirements" adopted implementing regulations for minimum training requirements for the operators of LCVs (March 30, 2004; 69 FR 16722).

The 2004 final rule created an information collection burden concerning the certification of new, current and non-grandfathered LCV drivers. An LCV is any combination of a truck-tractor and two or more semi-trailers or trailers, which operates on the National System of Interstate and Defense Highways (as defined in 23 CFR 470.107) and has a gross vehicle weight greater than 80,000 pounds. The purpose of this rule is to enhance the safety of LCV operations on our nation's highways.

By regulation, motor carriers cannot allow a driver to operate an LCV without ensuring that the driver has been properly trained in accordance with the requirements of 49 CFR 380.113. LCV drivers must present their LCV Driver-Training Certificate to prospective employers as proof of qualification to drive LCVs. Motor carriers must maintain a copy of the LCV Training Certificate in order to be able to show Federal, State or local officials that drivers operating LCVs are certified to do so.

Title: Training Certification for Drivers of Longer Combination Vehicles.

OMB Control Number: 2126–0026.

Type of Request: Revision of a currently-approved information collection.

Respondents: Drivers who complete LCV training each year, current LCV drivers who submit the LCV Driver-Training Certificate to a prospective employer, and motor carriers receiving and filing the certificates.

Estimated Number of Respondents: 31,500 drivers and motor carriers (750 new LCV drivers plus 15,000 current LCV drivers plus 15,750 motor carriers).

Estimated Number of Responses: 31,500 (750 new LCV drivers plus 15,000 current LCV drivers plus 15,750 motor carriers).

Estimated Time per Response: 10 minutes for preparation of LCV Driver-Training Certificate and an additional 10 minutes for the use of the LCV Driver-Training Certificate during the hiring process each year.

Expiration Date: February 28, 2011.

Frequency of Response: At various times during the year.

Estimated Total Annual Burden: 2,750 hours. The total number of drivers per year for whom this activity will occur consists of newly-trained LCV drivers (750) and current LCV drivers changing employers (15,000), a total of 15,750 drivers. The total annual information collection burden is estimated to be 2,750 hours: Preparation of LCV Driver-Training Certificate [750 newly trained LCV drivers × 10 minutes ÷ 60 minutes], and use of the certificate during the hiring process [15,750 total LCV drivers × 10 minutes ÷ 60 minutes]

Definitions: The LCV training regulations under 49 CFR part 380 are applicable only to drivers of "longer combination vehicles," defined as "any combination of a truck-tractor and two or more trailers or semi-trailers, which operate[s] on the National System of Interstate and Defense Highways (defined in 23 CFR 470.107) with a gross vehicle weight greater than 80,000 pounds" (49 CFR 380.105).

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for FMCSA's performance; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: September 2, 2010.

Kelly Leone,

Director, Office of Information Technology.

[FR Doc. 2010–22458 Filed 9–8–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2010–0831]

Airport Improvement Program (AIP): Policy Regarding Access to Airports From Residential Property

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of proposed policy; notice of proposed amendment to sponsor grant assurance 5; and request for public comment.

SUMMARY: This action proposes to amend and clarify FAA policy concerning through-the-fence access to a Federally obligated airport from an adjacent or nearby property, when that property is used as a residence and permits continuation of existing access subject to certain standards. This action also proposes to modify sponsor grant assurance 5, Preserving Rights and Powers, to prohibit new residential through-the-fence access to a Federally obligated airport. Current FAA policy discourages through-the-fence access to a Federally obligated airport from an off-airport residence. Owners of properties used both as a residence and for the storage of personal aircraft, sometimes called "hangar homes," have urged the agency to permit an exception to through-the-fence policy for residents who own aircraft. The FAA proposes to modify Airport Improvement Program (AIP) grant assurance 5, Preserving Rights and Powers, to clarify that airport sponsors are prohibited from permitting new through-the-fence access from residential properties. Pursuant to applicable law, the Secretary of Transportation is required to provide notice in the **Federal Register** and an opportunity for the public to comment upon proposals to modify or add new AIP assurances. The agency recognizes that there are airports at which residential through-the-fence access already exists. The FAA will not consider sponsors of these airports to be in violation of current grant assurances if the airport sponsor meets certain standards for control of airport operations and development; self-sustaining and nondiscriminatory airport rates; and compatible land use.

At present, there are 75 airports in the continental U.S. where residential through-the-fence access is known to exist. This represents less than 3 percent of the 3,300 airports listed in the FAA's National Plan of Integrated Airport Systems (NPIAS) and eligible for Federal investment. While the vast majority of airport sponsors do not have

residential through-the-fence access, due to the increasing number of requests to establish such access, particularly at general aviation airports, the agency has revisited the policy in order to establish clear guidance for the future.

DATES: Send your comments on or before October 25, 2010. The FAA will consider comments received on the Proposed Policy and the proposed grant assurance modification. Any necessary or appropriate revision to the Policy or the grant assurance modification resulting from the comments received will be adopted as of the date of a subsequent publication in the **Federal Register**.

ADDRESSES: You may send comments [identified by Docket Number FAA–2010–0831] using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the notice and comment process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. For more information, *see* the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Randall S. Fiertz, Director, Office of Airport Compliance and Field Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3085; facsimile: (202) 267–5257; e-mail: *randall.fiertz@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You can get an electronic copy of this notice and all other documents in this docket using the Internet by:

(1) Searching the Federal eRulemaking portal (*http://www.regulations.gov/search*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/index.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Airport Compliance and Field Operations, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3085. Make sure to identify the docket number, notice number, or amendment number of this proceeding.

Authority for the Policy and Grant Assurance Modification

This notice is published under the authority described in Subtitle VII, Part B, Chapter 471, sections 47107 and 47122 of Title 49 United States Code.

Background

Sponsors of airports that accept planning and development grants from the FAA under the Airport Improvement Program (AIP), 49 U.S.C. 47101 *et seq.,* agree to a list of standard conditions, or grant assurances. Similar obligations also attach to the transfer of Federal surplus property to airport sponsors and are often contained in surplus property deeds. These include responsibilities to retain the rights and powers necessary to control and operate the airport; to maintain the airport in a safe condition; to take reasonable steps to restrict land adjacent to the airport to compatible land uses; to allow access to the airport on terms that are reasonable, not unjustly discriminatory to any category of user; and to maintain a rate structure for airport fees that makes the airport as self-sustaining as possible.

A complete list of the current grant assurances can be viewed at: *http://www.faa.gov/airports/aip/grant_assurances/*.

Administration of the AIP, including sponsor compliance with grant assurances, is the responsibility of the FAA Associate Administrator for Airports. The FAA developed internal agency Order 5190, commonly referred to as the Airport Compliance Manual, which is used by agency employees in the administration of the AIP. On September 30, 2009, the agency issued FAA Order 5190.6B, Airport Compliance Manual; it superseded Order 5190.6A, which was in effect from 1989 to 2009. The new order was updated to reflect new statutory grant assurances and other pertinent statutory changes as well as changes in and clarifications of agency policy since 1989.

Typically, through-the-fence access allows an aircraft owner to store an aircraft at an off-airport property, and to use the airport by way of a taxiway that crosses the airport boundary and connects the owner's property or neighborhood to the airport's runway-taxiway system. Residential access to airports from residences was only briefly mentioned in Order 5190.6A. It defined through-the-fence access as where "an individual or corporation residing or doing business on an adjacent tract of land proposes to gain access to the landing area.* * *" Order 5190.6A otherwise only dealt with commercial through-the-fence access, and stated that when this type of arrangement "circumvents the attainment of the public benefit for which the airport was developed, the owner of the airport will be notified that the airport may be in violation of his agreement with the Government." Order 5190.6A did not address airparks with multiple residences or the sponsor's authority to permit establishment of new residences with through-the-fence access. Order 5190.6A stated a general policy recommending airport owners refrain from entering into residential through-the-fence agreements but did not articulate a policy that such access constituted a per se violation of Federal grant assurance obligations.

In the mid-2000s, several issues specifically relating to residential use of property on or near several Federally obligated general aviation airports came to the FAA's attention. In one case, the firm managing the airport established a residential development around the airport. In another case, a developer marketed hangar homes on the airport itself, next to a taxiway. In these cases and others, the FAA advised that the sponsor was precluded by its grant assurance obligations from permitting new residential development with through-the-fence access. In so advising, the agency cited violations of the AIP grant assurances relating to the rights and powers of the airport sponsor; economic discrimination; safe operation; and compatible land use. The FAA did not consider this to reflect any change in policy under Order 5190.6A, but rather an interpretation of that guidance and underlying grant assurance obligations as it applied to circumstances not anticipated in 1989.

The revisions to Order 5190.6B reflected the agency's strong policy concerns about new trends in residential through-the-fence access, which had been expressed in letters to sponsors and developers. Order 5190.6B stated that the FAA would not support any through-the-fence agreement associated with residential use, under any circumstances, since that action would be inconsistent with the Federal obligation to ensure compatible land use adjacent to the airport. In response to requests from numerous airport sponsors, users, and FAA airport district office staff, the FAA issued draft Compliance Guidance Letter 2009–1—*Through-the-Fence and On-Airport Residential Access to Federally Obligated Airports,* on October 13, 2009. The purpose of the Compliance Guidance Letter was to reiterate the FAA's policy regarding through-the-fence agreements and outline criteria for FAA personnel's review of these agreements. This guidance also discussed appropriate corrective actions that should be developed to prevent future residential through-the-fence access and limit its expansion. The FAA circulated the draft Compliance Guidance Letter among aviation user groups for comments from October 15, 2009 through December 21, 2009.

There has been no corresponding need for clarification of the agency's policy on commercial through-the-fence access. Commercial through-the-fence access has always been discouraged, but is a fact of life at some airports and a necessity at others where there is not sufficient land on airport for providers of aeronautical services. The potential adverse effects of commercial through-the-fence access can be mitigated by the measures discussed in Order 5190.6B, and the FAA is not proposing any changes to policy on commercial access.

FAA Review of the New Policy Statement and Public Outreach

In response to informal comments received on these actions, the FAA Associate Administrator for Airports directed the Office of Airport Compliance and Field Operations to review the policy for residential through-the-fence access as stated in Order 5190.6B. The Office of Airport Compliance and Field Operations took several steps to obtain public views on through-the-fence access as part of its policy review. Between July 2009 and March 2010, the Office of Airport Compliance and Field Operations:

- Received comments from stakeholders with regard to residential through-the-fence access at an aviation membership association's convention.
- Accepted comments from interested aviation associations and their members on a draft compliance guidance letter on through-the-fence access.
- Met with aviation membership associations which commented on the issue.
- Met with airport representatives from Wittman Regional Airport in Oshkosh, Wisconsin, and observed a meeting with representatives from Sandpoint Airport in Idaho and the FAA's Northwest Mountain Regional Office staff. Both airports have existing residential through-the-fence access arrangements.
- Spoke with State aviation officials of States with residential through-the-fence access.
- Conducted site visits and met with airport sponsors, local tenants, and residents at several other representative airports with existing residential through-the-fence access. Locations visited included airports in Erie, Colorado; Independence, Oregon; Driggs, Idaho; and Oneida, Tennessee.

Independent of the specific review of through-the-fence policy, the Office of Airport Compliance and Field Operations issued new Order 5190.6B for public review and comment. Any necessary corrections will be included in an update of the Order. A notice requesting public comment was published in the **Federal Register** on October 13, 2009 (74 FR 52524). Comments were due on March 31, 2010. Comments on the provisions of the Order related to residential through-the-fence will be addressed in finalizing this Policy. We expect to update the Order to reflect this Policy. Other comments will be dealt with separately in updating the Order.

Comments Received on Residential Through-the-Fence Access, July 2009–March 2010

During its policy review, the Office of Airport Compliance and Field Operations received comments by written submission, by e-mail, and verbally in meetings. Commenters included persons with residential through-the-fence access at a Federally obligated airport; State aviation officials; airport management; local government officials; developers; the Aircraft Owners and Pilots Association (AOPA); the American Association of Airport Executives (AAAE); the Experimental Aircraft Association (EAA); and the National Air Transportation Association (NATA). Many commenters took the position that residential through-the-fence access is actually beneficial for an airport. Some other commenters recognized potential and actual problems with such access, but stated that existing access should be allowed to continue even if new access is not allowed. EAA urged that residential through-the-fence be allowed, and that new requests for access be approved at general aviation airports. AOPA would accept a policy against establishing new residential through-the-fence access arrangements, but believed that existing locations should be permitted to continue. AAAE was concerned about requiring sponsors to depict through-the-fence access on the airport layout plan because the sponsor would not be able to prevent the property owner from splitting the parcel and establishing a second access point not depicted on the airport layout plan. NATA would support a ban on new residential through-the-fence access and the elimination of existing uses.

Issues raised by one or more commenters can be summarized as follows:

Comment: Residential through-the-fence access provides a supportive community that likes aviation, will not complain about airport noise, and protects the airport in local politics.

Response: Owners of residential lots with through-the-fence access frequently commented that the airport benefits from such owners, because they support the airport and would not oppose aircraft operations like other residents. We agree that this is true up to a point. We accept that aircraft owners do not object to the presence of the airport, or to operations by others with similar aircraft. However, when faced with a change in operations at the airport that may affect the desirability of a nearby residence, for example operations by helicopters or larger aircraft types, a through-the-fence owner is just as likely to oppose the change as support it. It is a guiding principle of the National Plan of Integrated Airport Systems (NPIAS) that "[a]irports should be flexible and expandable, and able to meet increased demand and to accommodate new aircraft types." The FAA is concerned that owners of residential property next to an airport could attempt to limit the airport sponsor's flexibility to expand an airport or accommodate new aircraft types.

Secondly, while through-the-fence communities sometimes attempt to limit ownership to aircraft owners, there is no effective way to prevent turnover of these properties to non-aircraft owners at some point. When that happens, the airport may encounter significant local opposition from its immediate neighbors.

Comment: Hangar homes should be considered an exception to the FAA general policy that residences are an incompatible land use, because owners of hangar homes accept airport noise. A hangar home should not be considered a residential use; the need to locate it near an airport taxiway makes it an aeronautical use.

Response: It is longstanding congressional and FAA policy that airports should be operated in a way that minimizes the impact of aircraft noise on communities. One of the key means of implementing that policy is to limit land uses around airports to uses compatible with airport noise and operations. Residential use is not a preferred, compatible use for properties adjacent to public-use airports. As such, the FAA has awarded several hundred million dollars in AIP grants in the past three decades for acquiring noise buffer land, relocating homes, and insulating homes to achieve compatible land use. Simultaneously adopting a policy that encourages more homes near airports is counter to these efforts. Distinguishing between homes without hangars and homes with hangars does not eliminate the domestic characteristics that present additional challenges, such as the proximity of children and pets, to normal airport operations. In addition, not all residents are aircraft owners, examples being family members and tenants. Furthermore, it is not possible to guarantee that a residence owned by an aircraft owner now will continue to be in the future. Even aircraft owners may be motivated more as homeowners than as aircraft owners, when faced with a proposed expansion of the airport or introduction of new aircraft types that might affect living conditions or residential property values. Finally, once in place, a residential use is difficult to move or eliminate because homeowners expect to retain the use and value of their home indefinitely.

Comment: Residential through-the-fence communities provide valuable revenue to the airport operator.

Response: It is true that some residential through-the-fence users pay the airport for access. In a few cases, the airport operator has come to depend on that revenue. In cases where residential through-the-fence access rights already exist, the FAA believes that the airport should charge for that access, not only to support the airport but also to fairly distribute the recovery of airport operating and capital expenses across both tenants and non-tenant users of the airport. So, if an owner of land next to an airport has through-the-fence access to an airport, the owner should pay for that access. However, the potential for additional revenue to the airport does not justify the establishment of homes next to an airport. Also, the effect on revenue is not always positive. Storage of aircraft at off-airport lots with airport access can undermine the market for hangars and tie-downs on airport property.

Comment: Residential through-the-fence owners provide additional security at an airport.

Response: Residence of persons near the airport does not automatically translate into full-time surveillance. It is true that residents may notice suspicious activity, because they are familiar with the airport and are around more than persons who are just using the airport when they are flying or working on an aircraft. On the other hand, the existence of routine traffic through-the-fence from off-airport locations makes such activity less suspicious because it is expected. Also, just the existence of additional access points through the airport boundary tends to make the airport less secure, not more. The FAA consulted with the Transportation Security Administration (TSA) of the Department of Homeland Security to obtain TSA's view of this particular comment. While TSA does not directly regulate access at general aviation airports, that agency took the position that access points to an airport should be limited to the number necessary. TSA plans to undertake a separate review of this matter and the FAA will incorporate any recommendations resulting from that review.

Comment: The FAA hasn't identified any actual problem associated with the residential use aspect of through-the-fence access. Most examples of problems cited have been generic through-the-fence issues, and are not specific to residential use. The FAA's concern about residential use is not justified by information, noise complaints, studies or experience.

Response: It is true that the FAA has cited problems with residential through-the-fence access that are common to any type of through-the-fence access, including commercial uses. Problems have included the sponsor's inability or failure to be reimbursed for the access; interference with airport operation because of the location of access points; and impeding optimal airport layout and growth. As with commercial uses, these problems can be mitigated, and the Policy proposed would require such mitigation for existing residential through-the-fence access where possible.

There are concerns that are particular to residential through-the-fence access, however. As mentioned previously, owners of hangar homes are highly tolerant of current aircraft types and operations at the airport, but can be resistant to change. Residential through-the-fence communities can have substantial influence on decisions of the airport sponsor, and over time limit the sponsor's ability to take actions to accommodate new aviation demand. Commenters pointed to a lack of noise complaints in FAA files as evidence that current hangar home owners have not objected to airport operations. Such comments would of course be made to the airport sponsor or local government, not the FAA. But we would not expect complaints about current operations anyway. The problem is complaints about growth and new aircraft types, and resistance to the sponsor's accommodation of those changes. At airports where the nearby residents have successfully prevented airport expansion or access by different aircraft types, *e.g.* jets or helicopters, then there will be no complaints, but there will have been a real and adverse effect on the airport's obligations and role in the NPIAS.

Comment: In developing policy toward residential through-the-fence, the FAA should not apply the same rules to all airports; airports are different, and the policy should reflect the fact that what is a problem at one airport will not be at another.

Response: The FAA agrees that each airport has its own circumstances, and conditions can vary widely among different airports. Differences might include, for example, the number of operations and variety of aircraft types, the number of owners with through-the-fence privileges, the number and location of access points across the airport boundary, the nature and duration of the owners' access rights, and the ability of State and local government to influence land use around the airport. Notwithstanding the different circumstances at each airport, however, there are common principles that apply to every sponsor of a Federally obligated airport. These include the obligations to maintain the rights and powers necessary to control operation and development of the airport, to treat similarly situated users in a similar manner, and to charge airport fees that are nondiscriminatory and that make the airport as self-sustaining as possible. The revised Policy proposed by the FAA will apply these general principles to the fact situation at each airport with existing through-the-fence access.

Comment: Even if there are potential problems with residential through-the-

fence access, they can be mitigated just like commercial through-the-fence uses.

Response: The FAA agrees that many actual and potential problems with residential through-the-fence access can be mitigated with the adoption of certain measures. Mitigation might help assure that the airport sponsor remains in control of airport access, collects reasonable fees to cover costs, and operates and maintains the airport in a safe manner. The revised Policy proposed in this notice will require sponsors of airports with existing through-the-fence access to take such measures if they have not already done so.

However, there are factors with residential use that are different from commercial uses and that cannot be entirely resolved by mitigation. Residential owners may resist change at the airport in order to protect the quality of life in residing next to the airport. Also, once in place, a residential use is difficult to move or eliminate because homeowners expect to retain the use and value of their home indefinitely. Accordingly, while the FAA agrees that there are mitigation measures that should apply to existing through-the-fence locations, that mitigation cannot resolve all problems.

Second, some of the mitigation measures mentioned by commenters are of limited effect, or may not be available at all airports. For example, a local government can zone a hangar home community as joint residential-aviation use, but that zoning would not prevent a non-aircraft owner from purchasing property there. Moreover, many States and jurisdictions do not have sufficient zoning power to adopt even this limited measure. Another example offered by commenters is a covenant not to complain about aircraft noise. Avigation easements and covenants can acknowledge the property is subject to airport noise and emissions, and effectively prevent the property owner from filing suit against the airport for aviation impact. No easement or covenant can prevent an owner from taking a position on local policy, however. Even the most restrictive covenant would not prevent a through-the-fence owner from working against the expansion of the airport or accommodation of new aircraft types. While the FAA supports these mitigation measures where available, they cannot completely eliminate the potential adverse effects of residential through-the-fence access.

Comment: If the FAA forces the termination of residential through-the-fence access by aircraft owners, the properties will be bought by non-aircraft owners, thereby bringing about the exact result that the FAA seeks to avoid: general residential use immediately adjacent to the airport.

Response: The FAA agrees with the comment. The FAA took this into consideration in its approach to both existing and new residential through-the-fence access. For existing access, the FAA will not require termination of existing arrangements, and will encourage mitigation measures that keep through-the-fence properties in the hands of aircraft owners to the extent possible. However, the same consideration argues against the establishment of any new residential through-the-fence access. This is because every property with such access can potentially be acquired in the future by an owner who has no interest in airport access, whether or not airport access is available.

Comment: The FAA changed its policy on residential through-the-fence access after years of not objecting to residential through-the-fence uses, and after hundreds of homeowners had already invested in hangar home properties. Even a policy that existing leases may not be renewed has a substantial adverse effect on the value of the property.

Response: The FAA would not characterize its approach to residential through-the-fence access in recent years as a policy change. Rather, the through-the-fence policy addressed an issue that was not fully considered in the agency's general compliance policy statement in 1989. However, we would acknowledge that the lack of clear guidance on this issue before the mid-2000's resulted in the inconsistent application of policy in FAA regional offices. Some older hangar home developments even had regional FAA approval. In visiting locations with residential through-the-fence access and talking to property owners, the FAA understands the effect of terminating airport access on the value and utility of properties that were acquired and developed to take advantage of airport access. For these reasons, the FAA is not proposing to require airport sponsors to terminate existing residential through-the-fence access at their airports. The FAA recognizes that Order 5190.6B and the draft Compliance Guidance Letter were not clear on how the FAA expected sponsors to manage existing residential through-the-fence arrangements. This Policy proposes clear guidance for these sponsors.

Comment: The FAA should allow not only through-the-fence access for hangar homes, but should allow hangar homes on the airport itself.

Response: The few cases where it may be appropriate to locate a residence on airport property are already listed in Order 5190.6B, including crew quarters and housing for key airport personnel in isolated areas. On-airport homes have the same problems as through-the-fence uses for airport rights and powers and oftentimes compatible land use. In addition, on-airport residences raise the additional concerns of personal safety, with pedestrians and vehicles in the vicinity of taxiways. In extremely unusual situations such as wilderness areas with no permanent road access to the airport and local community, the FAA has the authority to consider circumstances on a case-by-case basis. Accordingly, the FAA is not proposing any change to its effective prohibition on hangar homes on airport property.

Comment: The grant assurances, and the statute on which they are based, have not changed. The FAA previously interpreted this statute to allow residential through-the-fence access, and reversed this interpretation with no change in the underlying law.

Response: It is true that the grant assurances that affect through-the-fence access have not substantially changed since enactment of the Airport and Airway Improvement Act of 1982. It is clear from the FAA's 1989 compliance order, Order 5190.6A, that the agency recommended against any new through-the-fence access. The discussion in Order 5190.6A also indicates that the agency understood through-the-fence access to be almost entirely a commercial issue. At the time Order 5190.6A was issued, the agency was not confronted with a proliferation of residential through-the-fence uses or some of the actual problems caused by such uses. When those issues did arise, the FAA issued more specific policy guidance on through-the-fence access on a case-by-case basis. The agency continues to believe that residential through-the-fence access is not consistent with the characteristics of a Federally obligated public-use airport and has the strong potential to create grant assurance violations which are often difficult for a sponsor to correct. At the same time, however, the agency recognizes that a number of residential through-the-fence locations exist. Some of these uses could have resulted from the lack of specific guidance in FAA compliance documents, although in some cases the access was established over the objection of an FAA regional office. In any event the FAA proposes to accept the existence of these locations, and find the airport sponsor in compliance when the airport sponsor applies certain mitigation measures to

make the access consistent with the sponsor's grant assurances. However, with regard to the establishment of new through-the-fence arrangements, the FAA proposes amending the sponsor grant assurances to prohibit this practice in the future.

Comment: The FAA's policy is not being evenly applied in all regions. In at least one region, airports appear to be subject to a zero-tolerance policy on residential through-the-fence access that is not being applied in other regions.

Response: The Proposed Policy and amendment to the sponsor grant assurances will provide clear national guidance for all FAA regional and field offices and establish a standardized approach to through-the-fence issues in all regions.

Comment: The FAA should allow States and local communities to decide if residential through-the-fence access is appropriate for their airport.

Response: Airports become eligible for Federal assistance when the FAA determines they can provide important benefits to the national airport system. In turn, the FAA provides financial investments, through AIP grants, for the capital improvement programs of these airports. The FAA has a fiduciary responsibility to ensure that capital improvements made with AIP grants will serve their intended purpose for the useful life of the investment. The FAA believes that impacts associated with residential through-the-fence access can compromise the longevity of its investments. Allowing individual States and local communities to establish a different access policy for each airport could decrease the overall utility of the national airport system. Moreover, the FAA has a statutory obligation to enforce the terms of AIP grants, including the assurances made by airport sponsors.

Discussion of Options Considered

In reviewing the policy stated in Order 5190.6B, the FAA considered a range of possible policy approaches, as recommended in one or more public comments received. The agency considered the following four general policy approaches, with variations:

- Allow both new and existing residential through-the-fence access, on certain conditions.
- Prohibit new residential access, but allow existing access to continue under certain conditions on a case-by-case basis.
- Prohibit new residential through-the-fence access, and require sponsors to eliminate existing access.
- Allow States or airport sponsors to decide, as a matter of State and local law, whether to allow residential through-the-fence access at each airport.

The agency's review of the policy options listed above can be summarized as follows:

Allow both new and existing residential through-the-fence access, on certain conditions. The threshold issue for review of this policy is whether residential through-the-fence access is a problem for Federally obligated airports or not. The FAA has consistently discouraged through-the-fence access of any kind. In recent years, the FAA has objected to these arrangements as a result of actual and potential grant assurance violations. As part of its review, the FAA considered the potential problems for airports with residential through-the-fence access, but also the comments from property owners and others favoring such access for general aviation airports. After carefully balancing competing considerations of public policy, we have concluded that this access creates significant operational and land use problems for airport sponsors and should be banned in the future (at Federally obligated airports). Even at locations where off-airport property owners are charged a reasonable fee by the sponsor and the access is not causing current operational problems for the airport, residential through-the-fence access potentially diminishes the sponsor's ability to expand and improve the airport to meet current and future demand.

The FAA remains concerned that owners of residential property next to an obligated airport have strong incentives to limit the benefits of the Federal investments made at the airport, even if they are aircraft owners, if their residential quality of life or property values would be adversely affected by proposed airport improvements or increases in service. While through-the-fence communities sometimes attempt to limit ownership to aircraft owners, there is no very effective way to prevent sale or lease of these properties to non-aircraft owners in the future. If that happens, the airport may encounter significant local opposition from its immediate neighbors. Finally, once established, these access rights can be very difficult for a sponsor to change or eliminate.

No new residential access, but allow existing access to continue on certain conditions. Even if no new access from residential properties is created, the FAA believes there are approximately 75 airports in the continental U.S. with some degree of existing residential through-the-fence use. As part of this review, FAA staff visited some of these airports and spoke with affected property owners and airport sponsors. It is clear that through-the-fence access to residential property has existed at some locations for many years, and that some property owners have relied on permission for airfield access in purchasing their property and building hangar homes. Termination of the access at these existing locations could substantially reduce the value of the owners' properties and interfere with the owners' expected use of these properties in the future. In certain cases FAA regional offices were notified but took no action to discourage sponsors from permitting such access. In other instances, the sponsor granted through-the-fence access rights without addressing the FAA's concerns and objections. At some airports, access rights are perpetual, while at others the rights can be terminated only after expiration of a lease.

Given the potential for hardship and adverse effect on property values, the FAA does not believe a general policy against residential through-the-fence access should be applied retroactively to require sponsors to terminate existing uses. There are various actions that can be taken by airport sponsors and the property owners with access rights to help mitigate potential adverse effects. Where access rights could legally be terminated, but there is no immediate reason for the sponsor to do so, there would be little adverse impact from permitting those rights to continue until conditions at the airport change. For these reasons, the Policy proposed in this notice permits sponsors to continue existing access subject to standards for compliance.

The agency's acceptance of existing residential through-the-fence access does not constitute "grandfathering" of access rights at these airports. Rather, the Proposed Policy defines standards of compliance for an airport sponsor's control of access from residential property. Airport sponsors would be required to present the FAA with a plan for how the airport meets these standards, as a condition of continuing eligibility for future AIP grants and NPIAS status. The agency is aware that some sponsors and local governments have more rights and governmental authority to control activity around and adjacent to the airport than others. Agency staff would take these differences into account in reviewing the access plans provided by each sponsor. Where legal rights to through-the-fence access expire, the sponsor would be able to extend the rights for fixed periods with FAA concurrence

until there is a reason to terminate or modify the access.

Once a sponsor's residential through-the fence access plan is reviewed and accepted by the FAA, the FAA would consider the sponsor to be in compliance with its grant assurances although the airport has existing residential through-the-fence access. The FAA would allow sponsors a reasonable time to submit and obtain FAA acceptance of access plans, and would not initiate grant enforcement based on existing residential through-the-fence access per se during the review period. As proposed, the FAA would require an airport's access plan before the sponsor notifies the FAA of its intent to apply for an AIP grant, beginning in Fiscal Year 2013.

Where an airport sponsor is unable to meet the standards for existing access, the FAA would consider the future role of the airport in the NPIAS and the type of AIP investment justified. In the unlikely event a sponsor refuses to take available actions to meet the basic compliance standards, the FAA would consider grant enforcement at that time.

No new residential through-the-fence access, and eliminate existing access. For the reasons already discussed, the FAA does not believe that it is necessary or warranted to require sponsors to eliminate all existing residential through-the-fence access. Instead, the agency proposes a Policy that would allow existing access to continue on certain terms. In cases where an airport sponsor exercises its proprietary authority to limit or terminate its existing residential through-the-fence access, the FAA will not consider such action to violate Federal law. Residential through-the-fence access is not protected by the Federal grant assurances, and off-airport tenants would have no recourse under 14 CFR Part 16.

Allow States or airport sponsors to decide whether to allow residential through-the-fence access at each airport. Several commenters urged that the FAA take no position at all on residential through-the-fence access, at least at airports in the category of smaller general aviation airports. Instead, commenters urged that the FAA recognize the authority of each airport, or its State or local government, to decide as a matter of State and local, rather than Federal, law whether to allow residential through-the-fence access at the airport.

The FAA has a statutory obligation to enforce the terms of AIP grants, including the assurances made by airport sponsors. The FAA is ultimately responsible for interpreting and enforcing compliance with AIP grant assurances. Moreover, the Government Accountability Office's May 1999 report, *General Aviation Airports, Unauthorized Land Use Highlights Need for Improved Oversight and Enforcement,* recommended the FAA exercise greater oversight with regard to monitoring grant assurance compliance. Interpreting through-the-fence policy to be a matter of State and local, rather than Federal, law would likely result in a less consistent application of the policy. Accordingly, the FAA will retain responsibility for the establishment and enforcement of policy on residential through-the-fence access.

Actions Proposed in This Notice

The FAA proposes to take a two-prong approach to through-the-fence access to obligated airports from residential property:

1. The sponsor of an airport where residential through-the-fence access or access rights already exist will be considered in compliance with its grant assurances if the airport meets certain minimum standards for safety, efficiency, ability to generate revenue to recover airport costs, and minimizes the potential for noncompatible land uses consistent with standard sponsor grant assurance 21, Compatible Land Use.

2. The agency proposes to add a new paragraph to standard sponsor grant assurance 5, Preserving Rights and Powers, to prohibit a sponsor from allowing new through-the-fence access from a residential property.

In considering policy on through-the-fence access to federally obligated airports, the FAA's primary goals are to preserve the safety and efficiency of airports, and to ensure continuing public access to these airports as part of the national airport system. The viability and utility of a federally obligated, public use airport are best preserved by measures that:

- Ensure that airport sponsors retain the powers necessary to meet their obligations under the grant assurances and are able to maintain and develop the airport in the future. Also, while an airport operator is not obligated to expand airport facilities or property, it is a guiding principle of the National Plan of Integrated Airport Systems (NPIAS) that "[a]irports should be flexible and expandable, and able to meet increased demand and to accommodate new aircraft types."
- Ensure that airports have sufficient revenue to be as self-sustaining as possible and meet capital and operating requirements.
- Minimize encroachment of noncompatible land uses around the airport. Noncompatible land uses around an airport can increase the possibility of access restrictions, prevent airport improvement and expansion in response to aviation demand, and even threaten the continuing existence of the airport.

The FAA considers residential use of airport property or of properties within the airport's 65 DNL dB noise contour to be incompatible with the operation of a public use airport, whether or not the residents are aircraft owners. Ultimately, location of any residences near an airport boundary will increase the potential for opposition to expansion or increased use of the airport. Also, regardless of compatibility, the through-the-fence access itself can cause operational and land use problems for the sponsor and other airport users.

At the same time, the FAA recognizes that there are federally obligated airports where residential through-the-fence access already exists. In many of these cases the owners have legal rights for through-the-fence access to the airport.

1. The Proposed Policy on Existing Through-the-Fence Access From a Residential Property

In consideration of the foregoing, the Federal Aviation Administration proposes to adopt the following Policy on existing through-the-fence access to a federally obligated airport from residential property:

Policy on Existing Through-the-Fence Access to Airports From a Residential Property

Applicability

This Policy applies to any federally obligated airport with existing residential through-the-fence access.

For the purposes of this Policy statement:

In this sense "access" means:

1. An access point for taxiing aircraft across the airport boundary; or

2. The right of the owner of a particular off-airport residential property to use an airport access point to taxi an aircraft between the airport and that property.

"Existing access" through the fence is defined as any through-the-fence access that meets one or more of the following conditions:

1. There was a legal right of access from the property to the airport (*e.g.,* by easement or contract) in existence as of the date of this notice September 9, 2010; *or*

2. There was development of the property prior to the date of this notice

September 9, 2010, in reliance on the airport sponsor's permission for through-the-fence aircraft access to the airport; or

3. The through-the-fence access is shown on an FAA-approved airport layout plan or has otherwise been approved by the FAA in writing, and the owner of the property has used that access prior to the date of this notice September 9, 2010.

"Development" is defined as excavation or grading of land or construction of fixed structures.

"Additional through-the-fence access" is defined as:

1. Establishment of a new access point to the airport for the benefit of the holder of a legally enforceable right to access that cannot be accommodated by an existing access point; or

2. Extension or renewal of an existing right to access the airport from residential property or property zoned for residential use.

"Transfer of access" through the fence is defined as one of the following transactions:

1. Sale or transfer of a residential property or property zoned for residential use with existing through-the-fence access; *or*

2. Subdivision, development, or sale as individual lots of a residential property or property zoned for residential use with existing through-the-fence access.

I. Existing Through-the-Fence Access From Residential Property at Federally Obligated Airports

Status of Existing Residential Through-the-Fence Access

The FAA believes there are approximately 75 airports in the continental U.S. in the NPIAS where some form of through-the-fence access for taxiing aircraft was permitted prior to the date of this notice. The details of this access vary widely from location to location. Differences among particular locations include the number of persons with access rights; the number of access points across the airport boundary; the point at which the through-the-fence taxiway connects with the airport runway-taxiway system; the nature of access rights, *e.g.,* by easement, contract, or informal permission of the sponsor; the amount and type of traffic at the airport; and the sponsor's ability to impose operating rules and charge fees related to the access. In some locations, the access right is currently held by a developer that may intend to transfer the right to airport access to a homeowners association or to individual homeowners.

Many of these through-the-fence uses have been in effect for years, sometimes decades. At some locations, property owners have perpetual rights of access to the airport under an easement that cannot be extinguished by the airport sponsor except possibly through condemnation. In other locations, owners have rights of access for a term of years under contracts that will expire in the future. In both cases, many individual owners have made a substantial investment in properties for use jointly as a residence and aircraft hangar. In every case that the FAA reviewed, owners had the expectation of continued through-the-fence access to the airport both for their personal aircraft use and for the maintenance of property values and protection of their investment.

Some sponsors and users have taken measures to mitigate potential problems with residential through-the-fence at their airports. These measures include:

- Making through-the-fence users subject to airport operating rules and standards, by regulation or by agreement;
- Collection of fees by the sponsor for airport access from off-airport properties;
- Through-the-fence owners waiver of rights to bring any action against the sponsor for aircraft noise and emissions;
- Through-the-fence owners execution of avigation easements in favor of the airport;
- Conditions, covenants or restrictions that limit ownership of property with through-the-fence access rights to owners or operators of aircraft; and
- Zoning that limits the use of properties with through-the-fence use to a joint aviation-residential use.

As a result, the actual and potential problems with residential through-the-fence access to an airport have been mitigated to a greater degree at some airports than at others.

Policy Toward Sponsors With Existing Residential Through-the-Fence Access

The agency understands that it is not practical or even possible to terminate through-the-fence access at many of those airports where that access already exists. Where access could be terminated, property owners have claimed that termination could have substantial adverse effects on their property value and investment, and airport sponsors seeking to terminate this access could be exposed to costly lawsuits. Accordingly, the FAA will not consider the existence of residential through-the-fence access by itself to be in noncompliance with the airport sponsor's grant assurances.

However, where through-the-fence access rights are unrestricted, or where the airport sponsor has lost powers necessary for the future operation and growth of the airport, the existing residential through-the-fence access can interfere with the sponsor's ability to meet its obligations as sponsor of a federally assisted public use airport. As discussed above, at some airports the sponsor and through-the-fence users have made an effort to implement a series of measures to address potential problems with through-the-fence access, by ensuring continuing sponsor control of airport access and limiting the effects of incompatible land use on the airport boundary. The FAA believes such measures can substantially mitigate the potential problems with residential through-the-fence access where it exists, and avoid future grant compliance issues. It is reasonable, therefore, to require sponsors of airports with existing residential through-the-fence access, to have certain measures in effect to protect its proprietary power and limit adverse effects of the through-the-fence access to facilitate compliance with its grant assurance obligations.

Accordingly, the sponsor of an airport where residential through-the-fence access or access rights already exist will be considered in compliance with its grant assurances if the airport depicts the access on its airport layout plan and meets certain standards for safety, efficiency, ability to generate revenue to recover airport costs, and mitigation of potential noncompatible land uses. Those standards are listed in section II, *Standards for compliance at airports with existing through-the-fence access.* An airport sponsor covered by this Policy must seek FAA approval before entering into any arrangement which would establish additional access through-the-fence. Sponsors are reminded that there is no right to aircraft surface access to the airport from off-airport locations, and no off-airport property owner will have standing to file a formal complaint with the FAA to challenge the sponsor's decision not to permit such access.

The FAA will review future requests for AIP funds to ensure that Federal investments are in proportion to the public use of the airport. Projects designed to exclusively serve residential through-the-fence users will not be eligible for AIP funding.

II. Standards for Compliance at Airports With Existing Through-the-Fence Access

The FAA understands that municipally-owned airports have varying degrees of zoning authority. For example, one airport may have strong zoning powers, while another may have none. Also, the nature of existing through-the-fence rights can greatly affect the sponsor's ability to implement measures to control access. Accordingly, the FAA does not expect every airport with existing residential through-the-fence access to adopt a uniform set of rules and measures to mitigate that access. However, the FAA does expect each such sponsor to adopt reasonable rules and implement measures that accomplish the following standards for compliance, to the fullest extent feasible for that sponsor. In general, the greater the number of residential through-the-fence access points and users of the airport and the higher the number of aircraft operations, the more important it is to have formal measures in effect to ensure the sponsor retains its proprietary powers and mitigates adverse effects on the airport.

The FAA's standards for compliance for any sponsor of an airport with existing through-the-fence access are as follows:

1. *General authority for control of airport land and access.* The airport sponsor has sufficient control of access points and operations across airport boundaries to maintain safe operations, and to make changes in airport land use to meet future needs.

2. *Safety of airport operations.* By rule, or by agreement with the sponsor, through-the-fence users are obligated to comply with the airport's rules and standards.

3. *Recovery of costs of operating the airport.* The airport sponsor can and does collect fees from through-the-fence users comparable to those charged to airport tenants, so that through-the-fence users bear a fair proportion of airport costs.

4. *Protection of airport airspace.* Operations at the airport will not be affected by hangars and residences on the airport boundary, at present or in the future.

5. *Compatible land uses around the airport.* The potential for noncompatible land use adjacent to the airport boundary is minimized consistent with grant assurance 21, Compatible Land Use.

These standards will be applied, on a case-by-case basis, in the FAA's evaluation of whether each airport with existing residential through-the-fence access meets the above requirements to the fullest extent feasible for that airport. In situations when access can be legally transferred from one owner to another without the airport sponsor's review, the FAA will treat the access as existing. Because the ability of some sponsors to control access has been compromised as a result of legal rights previously granted to through-the-fence users, existing access locations may be evaluated under the alternative criteria for some standards as indicated below, if applicable to that airport.

III. Standards for Compliance at Airports Proposing Additional Through-the-Fence Access at Airports Covered by This Policy

Once allowed, residential through-the-fence access is very difficult to change or eliminate in the future. This is because residential owners, more so than commercial interests, typically expect that their residential property will remain suitable for residential use and protected from adverse effects for a long time. Residential buyers and their mortgage lenders may ensure that the property is purchased with rights that guarantee no change in the access to the airport for decades, or indefinitely. Because each additional residential through-the-fence access location introduces the potential for problems for the airport in the future, and because this access is effectively permanent and resistant to change once permitted, the FAA believes that additional residential through-the-fence access at public use airports should be carefully scrutinized.

The following supplemental standards will be applied to the FAA's case-by-case review of sponsors proposing additional residential through-the-fence access at airports with existing access. In situations when the transfer of access from one owner to another requires the airport sponsor's concurrence, the FAA will treat the access as additional. The FAA will not approve requests for additional access that are inconsistent with the sponsor's grant assurances (excluding grant assurance 5, Preserving Rights and Powers, paragraph "g" as proposed in this notice). Furthermore, the sponsor will be required to demonstrate the following standards for compliance:

- The term of the access does not exceed twenty years.
- The sponsor provides a current (developed or revised within the last five years) airport master plan identifying adequate areas for growth that are not affected by the existence of through-the-fence access rights, OR the sponsor has a process for amending or terminating existing through-the-fence access in order to acquire land that may be necessary for expansion of the airport in the future.
- The location of the new access point does not prevent development or changes in use of airport property in the future.
- The location and use of the new access point does not cause or hold the potential for operational problems or a reduction in efficiency of ground operations at the airport.
- The sponsor will impose and enforce safety and operating rules on through-the-fence residents utilizing this access while on the airport identical to those imposed on airport tenants and transient users.
- The sponsor will charge through-the-fence residents utilizing this access fees that recover airport costs and fairly distribute the burden of airport fees across all airport users, both tenants and through-the-fence. Rates should increase on the same schedule as tenant fees. Fees that may be sufficient for this purpose include, without limitation:
- Tenant tie-down charges.
- Tenant rates for square footage of off-airport hangars.
- Ground leases for dedicated taxiway connections to off-airport properties.
- Assessment of capital costs for general infrastructure.
- Through-the-fence residents will bear all the costs of infrastructure related to their access.
- Through-the-fence residents utilizing this access will grant the sponsor an avigation easement for overflight, including unobstructed flight through the airspace necessary for takeoff and landing at the airport.
- Through-the-fence residents utilizing this access, by avigation easement; deed covenants, conditions or restrictions; or other agreement, have acknowledged that the property will be affected by aircraft noise and emissions.
- Through-the-fence residents utilizing this access have waived any right to bring an action against the airport sponsor for operations at the airport associated with aircraft noise and emissions.
- The sponsor has a mechanism for ensuring through-the-fence residents utilizing this access will file FAA Form 7460–1, Notice of Proposed Construction or Alteration, if necessary.
- Where available, the airport sponsor or other local government has in effect measures to limit future use and ownership of the through-the-fence properties to aviation-related uses (in this case, hangar homes), such as through zoning or mandatory deed restrictions. The FAA recognizes this

measure may not be available to the airport sponsor in all States and jurisdictions.

• If the residential community has adopted restrictions on owners for the benefit of the airport (such as a commitment not to complain about aircraft noise), those restrictions are enforceable by the airport sponsor as a third-party beneficiary, and may not be cancelled without cause by the community association.

• The additional access is consistent with and depicted on the approved or proposed Airport Layout Plan (ALP).

IV. Process and Documentation

A. Existing Residential Through-the-Fence Access

1. *General.* The sponsor of an airport with existing residential through-the-fence access will be considered in compliance with its grant assurances, and eligible for future grants, if the FAA determines that the airport meets the applicable standards listed above under *Standards for compliance at airports with existing residential through-the-fence access.* The sponsor may demonstrate that it meets these standards by providing the FAA Airports District Office (ADO) or Regional Airports Division with a written description of the sponsor's authority and the controls in effect at the airport ("residential through-the-fence access plan" or "access plan"). The regional division or ADO will review each access plan, on a case-by-case basis, to confirm that it addresses how the sponsor meets each of these standards at its airport. The regional division or ADO will forward its recommendations regarding each access plan to the Manager of Airport Compliance. Only the Manager may accept an airport sponsor's residential through-the-fence access plan. In reviewing the access plan, the Manager may consult with the Transportation Security Administration (TSA). The FAA will take into account the powers of local government in each State, and other particular circumstances at each airport. In every case, however, the access plan must address each of the basic requirements listed under II of this Policy.

2. *Residential through-the-fence access plan.* The FAA will require evidence of compliance before issuing an AIP grant, beginning in Fiscal Year 2013. FY 2013 and later grants will include a special grant condition requiring the ongoing implementation of these access plans. Generally the FAA will not award discretionary grants to the airport until the FAA accepts the sponsor's access plan as meeting the standards to the extent feasible for that airport. Therefore, a residential through-the-fence access plan should be provided no later than the October 1st of the fiscal year in which the sponsor will request an AIP grant (*i.e.,* sponsors that will request an AIP grant in Fiscal Year 2013 must submit an access plan no later than October 1, 2012; sponsors requesting an AIP grant in Fiscal Year 2014 must submit no later than October 1, 2013).

3. *Airport Layout Plan.* The FAA will require all residential through-the-fence access points to be identified on the airport's layout plan. A temporary designation may be added through a pen and ink change to immediately identify the locations on the airport property which serve as points of access for off-airport residents. Airport sponsors which are required to submit access plans will have three years from the date their access plan is accepted to initiate a formal ALP revision to fully depict the scope of their existing residential through-the-fence arrangements. The FAA may decline to provide AIP funds for costs associated with these formal ALP revisions.

A sponsor's failure to depict all residential through-the-fence access points may be considered an apparent violation of the sponsor's grant assurances, and the agency may consider grant enforcement under 14 CFR Part 16.

4. *FAA review.* The FAA's acceptance of the access plan represents an agency finding that the airport has met the compliance standards for existing residential through-the-fence access. The FAA will review the airport sponsor's access plan prior to approving any formal revisions to the airport's layout plan. An airport sponsor's failure to implement its access plan could result in a violation of the special grant condition and potentially lead to a finding of noncompliance.

5. *Airports currently in noncompliance.* Airports currently in noncompliance due to grant assurance violations related to through-the-fence access, such as grant assurance 19, Operation and Maintenance, will need to continue to work with ADO and regional division staff to establish an appropriate corrective action plan. An FAA-approved corrective action plan, once accepted by the FAA, will serve as the sponsor's access plan. The decision to restore the sponsor's compliance status will be made by the Manager of Airport Compliance. In cases where the airport's safety and utility have been compromised, the Manager may require the sponsor to take definitive steps to address those concerns before restoring the sponsor to a compliant status.

6. *Airports with existing residential through-the-fence access that do not meet the compliance standards.* The FAA recognizes that some airport sponsors will not be able to fully comply with the standards listed above, due to limits on the powers of the sponsor and/or other local governments, or on other legal limits on the sponsor's discretion to adopt certain measures. Other airports have the capability to adopt measures to satisfy the compliance standards but have not done so. The FAA will take the following action with respect to any obligated airport with existing residential through-the-fence access that does not meet the minimum compliance standards:

a. *Airports that serve a function in the NPIAS but cannot fully meet the through-the-fence compliance standards.* Where the airport still substantially serves its intended function in the NPIAS, but residential through-the-fence access at the airport will have an adverse effect on the airport's operations, its ability to grow, or its ability to accept new kinds of aviation use, the FAA will consider a reduced level of future AIP investment in the airport. FAA evaluation of investment needs will reflect any impairment in the airport's utility due to residential through-the-fence use. The sponsor will not lose eligibility for non-primary entitlement grants on the basis of the through-the-fence access, but will not be able to depend on receiving future discretionary grants for all eligible projects.

b. *Airports that no longer have significant value in the national system.* Where the residential through-the-fence access cannot be controlled by the sponsor, and use of that access adversely affects the airport's availability as a public use airport, the FAA will consider removal of the airport from the NPIAS consistent with the requirements of FAA Order 5090.3C *Field Formulation of the National Plan of Integrated Airport Systems (NPIAS).* The FAA may either take steps to recover unamortized grant funds, or may leave grant assurances in effect for the life of existing grants but award no new grants.

B. Requests for Additional Residential Through-the-Fence Access at Airports Covered by This Policy

As of the date of this notice September 9, 2010, a sponsor proposing additional access must submit a current airport master plan and a revised residential through-the-fence access

plan as detailed below. A sponsor proposing to establish additional access points must also submit a revised Airport Layout Plan. The regional division or ADO will forward its recommendations regarding each request for additional access to the Manager of Airport Compliance. Only the Manager may approve an airport sponsor's request for additional access. In reviewing the proposal, the Manager may consult with TSA.

1. *Master Plan.* A sponsor wishing to permit additional (including proposals to extend or renew existing access agreements) residential through-the-fence access must submit a recent airport master plan to the ADO or Regional Airports Division. The FAA considers a master plan to be recent if it was developed or updated within the past five years. The master plan should explain how the sponsor plans to address future growth, development, and use of the airport property over the next twenty years.

2. *Residential through-the-fence access plan.* The sponsor is responsible for revising its access plan, as discussed under section IV.A.2 of this Policy, to reflect how it will meet the standards for compliance for the additional access. Once accepting the revised access plan, the FAA will condition future AIP grants upon its ongoing implementation.

3. *Application to approve revised Airport Layout Plan.* A sponsor wishing to permit additional residential through-the-fence access by establishing a new access point must submit a proposed ALP revision to the ADO or Regional Airports Division, depicting the point of access and associated airport infrastructure required for linking the access point to the airport runway/taxiway system. The sponsor should also submit information on the aircraft types and number of aircraft expected to use the additional access proposed. The FAA will not approve any change to the airport's ALP that appears inconsistent with the sponsor's grant assurances or that adversely affects the safety, efficiency, or utility of the airport. The FAA may decline to provide AIP funds for costs associated with these formal ALP revisions.

A sponsor's failure to depict all residential through-the-fence access points may be considered an apparent violation of the sponsor's grant assurances, and the agency may consider grant enforcement under 14 CFR Part 16.

4. *Continuing obligations.* Once the revised access plan and if required the revised ALP depicting the new access point are accepted by the FAA, the additional residential through-the-fence access is considered existing residential through-the-fence access, and the sponsor must comply with the continuing obligations for sponsors of airports with existing residential through-the-fence access, as described in section IV.A of this Policy.

V. Eligibility for AIP Grants

A. *General.* Beginning in Fiscal Year 2013, a sponsor will be required to submit their residential through-the-fence access plans prior to notifying the FAA of its intent to apply for an AIP grant. However, the FAA will review subsequent grant applications from each such sponsor to ensure that the requested grant of AIP funds would primarily serve the airport's public function in the national airport system. The FAA will limit the Federal investment in airport infrastructure and facilities to an amount related to general public demand at the airport.

B. *Public infrastructure and facilities with substantial benefit to private through-the-fence users.* Where private residential developments with through-the-fence access receive value from access to Federally assisted airport infrastructure and facilities, the FAA will expect the private users to share in those capital costs.

C. *Exclusive or primary private benefit.* On-airport infrastructure and facilities used exclusively or primarily for accommodation of through-the-fence users are considered private-use and are ineligible for AIP grants.

2. The Proposed Amendment to the Standard AIP Sponsor Assurances

The FAA considers a sponsor's consent to any new permission for through-the-fence access to the airport from a residential property to be inconsistent with the sponsor's grant assurances, specifically, the obligation to maintain rights and powers to control airport development and operation. Permitting such access to the airport may also result in violations of the obligation to impose a reasonable, not unjustly rate structure that makes the airport as self-sustaining as possible, and the obligation to restrict areas adjacent to the airport to compatible land uses. While some commenters argued that many existing residential through-the-fence uses have not caused apparent problems for the airport, the problems for airports and access to the national airport system are not always evident or important to the through-the-fence users themselves. For example, the interests of commercial and transient users may create a demand for expanded use of the airport or expansion of airport property, both of which could be adversely affected by the existence of residential properties on the airport boundary. This is inconsistent with the expectation that Federally obligated airports will be able to accommodate new demand.

Once allowed, residential through-the-fence access is very difficult to change or eliminate in the future. This is because residential owners, more so than commercial interests, typically expect that their residential property will remain suitable for residential use and protected from adverse effects for a long time. Residential buyers and their mortgage lenders may ensure that the property is purchased with rights that guarantee no change in the access to the airport for decades, or indefinitely. Because each new residential through-the-fence access location introduces the potential for the airport sponsor to have problems meeting its obligations under the sponsor grant assurances in the future, and because this access is effectively permanent and resistant to change once granted, the FAA believes that new residential through-the-fence uses at public use airports should not be established.

Accordingly, the FAA will consider a new through-the-fence access arrangement from a property used as a residence or zoned for residential use to be an apparent violation of the sponsor's grant assurances, and the agency may investigate any report of such action for possible enforcement under 14 CFR Part 16. Any action taken to strengthen, memorialize, or codify existing access in perpetuity beyond that described in an FAA approved residential through-the-fence access plan at an airport with existing access will also be considered a new grant of through-the-fence access. The sponsor will of course have the opportunity to present information and arguments to the FAA during the Part 16 process.

In consideration of the above, the FAA proposes to add new paragraph g. to standard AIP sponsor assurance 5, to read as follows:

C. Sponsor Certification. The sponsor hereby assures and certifies, with respect to this grant that:

* * * * *

5. Preserving Rights and Powers.

* * * * *

g. It will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport.

Issued in Washington, DC, on August 27, 2010.

Randall Fiertz,

Director, Airport Compliance and Field Operations.

[FR Doc. 2010–22095 Filed 9–8–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: FMCSA announces its denial of 97 applications from individuals who requested an exemption from the Federal vision standard applicable to interstate truck and bus drivers and the reasons for the denials. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions does not provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director Medical Programs, (202) 366–4001, U.S. Department of Transportation, FMCSA, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal vision standard for a renewable 2-year period if it finds "such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption." The procedures for requesting an exemption are set forth in 49 CFR part 381.

Accordingly, FMCSA evaluated 97 individual exemption requests on their merit and made a determination that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption program. Each applicant has, prior to this Notice, received a letter of final disposition on his/her exemption request. Those decision letters fully outlined the basis for the denial and constitute final Agency action. The list published today summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following 7 applicants lacked sufficient driving experience during the 3-year period prior to the date of their application:

Larry Cornelius, William M. Dunn, Thomas C. Furcht, Michael E. Herrera, Jr., William Moore, Steve Scriven, Carey A. Willoughby

The following 15 applicants had no experience operating a CMV:

Leon Andrews, Clay Burns, Tracy E. Duke, James R. Gladden, Yi D. Guo, Eric G. Harmann, Meridith J. Karppinen, Jackson D. Mason, Thomas G. Moffett, Kenneth Olsen, Gabriel A. Oubre, Chris Patton, Carlos Quezada, Angelina Rayes, David G. Stringer

The following 27 applicants did not have 3 years of experience driving a CMV on public highways with the vision deficiency:

James R. Bodine, Robert L. Borsh, Larry E. Carter, Albert M. DiVella, Steven Gahart, Martin E. Holden, Lee J. Hollister, Steven M. Keller, Jr., Ray V. Kuhaneck, Christopher Love, Frank S. Martinez, William M. Mercer, Ronald S. Milkowski, Noel V. Munoz, Curtis A. Norris, John P. O'Day, William Offord, Paul C. Pallini, Jerry L. Parks, Douglas L. Peterson, Charles D. Settles, Raeford W. Sink, William J. Statts, Robert D. Swaite, Edwin Treloar, Jr., Ronald Turner, Brent Wheeler, Jr

The following 12 applicants did not have 3 years of recent experience driving a CMV with the vision deficiency:

Ale Algarra, Lee S. Angelo, Eli J. Borkholder, Steven Keyes, Scott Murphy, Dennis R. Overman, Michael J. Peschong, Harry W. Richards, David Smith, Jeffrey M. Thorpe, Charles Watts, Donald Wright

The following 10 applicants did not have sufficient driving experience during the past 3 years under normal highway operating conditions:

Rick A. Ervin, Stephen P. Goodall, John R. Kelly, Osvaldo R. Maldonado, Frank G. Merrill, Alberto Mireles, Jr., Montie Price, Daniel R. Rosas, David M. Sims, Stephen W. Verrette

One applicant, Albert D. Agardi, had more than 2 commercial motor vehicle violations during the 3-year review period and/or application process. Each applicant is only allowed 2 moving citations.

One applicant, William R. Hammond, had commercial driver's license suspensions during the 3-year review period for moving violations. Applicants do not qualify for an exemption with a suspension during the 3-year period.

One applicant, John L. Broadway, had 2 serious commercial motor vehicle violations within a 3-year period. Each applicant is only allowed a total of 2 moving citations, 1, which can be serious.

One applicant, Kerrie L. Smith, did not have verifiable proof of commercial driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

The following 3 applicants did not hold a license which allowed operation of vehicles over 10,000 pounds for all or part of the 3-year period:

Adam O. Carson, Joe H. Saine, Joseph W. Schmit.

One applicant, James McKnight, did not have an Optometrist/Ophthalmologist willing to state that he is able to operate a commercial vehicle safely with his vision deficiency.

The following 10 applicants were denied for miscellaneous/multiple reasons:

Carl H. Block, Robert D. Fink, Felix M. Gonzalez, William A. Green, Tina L. Hernandez, Ramon L. Suarez, Clarence Taylor, Reginald D. Taylor, Ricky A. Teel, Jr., Cardell F. Thomas

One applicant, William A. Rochester, was disqualified for holding 2 commercial driver's licenses simultaneously.

One applicant, Soledad R. Martinez, did not meet the vision standard in his better eye.

The following 6 applicants met the current federal vision standards. Exemptions are not required for these applicants that meet the current regulations for vision:

A. B. Brown, Ryan M. Cook, Brian R. Hastins, Terry A. Jordan, Daniel Provencio, Keith Snyder.

Issued on: August 28, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–22538 Filed 9–8–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0201]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 15 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before October 12, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2010–0201 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. 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 for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." FMCSA can renew exemptions at the end of each 2-year period. The 15 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

James B. Bierschbach

Mr. Bierschbach, age 50, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/15 and in his left eye, 20/70. Following an examination in 2010, his optometrist noted, "In my medical opinion, this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle safely." Mr. Bierschbach reported that he has driven straight trucks for 22 years, accumulating 1.3 million miles and tractor-trailer combinations for 5 years, accumulating 525,000 miles. He holds a Class A Commercial Driver's License (CDL) from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John P. Catalano

Mr. Catalano, 44, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/50. Following an examination in 2010, his optometrist noted, "In my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Catalano reported that he has driven straight trucks for 26 years, accumulating 1 million miles. He holds a Class D operator's license from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Tyrone O. Friese

Mr. Friese, 61, has had a prosthetic left eye due to trauma since 1981. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2010, his optometrist noted, "In my medical opinion, Mr. Friese has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Friese reported that he has driven straight trucks for 44 years, accumulating 440,000 miles and tractor-trailer combinations for 14 years, accumulating 280,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Randy M. Lane

Mr. Lane, 46, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is count-finger vision only and in his left eye, 20/30. Following an examination in 2010, his ophthalmologist noted, "My medical opinion is that Randy has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Lane reported that he has driven straight trucks for 15 years, accumulating 75,000 miles. He holds a Class B CDL from Pennsylvania. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

Mark E. Lapp

Mr. Lapp, 45, has a prosthetic left eye due to a traumatic injury sustained in 1990. The best corrected visual acuity in

his right eye is 20/16. Following an examination in 2010, his ophthalmologist noted, "It is in my medical opinion that he has sufficient vision to operate a commercial vehicle." Mr. Lapp reported that he has driven straight trucks for 23 years, accumulating 23,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David S. Matheny

Mr. Matheny, 51, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, count-finger vision only. Following an examination in 2010, his optometrist noted, "It is my professional opinion that Mr. David Matheny's vision with corrective lenses is sufficient to perform the driving tasks required to operate a commercial vehicle." Mr. Matheny reported that he has driven tractor-trailer combinations for 4 years, accumulating 400,000 miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Frank G. Merrill

Mr. Merrill, 62, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, count-finger vision only. Following an examination in 2010, his optometrist noted, "In my opinion, individuals amblyopic in one and normal peripheral vision function very well in everyday life and driving, whether personal or commercial." Mr. Merrill reported that he has driven straight trucks for 45 years, accumulating 450,000 miles and tractor-trailer combinations for 45 years, accumulating 450,000 miles. He holds a Class D operator's license from Oklahoma. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Shannon L. Puckett

Mr. Puckett, 33, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/140 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "It is my medical opinion that he does have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Puckett reported that he has driven tractor-trailer combinations for 11 years, accumulating 1.1 million miles. He holds a Class A CDL from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Leo S. Ruiz, Jr.

Mr. Ruiz, 59, has had macular scarring in his left eye since childhood. The best corrected visual acuity in his right eye is 20/25 and in his left eye, 20/200. Following an examination in 2010, his ophthalmologist noted, "In my opinion, Mr. Ruiz has sufficient vision to operate a commercial vehicle." Mr. Ruiz reported that he has driven straight trucks for 2 years, accumulating 100,000 miles and tractor-trailer combinations for 31 years, accumulating 1.7 million miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV. He was cited for a cell phone violation.

Ronald B. Shafer

Mr. Shafer, 66, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/400. Following an examination in 2010, his optometrist noted, "Mr. Shafer should have sufficient vision to operate a commercial vehicle." Mr. Shafer reported that he has driven straight trucks for 15 years, accumulating 39,000 miles. He holds a Class C chauffeur's license from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Thomas M. Sharp

Mr. Sharp, 50, has had a prosthetic right eye due to trauma since 1982. The best corrected visual acuity in his left eye is 20/15. Following an examination in 2010, his ophthalmologist noted, "I expect that Mr. Sharp's condition will remain stable and in my opinion, has more than adequate vision to operate a commercial vehicle." Mr. Sharp reported that he has driven straight trucks for 30 years, accumulating 525,000 miles and tractor-trailer combinations for 8 years, accumulating 24,000 miles. He holds a Class A CDL from Maine. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ranjodh Singh

Mr. Singh, 30, has had complete loss of vision in his left eye since childhood due to trauma. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2010, his ophthalmologist noted, "In our expert opinion, Mr. Singh has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Singh reported that he has driven tractor-trailer combinations for 5 years, accumulating 350,000 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV. He exceeded the speed limit by 11 miles per hour.

Kenneth M. Sova

Mr. Sova, 48, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/60 and in his left eye, 20/20. Following an examination in 2010, his ophthalmologist noted, "I feel that Mr. Sova has sufficient peripheral visual fields and should not affect his ability to operate a commercial vehicle." Mr. Sova reported that he has driven straight trucks for 27 years, accumulating 67,500 miles. He holds an operator's license from Indiana. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV. He was cited for an improper turn at an intersection.

Mark A. Thornton

Mr. Thornton, 48, lost his left eye due to a traumatic injury sustained in 1985. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2010, his ophthalmologist noted, "Mark has been driving commercially since 1980 and has sufficient vision in his right eye to operate a commercial vehicle in the same way." Mr. Thornton reported that he has driven straight trucks for 25 years, accumulating 3 million miles and tractor-trailer combinations for 30 years, accumulating 3.6 million miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for a moving violation in a CMV.

Earl L. White, Jr.

Mr. White, 66, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/25 and in his left eye, 20/200. Following an examination in 2010, his optometrist noted, "In my opinion, Mr. White has adequate vision to perform the driving tasks required to operate a commercial motor vehicle." Mr. White reported that he has driven straight trucks for 40 years, accumulating 5.5 million miles. He holds a Class A CDL from New Hampshire. His driving record for the last 3 years shows no crashes and one conviction for a moving

violation in a CMV. He was cited for operating a CMV while uninsured.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business October 12, 2010. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: August 28, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–22479 Filed 9–8–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010 0078]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel IRISH GYPSY.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0078 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before October 12, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0078. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov/smses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel IRISH GYPSY is:

Intended Commercial Use of Vessel: "Overnight sight seeing charters of Southeast Alaska Inside Passage, the North Gulf Coast of Alaska and Alaska's Prince William Sound."

Geographic Region: "Northern Washington and Alaska."

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 (Volume 65, Number 70; Pages 19477–78).

Dated: September 1, 2010.

By order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–22407 Filed 9–8–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010 0079]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel EQUANIMITY.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0079 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before October 12, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0079. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the

Internet at *http://www.regulations.govhttp://smses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel EQUANIMITY is:

Intended Commercial Use of Vessel: "Scattering of human remains at sea."

Geographic Region: "California."

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 (Volume 65, Number 70; Pages 19477–78).

Dated: September 1, 2010.

By order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–22406 Filed 9–8–10; 8:45 am]

BILLING CODE 4910–81–P

TENNESSEE VALLEY AUTHORITY

Final Supplemental Environmental Impact Statement, Single Nuclear Unit at the Bellefonte Plant Site, Jackson County, TN

AGENCY: Tennessee Valley Authority (TVA)

ACTION: Issuance of Record of Decision (ROD)

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures for implementing the National Environmental Policy Act (NEPA). A notice of availability (NOA) of the *Final Supplemental Environmental Impact Statement for a Single Nuclear Unit at the Bellefonte Plant Site* (final SEIS) was published in the **Federal Register** on May 21, 2010. TVA prepared the final SEIS to update the extensive environmental information and analyses that exist respecting the Bellefonte site and the construction and operation of a nuclear power plant on that site. On August 20, 2010, the TVA Board of Directors (TVA Board) approved the expenditure of $248 million for additional engineering, design, and licensing activities, as well as the procurement of long lead-time components for the partially complete Bellefonte Unit 1. This decision will help maintain Unit 1 as a viable alternative to meet the projected need for base load generation on the TVA system in 2018–2020. Bellefonte Unit 1 is a 1,260-megawatt (MW) Babcock and Wilcox (B&W) -designed pressurized light water reactor. It is anticipated that the TVA Board will be asked to approve completion and operation of Unit 1 next year, depending on the results of a new TVA Integrated Resource Plan (IRP), which is scheduled for completion in spring 2011.

FOR FURTHER INFORMATION CONTACT: Ruth Horton, Senior NEPA Specialist, Environmental Permits and Compliance, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11D, Knoxville, Tennessee 37902–1499; telephone (865) 632–3719 or e-mail *blnp@tva.gov.* Thomas Spink, Bellefonte AP1000 Licensing Manager, Nuclear Generation, Development, and Construction, Tennessee Valley Authority, 1101 Market Street, LP 5A, Chattanooga, Tennessee 37402–2801; telephone (423) 751–7062 or e-mail *tespink@tva.gov.*

SUPPLEMENTARY INFORMATION: With almost 37,000 MW of net dependable summer generating capacity, TVA operates the nation's largest public power system, producing 4 percent of all the electricity in the nation. TVA provides electricity to most of Tennessee and parts of Virginia, North Carolina, Georgia, Alabama, Mississippi, and Kentucky. It serves about 9 million people in this seven-state region through 155 power distributors and 56 directly served large industries and Federal facilities. The TVA Act requires the TVA power system to be self-supporting and operated on a nonprofit basis and directs TVA to sell power at rates as low as are feasible. TVA power is supplied by three nuclear plants, 11 coal-fired plants, 12 gas-fired plants, 29 hydroelectric dams, a pumped-storage facility, a wind farm, a methane-gas cofiring facility, and several small solar photovoltaic facilities and through several power purchase agreements. TVA transmits electricity from these facilities over almost 16,000 miles of transmission lines.

This final SEIS supplements and updates the original TVA *Final Environmental Statement for Bellefonte Nuclear Plant Units 1 and 2* (May 1974), hereafter referred to as the 1974 FES; the TVA *Final Environmental Impact Statement for the Bellefonte Conversion Project* (October 1997); the U.S. Department of Energy's *Final Environmental Impact Statement for the Production of Tritium in a Commercial Light Water Reactor* (March 1999), which TVA adopted; and the TVA *Bellefonte Nuclear Plant Units 3 and 4, Combined License Application Part 3, Environmental Report, Revision 1* (October 2008), hereafter referred to as the COLA ER. Where pertinent, the final SEIS incorporates by reference, utilizes, tiers from, and updates information from this substantial environmental record.

The final SEIS also tiers from and incorporates by reference two TVA programmatic reviews, *Energy Vision 2020 Integrated Resource Plan Final Programmatic Environmental Impact Statement* (December 1995) and *Reservoir Operations Study Final Programmatic Environmental Impact Statement* (May 2004). In June 2009, TVA began work on a new IRP for meeting future demand on the TVA power system over the next 20 years. The new IRP is scheduled to be completed in spring 2011.

Background

The Bellefonte site is located on a 1,600-acre peninsula on the western shore of Guntersville Reservoir at Tennessee River Mile 392, near the town of Hollywood, Alabama. After completing an environmental statement for the project and receiving approval to begin construction from the Atomic Energy Commission, now the Nuclear Regulatory Commission (NRC), TVA commenced construction of two B&W pressurized-water reactors at the Bellefonte site in 1974. TVA halted construction in 1988 when forecasted load growth began to decrease. Currently, Units 1 and 2 are in "deferred" plant status, a designation by the NRC that construction permits for the facility exist, but construction is not currently active.

In 2006, TVA joined NuStart Energy Development LLC to participate in a demonstration of NRC's new combined licensing process. Using the Bellefonte site, TVA submitted a Combined License Application (COLA) to the NRC for two AP1000 units (designated as Bellefonte Units 3 and 4) in October 2007. This application is pending. TVA

has not proposed to construct these advanced reactors at the Bellefonte site or elsewhere.

Public Involvement

TVA published a notice of intent to prepare an SEIS in the **Federal Register** on August 10, 2009. The NOA of the draft SEIS was published in the **Federal Register** by the U.S. Environmental Protection Agency (USEPA) on November 13, 2009. TVA accepted comments on the draft SEIS until December 28, 2009. Approximately 50 people attended a public meeting on December 7, 2009, in Scottsboro, Alabama. Comments were received from 35 individuals and four Federal and State agencies. Some commenters supported the development of nuclear power generation, while others stated opposition. Many comments were focused on the age of existing structures, water quality, reactor design, the safety of nuclear power, air quality and climate change, spent fuel, radwaste, the need for power and alternative sources of energy, and socioeconomic impacts.

After considering and responding to all substantive comments, TVA completed and issued the final SEIS, which identifies Alternative B, Completion and Operation of Bellefonte Unit 1, as TVA's preferred alternative. The NOA of the final SEIS was published in the **Federal Register** on May 21, 2010.

Although not required, TVA invited comments on the Final SEIS during a 30-day period from May 21, 2010, through June 21, 2010. Comments were received from nine individuals, one State agency, and one Federal agency. These comments have been considered. Compared to the information and analysis in the final SEIS, none raised significant new issues or provided significant new information.

Alternatives Considered

TVA considered numerous alternatives to constructing and operating Bellefonte Units 1 and 2 in its 1974 FES, including various sources of base load generation and eight alternative plant locations. As part of the COLA process for Units 3 and 4 (see background, above), TVA evaluated the construction and operation of two Westinghouse AP1000 units at the Bellefonte site, including alternative sites and energy resource options.

In the present final SEIS, TVA evaluates three generation alternatives and two transmission alternatives. The power generation alternatives include Alternative A—No Action, Alternative B—Completion and Operation of a B&W Pressurized Light Water Reactor, and Alternative C—Construction and Operation of an AP1000 Advanced Passive Pressurized Light Water Reactor. The transmission alternatives were No Action and Action.

Under Alternative A, No Action, TVA would continue to maintain the construction permits for Units 1 and 2 in deferred status, which would involve routine maintenance of select plant systems and other regulatory compliance activities. Major buildings and plant components would remain intact, but some investment recovery activities would continue.

Under Alternative B, TVA would complete construction of either the B&W designed Unit 1 or Unit 2. Units 1 and 2 are approximately 55 percent and 35 percent complete, respectively. However, all major plant structures, including the plant cooling towers and the reactor, auxiliary, control, turbine, office, and service buildings have been completed and remain intact for both units. New construction would consist of support buildings, laydown areas and parking, minor offices, warehouses, security upgrades, and auxiliary buildings within the previously disturbed plant footprint. The majority of completion activities would take place inside existing buildings. Existing plant systems, facilities, and operational components continue to be evaluated to better determine their need for replacement or refurbishment under NRC guidelines. Major construction activities would not be required to complete either unit.

In addition to this final SEIS, TVA has completed a detailed scoping, estimating, and planning (DSEP) study for Units 1 and 2 to develop a licensing strategy, determine the material condition of Units 1 and 2, define the schedule and cost for completion and startup, and assess project risk. The DSEP determined that seismic Category 1 structures (*e.g.,* safety-related structures designed and built to withstand the maximum potential regional earthquake stresses) for Units 1 and 2 are intact and require only minor maintenance to meet current requirements.

Under Alternative C, TVA would construct and operate a single 1,100-MW AP1000 advanced passive pressurized light water reactor at the Bellefonte site, designated Unit 3. New construction would consist of the power block composed of five principal structures: Nuclear island (containments, shield and auxiliary buildings), diesel generator, turbine, annex buildings, and radwaste buildings. The AP1000 would use the existing natural draft cooling towers, water intake channel and pumping station, blowdown discharge structure, transmission lines and switchyards, and several other supporting facilities. Construction of the new power block would entail blasting, excavation, and grading of previously disturbed ground and the clearing of 50 acres of forest within the original site footprint. As a modular design, half of the major components would be constructed elsewhere, then transported and assembled at the Bellefonte site. Natural features of the site would be preserved as much as possible, and landscaping would be designed to help visually blend the buildings with the surroundings. The existing turbine and office and service buildings would be removed.

The transmission system for Units 1 and 2 was completed in the 1980s. Much of this system, except two pairs of 500-kilovolt (kV) lines connecting the plant site to the TVA system and the associated switchyard, has been in use since that time. Based on an interconnection system impact study conducted in 2009, TVA determined that no new transmission lines would be needed for either Action Alternative. However, due to routine system growth, some transmission upgrades would be needed to accommodate the delivery of power produced by a single nuclear unit on the Bellefonte site.

Two transmission alternatives were considered, Action and No Action. Under the No Action transmission alternative, current line operation and maintenance activity would be continued, but the existing transmission system could not support operation of a nuclear unit at the Bellefonte site. Under the Action Alternative, TVA would refurbish and reenergize the 500-kV switchyard and the two pairs of connecting 500-kV transmission lines. Additionally, approximately 100 miles of existing transmission lines would be uprated (i.e., retensioned), and 121 miles of line would be reconductored (i.e., lines would be upgraded to a higher carrying capacity). The affected lines include nine transmission lines in Alabama, Tennessee, and Georgia. All work would occur in existing rights-of-way.

Other energy alternatives and sites were also considered in the final SEIS. TVA considered whether power needs could be met using power purchases, repowering of electrical generation plants, energy conservation, fossil fuel energy sources, and renewable energy resources including wind, solar, biomass, and hydropower. All of these energy resources have a place in TVA's plans for providing affordable, reliable

power in the future. However, TVA's need for power analysis indicates that even with substantial energy replacement through conservation measures, TVA must still add new base load generation to balance resources with the projected load requirements. Neither coal-fired nor natural gas-fired power was found to be environmentally preferable to nuclear power, and renewable energy sources were not found sufficient to meet power needs in the required timeframe.

The 2008 COLA ER updated information about potential alternative sites. No obviously superior alternatives to the Bellefonte site were found among five candidate sites.

Need for Power

To provide the most up-to-date information, TVA adjusted the need for power analysis between the draft SEIS and final SEIS. Adjustments include updates to reserve requirements, forecasted hydropower production, fuel and emissions' allowance prices, and the load forecast. New power purchase agreements for wind energy were taken into account, as were anticipated layups of some amount of coal-fired generation by 2015. Plans for TVA's Energy Efficiency and Demand Response (EEDR) program were also updated.

Since 1990, TVA's net system requirements have grown at an average rate of 2.3 percent. The current medium-load (or expected) forecast shows a 1.3 percent average annual growth from 2010 through 2030. The high forecast projects load growth of only 2.0 percent, and the low forecast projects 0.3 percent. The final SEIS analysis shows overall needs increase approximately 7,500 MW in capacity by 2019 in the medium-load case, based in part on the projected decrease in generation from existing coal-fired units. TVA anticipates using a mix of resources, including EEDR programs, renewable resources, natural gas-fired generation, and nuclear generation to provide the additional future needs. In TVA's base-case analysis, the EEDR portion of total energy capacity increases from 1 percent in 2010 to 6 percent in 2019. Renewable resources decrease slightly, from 15 percent in 2010 to 14 percent in 2019, because the forecasted peak load also grows.

Environmental Consequences

The environmental consequences of constructing and operating Bellefonte Units 1 and 2 were addressed comprehensively in the 1974 FES. Subsequent environmental reviews by TVA and NRC have updated that analysis. By 1988, when construction of Units 1 and 2 was halted, most of the construction effects had already occurred. Completing either of these units would use structures that already exist, and most of the work required for completion would occur inside of those buildings. Land disturbances proposed for the construction of new support facilities would be within the current plant footprint.

The environmental effects of constructing and operating two AP1000 units were addressed in the 2008 COLA ER. This final SEIS updates and supplements information provided in that COLA ER. Although more site preparation and construction would be necessary under Alternative C, this would be offset by the somewhat simpler design and modern modular construction techniques used to construct the AP1000 unit. As a result, the construction duration and site construction labor force for an AP1000 unit is comparable to the estimated duration and labor requirements for Alternative B.

This final SEIS updates analyses of the following resources that could be effected construction and operation of a nuclear unit: Surface water and groundwater, floodplain/flood risk, wetlands, aquatic ecology, terrestrial ecology, endangered and threatened species, natural areas, recreation, archaeological resources and historic structures, visual, noise, socioeconomics and environmental justice, solid and hazardous waste, seismology, climatology, meteorology, air quality, global climate change, radiological effects of normal operations, uranium fuel use effects, nuclear plant safety, and security and plant decommissioning.

Ignoring the impacts from constructing alternative base load generation, virtually no impacts would result at the Bellefonte site from implementation of the No Action Alternative. Most of the impacts that would occur under the two Action Alternatives would be minor to moderate. Thermal water effects from plant operations would be similar, although impacts from operation of an AP1000 unit would be slightly less than impacts from a B&W unit due to the smaller amount of water withdrawal and blowdown discharge. However, a B&W unit would consume a smaller amount of the water withdrawn than an AP1000 unit. Under either Action Alternative, derates are possible during periods of excessive heat and drought. Alternative B would require the removal of about 10 percent more material from the intake channel than Alternative C, and dredging from the main river channel is not required for Alternative C. Impacts from the intake dredges would be minor. Dredging of the barge unloading area for an AP1000 unit and towing of barges during construction for either alternative could impact the endangered pink mucket pearlymussel (hereafter referred to as pink mucket). Plant operations under Alternative B or C could also impact the pink mucket.

Under Alternative C, 50 acres of forest and native grassland, including 12 acres of wetlands, would be lost. For both Action Alternatives, one archaeological site outside the site footprint would be marked to ensure avoidance. There could be temporary periods of moderate noise impacts during construction for both Action Alternatives. Some minor to moderate socioeconomic impacts are expected, primarily during construction, for either Action Alternative including housing availability, demand for schools, and increased traffic. No disproportionate impacts to low-income or minority populations are expected.

The final SEIS also considered the environmental consequences of the proposed transmission system improvements on surface water and groundwater, aquatic and terrestrial ecology, threatened and endangered species, wetlands, floodplains, natural and recreation areas, land use, visual and archaeological resources and historic structures, socioeconomics and environmental justice, as well as operational impacts such as electric and magnetic fields and lightning strike hazard. Direct, indirect, and cumulative impacts on these resources from the transmission Action Alternative would be none to minor with the use of standard TVA right-of-way vegetation management guidelines and environmental quality protection specifications for transmission line construction.

During the course of the SEIS preparation, TVA consulted with the U.S. Fish and Wildlife Service (USFWS) and the State Historic Preservation Officers (SHPOs) in Alabama, Tennessee, and Georgia, as well as interested tribes. On January 21, 2010, USFWS concluded that only the pink mucket could be affected by the proposed nuclear plant construction and operation. In a biological opinion issued April 15, 2010, USFWS issued an incidental take permit for the pink mucket under either Action Alternative. TVA committed to providing $30,000 to be used for research and recovery of the pink mucket should either of the Action Alternatives be selected.

In a September 9, 2009, letter, the Alabama SHPO concurred with TVA's finding of no effects on historic

properties associated with construction and operation of a nuclear unit on the Bellefonte site. TVA completed a memorandum of agreement (MOA) with the Georgia SHPO on April 28, 2010, and with the Alabama SHPO on June 1, 2010, for the treatment of potential impacts to historic properties from transmission system improvements on existing rights-of-way. Instead of entering into an MOA, in a May 20, 2010, letter, the Tennessee SHPO requested TVA follow procedures to conduct a phased identification and evaluation of historic properties pursuant to 36 CFR Part 900.4(b)(2).

Comments on the Final SEIS

TVA received comments on the final SEIS from 11 persons or entities, including letters from four individuals, five citizen groups, the Tennessee Department of Environment and Conservation Water Supply (TDEC Water Supply), and the USEPA.

Three of the four individuals expressed support for the project and interest in jobs at the plant site. One agreed that a plant was needed but expressed concern that spent fuel and radwaste storage issues should be addressed. The citizen groups included Southern Alliance for Clean Energy, Blue Ridge Environmental Defense League and its local affiliate Mothers Against Tennessee River Radiation/ Bellefonte Efficiency and Sustainability Team, Citizen's Task Force, and Citizens to End Nuclear Dumping in Tennessee. These groups preferred the No Action Alternative due to their perception of the high cost and safety risks associated with nuclear power, along with perceived uncertainties about fuel availability and spent fuel storage. They preferred that TVA implement an aggressive program to reduce demand for electricity by promoting EEDR programs as well as increasing renewable energy capacity. These organizations also commented on TVA's power forecast, completing the IRP before making this decision, the viability of both technologies under consideration, flooding, earthquakes, and climate change. No new issues were raised in these comments, and similar comments were addressed in the final SEIS.

TDEC Water Supply's comments focused on source water protection, including water wells and underground injection control, during the proposed transmission improvements. Currently, no new right-of-way is planned, and TVA has no plans to fill sinkholes or disturb wells. However, TVA will consider TDEC's guidance in planning these improvements.

USEPA reiterated its preference for Alternative C, commenting that an AP1000 unit would operate more efficiently and be safer due to the use of passive safety features. USEPA expressed concern about the age of the partially completed B&W plant and the cost effectiveness of completing one of the B&W units versus new construction over the life of the plant. However, USEPA also gave deference to the NRC licensing process regarding the identification of the appropriate reactor technology for the site. TVA was commended for pursuing energy technology options that would reduce air emissions.

In response to USEPA's comment on environmental justice, TVA has examined U.S. Census data for neighboring block groups. TVA found that seven block groups surround the Bellefonte site block group. Of these, five block groups had minority populations greater than the county average, but well below the state and national averages. These groups are not expected to be disproportionately affected by construction and operation of a nuclear plant. The in-depth analysis of the impacts on low-income or minority populations conducted in 2008, referenced in the final SEIS, includes information regarding specific outreach strategies used for data collection in the COLA ER. The final SEIS acknowledges the need to provide ongoing outreach to all affected populations. The final SEIS also acknowledges the potential for housing issues related to the construction workforce and the need for mitigation. TVA has undertaken an in-depth housing study to better identify the extent and location of housing impacts and to develop a strategy for addressing those concerns. This study, to be completed in fall 2010, will be available for consideration when TVA makes its final decision about plant construction. Any additional mitigation that might be identified because of the housing study will be incorporated into a second ROD described below. Material was added to the final SEIS stating what actions TVA would take under both Alternatives B and C to prevent and monitor tritium leaks to groundwater, based on industry and NRC guidance. USEPA also asked whether TVA planned to fill wetlands on the rights-of-way for the transmission system serving the site. TVA has no plans to fill wetlands in existing rights-of-way. Final SEIS Table E–3 includes information requested by USEPA regarding a comparison of effluent temperatures for the B&W and AP1000 units. The effluent temperature from a B&W unit would be the same as for an AP1000 unit, and no adverse thermal effects are expected beyond the mixing zone.

Decision

TVA has chosen a phased decision-making approach for the Bellefonte project. As stated in the final SEIS, TVA's preferred alternative is completion and operation of Bellefonte Unit 1. On August 20, 2010, the TVA Board approved a budget allocation of $248 million in support of continued engineering, design, and regulatory-basis development, as well as the procurement of long-lead components such as steam generators for Unit 1 in order to preserve the completion option on a timely basis. This will help ensure that Unit 1 continues to be a viable alternative for meeting base load power needs in the 2018–2020 time frame. Based on the results of TVA's new IRP, scheduled to be completed in spring 2011, the TVA Board will be asked to approve the completion and operation of Unit 1. TVA will issue a second ROD to document that decision.

Environmentally Preferred Alternative

Under the No Action Alternative, TVA would continue to maintain the construction permits for Bellefonte Units 1 and 2 in deferred status. There would be little change to the Bellefonte site and minimal direct environmental impacts. Under this alternative, TVA would have to pursue other means of meeting the need for power. Although energy conservation is expected to substantially reduce future demand growth on the TVA system, TVA's analyses indicate that it would still need more base load generation. Because Bellefonte Unit 1 has been partially constructed and any major disturbance of the Bellefonte site has already occurred, constructing a new base load plant would likely result in greater environmental impacts than completing and operating Unit 1.

The environmental impacts of the two Action Alternatives are very similar. The B&W unit (Alternative B) would withdraw more water from the reservoir than would the AP1000 plant (Alternative C), but due to increased evaporative losses, the AP1000 would consume more water. Under both Action Alternatives, the proportion of average river flow withdrawn and discharged is very small, and impacts from thermal discharges and on water supply are similar and minor. Slightly more dredging of the reservoir would be required for the B&W unit, but dredging for the AP1000 unit at the barge unloading dock could impact the pink

mucket mussel. Operation of either facility could impact the pink mucket in the mixing zone.

Overall, potential impacts to water quality and aquatic ecology of Alternative B are slightly higher than Alternative C, but both would be insignificant. Because part of the Alternative C facility would be constructed on a mostly forested site, it would result in greater impacts to wildlife, vegetation, and wetlands. Neither Action Alternative would clearly result in lower socioeconomic impacts. While both alternatives would employ the same number of construction workers, the construction period for the AP1000 unit would be about 30 percent longer. The AP1000, however, would require about 20 percent fewer employees to operate the plant. More solid waste would be produced during AP1000 construction, while the B&W construction would produce more hazardous waste. The B&W unit would generate about 5 percent more spent fuel during its operating lifetime. However, when standardized by the amount of energy generated, spent fuel generation is similar. The amount of radioactive waste produced by each reactor type would also be similar when standardized by the amount of energy generated. The safety effects of the two reactor types are not materially different.

Based on this comparison, TVA has determined that neither Action Alternative would be environmentally preferable to the other. However, either Action Alternative likely would be environmentally preferable to the No Action Alternative, assuming TVA has to build new base load generation.

Mitigation Measures

Recommencement of construction activities on the Bellefonte site would not occur until the TVA Board authorizes construction and TVA formally notifies NRC of its intent to reactivate construction. The preliminary activities authorized by the TVA Board on August 20 do not have the potential environmental impacts from constructing and operating a nuclear unit at the Bellefonte site that were identified in the final SEIS. Accordingly, no actions are necessary at this time to mitigate potential environmental impacts.

Dated: August 26, 2010.

Ashok S. Bhatnagar,

Senior Vice President, Nuclear Generation Development and Construction.

[FR Doc. 2010–22413 Filed 9–8–10; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0111]

Proposed Information Collection (Statement of Purchaser or Owner Assuming Seller's Loans, VA Form 26–6382) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine release of liability and substitution of entitlement of veterans-sellers to the government on guaranteed, insured and direct loans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 8, 2010.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900–0111" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA. With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement of Purchaser or Owner Assuming Seller's Loans, VA Form 26–6382.

OMB Control Number: 2900–0111.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–6382 is completed by purchasers who are assuming veterans' guaranteed, insured, and direct home loans. The information collected is essential in the determinations for release of liability as well as for credit underwriting determinations for substitution of entitlement. If a veteran chooses to sell his or her VA guaranteed home, VA will allow a qualified purchaser to assume the veteran's loan and all the responsibility under the guaranty or insurance. In regard to substitution of entitlement cases, eligible veteran purchasers must meet all requirements of liability in addition to having available loan guaranty entitlement.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,000.

Dated: September 3, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–22435 Filed 9–8–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VA Form 10–0488)]

Proposed Information Collection (Follow-Up Study of a National Cohort of Gulf War and Gulf Era Veterans) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of

Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to assist in VA's efforts to address the health concerns and problems of Gulf War Veterans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 8, 2010.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *mary.stout@va.gov.* Please refer to "OMB Control No. 2900–New (VA Form 10–0488)" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Mary Stout (202) 461–5867 or FAX (202) 273–9387.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Follow-Up Study of a National Cohort of Gulf War and Gulf Era Veterans, VA Form 10–0488, and Consent Form for Release of Medical Records, VA Form 10–0488a.

OMB Control Number: OMB Control No. 2900–New.

Type of Review: New Collection.

Abstracts

a. The data collected on VA Form 10–0488, will help VA to assess the health of Gulf War veterans who were exposed to a variety of environmental factors potentially linked to a chronic condition including Chronic Fatigue Syndrome and unexplained multi-system illnesses. VA will use the data to better understand the long-term consequences of military deployment and to provide better health care for Gulf War veterans.

b. VA Form 10–0488a is completed by claimants to request release of medical records from their health care provider.

Affected Public: Individuals or households.

Estimated Annual Burden

a. Follow-Up Study of a National Cohort of Gulf War and Gulf Era Veterans, VA Form 10–0488—9,000.

b. Consent Form for Release of Medical Records, VA Form 10–0488a—117.

Frequency of Response: Annually.

Estimated Average Burden per Respondents

a. Follow-Up Study of a National Cohort of Gulf War and Gulf Era Veterans, VA Form 10–0488—30 minutes.

b. Consent Form for Release of Medical Records, VA Form 10–0488a—10 minutes.

Estimated Annual Responses

a. Follow-Up Study of a National Cohort of Gulf War and Gulf Era Veterans, VA Form 10–0488—18,000.

b. Consent Form for Release of Medical Records, VA Form 10–0488a—700.

Dated: September 3, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–22436 Filed 9–8–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974: Computer Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Computer Match Program.

SUMMARY: Pursuant to 5 U.S.C. 552a, the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a computer matching program with the Social Security Administration (SSA). Data from the proposed match will be used to verify the earned income of nonservice-connected veterans, and those veterans who are zero percent service-connected (noncompensable), whose eligibility for VA medical care is based on their inability to defray the cost of medical care. These veterans supply household income information that includes their spouses and dependents at the time of application for VA health care benefits.

DATES: *Effective Date:* This match will start October 12, 2010, unless comments dictate otherwise.

ADDRESSES: Written comments may be submitted by mail or hand-delivery to Director, Regulations Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or e-mail through *http://www.Regulations.gov.* All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment (this is not a toll free number). In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Tony A. Guagliardo, Director, Health Eligibility Center, (404) 848–5300 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs has statutory authorization under 38 U.S.C. 5317, 38 U.S.C. 5106, 26 U.S.C. 6103(l)(7)(D)(viii) and 5 U.S.C. 552a to establish matching agreements and request and use income information from other agencies for purposes of verification of income for determining eligibility for benefits. 38 U.S.C. 1710(a)(2)(G), 1720(a)(3), and 1710(b) identify those veterans whose basic eligibility for medical care benefits is dependent upon their financial status. Eligibility for nonservice-connected and zero percent noncompensable service-connected veterans is determined based on the veteran's inability to defray the expenses for necessary care as defined in 38 U.S.C. 1722. This determination can affect their responsibility to participate in the cost of their care through copayments and their assignment to an enrollment priority group.

The goal of this match is to obtain SSA earned income information data needed for the income verification process. The VA records involved in the match are "Enrollment and Eligibility Records—VA" (147VA16). The SSA records are from the Earnings Recording and Self-Employment Income System, SSA/OEEAS 09–60–0059 and Master Files of Social Security Number Holders and SSN Applications, SSA/OEEAS, 60–0058, (referred to as "the Numident"). A copy of this notice has been sent to both Houses of Congress and OMB.

This matching agreement expires 18 months after its effective date. This match will not continue past the legislative authorized date to obtain this information.

Approved: August 24, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2010–22487 Filed 9–8–10; 8:45 am]

BILLING CODE P



Federal Register

Thursday,
September 9, 2010

Part II

Environmental Protection Agency

40 CFR Parts 60 and 63

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2002–0051; EPA–HQ–OAR–2007–0877; FRL–9189–2]

RIN 2060–AO15, 2060–AO42

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) from the Portland Cement Manufacturing Industry and to the New Source Performance Standards (NSPS) for Portland Cement Plants.

The final amendments to the NESHAP add or revise, as applicable, emission limits for mercury, total hydrocarbons (THC), and particulate matter (PM) from new and existing kilns located at major and area sources, and for hydrochloric acid (HCl) from new and existing kilns located at major sources. The standards for new kilns apply to facilities that commence construction, modification, or reconstruction after May 6, 2009.

The final amendments to the NSPS add or revise, as applicable, emission limits for PM, opacity, nitrogen oxides (NO_X), and sulfur dioxide (SO_2) for facilities that commence construction, modification, or reconstruction after June 16, 2008. The final rule also includes additional testing and monitoring requirements for affected sources.

DATES: These final rules are effective on November 8, 2010. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register on November 8, 2010.

ADDRESSES: EPA has established two separate dockets for these actions: Docket ID No. EPA–HQ–OAR–2007–0877 for the amendments to the NSPS and Docket ID No. EPA–HQ–OAR–2002–0051 for the amendments to the NESHAP. All documents in the two dockets are listed in the *http://www.regulations.gov* index. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Standards of Performance for Portland Cement Plants Docket, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Barnett; Office of Air Quality Planning and Standards; Sector Policies and Programs Division, Metals and Minerals Group (D243–02); Environmental Protection Agency; Research Triangle Park, NC 27711; telephone number: (919) 541–5605; fax number: (919) 541–5450; e-mail address: *barnett.keith@epa.gov.*

SUPPLEMENTARY INFORMATION: The supplementary information presented in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document?
C. Judicial Review
II. Background Information on the NESHAP, 40 CFR Part 63, Subpart LLL
A. What is the statutory basis for the NESHAP in 40 CFR part 63, subpart LLL?
B. Summary of the National Lime Association v. EPA Litigation
C. EPA's Response to the Remand
D. Reconsideration of EPA Final Action in Response to the Remand
III. Background Information From the NSPS 40 CFR Part 60, Subpart F
IV. Summary of EPA's Final Action on Amendments
A. What are EPA's final actions on 40 CFR part 63, subpart LLL?
B. What are EPA's final actions on 40 CFR part 60, subpart F?
C. What is EPA's sector-based approach?
V. Responses to Major Comments
A. What are the significant comments and responses on 40 CFR part 63, subpart LLL?
B. What are the significant comments and responses on 40 CFR part 60, subpart F?
VI. Summary of Cost, Environmental, Energy, and Economic Impacts of the Final Amendments to Subpart LLL and Subpart F
VII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
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D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. General Information

A. Does this action apply to me?

Categories and entities potentially regulated by this final rule include:

Category	NAICS code [1]	Examples of regulated entities
Industry	327310	Portland cement manufacturing plants.
Federal government	.....	Not affected.
State/local/Tribal government	.....	Portland cement manufacturing plants.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility will be regulated by this action, you should examine the applicability criteria in 40 CFR 60.60 (subpart F) or in 40 CFR 63.1340 (subpart LLL). If you have any questions regarding the applicability of this final action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action is available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following

signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of these final rules are available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by November 8, 2010. Under section 307(b)(2) of the CAA, the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for EPA to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

II. Background Information on the NESHAP, 40 CFR Part 63, Subpart LLL

A. What is the statutory basis for the NESHAP in 40 CFR part 63, subpart LLL?

Section 112 of the CAA establishes a regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. After EPA has identified categories of sources emitting one or more of the HAP listed in section 112(b) of the CAA, section 112(d) requires us to promulgate NESHAP for those sources. For "major sources" that emit or have the potential to emit 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of a combination of HAP, these technology-based standards must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards.

The statute specifies certain minimum stringency requirements for MACT standards, which are referred to as "floor" requirements. *See* CAA section 112(d)(3). Specifically, for new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (for which the Administrator has emissions information) in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we must also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements. CAA section 112(d)(2).

Section 112(k)(3)(B) of the CAA requires EPA to identify at least 30 HAP that pose the greatest potential health threat in urban areas, and section 112(c)(3) requires EPA to regulate, under section 112(d) standards, the area source [1] categories that represent 90 percent of the emissions of the 30 "listed" HAP ("urban HAP"). We implemented these listing requirements through the Integrated Urban Air Toxics Strategy (64 FR 38715, July 19, 1999).[2]

The Portland cement manufacturing source category was listed for regulation under this 1999 Urban Strategy based on emissions of arsenic, cadmium, beryllium, lead, and polychlorinated biphenyls (PCB). The final NESHAP for the Portland Cement Manufacturing Industry (64 FR 31898, June 14, 1999) included emission limits based on performance of MACT for the control of THC emissions from area sources. This 1999 rule fulfills the requirement to regulate area source cement kiln emissions of PCB (for which THC is a surrogate). However, EPA did not include requirements for the control of the non-volatile metal HAP (arsenic, cadmium, beryllium, and lead) from area sources in the 1999 rule or in the 2006 amendments. To fulfill our requirements under CAA section 112(c)(3) and 112(k), EPA is thus setting emissions standards for these metal HAP from Portland cement manufacturing facilities that are area sources (using PM as a surrogate). In this final rule EPA is promulgating PM standards for area sources based on performance of MACT, PM being a surrogate for these (and other non-volatile) HAP metals.

Section 112(c)(6) requires that EPA list categories and subcategories of sources assuring that sources accounting for not less than 90 percent of the aggregate emissions of each of seven specified HAP are subject to standards under section 112(d)(2) or (d)(4). The seven HAP are as follows: Alkylated lead compounds; polycyclic organic matter; hexachlorobenzene; mercury; polychlorinated byphenyls; 2,3,7,8-tetrachlorodibenzofurans; and 2,3,7,8-tetrachloroidibenzo-p-dioxin. Standards established under CAA section 112(d)(2) must reflect the performance of MACT. "Portland cement manufacturing: Non-hazardous waste kilns" is listed as a source category pursuant to CAA section 112(c)(6) due to emissions of polycyclic organic matter (POM), mercury, and dioxin/furans. Consistent with the requirements of CAA section 112(c)(6), we set MACT standards for these pollutants. 63 FR 17838, 17848, April 10, 1998; *see also* 63 FR at 14193 (March 24, 1998) (area source cement kilns' emissions of mercury, dibenzo-p-dioxins and dibenzo-p-furans, POM, and PCB are subject to MACT).

Section 129(a)(1)(A) of the CAA requires EPA to establish specific performance standards, including emission limitations, for "solid waste incineration units" generally, and, in particular, for "solid waste incineration units combusting commercial or industrial waste" (CAA section 129(a)(1)(D)).[3]

[1] An area source is a stationary source of HAP emissions that is not a major source. A major source is a stationary source that emits or has the potential to emit 10 tpy or more of any HAP or 25 tpy or more of any combination of HAP.

[2] Since its publication in the Integrated Urban Air Toxics Strategy in 1999, EPA has amended the area source category list several times.

[3] CAA section 129 refers to the Solid Waste Disposal Act (SWDA). However, this Act, as amended is commonly referred to as RCRA.

Section 129 of the CAA defines "solid waste incineration unit" as "a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public." CAA Section 129(g)(1). CAA Section 129 also provides that "solid waste" shall have the meaning established by EPA pursuant to its authority under the Resource Conservation and Recovery Act (RCRA). Section 129(g)(6).

In *Natural Resources Defense Council* v. *EPA,* 489 F. 3d 1250, 1257–61 (DC Cir. 2007), the Court vacated the Commercial and Industrial Solid Waste Incineration Units (CISWI) Definitions Rule, 70 FR 55568 (Sept. 22, 2005), which EPA issued pursuant to CAA section 129(a)(1)(D).

In response to the Court's remand and vacatur of the CISWI Definitions rule, EPA initiated a rulemaking to identify which secondary materials are non-hazardous "solid waste" for purposes of subtitle D (non-hazardous waste) of the RCRA when burned in a combustion unit. *See* 75 FR 31844 (June 4, 2010). Any final definition adopted in that rulemaking, in turn, will determine the applicability of CAA section 129(a) (*i.e.,* any combustion unit that burns any non-hazardous secondary material that is considered to be a solid waste would be subject to CAA section 129 requirements).

There is presently no Federal regulatory interpretation of "solid waste" for EPA to apply under Subtitle D of RCRA for purposes of CAA section 112 and 129. EPA is not prejudging, and cannot prejudge the outcome of the recently proposed non-hazardous solid waste rulemaking. EPA therefore cannot reliably determine at this time if the non-hazardous secondary materials combusted by cement kilns are to be classified as solid wastes. Accordingly, EPA is basing all determinations as to source classification on the emissions information now available, as required by CAA section 112(d)(3), and will necessarily continue to do so until the solid waste definition discussed above is promulgated. The current data base classifies all Portland cement kilns as CAA section 112 sources (*i.e.,* subject to regulation under CAA section 112).

We proposed amendments to the Portland Cement Manufacturing NESHAP on May 6, 2009. *See* 74 FR 21136. We received a total of 3,229 comments from the Portland cement industry, environmental groups, State environmental agencies and others during the comment period. This final rule reflects our consideration of all the comments we received. Detailed responses to the comments not included in this preamble are contained in the Summary of Public Comments and Responses document, which is included in the docket for this rulemaking.

B. Summary of the National Lime Association v. EPA Litigation

On June 14, 1999 (64 FR 31898), EPA issued the NESHAP for the Portland Cement Manufacturing Industry (40 CFR part 63, subpart LLL).[4] The 1999 final rule established emission limitations for PM as a surrogate for non-volatile HAP metals (major sources only), dioxins/furans, and for greenfield [5] new sources total THC as a surrogate for organic HAP. These standards were intended to be based on the performance of MACT pursuant to CAA sections 112(d)(2) and (3). We did not establish limits for THC for existing sources and non-greenfield new sources, nor for HCl or mercury for new or existing sources. We reasoned that emissions of these constituents were a function of raw material concentrations and so were essentially uncontrolled, the result being that there was no level of performance on which a floor could be based. EPA further found that beyond the floor standards for these HAP were not warranted.

Ruling on petitions for review of various environmental groups, the DC Circuit held that EPA had erred in failing to establish CAA section 112(d) standards for mercury, THC (except for greenfield new sources) and HCl. The court held that "[n]othing in the statute even suggests that EPA may set emission levels only for those * * * HAPs controlled with technology." *National Lime Ass'n* v. *EPA,* 233 F. 3d 625, 633 (DC Cir. 2000). The court also stated that EPA is obligated to consider other pollution–reducing measures such as process changes and material substitution. *Id.* at 634 ("the absence of technology-based pollution control devices for HCl, mercury, and total hydrocarbons did not excuse EPA from setting emission standards for those pollutants"). Later cases go on to hold that EPA must account for levels of HAP in raw materials and other inputs in establishing MACT floors, and further hold that sources with low HAP emission levels due to low levels of HAP in their raw materials can be considered best performers for purposes of establishing MACT floors. *See, e.g., Cement Kiln Recycling Coalition* v. *EPA,* 255 F. 2d 855, 865–66 (DC Cir. 2001); *Sierra Club* v. *EPA* ("Brick MACT"), 479 F. 3d 875, 882–83 (DC Cir. 2007).[6]

C. EPA's Response to the Remand

In response to the *National Lime Ass'n* mandate, on December 2, 2005, we proposed standards for mercury, THC, and HCl. (More information on the regulatory and litigation history may be found at 70 FR 72332, December 2, 2005.) We received over 1,700 comments on the proposed amendments. Most of these comments addressed the lack of a mercury emission limitation in the proposed amendments. On December 20, 2006 (71 FR 76518), EPA published final amendments to the NESHAP. The 2006 amendments contained a new source standard for mercury emissions from cement kilns and kilns/in-line raw mills of 41 micrograms per dry standard cubic meter, or alternatively the application of a limestone wet scrubber with a liquid-to-gas ratio of 30 gallons per 1,000 actual cubic feet per minute of exhaust gas. The final rule also adopted a standard for new and existing sources banning the use of utility boiler fly ash in cement kilns where the fly ash mercury content has been increased through the use of activated carbon or any other sorbent unless the cement kiln seeking to use the fly ash can demonstrate that the use of fly ash will not result in an increase in mercury emissions over its baseline mercury emissions (*i.e.,* emissions not using the mercury-laden fly ash). EPA also issued a THC standard for new cement kilns (except for greenfield cement kilns that commenced construction on or before December 2, 2005) of 20 parts per million (corrected to 7 percent oxygen) or 98 percent reduction in THC emissions from uncontrolled levels. EPA did not set a standard for HCl, determining that HCl was a pollutant for which a threshold had been established, and that no cement kiln, even under conservative operating conditions and exposure assumptions, would emit HCl at levels that would exceed that threshold level, allowing for an ample margin of safety. EPA pointed to CAA section 112(d)(4) authority as its rationale for not establishing HCl emissions limits.

[4] Cement kilns which burn hazardous waste are a separate source category, since their emissions of many HAP differ from Portland cement kilns' as a result of the hazardous waste inputs. Rules for hazardous waste-burning cement kilns are found at subpart EEE of part 63.

[5] For purposes of the 1999 rule a new greenfield kiln is a kiln constructed after March 24, 1998, at a site where there are no existing kilns.

[6] In the remainder of the opinion, the Court in *National Lime Ass'n* upheld EPA's standards for PM and dioxin (on grounds that petitioner had not properly raised arguments in its opening brief), upheld EPA's use of PM as a surrogate for HAP metals, and remanded for further explanation EPA's choice of an analytic method for HCl.

D. Reconsideration of EPA Final Action in Response to the Remand

At the same time we issued the final amendments, EPA on its own initiative made a determination to reconsider the new source standard for mercury, the existing and new source standard banning cement kiln use of certain mercury-containing fly ash, and the new source standard for THC (71 FR 76553, December 20, 2006). EPA granted reconsideration of the new source mercury standard both due to substantive issues relating to the performance of wet scrubbers and because information about their performance in the industry had not been available for public comment at the time of proposal; that information is now available in the docket. We also committed to undertake a test program for mercury emissions from cement kilns equipped with wet scrubbers that would enable us to resolve these issues. We further explained that we were granting reconsideration of the work practice requirement banning the use of certain mercury-containing fly ash in cement kilns to allow further opportunity for comment on both the standard and the underlying rationale and because we did not feel we had the level of analysis we would like to have to support a beyond-the-floor determination. We granted reconsideration of the new source standard for THC because the information on which the standard was based arose after the period for public comment. We requested comment on the actual standard, whether the standard is appropriate for reconstructed new sources (if any should occur) and the information on which the standard is based. We specifically solicited data on THC emission levels from preheater/precalciner cement kilns. We stated that we would evaluate all data and comments received, and determine whether in light of those data and comments it was appropriate to amend the promulgated standards.

EPA received comments on the notice of reconsideration from two cement companies, three energy companies, three industry associations, a technical consultant, one State, one environmental group, one ash management company, one fuels company, and one private citizen. As part of these comments, one industry trade association submitted a petition to withdraw the new source MACT standards for mercury and THC and one environmental group submitted a petition for reconsideration of the 2006 final action. A summary of these comments is available in the docket for this rulemaking.[7]

In addition to the reconsideration discussed above, EPA received a petition from Sierra Club requesting reconsideration of the existing source standards for THC, mercury, and HCl, and judicial petitions for review challenging the final amendments. EPA granted the reconsideration petition. The judicial petitions have been combined and are being held in abeyance pending the results of the reconsideration.

In March 2007 the DC Circuit Court issued an opinion (*Sierra Club* v. *EPA,* 479 F.3d 875 (DC Cir. 2007) (*Brick MACT*)) vacating and remanding CAA section 112(d) MACT standards for the Brick and Structural Clay Ceramics source categories. Some key holdings in that case were:

- Floors for existing sources must reflect the average emission limitation achieved by the best performing 12 percent of existing sources, not levels EPA considers to be achievable by all sources (479 F. 3d at 880–81);
- EPA cannot set floors of "no control." The Court reiterated its prior holdings, including *National Lime Ass'n,* confirming that EPA must set floor standards for all HAP emitted by the major source, including those HAP that are not controlled by at-the-stack control devices (479 F. 3d at 883); and
- EPA cannot ignore non-technology factors that reduce HAP emissions, including when determining which sources are best performers for purposes of ascertaining the MACT floor. Specifically, the Court held that "EPA's decision to base floors exclusively on technology even though non-technology factors affect emissions violates the Act." (479 F. 3d at 883).

Based on the statute, as interpreted in the *Brick MACT* decision, we believe a source's performance resulting from the presence or absence of HAP in raw materials must be accounted for in establishing floors; *i.e.,* a low emitter due to low HAP proprietary raw materials can still be a best performer. In addition, the fact that a specific level of performance is not being intentionally achieved by the source is not a legal basis for excluding the source's performance from consideration. *Sierra Club* v. *EPA,* 479 F.3d at 631–34; *National Lime Ass'n,* 233 F. 3d at 640.

The *Brick MACT* decision also reiterated that EPA may account for variability in setting floors. However, the Court found that EPA erred in assessing variability because it relied on data from the worst performers to estimate best performers' variability, and held that "EPA may not use emission levels of the worst performers to estimate variability of the best performers without a demonstrated relationship between the two." 479 F. 3d at 882.

After considering the implications of this decision, EPA granted the petition for reconsideration of all the existing source standards in the 2006 rulemaking.

A second Court opinion of relevance to the Portland cement NESHAP amended here is *Sierra Club* v. *EPA,* 551 F. 3d 1019 (DC Cir. 2008). In that case, the court vacated the regulations contained in the General Provisions which exempt major sources from CAA section 112(d) standards during periods of startup, shutdown and malfunction (SSM). The regulations (in 40 CFR 63.6(f)(1) and 63.6(h)(1)) provided that sources need not comply with the relevant CAA section 112(d) standard during SSM events and instead must "minimize emissions * * * to the greatest extent which is consistent with safety and good air pollution control practices." The current Portland Cement NESHAP references the now-vacated rules in the General Provisions. As a result of the court's decision, we are removing the references to the vacated provisions and addressing SSM in this rulemaking. Discussion of this issue may be found in Section IV.A.

III. Background Information on the NSPS 40 CFR Part 60, Subpart F

NSPS implement CAA section 111(b) and are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The primary purpose of the NSPS is to attain and maintain ambient air quality by ensuring that the best demonstrated emission control technologies are installed as the industrial infrastructure is modernized. Since 1970, the NSPS have been successful in achieving long-term emissions reductions in numerous industries by assuring cost-effective controls are installed on new, reconstructed, or modified sources.

Section 111 of the CAA requires that NSPS reflect the application of the best system of emission reductions which, taking into consideration the cost of achieving such emission reductions, any non-air quality health and environmental impact and energy requirements, the Administrator determines has been adequately

[7] Summary of Comments on December 20, 2006 Final Rule and Notice of Reconsideration. April 15, 2009.

demonstrated. This level of control is commonly referred to as best demonstrated technology (BDT). EPA promulgated Standards of Performance for Portland Cement Plants (40 CFR, part 61 subpart F) in 1971 ((36 FR 24876, December 23, 1971).

Section 111(b)(1)(B) of the CAA requires EPA to periodically review and revise the standards of performance, as necessary, to reflect improvements in methods for reducing emissions. We have conducted three reviews of the standards (39 FR 20793, June 14, 1974; 39 FR 39874, November 12, 1974; and 53 FR 50354, December 14, 1988).

We proposed the current review of the Portland Cement Plant NSPS on June 16, 2008. We received a total of 46 comments from the Portland cement industry, environmental groups, State environmental agencies and others during the comment period. This final rule reflects our consideration of all the comments we received. Detailed responses to the comments not included in this preamble are contained in the Summary of Public Comments and Responses document which is included in the docket for this rulemaking.

IV. Summary of EPA's Final Action on the Amendments

In this section we discuss the final amendments to 40 CFR part 63 subpart LLL and part 60 subpart F, the changes since proposal, and the rationale for the changes. Responses to specific comments may be found in the response to comment section of this document or in the response to comment documents contained in the dockets for this rulemaking.

As a preliminary matter, EPA notes that certain portions of the existing rules are not being amended substantively but are being reprinted, sometimes with editorial changes, in today's regulatory text. As explained at proposal, EPA did so either for readers' convenience or to make certain non-substantive "plain English" changes to rule text. 74 FR at 21140. The final rule text makes these same non-substantive changes (which did not occasion public comment), and reprints certain existing provisions. Provisions from the existing rules which do not change substantively include the PM emission limits for kilns currently subject to the NSPS, the opacity limits for raw materials dryers, raw mills, and finish mills, and the limits for dioxin furan (D/F) for cement kilns. We reorganized the testing and monitoring requirements of both rules to make them more consistent, and modified the rule language to better conform with the June 1, 1998, Executive Memorandum on Plain Language in Government Writing.

A. What are EPA's final actions on 40 CFR part 63, subpart LLL?

1. What are the final actions on emission limits under 40 CFR part 63, subpart LLL?

In this action, we are amending the emission limits for mercury, THC, and PM from new and existing kilns located at a major or area source, and for HCl from new and existing kilns located at major sources. We identify these standards below for the emission sources in a typical Portland cement production process. We have applied the limits for existing and new sources in this final rule for mercury and THC to area sources consistent with CAA section 112(c)(6). As noted above, mercury is one of the pollutants specifically singled out by Congress in CAA section 112(c)(6), and THC is a surrogate for POM and PCB, which are also section 112(c)(6) HAP. *See* 63 FR 14193, March 24, 1998 (determination to control all THC emissions from the source category under MACT standards). Finally, Portland cement kilns are a listed area source category for urban HAP metals pursuant to CAA section 112(c)(3), and control of these metal HAP emissions (via the standard for the PM non-mercury HAP metal surrogate) is required to ensure that area sources representing 90 percent of the area source emissions of urban metal HAP are subject to CAA section 112 control, as required by CAA section 112(c)(3). The PM standards for area sources reflect MACT, as explained below.

a. Changes to Overall Floor Setting Procedure

The MACT floor limits for each of the HAP and HAP surrogates (mercury, THC, HCl, and PM) are calculated based on the performance of the lowest emitting (considered best performing in this rulemaking) sources in each of the MACT floor pools for each HAP or HAP surrogate. We ranked all of the sources for which we had data based on their emissions and identified the lowest emitting 12 percent of the sources for which we had data, which ranged from two kilns for THC to 11 kilns for mercury for existing sources. For new source MACT, the floor was based on the best controlled source.

In assessing sources' performance, EPA may consider variability both in identifying which performers are "best" and in assessing their level of performance. *Brick MACT,* 479 F. 3d at 881–82; *see also Mossville Envt'l Action Now* v. *EPA,* 370 F.3d 1232, 1241–42 (DC Cir 2004) (EPA must exercise its judgment, based on an evaluation of the relevant factors and available data, to determine the level of emissions control that has been achieved by the best performing sources considering these sources' variability).

Variability in cement kilns' performance has a number of causes. For many of the pollutants, notably mercury and THC, most kilns do not have add-on control devices. The main source of variability for these pollutants consequently is the differing mercury and organic concentrations in the raw materials and fuels which are fed to the kiln. For particulate matter, which is well-controlled by baghouses, the variability is chiefly due to variations in performance of the control device for which both run-to-run and test-to-test variability must be accounted.[8]

In determining the MACT floor limits, we first determine the floor, which, as explained above, for existing sources is the level achieved in practice by the average of the top 12 percent of existing sources, or the level achieved in practice by the best controlled similar source for new sources. In this rule, EPA is using lowest emissions as the measure of best performance.

We then assess variability of the best performers by using a statistical formula designed to estimate a MACT floor level that is equivalent to the average of the best performing sources based on future compliance tests (or calculated inputs in the case of mercury). Specifically, the MACT floor limit is an upper prediction limit (UPL) calculated with the Student's t-test using the TINV function in Microsoft Excel®. The Student's t-test has also been used in other EPA rulemakings (*e.g.,* NSPS for Hospital/Medical/Infectious Waste Incinerators, NESHAP for Industrial, Commercial, and Institutional Boilers and Process Heaters) in accounting for variability. A prediction interval for a future observation is an interval that will, with a specified degree of confidence, contain the next (or some other pre-specified) randomly selected observation from a population. In other words, the prediction interval estimates what the upper bound of future values will be, based upon present or past background samples taken. The UPL

[8] Run-to-run variability is essentially within-test variability, and encompasses variability in individual runs comprising the compliance test, and includes uncertainties in correlation of monitoring parameters and emissions, and imprecision of stack test methods and laboratory analysis. 72 FR at 54877 (Sept. 27, 2007). Test-to-test variability results from variability in pollution device control efficiencies over time (depending on many factors, including for fabric filters the point in the maintenance cycle in which a fabric filter is tested). Test-to-test variability can be termed long-term variability. 72 FR at 54878.

consequently represents the value which we can expect the mean of future observations (3-run average for HCl, 30-day average for mercury, PM, HCl (sources not having wet scrubbers or otherwise electing CEM-based compliance), and THC) to fall below within a specified level of confidence, based upon the results of an independent sample from the same population. In other words, if we were to randomly select a future test condition from any of these sources (*i.e.,* average of 3 runs or 30-day average) we can be 99 percent confident that the reported level will fall at or below the UPL value. Use of the UPL is appropriate in this rulemaking because it sets a limit any single or future source can meet based on the performance of members of the MACT pool.

This formula uses a pooled variance (in the s^2 term) that encompasses all the data-point to data-point variability of the best performing sources comprising the MACT floor pool for each HAP. Where variability was calculated using the UPL statistical approach (*i.e.,* for the Hg, HCl, and PM standards), we used the average (or sample mean) and sample standard deviation, which are two statistical measures calculated from the data distributions for mercury, HCl, and PM. The average is a central value of a data set, and the standard deviation is the common measure of the dispersion of the data set around the average. We describe in detail in the preamble sections on mercury, HCl and PM and in the memorandum "Development of the MACT Floors for the Final NESHAP for Portland Cement", August 6, 2010" how these averages were developed. We note here that the methodology accounts for both short-term and long-term variability and encompasses run-to-run and test-to-test variability. The formula also applies differently depending on how the underlying data set is distributed. To this end, EPA carefully evaluated the data sets for each HAP to ascertain whether the data were normally distributed, or distributed in some other manner (*i.e.,* log normally). After applying standard and rigorous statistical tests (involving the degree of "skewness" of the data), we determined that the distributions for mercury and particulate matter were approximately a normal distribution, which in turn determined the final form of the UPL equation. *See* Floor Calculations for Final Portland Cement NESHAP, August 6, 2010; *see also* 75 FR at 32019–20.

EPA was able to reasonably calculate variability for the THC and HCl standards without needing to use predictive statistics. Specifically, the data set for THC contains a sufficient number of observations to estimate the variability without the need of any type of statistical intervals (no UPL needed to be calculated). For HCl, although EPA applied the UPL formula in developing the HCl standard, the key issue for the HCl data set is the HCl analytic method's detection limit, which ultimately dictated the level of the standard.

At proposal we adopted a form of the UPL equation that has been used in a previous rulemaking. 69 FR 21233 April 20, 2004. Commenters stated correctly that there was an error in the equation used at proposal. As a result of these comments, EPA corrected the formula in the final rule. The UPL used in the final rule is calculated by:

$$UPL = \bar{x} + t(0.99, n-1) \times \sqrt{s^2 \times \left(\frac{1}{n} + \frac{1}{m}\right)}$$

Where:

$\bar{x}$ = the mean of the sample data set
n = the number of test runs
m = the number of test runs in the compliance average
s^2 = observed variance
t = student t distribution statistic

This calculation was performed using the following Excel functions:

Normal distribution: 99 percent UPL = AVERAGE(Test Runs in Top 12percent) + [STDEV(Test Runs in Top 12percent) x TINV(2 x probability, n-1 degrees of freedom)*SQRT((1/n)+(1/m))], for a one-tailed t-value, probability of 0.01, and sample size of n

This is the same UPL equation that EPA used in more recent rulemakings. *See* 75 FR 32020 (June 4, 2010) and 75 FR 31905 (June 4, 2010). The value of "m" denotes the number of future observations, and it is used to calculate an estimate of the variance of the average of m-future observations. For example, if 30-day averages are used to determine compliance (m=30), the amount of variability in the 30-day average is much lower than the variability of the daily measurements in the data base, which results in a lower UPL for the 30-day average.

As an illustration of the effects that correcting the UPL had on the emission limits, we calculated the UPLs for mercury and PM using the proposal version of the UPL formula, and the version used in this final rule. The results of these calculations are presented in Table 1. Both calculated limits are about 20 percent lower when the corrected UPL formula is used.

TABLE 1—COMPARISON EMISSION LIMITS CALCULATED USING PROPOSAL UPL FORMULA VERSUS CORRECTED UPL FORMULA FOR EXISTING SOURCES

	Proposal (uncorrected UPL formula)	Proposal (corrected UPL formula)
Mercury, (lb/MM tons feed) [lb/MM tons clinker]	29.6 [48.8]	22.5 [37.1]
PM (lb/ton clinker)	0.05	0.04

b. Ramifications of EPA Statistical Approach

A number of commenters maintained that this final rule raises the (perceived) quandry voiced by Judge Williams in his concurring opinion in *Brick MACT* where an achieved level of performance for purposes of CAA section 112(d)(3) results in a standard which is unachievable under CAA section 112(d)(2) because it is too costly or not cost-effective. *Brick MACT,* 479 F. 3d at 884–85. EPA is of course mindful of the repeated admonitions (with accompanying vacaturs and remands) from the DC Circuit that MACT floors must reflect achieved performance, that HAP content of process inputs (raw materials and fuels) must be accounted for in ascertaining sources' performance, and that costs cannot be considered by EPA in ascertaining the level of the MACT floor. *See, e.g., Brick MACT,* 479 F. 3d at 880–81, 882–83; *NRDC* v. *EPA,* 489 F. 3d 1364, 1376 (DC Cir. 2007) ("Plywood MACT"); *see also Cement Kiln Recycling Coalition* v. *EPA,* 255 F. 3d 855, 861–62 (DC Cir. 2001) ("achievability" requirement of CAA section 112(d)(2) cannot override the requirement that floors be calculated on the basis of what best performers actually achieved). EPA is also mindful of the need to account for sources' variability (both due to control device

performance and variability in inputs) in assessing sources' performance when developing technology-based standards. *See, e.g., Mossville Environmental Action Now* v. *EPA,* 370 F. 3d 1232, 1242 (DC Cir. 2004); *National Lime I,* 627 F. 2d 416,433–34(DC Cir. 1980). EPA has carefully developed data for each standard, assessing both technological controls and HAP inputs in doing so. For mercury, EPA used the pooled variance from all of the best performing kilns in the MACT floor pool in order to fully assess these kilns' intra-quarry and other variable mercury levels. EPA also used pooled variance to assess the variability of HCl and PM emissions for the MACT floor pool kilns. *See* 70 FR at 59438 (Oct. 12, 2005) (explaining when use of such pooled variances can be reasonable). EPA has also adopted 30-day averaging periods for all of the standards, further allowing short term fluctuations to be averaged out over the 30-day period.

The result are floors which reasonably estimate the performance over time of the best performing sources, as do the standards based on those floors. It is true that many sources will need to install controls to meet these standards, and that these controls have significant costs (although EPA estimates that the rule's costs are substantially outweighed by its benefits). *See* Section VI below. This is part of the expected MACT process where, by definition, the averaged performance of the very best performers sets the minimum level of the standard. The Agency believes that it has followed the statute and applicable case law in developing its floor methodology.

Industry commenters nonetheless maintained that EPA had not properly accounted for variability of the best performing sources because not even these sources can meet the standards which are predicated on their own performance without adding controls. This contention lacks a basis in the record. For mercury, all performers in the MACT floor pool—not just those with emissions below the average of the best performers— meet the promulgated standard (highest 30-day average in MACT pool is 41.63 lb/MM tons clinker; the standard is 55 lb/MM tons clinker (30-day average). In addition, several additional kilns, which are not in the pool of best performers, meet the standards. For THC, all kilns in the pool of best performers meet the promulgated standard (highest 30-day average in MACT pool is 5.68 ppmv; the standard is 24 ppmv). In addition, seven additional kilns which are not in the pool of best performers meet the standards. Indeed, nine of the 11 kilns for which EPA has CEM data are meeting the promulgated standards for THC. For PM, all six kilns in the MACT pool as well as twelve kilns overall meet the promulgated 30-day standard even though the measurements in the data base are stack tests (*i.e.,* unlike for mercury and THC, these are not averaged values).[9] Virtually all kilns in the MACT floor pool are meeting the HCl standard, although this is largely the result of setting the standard at a level reflecting analytic method quantitation limits.

Commenters presented virtually no quantified data that floor plants are unable to meet the standards. *See National Association of Metal Finishers* v. *EPA,* 719 F. 2d 624, 649 (3d Cir. 1983) (unquantified assertions are entitled to little if any weight). Rather, their comments (comment 2845 at Table 1, echoed by many other industry commenters) provided narrative descriptions purporting to demonstrate that floor plants would not be able to achieve the standards.[10] In those instances where commenters provided actual data on these plants' performance, EPA took the information into account in developing the final standards. Indeed, EPA adjusted all of the standards based on actual data presented. However, EPA is not willing to act on pure supposition and conjecture regarding variability, particularly in the face of record information indicating that not only all floor plants but a number of additional plants are already meeting the promulgated standards.

c. Mercury Limits for Kilns

i. Floor Determination. We proposed mercury emissions limits of 43 lb/million (MM) tons clinker for existing sources and 14 lb/MM tons clinker for new sources. The proposed floor was based on 30 days of data on all kiln inputs for 89 kilns. *See* 74 FR at 21142–43. For all kilns but the five equipped with wet scrubbers, emissions were assumed to equal the total mass of mercury fed to each kiln. Scrubber-equipped kilns were considered to emit all mercury minus an assumed amount representing the average performance of the wet scrubbers. For kilns that waste cement kiln dust (CKD), the mercury component of the CKD was subtracted from inputs to calculate emissions. *Id.* By conducting a total mass balance for mercury and then assuming that all mercury inputted is emitted (minus conservatively estimated removals for scrubber usage and dust wastage), EPA made a near worst case assumption as to kilns' mercury emission levels. The kilns were then ranked from best to worst based on the extrapolated mercury emissions, normalized to clinker production. EPA further proposed that no beyond the floor standard was appropriate for either existing or new sources. *Id.* at 21149.

Since proposal we received updated data on certain kilns' raw materials usage and mercury content[11] and used that data to revise our average mercury emissions estimates from the best performing kilns at proposal.[12] We have also revised upward the floor kilns' projected emissions based on their reasonably estimated intra-quarry variability (explained further below). As a result, estimated emissions from these kilns increased, and one of the kilns in the group of sources used to set the existing source floor is no longer one of the best performing kilns. At proposal, the average mercury emissions of the top 12 percent of the kilns was 27.4 pounds per million (lb/MM) tons clinker, and the average emissions of the best performing source were 13.4 lb/MM ton clinker. After revising our mercury emissions estimates, the averages were 32 and 14 lb/MM tons clinker, respectively, as shown in Table 2.

TABLE 2—MERCURY MACT FLOOR

Kiln code	Mercury emissions (lb/MM ton feed)
1589	8.48
1650	9.53
1315	15.26
1302	15.28
1248	16.63
1259	21.33
1286	22.65
1594	25.23
1435	25.51
1484	25.51
1364	25.91
MACT—Existing Kilns	
Average: lb/MM tons feed (lb/MM tons clinker)	19.21 (31.7)
Total variance	272.3

[9] Development of The MACT Floors For The Final NESHAP For Portland Cement. August 6, 2010.

[10] For example, the commenter asserted, without providing support, that for the floor kilns the standards were "achieved in practice, but not under foreseeable operations"; "achieved in practice based on limited stack tests"; "data shows that proposed standard was not achieved in practice when malfunction emission [sic] are included in compliance determination" (although no such data were provided to EPA).

[11] *See* Portland Cement Association Comments on the NESHAP–Proposed Rule (Docket Number: EPA–HQ–OAR–2002–0051) (September 4, 2009) at pp. 31–35.

[12] Development of The MACT Floors For The Final NESHAP For Portland Cement, August 6, 2010.

TABLE 2—MERCURY MACT FLOOR—Continued

Kiln code	Mercury emissions (lb/MM ton feed)
UPL: lb/MM tons feed (lb/MM tons clinker) ..	32.8 (54.1)
MACT—New Kilns	
Average: lb/MM tons feed (lb/MM tons clinker)	8.48 (14.0)
Total variance	35.2
UPL: lb/MM tons feed (lb/MM tons clinker) ..	12.3 (20.3)

As noted above, we are taking into account operating variability of the best performing kilns, or in the case of new source MACT the single best controlled kiln, in assessing their performance (*i.e.,* both in determining which performers are best, and calculating what their performance is). When we calculated the UPL with 99 percent confidence for the best performing sources (or in the case of new source MACT the best controlled single source), we calculated a mercury floor of 55 lb/MM tons clinker for existing sources and 21 lb/MM tons clinker for new sources. We chose a 30-day averaging period for the mercury emission limit. As noted above, the use of a 30-day average (as opposed to hourly or daily averages) tends to reduce variability, and also best reflects the nature of the data from which the floor was derived and assures that several operating cycles of raw mill on and off are included in each average. *Id.* at 21144.

Industry commenters stated that we should account for additional sources of variability in this floor determination, namely intra-quarry variability and variability of the mercury content in local coals which kilns could utilize. As explained below, beyond those situations where commenters documented that sources actually used inputs with greater mercury content than used during the 30-day test period (*see* note 11 above), or where further intra-quarry mercury variability could reasonably be estimated, we did not do so.

EPA is of course aware that limestone quarries are immense, and are customarily used from periods of 50 to 100 years. Taking the average of 30 days of sampling data from one part of the quarry would not necessarily encompass all of the different mercury levels throughout the quarry.

Although industry commenters originally raised the issue of long term intra-quarry variability during the initial May 2007 30-day data collection, no plant chose to perform additional sampling and analysis of their raw materials and feed that would have allowed this issue to be directly addressed. Certain industry commenters did point, however, to data from the 30-day sampling effort as providing useful information on potential intra-quarry mercury variability of the two best performers. The data come from 30-day sampling conducted at four sources (three of which are located at a single facility), which all quarry limestone from a common geologic limestone formation.[13] All six kilns (the two floor kilns, and the other four kilns in the immediate vicinity) are in the same city and within 9 miles of each other. It is a reasonable assumption that variability of mercury levels (as opposed to mercury levels themselves) across this formation are substantially the same and therefore that the variability of mercury levels in the two best performers' quarries can be adjusted to reflect the variability seen in the other quarries which are part of the common geologic formation. *See Brick MACT,* 479 F. 3d at 881–882 (EPA may look at performance of sources which are not among the best in estimating variability of best performers if there is a demonstrated relationship between the two).

EPA further applied these estimates of intra-quarry variability to the mercury data for the other best performing kilns (*i.e.,* applied the same RSD to the other best performing sources). EPA did so to more robustly characterize long-term variability of these sources' quarries' mercury levels. The fact that intra-quarry variability of the two lowest emitting sources increased somewhat after examination with other quarries in the common geologic formation confirms that there can be further variability. Since the intra-quarry variability comes from quarries servicing the two lowest emitting kilns, EPA would not expect intra-quarry variability to be lower for the other best performing sources. In no other instance did commenters provide data that we could use to determine intra-quarry variability for kilns in the MACT floor pool.[14]

Commenters also maintained that because cement kilns can burn different types of coal, variability of coal mercury content needs to be factored into estimates of sources' performance. Commenters maintained that they obtained coal from a "local market" and so might eventually use any coal from that market. The comments did not further link coal to individual mines or to other particularized sources. Commenters appear to be asking for an upward adjustment of the MACT floors based on coal they might potentially use but never had used. EPA believes that allowing for any inputs that might conceivably be used in the future, including from sources in an area which a source has never used to date, goes beyond a reasonable estimate of performance over time and invites inflated estimates of variability based only on hypothesized possibilities, not on actual behavior.[15] EPA not only does not believe such methodology is a reasonable means of calculating sources' achieved performance, but also believes that such an approach creates a perverse incentive to build in compliance margins based on seeking out more polluted inputs.

For example, the price of lower mercury coal may increase as a result of this rule (it may be more desirable as a means of keeping mercury emissions low), so plants may seek out higher mercury coal which they otherwise have never used. This type of volitional activity does not seem to be within the ambit of normal variability of process inputs. In addition, facilities do have choices for coal. As noted in the comments, some facilities obtain coals from several States, while others appear to limit themselves to more local areas. However, coal is a commodity that can be transported long distances to fuel utility boilers. Therefore, we believe that a facility should have sufficient coals available that they would not be compelled to use a higher mercury coal just because it happens to be near the plant.

ii. Decision Regarding Whether To Create a Subcategory Based on Limestone Mercury Content

EPA may create subcategories which distinguish among "classes, types, and sizes of sources." CAA section 112(d)(1). EPA reads this provision to provide the Agency with discretion to subcategorize,

[13] Memorandum. Intra-quarry Variability Estimate, July 21, 2010.

[14] For example, one industry commenter submitted core (unground, unprocessed) samples from its quarry which samples differed in mercury content by approximately one order of magnitude. This facility is not a best performer, the samples are single measurements (rather than 30-day measurements or some longer duration), and (unlike the 30-day measurements used as the basis for the standard) have not been processed (*i.e.,* passed through the quarry crushers and mixed in the storage pile which would tend to make the material more homogeneous). Therefore, these data are not comparable to the data used to set the MACT floors.

[15] The situation differs from use of limestone from a proprietary quarry. Not only have sources used the quarry in the past but will necessarily continue to do so in the future.

and EPA may exercise that discretion if sources are rationally distinguishable due to some difference in class, type or size. *See Lignite Energy Council* v. *EPA,* 198 F. 3d 930, 933 (DC Cir. 1999) ("EPA is not required by law to subcategorize—section 111[b][2] merely states that 'the Administrator *may* distinguish among classes, types, and sizes within categories of new sources' " (emphasis original)). Moreover, as we noted at proposal, "normally, any basis for subcategorizing must be related to an effect on emissions, rather than to some difference among sources which does not affect emissions performance." 74 FR at 21145. EPA may also exercise this discretion on a pollutant-specific basis, since the difference in class, type or size may only have practical significance for certain HAP. In this final rule, EPA carefully considered the possibility of creating different subcategories of cement kilns with respect to mercury emissions.

The subcategorization possibilities for mercury which we considered and rejected at rule proposal were the type of kiln, presence of an inline raw mill, practice of wasting cement kiln dust, total mercury inputs, or geographic location. *See* 74 FR 21144–21145. We likewise reject these bases in this final rules for the reasons already stated.

At proposal we also considered subcategorizing by the mercury concentration of the limestone in the kiln's proprietary quarry. We did not propose to create this type of subcategory, and also choose not to do so in this final rule.

As we explained at proposal, the facts do not indicate sharp disparities in limestone mercury content that readily differentiate among types of sources for most of the facilities for which we have data, and thus do not support this subcategorization approach for the majority of the facilities. *See* Figure 1 showing a gradual continuum of mercury concentrations in limestone for all but two outlying plants.

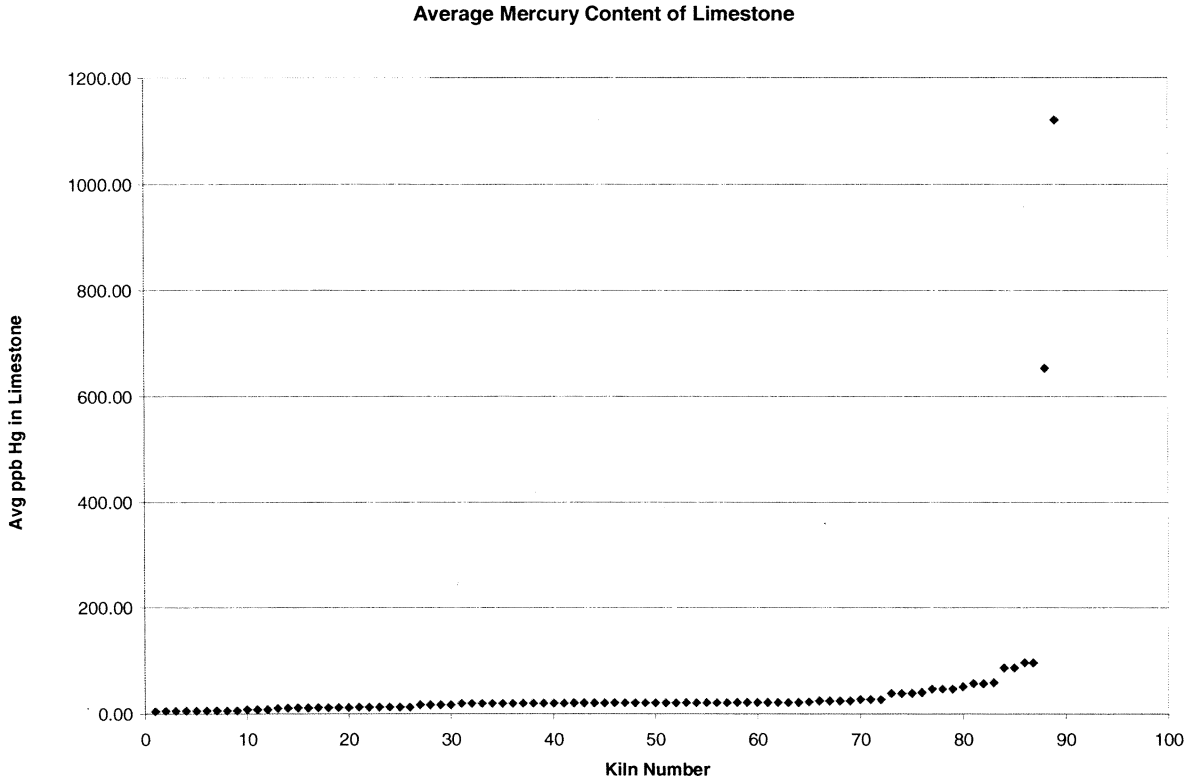


Figure 1. Average Mercury Concentration of Limestone

Industry commenters who supported creating a separate subcategory for the two highest mercury emitting sources based on limestone mercury content agreed with this assessment. Thus, EPA sees no technical justification to subcategorize by limestone quarry mercury content for the majority of the source category.

However, as also shown in Figure 1, there is a sharp disparity for two kilns which have the highest quarry mercury contents. These sources' mercury emissions are also disproportionately higher than all other cement kilns', and are related almost entirely to the limestone mercury content, not to mercury content of other inputs. Commenters who supported subcategorization by quarry mercury levels recommended that EPA create a separate source category for these two kilns based on their uniquely high quarry mercury contents.

If we were to set a separate subcategory for these two kilns, we determined that the floor level of control would be approximately 2100 lb/MM tons clinker. Due to the high level of this floor, we evaluated a beyond-the-floor option of 85 percent reduction in emission for the highest emitting kiln. This level would represent the highest level of mercury control believed achievable for the highest emitting facility based on test data on a pilot mercury control system for that facility.[16] This level of control would result in an emissions limit of

[16] Letter, C. Lesslie, Ash Grove Cement to P. Tsirigotis, U.S. EPA, April 22, 2010.

approximately 500 lb/MM tons clinker. This level is over 10 times the level that will be required for all other kilns, and even exceeds every other kiln's uncontrolled mercury emissions levels which range from 20 to 400 lb/MM tons clinker.

Mercury in the air eventually settles into water or onto land where it can be washed into water. Once deposited, certain microorganisms can change it into methylmercury, a highly toxic form that builds up in fish, shellfish and animals that eat fish. Fish and shellfish are the main sources of methylmercury exposure to humans. Methylmercury builds up more in some types of fish and shellfish than in others. The levels of methylmercury in fish and shellfish depend on what they eat, how long they live and how high they are in the food chain. Mercury exposure at high levels can harm the brain, heart, kidneys, lungs, and immune system of people of all ages. Research shows that most people's fish consumption does not cause a health concern. However, it has been demonstrated that high levels of methylmercury in the bloodstream of unborn babies and young children may harm the developing nervous system, making the child less able to think and learn.[17] Heightened concern for mercury's toxic effects is reflected directly in the structure of section 112 of the Act. Mercury is one of the pollutants identified for MACT-level control under the CAA's air toxics provision even (in most instances) when emitted by area sources (*see* CAA section 112(c)(6)).

Thus, creating a high-mercury subcategory for two kilns based on limestone mercury content would result in standards allowing emissions of 500 lb/MM tons of clinker. Based on 2008 production rates, this would allow 1,020 pounds of mercury emissions per year from the potential two-plant subcategory. To put this in perspective, the rest of the industry (92 plants) would be allowed to emit 1,012 pounds tons of mercury per year (again based on 2008 production rates), and the two high-emitting plants would be allowed to emit 1,020 pounds per year. This would result in a doubling of mercury emissions from this source category after the application of MACT. Moreover, national mercury emissions for industrial sources are approximately 50 tpy.[18] That would mean that these two sources alone would constitute 1 percent of the industrial mercury emissions for the U.S. EPA believes it is a reasonable exercise of discretion not to create a subcategory, where, as here, doing so would allow on-going emissions of a disproportionately high volume of a high-toxicity pollutant.

Due to mercury's high toxicity and the extremely high mercury emissions that would result, the Administrator is thus not exercising her discretion to subcategorize in setting the final mercury emissions limit. In light of this decision, it is unnecessary for EPA to address the further question of whether subcategorizing by raw material content of proprietary quarries is permissible under section 112 of the Act.

Although the Agency has concluded that it is reasonable to set the same mercury standard for all cement kilns, we acknowledge the unique challenges that the highest emitting sources may face in meeting the reductions within the regulatory compliance timeline. In particular, as discussed at length above, the two highest emitting kilns—the kilns located in Durkee and Tehachapi—have unusually high levels of mercury in their proprietary limestone quarries, which, as typifies this sector, are located proximate to kiln operations. The mercury content of source material is the key factor in the high levels of emissions experienced at these kilns and a complicating consideration in their ability to achieve compliance in a timely manner.

We also recognize that this challenge presents a unique opportunity to achieve substantial reductions in this naturally occurring, persistent, and widespread contaminant in an amount and on a schedule that exceeds what will be required in the final rule. The Agency believes that the two sources in question may be able in the near term to install aggressive controls, including activated carbon injection, that would result in dramatic near term reductions in mercury emissions (as much as 90 percent or two tons of mercury emissions in the first two years of operation). If they were to do so, these sources would emit substantially less mercury in the next few years than the alternative of allowing these facilities to continue to emit at current levels for three additional years, as would otherwise be the case. This would be a very substantial reduction in emissions of this pollutant. Annual emissions of mercury from all sources (not just cement kilns) are estimated to be 50 tpy,[19] and emissions from the entire source category are approximately 7.5 tons per year,[20] so that a two ton reduction is a substantial reduction of mercury emissions.

We understand that one of the two high emitting kilns has already installed activated carbon injection, but that its performance could be further optimized. *See* 74 FR 21148. The other kiln would have to install activated carbon injection and both kilns would need to install dust shuttling. The net benefit to the environment and public health would extend a number of years beyond the MACT compliance deadline.

If the Durkee and Tehachapi kilns were willing to make a near term reduction (*e.g.,* 90 percent) in their mercury emissions significantly before the compliance date in the rule, the Agency would consider providing these kilns a compliance schedule that extends beyond the three to four years specified in this rule. The purpose of such an approach would be to provide a substantial net benefit to the environment; therefore ultimate compliance with the MACT standard would need to be by a date that ensures the long term emissions from these sources would be significantly lower than their emissions from meeting the standard on the schedule in the rule. Given the nature of mercury and the additional reductions that could be obtained, the Agency is interested in exploring this concept.

Finally, EPA notes that the same early reduction opportunities for mercury do not appear to exist for the rest of the Portland cement industry. It typically takes on the order of three years to install activated carbon injection technology. One of the high mercury plants has recently completed installation of ACI and has just commenced full scale operation of the kiln with ACI installed. The other kiln faces fewer installation barriers than other kilns. This is because the company has tested carbon injection and dust shuttling on one of its other kilns, and is already using dust shuttling to reduce emissions at another kiln, and is therefore better positioned to rapidly install controls after one year. To our knowledge, these circumstances are not applicable to the rest of the Portland cement source category, and could not even be duplicated at all the other facilities owned by these companies due to limitations in

[17] For more information *see http://www.epa.gov/mercury/about.htm.*

[18] Mercury Emission in the U.S. by Source Category 1990 to 1993, 2002, and 2005. *http://cfpub.epa.gov/eroe/index.cfm?fuseaction=detail.viewMidImg&ch=46&lShowInd=0&subtop=341&lv=list.listByChapter&r=188199.*

[19] Mercury Emission in the U.S. by Source Category 1990 to 1993, 2002, and 2005. *http://cfpub.epa.gov/eroe/index.cfm?fuseaction=detail.viewMidImg&ch=46&lShowInd=0&subtop=341&lv=list.listByChapter&r=188199.*

[20] Summary of Environmental And Cost Impacts For Final Portland Cement NESHAP And NSPS August 6, 2010.

infrastructure available to design and build these systems.

iii. Beyond the Floor Determinations for Mercury

We are basing the final mercury standard on the floor level of control. When we establish a beyond the floor standard we typically identify control techniques that have the ability to achieve an emissions limit more stringent than the MACT floor. Under these final amendments, most existing kilns would have to have installed both a wet scrubber and activated carbon injection (ACI) for control of mercury, HCl and THC.[21] To achieve further reductions in mercury beyond what can be achieved using wet scrubber and ACI in combination, the available options would include closing the kiln and relocating to a limestone quarry having lower mercury concentrations in the limestone, transporting low-mercury limestone in from long distances, switching other raw materials to lower the amount of limestone in the feed, wasting CKD, and installing additional add-on control devices. These options were discussed at proposal, and were rejected as either technically infeasible or not cost-effective. Consideration of non-air quality impacts and energy requirements do not change this conclusion. *See* 74 FR at 22249–50. We received no comments that would cause us to change that determination.

We did receive one comment from an environmental group requesting EPA explore fuel switching as a beyond the floor option. However, EPA thoroughly explored fuel switching as a control option in the 2006 rulemaking and determined that there were problems with fuel availability and the costs were prohibitive. *See* 70 FR 72340. EPA is not presently aware of facts that would justify a different approach in this final rule.

As a result of these analyses, we determined that, considering the technical feasibility and costs, there is no reasonable beyond the floor control option, and the final mercury emission limit is based on the MACT floor level of control.

c. THC Limits for Kilns and Raw Material Dryers

The limits for existing and new sources in this final rule apply to both area and major sources. As noted earlier, we have applied these limits to area sources consistent with CAA section 112(c)(6).

i. Floor Determination. EPA proposed THC emissions limits of 7 and 6 parts per million by volume dry (ppmvd) for existing and new sources respectively for both cement kilns and raw material dryers. The existing source standard was based on the performance of the best performing 12 percent of cement kilns for which we had THC CEMS data. At proposal we requested comment on the issue of whether or not we should base the existing source floor on the best performing five kilns, rather than on the best performing 12 percent (two kilns). Industry commenters supported the use of the best five kilns stating that this would be in keeping with what appeared to be the intent of Congress that five kilns should be the minimum number of sources on which to set an existing source floor. However, other commenters noted that a plain reading of the statute is that when the source category has 30 or more sources, the top performing 12 percent for which the Administrator has data must be used, even if this results in less than five facilities due to lack of available data. In this final rule we are reaffirming our decision at proposal to use the best performing 12 percent rather that the best performing five facilities because we believe this result to be unavoidably compelled by the literal language of the statute.

At proposal we set the emissions limit based on the 99th percentile of the available data. As a result of new data received after the comment period, we recalculated the averages of the kilns for which we had CEMS data and selected the best performing two kilns (12 percent of 15 total kilns) based on their average emissions. *See* Calculations of Floors for Final Portland Cement NESHAP dated August 6, 2010. Because these were large data sets (688 and 274 readings), we directly calculated the 99th percentile of the 30-day averages to determine the MACT floor which is 24 ppmvd.[22] This is shown in Table 3.

[21] Summary of Environmental and Cost Impacts of Proposed Revisions to Portland Cement NESHAP (40 CFR Part 63, subpart LLL), April 15, 2009.

[22] In other words, as noted above, EPA possesses sufficient THC data that it is not necessary to estimate variability by use of the UPL equation. Rather, variability is calculated directly from the THC data set comprised of the two lowest emitting sources.

Table 3. Summary of THC CEMS Data and MACT Floor

Kiln	Average (ppmvd at 7% O2, propane)	Number of readings	Kiln type	In-line raw mill
Kiln 1	4.7	668	Preheater/precalciner	yes
Kiln 2	5.7	274	Precalciner	yes
Existing Source Average	5.2			
Existing Source 99th percentile	24			
New Source Average	4.7			
New Source 99th percentile	24			

For new sources, we analyzed the data from the kiln with the lower numeric average to determine the 99th percentile of its performance. The result of this analysis was also a 24 ppmvd standard because this kiln had more variability (although a lower average performance) than the other kiln in the data set. This emission limit is based on a concentration measured dry, corrected to 7 percent oxygen and a 30-day average measured using a CEM.

ii. Additional THC data received too late to be considered in this rulemaking. In addition to the THC CEMS data just discussed, we received another set of THC CEMS data from the Portland Cement Association (PCA). These data were not submitted to EPA until mid-June 2010, virtually too late for any consideration, much less considered analysis. This set consisted of THC CEMS data collected over periods ranging from 31 to 90 days for additional kilns not in the data base discussed above, as well as additional data from some of the kilns already in our data base. These additional data increased the total number of kilns with THC CEMS data to 30 kilns. The PCA also provided a floor analysis on this data set and recommended THC emissions limits. The data set as presented by PCA is shown in Table 4.

TABLE 4—PORTLAND CEMENT ASSOCIATION: DETERMINATION OF SIZE OF BEST PERFORMING POOL FOR PROPOSED SUB-CATEGORIES FOR THC

[Mid-June 2010 data submission]

Sub category	Estimated U.S. population	Kilns for which data are available	Procedure for selecting pool of best performing kilns		
			Existing units		New units
			Rule	Pool size	
Major Non-Commingled Kilns	> 30	17	Best 12%	3	Best 1.
Major Commingled Kilns	< 30	7	Best 5	5	Best 1.
Area Kilns	< 30	6	Work Practices Standard.		

In this analysis, the PCA proposed two subcategories: Kilns where the coal preparation mill exhaust is comingled with the kiln exhaust, and kilns where the coal preparation mill has a separate stack. The PCA maintains that subcategories are needed because emissions for the coal preparation mill (which are believed to be chiefly methane from the coal) will, all other things being equal, elevate the THC emissions of the kiln exhaust. *See also* 74 FR at 21152. The PCA recommended floors are shown in Tables 5 and 6 below:

TABLE 5—ALTERNATIVE MACT FLOORS FOR THC MAJOR NON-COMMINGLED KILNS

	Existing units (ppm)	New units (ppm)
99th Percentile	30	11
99.9th Percentile	36	12

TABLE 6—ALTERNATIVE MACT FLOORS FOR THC MAJOR COMMINGLED KILNS

	Existing units (ppm)	New units (ppm)
99th Percentile	70	17
99.9th Percentile	80	20

However, the PCA MACT analysis suffers from one major deficiency because it excludes area sources from

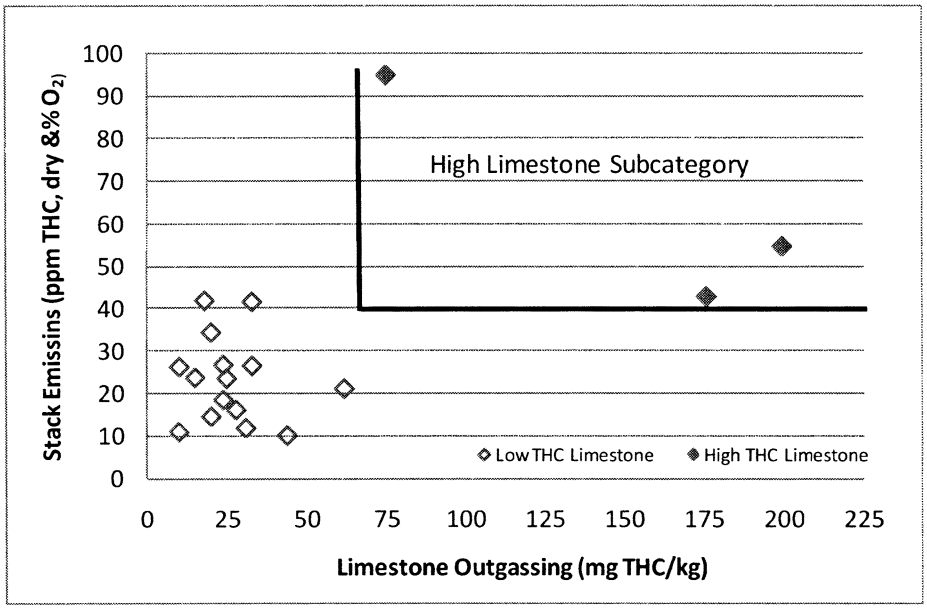
the MACT floor analysis, and assumes a work practice for these sources. As previously noted, THC emissions serve as surrogates for POM and PCB emissions. CAA section 112(c)(6) requires EPA to list, and to regulate under standards established pursuant to CAA section 112(d)(2) or (d)(4), categories of sources accounting for not less than 90 percent of emissions of these HAP standards established under CAA section 112(d)(2) must reflect the performance of MACT. Again, as explained above, EPA has long since determined that area source cement kilns' THC emissions must be controlled under CAA section 112 (d)(2) or (d)(4) in order to satisfy the 90 percent requirement. Therefore, these area sources should have been included in the MACT floor analysis.

If this error in the floor analysis is corrected, the MACT floor for the kilns with comingled exhaust would be unchanged from the PCA analysis of 70 ppmvd for existing and 17 ppmvd for new (assuming the statistical calculations were done correctly).

However, this estimate is premised on the assumption that there are less than 30 kilns in this subcategory (so that 5 sources would be used to establish the floor). That assumption is based on data provided in the PCA report that indicated, of the 87 kilns that provided data to PCA on their coal preparation stack configurations, 13 had comingled exhaust. If there are actually 30 or more kilns with this configuration, the MACT floor would have to be based on the best performing 12 percent of 8 kilns (the 7 major source comingled kilns plus one area source comingled kiln) which would be one kiln, Lehigh at Union Bridge. If one kiln is used for the existing source floor, the existing source MACT limit would be 17 ppmvd using the 99th percentile. The estimate of 26 versus 30 or more sources causes a high level of uncertainty in this analysis.

For sources that do not comingle the exhaust, the floor would appear to be approximately 13 ppmvd when the area sources are included in the analysis. This is also lower than the floor calculated from the long term data set out above (and would result in a standard roughly 50 percent more stringent than that which EPA is adopting).

The PCA analysis also recommended a separate subcategory for kilns with high limestone outgassing based on the information shown below:



The limestone outgassing factor is determined by heating a sample of the limestone from the kiln's proprietary quarry to determine the potential for THC emissions based on the amount and types of organic materials present. The premise here is basically the same as previously discussed for subcategorization by limestone mercury content when setting mercury emissions limits, because the kiln is tied to its limestone quarry. The subcategory proposed was for sources with THC outgassing ≥ 65 mg/kg. The recommended THC emissions limits for this subcategory were 170 and 62 ppmvd for new and existing sources respectively. This analysis, however, suffers from the same defect previously discussed in that for a subcategory with only three sources where we have data, the best performing 12 percent would be one kiln, so the actual limit for new and existing would be 62 ppmvd. We rejected this option because it suffers from the same defects as subcategorization by limestone mercury content. First, the choice of high versus low organics appears arbitrary. A level between 75 and 175 could just as easily have been chosen. The selection of 65 appears to be an attempt to move the high THC emitting facility into a subcategory with a high limit. Second, subcategorizing in this manner could result in situations where a few facilities would be allowed to emit at levels well above the remainder of the sources in this source category. Third, although the two kilns with the highest outgassing limestone appear to be outliers (similar to the two facilities with unusually high limestone mercury contents), we do not have data on a majority of the kilns (as we do with mercury) and it is possible that if we had more data, the two facilities that appear to be outliers would be part of a gradual continuum, which would mean the level we chose to separate high and low outgassing limestone would be mistaken.

We also considered combining all the THC CEMS data (the more recent PCA data, data used at proposal, and data received during the comment period which would create a data set of 34 kilns). The results of this analysis was a floor (based on the 99th percentile of the data) of 24 ppmvd for existing sources (the same standard adopted in

the final rule) and 3 ppmvd for new sources (more stringent than the new source standard in the final rule). Given the short time available to review the PCA data, the uncertainty concerning the actual size of one of the subcategories, the fact that these data would not in our view significantly change the levels of the standard for most kilns, and the concerns we have with subcategorization by limestone organic outgassing potential, we conclude that there is no compelling reason to change our floor determination based on this new information, which again was submitted only days before the final rule requirements had to be determined in order to meet the court ordered deadline for this rule.

iii. Beyond the floor determination. At proposal we evaluated several practices and technologies that are available to cement kilns to control emissions of organic HAP at a level beyond the floor. 74 FR at 21152. These practices include raw materials substitution, ACI systems and limestone scrubber and regenerative thermal oxidizer (RTO). We rejected each of these alternatives based on technical limitations or poor cost-effectiveness. Consideration of non-air quality impacts and energy support this determination as well (RTOs in particular being associated with appreciable energy penalties). 74 FR at 21152. We received no comments that have caused us to change that proposed decision. Therefore, we are choosing the floor level of control for the final THC emissions limit.

iv. Standards for THC. We are establishing the emissions limit for THC at the floor level of control. In addition, because the final existing source standard will be more stringent than the new source standard of 50 ppmvd for greenfield new sources contained in the 1999 final rule, we are also removing the 50 ppmvd standard for both kilns and raw material dryers.

EPA proposed an alternative floor for non-dioxin organic HAP, based on measuring the organic HAP itself rather than the THC surrogate. This equivalent alternative limit would provide additional flexibility in determining compliance, and it would be appropriate for those cases in which methane and ethane comprise a disproportionately high amount of the organic compounds in the feed because these non-HAP compounds could be emitted and would be measured as THC. At proposal we determined that organic HAP averaged 24 percent of the THC. Since proposal we have reevaluated these data and recalculated an average organic HAP concentration of 35 percent. Based on this percentage, and the fact that the THC emission limit is now 24 ppmvd, we are promulgating an alternative organic HAP limit of 9 ppmvd, corrected to 7 percent oxygen (or 19 percent oxygen for raw material dryers), for new and existing sources. The specific organic compounds that will be measured to determine compliance with the alternative to the THC limit are benzene, toluene, styrene, xylene (ortho-, meta-, and para-), acetaldehyde, formaldehyde, and naphthalene. These were the organic HAP species that were measured along with THC in the cement kiln emissions tests that were reviewed. Nearly all of these organic HAP species also were identified in an earlier analysis of the organic HAP concentrations in THC in which the average concentration of organic HAP in THC was 35 percent.[23]

The alternative standard will be based on organic HAP average concentration of organic HAP in THC was 35 percent.[24] The alternative standard will be based on organic HAP emission testing and concurrent THC CEMS measurements that will establish a site specific THC limit that will demonstrate compliance with the total organic HAP limit. The site specific THC limit will be measured as a 30 day rolling average.

iv. THC Emissions from Raw Material Dryers. As we noted at proposal, some plants may dry their raw materials in separate dryers prior to or during grinding. *See* 74 FR at 21153; *see also* 63 FR at 14204. This drying process can potentially lead to organic HAP and THC emissions in a manner analogous to the release of organic HAP and THC emissions from kilns when hot kiln gas contacts incoming feed materials. The methods available for reducing THC emissions (and organic HAP) is the same technology described for reducing THC emissions from kilns and in-line kiln/raw mills. Based on the similarity of the emissions source and controls, we proposed to set the THC emissions limit of materials dryers at the same levels as the kilns.

Commenters noted that stand alone raw materials dryers have higher gas flows relative to the amounts of fuels burned. This results in higher oxygen concentrations, typically as high as 19 percent. They also noted that raw material dryers may have higher THC and lower HAP emissions because raw materials dryers operate at lower temperature than kilns (since the dryer only needs to operate at the temperature needed to remove free water), and that the residence times for dryers is considerably longer than for kilns.

However, although we agree that the exhaust oxygen contents of raw material dryers may be higher than occurs with a cement kiln, there are reasons to believe that dryers actually emit less hydrocarbons than kilns. Operating at lower temperatures, we would expect any hydrocarbons that are emitted from dryers to be only those with the highest volatility, and therefore that the potential for emissions of organic HAP would be less for dryers than for kilns. However, the longer residence times could tend to increase emissions. Therefore, making any conclusions on the emission of dryers relative to kilns is difficult. We also note that we are allowing dryers to also use the alternative organic HAP emissions limit, so if the surmise that organic HAP emissions are low relative to the cement kilns is correct, this alternative should be very viable for these sources.

In short, we received no data indicating that the same limit as for kilns was infeasible, or that would otherwise allow us to set a different THC emissions limit for raw materials dryers. Therefore, in these final amendments we are setting the THC emissions limit at the same level as the cement kiln's, which is 24 ppmvd measured as propane.

However, because raw material dryers have high oxygen contents due to their inherent operation characteristics (and not due to the addition of dilution air), referencing the raw material dryer standard to 7 percent oxygen would actually result in a more stringent standard than for cement kilns. For example, given the typical oxygen contents of kiln exhaust (7 to 12 percent), a kiln just meeting the THC limit of 24 ppmvd would have an actual stack measurement of approximately 16 to 24 ppmvd. If the raw material dryer standard is referenced to the same oxygen level, they would have to meet a measured THC limit of approximately 3 ppmvd. For this reason, we are referencing the oxygen level of the standard for raw materials dryers to 19 percent oxygen, which is the typical oxygen level found in the exhaust of these devices.

d. Hydrochloric Acid Emissions From Kilns

In the proposed rule we based the proposed HCl emission limit for major sources on HCl data measured at 27 kilns using Method 321. The data in ppmvd corrected to 7 percent oxygen (O_2) were ranked by emissions level and the top 12 percent (4 kilns) lowest emitting kilns identified as best

[23] Summary of Organic HAP Test Data. August 6, 2010.

[24] Ibid.

performing existing sources. The calculated MACT floors were 2 ppmvd and 0.1 ppmvd respectively.

i. Floor Determination. Subsequent to proposal, we received comments that indicated we had inappropriately (albeit inadvertently) included certain natural area sources in the MACT floor analysis. We have removed those natural area sources from the floor analysis. In addition, many of the source tests were not actually EPA Method 321 tests; others lacked important quality assurance information. As a result, we issued letters under CAA section 114 authority requiring facilities that were major sources and that had previously submitted data to retest their facilities. We used this new data set to calculate a MACT floor. The data from the best performing three sources, as determined by average emissions during the test, are shown below in Table 7.

TABLE 7—HCL MACT FLOOR

Kiln	HCl emissions (ppmvd at 7% O_2)
1	0.34
2	0.44
3	0.46
MACT—Existing	
Average (Top 3)	0.41
Variance	0.02
UPL	0.52
MACT—New	
Average	0.34
Variance	0.0
UPL	0.34

However, these measurements are very close to the detection limit for analytic method 321 actually calculated in the field for HCl—from 0.2 to 0.3 parts per million by volume (ppmv) as measured in the stack.[25] The expected measurement imprecision for an emissions value occurring at or near the method detection level is in fact about 40 to 50 percent. This large measure of analytic uncertainty decreases as measured values increase: Pollutant measurement imprecision decreases to a consistent relative 10 to 15 percent for values measured at a level about three times the method detection level. *See* American Society of Mechanical Engineers, *Reference Method Accuracy and Precision (ReMAP): Phase 1, Precision of Manual Stack Emission Measurements,* CRTD Vol. 60, February 2001. Thus, if the value equal to three times the representative method detection level were greater than the calculated floor emissions limit, we would conclude that the calculated floor emissions limit does not account entirely for measurement variability.

That is the case here with HCl. The calculated standard (not accounting for the inherent analytical variability in the measurements) is 0.52 ppm (*see* Table 7 above). In order to account for measurement variability, we multiplied the highest reported minimum detection level for the analytic method by a factor of three which results in a level of 0.9 ppmv. This represents the lowest level that can be reliably measured using this test method, and we therefore believe that it is the lowest level we can set as the MACT limit taking the appropriate measurement variability into account. Converting this level to a dry basis at 7 percent oxygen results in a floor of 3 ppmvd for both new and existing sources. As explained further below, we are using a CEM to measure this standard, and it is a 30-day average.

ii. Beyond the Floor Determination. At proposal we examined the use of a packed bed scrubber, which was assumed to have a higher HCl removal efficiency than the spray tower limestone scrubbers typically used in this industry. Considering the high costs, high cost-effectiveness and small additional emissions reduction (and adverse cross-media impacts), we did not believe that a beyond-the-floor standard for HCl is justified. We received no comment that would change that decision. In addition, the current HCl floor limit is actually set at the lowest level we believe can be accurately quantified by the applicable test method. Therefore, a lower standard could not be reliably quantified. For these reasons we selected the floor level of control as MACT for HCl for major sources.

iii. Compliance Mechanisms. As proposed, kilns equipped with wet scrubbers may demonstrate compliance by means of stack testing at intervals of 30 months, plus utilize continuous monitoring of specified parameters. All other kilns are required to use a CEMS, with compliance based on a 30-day rolling average. Although the underlying data were obtained via stack tests, rather than with continuous monitors, EPA believes that because the HCl standard is established at a level higher than all measured values (to account for the inability to reliably measure any lower standard) and measured based on 30-day averages, it provides an ample compliance margin.

iv. Determination not to Establish a Risk-Based Standard for HCl. At proposal, EPA elected not to exercise its discretion under CAA section 112(d)(4) and proposed a major source standard for HCl based on MACT. The primary basis for not setting a health-based standard was that setting a MACT standard for HCl not only controlled HCl but also co-controlled other HAP (such as HF, Chlorine (Cl_2), and hydrogen cyanide (HCN)) and criteria pollutants yielding very substantial environmental benefits. However, we also requested comment on whether we had the legal authority to establish a standard for HCl, and, if so, whether we should exercise our discretion to do so. 74 FR at 21154. After considering comments, EPA has decided not to exercise its discretion to establish a risk-based standard for HCl under CAA section 112(d)(4), opting instead to promulgate a standard for HCl based on the performance of MACT in this final rule. This section discusses the basis for that decision.

Setting technology-based MACT standards for HCl will result in significant reductions in emissions of other pollutants, most notably SO_2, and would likely also result in additional reductions in emissions of mercury, along with condensable PM, ammonia, and semi-volatile compounds. The additional reductions of SO_2 alone attributable to the MACT standard for HCl are estimated to be 124,000 tons per year in the third year following promulgation of the proposed HCl standard. These are substantial reductions with substantial public health benefits. SO_2 emissions are associated with a variety of human health, ecosystem, and visibility effects. 75 FR at 35525–27 (June 22, 2010). Even more significantly, SO_2 is also a precursor to $PM_{2.5}$. Reducing SO_2 emissions also reduces $PM_{2.5}$ formation, human exposure, and the incidence of $PM_{2.5}$-related health effects, among them premature mortality and cardiovascular and respiratory morbidity. *See* detailed discussion of $PM_{2.5}$ health effects in the text at Table 13 below.

For these rules the SO_2 reductions represent a large fraction of the total monetized benefits from reducing $PM_{2.5}$, but it is not possible to isolate the portion if the total monetized benefits attributable to the emission reductions of SO_2 resulting from the application of HCl controls. The benefits models assume that all fine particles, regardless of their chemical composition, are equally potent in causing premature mortality because there is no clear scientific evidence that would support the development of differential effects estimates by particle type.

[25] Memorandum. EPA Method 321 Detection Limits and Minimum Quantification Limit, July 26, 2010.

We estimate the number of premature mortalities avoided each year due to the reductions in $PM_{2.5}$ exposure attributable to this standard to be in the thousands. RIA Table 6–3. We also estimate there to be over 2800 instances of annual cardiovascular and respiratory morbidity cases avoided, and hundreds of thousands of work loss days avoided. *Id.* The monetized benefits just from premature mortality avoided attributable to $PM_{2.5}$ reductions from this standard are estimated to be $7.4 billion to $18 billion at the three percent discount rate and $6.7 billion to $17 billion at a seven percent discount rate, nearly an order of magnitude higher than the rule's estimated social costs. *See* Table 13 below. Although MACT standards may directly regulate only HAPs and not criteria pollutants, Congress did recognize, in the legislative history to section 112(d)(4), that MACT standards would have the collateral benefit of controlling criteria pollutants as well and viewed this as an important benefit of the air toxics program.[26] The EPA believes these health and environmental benefits to be large and important and fully in keeping with the paramount goal of the Clean Air Act "to protect and enhance the quality of the Nation's air" (CAA section 101(b)(1)), and so is adopting MACT standards for HCl.[27]

Commenters from industry urged EPA to retain a risk-based standard but did not challenge EPA's finding or quantification that there would be these enormous health and environmental benefits to setting a standard reflecting MACT to control HCl. The commenters nonetheless urged EPA to retain a risk-based standard, noting that EPA had done so in the predecessor to this rule and for other source categories, and that HCl is a threshold pollutant within the meaning of CAA section 112(d)(4) so that there is a technical basis for such a standard. These arguments do not persuade the Agency to forego the very significant benefits just outlined. However, even if (contrary to the analysis just set out) EPA were inclined to adopt a risk-based standard here, there would be technical obstacles to doing so, as described at the final part of this section.

As we noted in the proposed rule, as a general matter, CAA section 112(d) requires MACT standards at least as stringent as the MACT floor to be set for all HAP emitted from major sources. However, CAA section 112(d)(4) provides that for HAP with established health thresholds, EPA has the discretionary authority to consider such health thresholds with an ample margin of safety when establishing emission standards under CAA section 112(d). This provision is intended to allow EPA to establish emission standards other than technology-based MACT standards in cases where a less stringent emission standard will still ensure that the health threshold will not be exceeded, with an ample margin of safety. In order to exercise this discretion, EPA must first conclude that the HAP at issue has an established health threshold and must then provide for an ample margin of safety when considering the health threshold to set an emission standard. We discussed this issue at length in the recent proposed Industrial Boiler MACT. *See* 75 FR at 32020–33 (June 4, 2010) (declining to propose a risk-based standard for HCl emissions).

The legislative history of section 112(d)(4) indicates that Congress did not intend for this provision to provide a mechanism for EPA to delay issuance of emission standards for sources of HAPs. The legislative history also indicates that a health-based emission limit under section 112(d)(4) should be set at the level at which no observable effects occur, with an ample margin of safety. S. Rep. 101–228 at 171–72. The legislative history further states that employing a section 112(d)(4) standard rather than a conventional MACT standard "shall not result in adverse environmental effects which would otherwise be reduced or eliminated." *Id.*

It is clear that EPA may exercise its discretionary authority under 112(d)(4) only with respect to pollutants with an established health threshold. Where there is an established threshold, EPA has, in the proposed rule on industrial boilers, interpreted section 112(d)(4) to allow us to weigh additional factors, beyond any established health threshold, in making a judgment whether to set a standard for a specific pollutant based on the threshold, or instead follow the traditional path of developing a MACT standard after determining a MACT floor (75 FR 32030). In deciding whether to exercise its discretion for a threshold pollutant for a given source category, EPA has interpreted section 112(d)(4) to allow us to take into account factors such as the following: The potential for cumulative adverse health effects due to concurrent exposure to other HAPs with similar biological endpoints, from either the same or other source categories, where the concentration of the threshold pollutant emitted from the given source category is below the threshold; the potential impacts on ecosystems of releases of the pollutant; and reductions in criteria pollutant emissions and other co-benefits that would be achieved via the MACT standard—the decisive factor here. Each of these factors is directly relevant to the health and environmental outcomes at which section 112 of the Clean Air Act is fundamentally aimed. If EPA does determine that it is appropriate to set a standard based on a health threshold, we must develop emission standards that will ensure the public will not be exposed to levels of the pertinent HAP in excess of the health threshold, with an ample margin of safety.

Since any emission standard under section 112(d)(4) must consider the established health threshold level, with an ample margin of safety, in this rulemaking EPA has considered the adverse health effects of the HAP acid gases, beginning with HCl. Research indicates that HCl is associated with chronic respiratory toxicity. In the case of HCl, this means that chronic inhalation of HCl can cause tissue damage in humans. Among other things, it is corrosive to mucous membranes and can cause damage to eyes, nose, throat, and the upper respiratory tract as well as pulmonary edema, bronchitis, gastritis, and dermatitis. Considering this respiratory toxicity, EPA has established a chronic reference concentration (RfC) for the inhalation of HCl of 20 μg/m^3. (*See http://www.epa.gov/ncea/iris/subst/0396.htm.*) An RfC is defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups[28]) that is likely to be without an appreciable risk of deleterious effects during a lifetime. The IRIS health assessment evaluated chronic non-cancer risks and did not include an evaluation of carcinogenic effects (on which there are very limited studies). As a reference value for a single pollutant, RfCs do not reflect any

[26] *See* S. Rep. No. 101–228, 101st Cong. 1st sess. at 172. EPA consequently does not accept the argument that it cannot consider reductions of criteria pollutants in determining whether to exercise its discretion to adopt a risk-based standard under section 112(d)(4). There appears to be no valid reason that EPA must ignore controls which further the health and environmental outcomes at which section 112(d) of the Act is fundamentally aimed.

[27] We further note that HCl is not the only acid gas HAP emitted by Portland cement plants. Hydrogen fluoride, HCN, ammonia, and chlorine may also present and were not accounted for in the risk analysis. Setting an HCl standard under 112(d)(2) and (3) allows the Agency to also address these other HAPs as they are co-controlled by wet scrubbers along with HCl.

[28] "Sensitive subgroups" may refer to particular life stages, such as children or the elderly, or to those with particular medical conditions, such as asthmatics.

potential cumulative or synergistic effects of an individual's exposure to multiple HAPs or to a combination of HAPs and criteria pollutants. Similarly, an RfC evaluation does not focus on potential environmental impacts.

With respect to the potential health effects of HCl, we know the following:

1. Chronic exposure to concentrations at or below the RfC is not expected to cause chronic respiratory effects;

2. Little research has been conducted on its carcinogenicity. The one occupational study of which we are aware found no evidence of carcinogenicity;

3. There is a significant body of scientific literature addressing the health effects of acute exposure to HCl (California Office of Health Hazard Assessment, 2008. Acute Toxicity Summary for Hydrogen Chloride, *http://www.oehha.ca.gov/air/hot_spots/2008/AppendixD2_final.pdf#page=112* EPA, 2001). However, we currently lack information on the peak short-term emissions of HCl from cement kilns which might allow us to determine whether a chronic health-based emission standard for HCl would ensure that acute exposures will not pose health concerns.

4. We are aware of no studies explicitly addressing the toxicity of mixtures of HCl with other respiratory irritants. However, many of the other HAPs (and criteria pollutants) emitted by cement kilns also are respiratory irritants, and in the absence of information on interactions, EPA assumes an additive cumulative effect (Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures. *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=20533*).

Cement kilns also emit other acid gases along with HCl, including chlorine (Cl_2), HCN and hydrogen fluoride (HF), all of which are HAPs. Like HCl, these HAP gases have established chronic health thresholds below which they are not expected to pose any significant risk of chronic respiratory effects, have no evidence to suggest that they may pose carcinogenic effects, and have an established body of literature regarding acute respiratory health effects. They are also controlled during the process of controlling HCl emissions from cement kilns using a wet scrubber. As such, their health impacts must be taken into account when considering a health-based emission limit for HCl.

In the 2006 final rule, EPA did not set any standard for HCl.[29] The Agency reasoned that no further control was necessary for Portland cement emissions of HCl because HCl is a "health threshold pollutant" and human health is protected with an ample margin of safety at current HCl emission levels. 71 FR at 76527. Underlying this conclusion was EPA's analysis of a tiered screening study of dispersion modeling of cement facilities' worst-case and actual HCl emissions. This study was conducted by the Portland Cement Association for about two-thirds of operating U.S. cement plants. Dispersion modeling results were evaluated against the RfC for HCl.[30] The screening analysis involved making conservative assumptions regarding HCl emission concentrations and plants' operating conditions (greater concentrations than known to be emitted and perpetual operation at maximum capacity). All plants in the analysis, with five exceptions, had HCl levels well below a Hazard Quotient (HQ) level of 1.0, the ratio of exposure (or modeled concentration) to the health reference value or threshold level. The remaining five plants in the analysis had HQ levels greater than 1.0 assuming maximum emissions, but less than 1.0 when their actual emissions were used in the dispersion models. *Id.* at 76528–29.

At proposal of these amendments, recognizing that the 2006 determination was deficient, if for no other reason because it failed to establish any emission standard whatever, EPA conducted its own analysis to determine what numerical standard for HCl would be necessary to at least assure that, for the sources in the controlled category or subcategory, persons exposed to emissions of HCl would not experience the adverse health effects on which the threshold is based. In order to determine this level, in the proposed rule we conducted a risk analysis of the same 68 facilities analyzed by PCA using a screening level dispersion model (AERSCREEN). Using the site specific stack parameters provided by the PCA and conservative meteorological conditions (taken from the PCA analysis), the AERSCREEN modeling predicted the highest long term ground level concentration surrounding each facility, and used this concentration to back calculate the highest allowable HCl emissions rate that could occur without exceeding the allowable RfC. The results of this analysis indicated that an HCl emission limit of 23 ppmv or less (an order of magnitude higher than the MACT standard) would result in no exceedances of the RfC for HCl for any of the facilities assessed.[31]

Based on further consideration, EPA now believes that the 2006 PCA study and analysis has the following deficiencies. First of all, not all cement plants were evaluated (the PCA study covered about two thirds of the plants in the source category), and among those not evaluated were cement plants with the most likelihood of posing risk at ground level from HCl emissions due to use of positive pressure baghouses with monovents or multiple short stacks. Secondly, the analysis did not consider the impacts of the co-emitted acid gases, an important consideration in determining an ample margin of safety. In addition, no data were provided, nor do we have data, on other pollutants in the vicinity of these cement facilities, or background concentration data for HCl to determine cumulative impacts of HCl emissions for these facilities.[32] EPA's analysis of 2009 could not improve on the PCA study, given the lack of robust emissions data for Cl_2, HF, and HCN, and the lack of any additional data for the cement kilns not included in the original study. As a result, EPA cannot ensure that the resulting derivation of 23 ppmv as a possible health-based emission standard for HCl would result in chronic ambient levels of acid gases that would not pose significant health risks. EPA has no data that would allow us to extend that analysis to cover all acid gases and all facilities.

In addition to potential health impacts, EPA has evaluated the potential for environmental impacts when considering whether to exercise discretion under section 112(d)(4). When HCl gas encounters water in the

[29] Although the decision not to set a standard in 2006 was based on the authority of section 112(d)(4), we note that the statute in fact states: "the Administrator may consider such threshold level, with an ample margin of safety, *when establishing emission standards* under this subsection." Section 112(d)(4), emphasis added.

[30] In the previous study EPA also evaluated dispersion modeling results against an acute exposure guideline level (AEGL) below which acute effects would not be expected to occur. However, even given the uncertainties mentioned for short term HCl emissions, that analysis indicated that chronic effects would be of the most concern.

[31] Derivation of a Health-Based Stack Gas Concentration Limit for HCl in Support of the National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry, April 10, 2009.

[32] It should be noted that large amounts of site-specific information both on kiln operation and local meteorological information is needed to obtain meaningful results from AERSCREEN and other dispersion models. This information is in the ready possession of the industrial sources themselves, but for unknown reasons, was not provided by industry to EPA either as part of the 2006 PCA analysis or in response to subsequent data solicitations by EPA.

atmosphere, it forms an acidic solution of HCl. In areas where the deposition of acids derived from emissions of sulfur and nitrogen oxides are causing aquatic and/or terrestrial acidification, with accompanying ecological impacts, the deposition of HCl could exacerbate these impacts. Being mindful of the explicit legislative history, and in keeping with past EPA practice, it is appropriate to consider potential adverse environmental effects in addition to adverse health effects when setting an emission standard for HCl under section 112(d)(4). The co-emissions of HF, HCN, and Cl_2 from cement kilns could serve to further aggravate these environmental acidification impacts, but EPA has no data to determine these impacts.

Although the PCA analysis did not include an assessment of potential environmental effects, for the 2006 final Portland cement rule, EPA conducted its own analysis of potential effects of cement kilns' HCl emissions to wildlife, aquatic life, and other natural resources. The Agency concluded at the time that acute and chronic exposures to expected HCl concentration around cement kilns are not expected to result in adverse environmental toxicity effects. *Id.* at 76529. EPA accordingly declined to establish any standard for HCl.

At this time, we now believe the ecological risk analysis performed in 2006 is insufficient, as it was merely a literature review and not a formal ecological assessment, and, as discussed in the previous paragraphs, it did not cover the impacts of the other acid gases, nor did it cover about one third of the existing cement plants. No additional information was provided during the comment period which addressed these various technical issues, notwithstanding EPA's solicitation of data.

Consequently, although EPA is declining to adopt a section 112(d)(4) risk-based standard for HCl emissions from Portland cement facilities for the sound policy reasons discussed herein, we further note that there remain technical issues as to the appropriateness of such a standard even if EPA were inclined to exercise that discretion. We also do not view ourselves as bound by the technical determinations made in the 2006 rulemaking for the reasons just explained.

EPA also has concluded that the facts here are distinguishable from those in other rulemakings in which it exercised its discretionary authority under section 112(d)(4). In the case of the Pulp and Paper MACT (63 FR at 18765 (April 15, 1998)), the risk analysis indicated, at the 95 percent confidence interval, that the maximum concentration predicted to which people were estimated to be exposed was 0.3 g/m_3, 60 times less than the inhalation reference concentration. This is a much lower value than present in the Portland cement risk analysis discussed above. In the case of the Lime Manufacturing NESHAP (67 FR at 78054 (Dec. 20, 2002)), there are two key distinctions. First, the technical information available to EPA covered 100 percent of all lime kilns in the U.S., which is not the case for the Portland cement risk analysis. Second, EPA did a worst case analysis as a supplement to the industry analysis and determined that the highest hazard index under that scenario was 0.21. Based on the EPA analysis determining a health based limit for Portland cement, if we were to allow the same level of risk as we determined in Lime NESHAP analysis, the health based emission limit would be 2 ppmvd, which is almost the same level as the MACT standard we are finalizing in this action.

EPA also considers the alternative standard for total chlorine in the Hazardous Waste Combustor MACT (70 FR at 59555 (Oct. 12, 2005)) to be distinguishable. That rule, under the authority of section 112(d)(4) establishes a site-specific risk-based standard for total chlorine (of which HCl is the largest component), whereby, in lieu of meeting the MACT standard, sources may emit total chlorine at higher levels if they demonstrate that their emissions of total chlorine from all hazardous waste combustor sources at a facility do not exceed both acute (one-hour) and chronic (annual) exposure thresholds. The demonstration must account for all relevant site-specific conditions, or be based on worst-case screening assumptions. If sources satisfy these criteria, the amount of their total chlorine emissions is still capped by the technology-based limit to which these sources were previously subject. The site-specific demonstrations, applicability to all combustor sources at a facility, use of acute and chronic health benchmarks, and capping of emission limits are all unique to that rule.

e. PM Emissions From Kilns

Particulate matter serves as a surrogate for non-volatile metal HAP (a determination upheld for this source category in *National Lime Ass'n,* 233 F. 3d at 637–39). Existing and new major sources are presently subject to a PM limit of 0.3 lb/ton of feed which is equivalent to 0.5 lb/ton clinker. EPA is amending this standard for major sources, and also adding PM standards for existing and new area source cement kilns. In all instances, EPA is revising these limits because they do not represent MACT, but rather a level which is achievable by the bulk of the industry. *See* 63 FR at 14198 (March 24, 1998); *see also* 233 F. 3d at 633 (indicating that the standards for PM were likely legally deficient but that the argument had not been properly preserved for the court to adjudicate). This is not legally permissible. *Brick MACT,* 479 F. 3d at 880–81. EPA thus does not accept the argument of some commenters that EPA may only amend promulgated MACT standards by means of the periodic review procedures of section 112(d)(6), which does not include re-determining floor levels. Section 112(d)(6)does not indicate that it is the exclusive means of amending MACT standards, and in particular does not speak to a situation where an original floor was palpably short of statutory requirements and where that floor became the ultimate standard. EPA consequently believes it has discretion to reconsider and redo the MACT floor analysis for PM, and to amend the standard as appropriate.

Other commenters suggested that even if EPA has such discretion, it would (or should) be limited to a reanalysis of the original database for the 1999 rule and so should not consider kilns' subsequent performance. Were EPA to take that approach here, the floor (and standard) for PM would be more stringent than the floor (and standard) in this rule.[33] Because EPA considers the database for the current rule to be more representative of performance capabilities of best performing kilns than the sparser 1999 database, EPA is basing its determination on the more representative data.

EPA is setting a PM standard based on MACT for existing and new area source cement kilns. As noted at proposal, Portland cement kilns are a listed area source category for urban HAP metals pursuant to section 112(c)(3), and control of these metal HAP emissions (via the standard for the PM metal surrogate) is required to ensure that area sources representing 90 percent of the area source emissions of urban metal HAP are subject to section 112 control, as required by section 112(c)(3). EPA has determined that this standard should reflect MACT, rather than GACT, because there is no essential difference between area source and major source cement kilns with respect to emissions

[33] Calculation of PM MACT Floor Based on Data in 1998 Proposal. July 7, 2010.

of either HAP metals or PM. Thus, the factors that determine whether a cement kiln is major or area are typically a function of the source's HCl or formaldehyde emissions, rather than its emissions of HAP metals. As a result, there are kilns that are physically quite large that are area sources, and kilns that are small that are major sources. Both large and small kilns have similar HAP metal and PM emissions characteristics and controls.

Given that EPA is developing major and area source standards for PM at the same time in this rulemaking, a common control strategy consequently appears warranted for these emissions. We thus have included all cement kilns in the floor calculations for the final PM standard, and have developed common PM limits based on MACT for both major and area sources.

i. *Floor Determination.* At proposal we had compiled PM stack test data for 45 kilns from the period 1998 to 2007. EPA ranked the data by emissions level and the lowest emitting 12 percent, 6 kilns, was used to develop the proposed existing source MACT floors of 0.085 and 0.08 lb/ton clinker for new and existing sources respectively.

Commenters noted that we had omitted some of the data already submitted to EPA in developing the MACT floor. In addition, we noted for two of the best performing facilities we had only one emissions test. Therefore we requested these sources to submit additional PM emission test data and the source sent two additional PM emissions tests for each kiln to allow us to better characterize emissions variability. We modified the PM data base to reflect these submissions. Another change made since proposal is that we have changed the compliance requirement to require a PM CEMS. This requires that we establish an averaging period. We chose a period of 30 days (rolling average) to be consistent with requirements for mercury and THC, and because PM emissions on a lb/ton basis are affected by raw mill cycles (typically encompassed within 30-days, *see* 74 FR at 21144) for kilns with in-line raw mills. We have converted the concentrations obtained from 3-hour tests into 30-day values by means of the UPL equation previously described. It should be noted that due to the longer averaging periods, the actual limit will be a lower number compared to the shorter compliance interval in the proposed rule (30 days versus a three hour test). This damping of variability when a longer averaging period is used is well established where continuous monitors have been used to measure emissions, and is also accounted for in the "m" term of the UPL equation. The results of the new MACT analysis are shown in Table 8.

TABLE 8—PM MACT FLOOR

Kiln	PM emissions (lb/ton clinker)
1	0.01
2	0.01
3	0.01
4	0.03
5	0.04
6	0.04
MACT—Existing	
Average	0.02
Variance	0.001
UPL	0.04
MACT—New	
Average	0.01
Variance	0.00001
UPL	0.01

EPA proposed use of PM CEMS as an alternative to using a bag leak detector, and also solicited comment on requiring their use generally. 74 FR at 21157. As we noted there, performance specifications for PM CEMS are now available, and continuous monitors "give a far better measure of sources' performance over time than periodic stack tests". After considering the public comments, EPA continues to believe that this is the case. *See also* further discussion of this issue at Section A.3 of this preamble below.

EPA does not agree with the comment that use of a CEM renders the standard more stringent and so results in floors (and standards) more stringent than those achieved by average of the best performing sources. First, the continuous collection of data used to assess compliance with this standard does not create a limit more stringent that otherwise allowed. As discussed in the preamble to the Credible Evidence Rule, "* * * continuous monitoring of the standards (has) no effect on the stringency of the standard * * *" (62 FR at 8326, February 24, 1997).

Further, a statistically-based adjustment to account for emissions variability, and which, in this case, increases the numerical value of the standard (and its longer averaging period) by fifty percent, does not make the standard more stringent. Finally, increasing the averaging period beyond the duration associated with conducting a performance test (typically three hours) to 30 days normally makes a standard more lenient because there is more opportunity to average out individual results. As mentioned in the description of the Salo and Pederson memoranda cited in Section 4.1.2.1 of the Credible Evidence Rule Response to Comment Document, "* * * (t)he effect of the change from a 3-hour averaging time to a 30-day averaging time is to make the standard more lenient * * *".[34]

ii. Beyond the Floor Determination.

EPA did not propose beyond-the-floor standards for PM. This was because the cost effectiveness of adopting beyond-the-floor controls was several orders of magnitude greater than EPA has accepted for PM reductions in other rules where standards allow consideration of costs, and because the incremental amount of PM removed was very small (3 tpy nationwide). Consideration of non-air quality issues did not change this conclusion. 74 FR at 21155. Commenters did not challenge this analysis. EPA accordingly is not adopting beyond-the-floor standards for PM.

The final PM emissions limit for existing sources is 0.04 pounds per ton (lb/ton) clinker for and 0.01 lb/tons clinker for new sources (30-day average). Kilns where the clinker cooler gas is combined with the kiln exhaust and sent to a single control device for energy efficiency purposes (*i.e.,* to extract heat from the clinker cooler exhaust) will be allowed to adjust the PM standard to an equivalent level accounting for the increased gas flow due to combining of kiln and clinker cooler exhaust (an action for which EPA received no adverse comment). *See* 74 FR at 21156 and 73 FR at 64090–91 (Oct. 28, 2008) (explaining the equivalency of this standard and the energy efficiency benefits resulting from combining these gas flows). The PM standard is a 30-day rolling average and is measured with a CEM.

iii. Compliance Alternative for Comingled Kiln/Clinker Cooler Exhaust.

As we noted at proposal, some kilns combine the clinker cooler gas with the kiln exhaust and send the combined emissions to a single control device. There are significant energy savings (and attendant greenhouse gas emission reductions) associated with this practice, since heat can be extracted from the clinker cooler exhaust. However, there need to be different conversion factors from concentration to mass per unit clinker in these cases to allow for the increased gas flow, which result in a different PM emissions limit. We proposed adjustment factors that would account for these differences and create a site specific PM emission limit

[34] Available at *http://www.epa.gov/ttncaaa1/t1/fr_notices/certcfin.pdf.*

of this situation. *See* 74 FR 21155–56 and 21184. We received no comments on these factors and are thus adopting them as proposed, except that the factors have been changed to account for changes in the underlying kiln and clinker cooler emissions limits. Note that adjustments would also be necessary for kilns subject to the NSPS PM limit. Thus, we are including a cross reference for the NSPS to the appropriate section of the NESHAP rule.

f. Opacity Standards for Kilns and Clinker Coolers

We are removing all opacity standards for kilns and clinker coolers because these sources will be required to monitor compliance with the PM emissions limits by more accurate means. Although some commenters requested retention of opacity as a backup standard, and others as an alternative, none of these comments offered any convincing information or other justification for perpetuating a less reliable compliance methodology. Though we have preserved some regulation text, any kiln or clinker cooler that uses a PM CEMS to monitor compliance with the PM emission limit is exempt from opacity standards.

g. PM Standard for Clinker Coolers

In addition to amending the PM standard for kilns we are similarly amending the PM emissions limit for clinker coolers. Fabric filters are the usual control for both cement kilns and clinker coolers. As EPA noted in our proposed revision to the NSPS (73 FR 34078, June 16, 2008), we believe that the current clinker cooler controls can meet the same level of PM control that can be met by the cement kiln. No commenter challenged this. One commenter did state that PM limits for clinker coolers should not be changed, but we disagree with that comment for the reasons previously discussed on the PM limit for kilns. Therefore, we are setting the same PM emissions limits and compliance requirements for both clinker coolers and kilns.

h. Standards for Open Clinker Piles

At proposal we noted that open clinker piles were currently unregulated, and that hexavalent chromium emissions had been detected in fugitive dust from these piles. *See* 74 FR at 21163. We requested comment and information as to how common the practice of open clinker storage is, appropriate ways to detect or measure fugitive emissions (ranging from open-path techniques to continuous digital or intermittent manual visible emissions techniques), any measurements of emissions of hexavalent chromium (or other HAP) from these open storage piles, potential controls to reduce emissions, or any other factors we should consider.

Commenters did not provide data on this practice. Industry commenters stated emission were *de minimis* and should not be regulated. Other commenters noted that the fact that we know these sources emit HAP is sufficient to necessitate regulation.

We agree that these operations do emit HAP and that regulation of these sources is necessary. *See National Lime,* 233 F. 3d at 640 (upholding EPA position that de minimis exceptions are not to be read into the MACT standard setting process). Because the emissions in question are fugitive dust for which measurement is not feasible since (by definition) the emissions are not emitted through a conveyance or other device which allows their measurement (*see* section 112 (h)(1) and (2)(A)), we are adopting the work practice standards and opacity emissions limits contained in Rule 1156 as amended by the South Coast Air Quality Management District on March 6, 2009 and incorporating them into this rule. There are only two plants which EPA can state definitively have open storage piles and are complying with Rule 1156, so these existing regulatory standards would constitute a floor level of control (and EPA does not believe beyond-the-floor controls are needed, since utilizing some type of enclosure should well control fugitive emissions). A summary of the requirements are as follows:

If clinker material storage and handling activities occur more than 1,000 feet from the facility property-line,

○ Utilize a three-sided barrier with roof, provided the open side is covered with a wind fence material of a maximum 20 percent porosity, allowing a removable opening for vehicle access. The removable wind fence for vehicle access may be removed only during minor or routine maintenance activities, the creation or reclamation of outside storage piles, the importation of clinker from outside the facility, and reclamation of plant clean-up materials. The removable opening shall be less than 50 percent of the total surface area of the wind fence and the amount of time shall be minimized to the extent feasible;

○ Storage and handling of material that is immediately adjacent to the three-sided barrier due to space limitations inside the structure shall be contained within an area next to the structure with a wind fence on at least two sides, with at least a 5 foot freeboard above the top of the storage pile to provide wind sheltering, and shall be completely covered with an impervious tarp, revealing only the active disturbed portion during material loading and unloading activities;

○ Storage and handling of other active clinker material shall be conducted within an area surrounded on three sides by a barrier or wind fences with one side of the wind fence facing the prevailing wind and at least a 5-foot freeboard above the top of the storage pile to provide wind sheltering. The clinker shall remain completely covered at all times with an impervious tarp, revealing only the active disturbed portion during material loading and unloading activities. The barrier or wind fence shall extend at least 20 feet beyond the active portion of the material at all times; and

○ Inactive clinker material may be alternatively stored using a continuous and impervious tarp, covered at all times, provided records are kept demonstrating the inactive status of such stored material.

• If clinker material storage and handling activities occur 1,000 feet or less from the facility property-line these activities must be in an enclosed storage area.

In the SCAQMD regulation, there are different requirements for active vs. inactive open clinker piles. An inactive pile is one that had not been disturbed for 30 consecutive days. In addition, the ACAQMD rule has different requirements for clinker piles that are 1,000 feet or less form the facility property-line. This 1000 foot criterion was a mutually agreed number among the stakeholders (both industry and environmental groups) involved in developing the regulation.[35] Given the lack of additional data, we saw no reason to change these criterion. More information on this rule is available at *http://www.aqmd.gov/hb/gb_cal95.html.*

Industry commenters also maintained that regulation of open storage piles would violate a 2001 settlement agreement between EPA and the industry in which EPA agreed that the 1999 rule did not apply to fugitive emission sources. But nothing in that settlement agreement prevents EPA from amending its regulations if it is appropriate to do so (nor could EPA legally bind itself in such a way). The agreement in fact states that "[n]othing in this Agreement shall be construed to limit or modify EPA's discretion to alter, amend, or revise, or to promulgate regulations that supersede, the

[35] Telecon with Tuyet-Le Pham, South Coast Air Quality Management District. June 29, 2010.

regulations identified in section III of this Agreement." Consequently, EPA's action today properly amends the current regulation, and does not violate any provisions of the settlement agreement.

i. Format of the Normalized Standards in the NESHAP and the NSPS

Emission limits are typically normalized to some type of production or raw material input value because this allows comparison (and ultimately the ability to set a single standard) for different sized facilities. As we noted at the NSPS proposal, the current NSPS and limits (and NESHAP limits before today's amendments) for PM are expressed on a pound of PM per ton (lb/ton) of dry feed input format. *See* 73 FR at 34075–76. In this final NESHAP (and NSPS) we are adopting a new normalizing parameter of lb/ton of clinker—*i.e.,* normalizing based on kiln output rather than input for both PM and mercury.

We noted at proposal of the NSPS that adopting an output-based standard avoids rewarding a source for becoming less efficient, *i.e.,* requiring more feed to produce a unit of product, therefore promoting the most efficient production processes. 73 FR at 34076. EPA therefore proposed that all of the NSPS (for PM, NO_x, and SO_2) be normalized by ton of clinker produced, and later proposed the same parameter for the two standards in the NESHAP which are normalized, mercury and PM. 73 FR at 34076; 74 FR at 21140.

In this final NESHAP (and NSPS) we are therefore adopting a new normalizing parameter of lb/ton of clinker—*i.e.* normalizing based on kiln output rather than input—for mercury and PM in the NESHAP, and for PM, NO_x, and SO_2 in the NSPS. Commenters either supported this proposal, or did not question that normalizing by output promotes more efficient production. However, commenters from industry raised technical objections and concerns to the proposal. They maintained that the measurement of kiln output is not as exact as the measurement of kiln input, and that many kilns have not installed clinker measuring equipment. These objections do not necessitate normalizing by inputs. Most commenters also stated that kiln feed could be accurately measured and also indicated that most facilities currently derive reasonable feed-to-clinker conversion factors from these measurements. Kilns already calculate clinker production in this way when required to meet emissions limits normalized by clinker production, as many NSR and PSD permits for cement kilns presently do.[36]

Since it appears from comments that the equipment to accurately measure clinker is not typically installed in this industry, we must assume these facilities use a feed-to-clinker conversion factor to calculate clinker production on whatever time basis is necessary (*e.g.,* daily, hourly, *etc.*). Therefore, we have modified the rule language to more clearly provide the option allowing facilities to measure feed inputs and to use their site specific feed/clinker ratio to calculate clinker production (and to make clear that no prior approval from a regulatory authority is necessary to do so). Facilities would be allowed to use a constant feed/clinker ratio in accord with their usual cycles for determining such ratios, typically on a monthly basis when clinker inventories are reconciled.

Commenters were nonetheless concerned that because clinker/feed ratios change somewhat and are only re-determined at the end of a cycle, a slight change in clinker/feed ratio, determined at the end of the cycle, could show lack of compliance without even an opportunity to alter operation. To obviate this legitimate concern, the rule provides that facilities are not required to retroactively update clinker production estimates after recomputing feed/clinker ratios. We would not expect that the clinker/feed ratio will change significantly from month to month, so we do not see this as creating a situation where facilities will be able to have large amounts of excess emissions but still be considered in compliance (especially since the 30-day standards are all rolling averages).

So, for these reasons above we are adopting emission limits normalized by kiln output for PM in both the NESHAP and the NSPS, for mercury in the NESHAP, and for NO_X and SO_2 in the NSPS (the same analysis applying to the limits in the NSPS).

2. What are the final operating limits under subpart LLL?

EPA is eliminating the restriction, adopted in the 2006 rule, on the use of fly ash where the mercury content of the fly ash has been increased through the use of activated carbon once the kiln has complied with a numerical mercury emissions limit. Given the emission limitation for mercury, whereby kilns must continuously meet the mercury emission limits described above (including when using these materials) there does not appear to be a need for such a provision. This provision is removed once a kiln is in compliance with the mercury limitations adopted in this. We are removing the requirement at compliance, rather than when the rule takes effect, to prevent the possibility of additional mercury emissions between the rule's effective date and the required compliance date. However, once the rule takes effect EPA is removing the requirement to maintain the amount of cement kiln dust wasted during testing of a control device, and the provision requiring that kilns remove from the kiln system sufficient amounts of dust so as not to impair product quality for the same reasons. In this case, we do not see immediate removal of these provisions as creating a likelihood of increased mercury emissions prior to the compliance date.

3. What are the final testing and monitoring requirements under subpart LLL?

Kilns will be required to meet the following changed monitoring/testing requirements:

- CEMS (PS–12A) or sorbent trap monitors (PS–12B) to continuously measure mercury emissions, along with Procedure 5 for ongoing quality assurance.
- CEMS meeting the requirement of PS–8 to measure THC emissions for existing sources. (New sources are already required to monitor THC with such a CEMS). Kilns meeting the organic HAP alternative to the THC limit will still be required to continuously monitor THC (based on the results of THC monitoring done concurrently with the Method 320 test), and will also be required to test emissions using EPA Method 320 or ASTM D6348–03 every 30 months to identify the organic HAP component of their THC emissions.
- Installation and operation of a PM CEMS that meets the requirements of PS–11.
- CEMS meeting the requirements of PS–15 will be required to demonstrate compliance with the HCl standard for all kilns except those using a caustic scrubber. If a facility is using a caustic scrubber to meet the standard, EPA Test Method 321 and ongoing continuous parameter monitoring of the scrubber may be used in lieu of a CEMS to demonstrate compliance. The M321 test must be repeated every 30 months.

Raw material dryers that are existing sources will also be required to install and operate CEMS meeting the requirement of PS–8 to measure THC emissions. (New raw material dryer sources are already required to monitor THC with a CEMS). Raw material dryers

[36] RACT/BACT/LAER Clearing house Report for Portland Cement. November 25, 2009.

meeting the organic HAP alternative to the THC limit will still be required to continuously monitor THC (based on the results of THC monitoring done concurrently with the Method 320 test), and will also be required to test emissions using EPA Method 320 or ASTM D6348–03 every 30 months to identify the organic HAP component of their THC emissions.

New or reconstructed raw material dryers and raw or finish mills will be subject to longer Method 22 and, potentially, to longer Method 9 tests. The increase in test length duration is necessary to better reflect the operating characteristics of sources subject to the rule. EPA has included the costs associated with increased test duration in its estimates of the rule's costs.

The requirements above are the same as those proposed with the following exceptions.

For kilns and clinker coolers, EPA proposed to require bag leak detection systems for fabric filters and an ESP predictive model to monitor performance of an ESP. In this final rule we are requiring the use of a PM CEMS for all PM control devices. We did receive comments on technical issues associated with PM CEMS, which we have addressed in the Comments and Responses Document in the docket to this rulemaking. As explained earlier, we continue to believe that these devices provide the most positive indication that a facility is actually complying with the PM emissions limit. We also note that we promulgated a requirement for PM CEMS in the 1999 final rule but deferred the compliance date until the establishment of performance specifications. These specifications have now been established as EPA Performance Specification 11.

In the proposed rule we specified that THC CEMS must meet the requirements of performance specification 8A. Commenters correctly pointed out certain deficiencies of the 8A method as applied to this source category. In response to those comments we have changed the requirement to PS–8.

Where periodic performance tests are required for HCl we changed the test frequency to 30 months because a commenter noted both chlorine inputs and scrubber performance may change significantly over five years. For similar reasons we changed the testing frequency for the organic HAP option to 30 months. We believe aligning the test schedules for all pollutants (dioxin furan, organic HAP, and HCl) to the same testing schedule will allow for more efficient use of testing resources.

4. Standards for Startup and Shutdown

As noted above, the United States Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), *cert. denied,* 130 S. Ct. 1735 (U.S. 2010). Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), that are part of a regulation, commonly referred to as the "General Provisions Rule," that EPA promulgated under section 112 of the CAA. When incorporated into CAA section 112(d) regulations for specific source categories, these two provisions exempt sources from the requirement to comply with the otherwise applicable CAA section 112(d) emission standard during periods of SSM.

The effect of the vacatur is that the cross-reference to 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1) in Table 2 to subpart LLL no longer operates to incorporate an SSM exemption.

In light of the *Sierra Club* decision, EPA proposed to require that sources be in continuous compliance with emissions limits at all times, even during startup, shutdown, and malfunction. 74 FR at 21161–62. We proposed that these sources meet the same standards at all times. *Id.* We also specifically asked for information on emissions during startup, shutdown, and malfunction.

In these final amendments we have eliminated the cross-reference to the vacated General Provisions' exemptions contained in Table 1 of current subpart LLL. In establishing the standards in this rule, EPA has taken into account cement kilns' operating properties during startup and shutdown periods and, for the reasons explained below, has established different standards for those periods. EPA is not setting separate standards for malfunctions so that, for the reasons explained below, the standard that applies during normal operations applies during periods of malfunctions. We have also revised Table 2 (the General Provisions table) in several respects. For example, we have eliminated the General Provisions' requirement that the source develop an SSM plan. We have also removed certain recordkeeping and reporting requirements related to the SSM exemption. EPA has attempted to ensure that we have not incorporated into the regulatory text any provisions that are inappropriate, unnecessary, or redundant in the absence of the SSM exemption.

Startup is the period of time between when fuel is first introduced into a cement kiln that is not firing fuel, and when the kiln temperatures are within normal operating limits, the kiln is using its normal operating fuel, and the kiln is producing clinker. During kiln startup, fuel is first introduced into the kiln to raise the kiln to the appropriate operating temperatures. In the case of a cold start the fuel is typically a natural gas or distillate fuel. Once the kiln reaches certain temperatures, the normal operation fuel is introduced. After the kiln reaches stable operating temperatures, kiln feed is introduced in low amounts which are gradually increased. Because the kiln feed is a significant source of most kiln emissions (HAP and otherwise) we would consequently expect that kiln emissions, on a concentration basis, would not be any higher during startup than during normal operations, with any potential short-term emission spikes due to transient conditions or release of emissions from materials left in the kiln from the last operating period being accommodated through an averaging period. Indeed, on a pure concentration basis, kiln emissions over time would likely be lower than during normal operation given the lesser volume of inputs being processed, and (at startup) the cleaner fuel being used to heat the kiln to normal operating conditions.

Notwithstanding that stack concentrations over time would likely be the same or less than during normal operation, in some cases, the manner in which the standard is expressed is not appropriate during startup. Most particularly, the mercury and PM standards are normalized to kiln production (amount of pollutant allowed being linked to a ton of clinker produced). During startup, production is by definition either non-existent or very low. Even where there is a modest amount of production during startup, relationships between HAP concentration and amount of product are skewed so as to make this means of measurement inappropriate. In addition, normalized standards require accurate measurements of kiln volumetric flow rate (used to convert concentration into mass) and kiln flow rate, which changes in important ways from normal values during startup. When considered along with such phenomena as varying kiln stack moisture contents and flow rate, flow rate measurements are significantly less accurate during startup than during normal operation.

For these reasons, we are establishing standards for mercury and PM by converting the normal operation standards to a concentration basis.

These conversions are as follows: 55 lb mercury/MM tons clinker is equivalent to 10 micrograms per dry standard cubic meter (ug/dscm); 21 lb mercury/MM tons clinker is equivalent to 4 ug/dscm; 0.04 lb PM/ton clinker is equivalent to 0.004 grains per dry standard cubic foot (gr/dscf); and 0.01 lb PM/ton clinker is equivalent to 0.0008 gr/dscf. Mercury and PM would be measured during startup with a CEMS (as during normal operation) and the concentration standard would be met on the basis of 7-day averages. We do not believe a 30-day average is appropriate for these periods because they are of short duration, and it might take a period of 1 year or more to accumulate 30 days of startup operation. We considered an averaging period equal to the time period of each startup, but that would have meant different averaging periods for each event. Therefore, we chose 7 days as a period short enough to accumulate the data necessary to calculate the average over a reasonable period (certainly less than a year) but long enough to allow averaging out any transient spikes that may occur. In this way, short-term spikes which occur during startup would be averaged against the lower concentrations which otherwise typically maintained. A consequence of this compliance regime (as for the standards which apply during normal operation), is that a source (at least initially) cannot determine compliance based on any single startup (or shutdown) event. Seven days of data will need to be averaged.

All of the discussion above applies to THC emissions during startup: Feed (the main source of THC emissions) is introduced gradually so THC emissions should ordinarily be lower, cleaner fuels are initially used to heat the kiln to normal temperatures, *etc.* The difference is that the THC standard is already expressed as a concentration, so the measurement difficulties with a normalized standard do not exist. However, during normal operation the THC standard is corrected to a specified oxygen concentration to avoid the situation where a facility uses dilution air to lower the measured concentration. At startup, oxygen concentrations may be higher than during normal operation, and may also fluctuate more. This could have the effect of actually making the standard more stringent during startup. Consequently, EPA is adopting the same concentration standard for THC during startup as applies during normal operation, but is removing the oxygen concentration correction factor. The standard is measured with a CEMS and is based on a 7-day average so, that, again the lower concentrations which ordinarily maintain at startup should balance out any transient events that occur because the kiln is not yet in steady state mode.

HCl is also expressed as an un-normalized stack concentration corrected to a specific oxygen concentration. Where measured with a CEMS, EPA knows of no reason the same standard as applies during normal operation should not be met during startup, except that the averaging period would be 7 days and the oxygen correction factor would be removed for the reasons noted above. However, for those units equipped with wet scrubbers, sources may choose to demonstrate compliance by means of stack testing and parametric monitoring. *See* Section IV.A.3. In such a circumstance, there are no parameters to measure because HCl will not be emitted. This is because HCl is emitted only as kilns begin burning normal fuel, not the natural gas or distillate used as a fuel during startup. Consequently, EPA is providing that emissions of HCl shall be zero at all such times as distillate or natural gas is used to fire the kiln (and that is the parameter which would be measured).

The current standard for dioxins and furans is expressed either as a concentration, or a combination of concentration and temperature control at the inlet to the PM control device. Continuous compliance is determined based on demonstrating the measured temperature at the inlet to the PM control device does not exceed the limit established during dioxin compliance testing. This is because higher PM control inlet temperature can increase dioxin emissions. *See* 63 FR 14196, March 24, 1998. Based on a comment indicating that there can be an increase in short-term temperature fluctuations during startup (and shutdown), EPA is indicating in the startup standard that temperature measurements can increase by 10 percent during these periods.

Shutdown is the period of time between when kiln raw material feed is shutoff and gas flow through the kiln ceases. Shutdown operations are in many ways a mirror image of startup. During shutdown, the same transient conditions and low product production rates occur as during startup. Cement kilns cannot be immediately shut off. Even after the feed is stopped, gas flow must be continued through the kiln and the kiln continues to rotate to prevent kiln overheating and/or warping. Moreover, the concerns about inability to have normalized standards or standards with oxygen correction factors, air pollution control inlet temperature variability, and lack of measureable HCl emissions when the kiln is fired with distillate or natural gas and is not HCl CEM-equipped, all apply at shutdown for the same reasons as at startup. For this reason, we are setting the same limits for kilns during shutdown operations as during startup.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. In the proposed rule, EPA expressed the view that there are different modes of operation for any stationary source, and that these modes generally include startup, normal operations, shutdown, and malfunctions. 74 FR at 21162. However, after considering the issue of malfunctions more carefully, EPA believes that malfunctions are distinguishable from startup, shutdown and normal operations. Malfunction is defined as a "sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner * * *" (40 CFR 63.2). EPA has determined that malfunctions should not be viewed as a distinct operating mode or condition and, therefore, any emissions that occur at such times do not need to be factored into development of CAA section 112(d) standards, which, once promulgated, apply at all times. In *Mossville Environmental Action Now* v. *EPA,* 370 F.3d 1232, 1242 (DC Cir. 2004), the court upheld as reasonable standards that had factored in variability of emissions under all operating conditions. However, nothing in section 112(d) or in caselaw requires that EPA anticipate and account for the innumerable types of potential malfunction events in setting emission standards. *See, Weyerhaeuser* v *Costle,* 590 F.2d 1011, 1058 (DC Cir. 1978) ("In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.")

Further, it is reasonable to interpret section 112(d) as not requiring EPA to account for malfunctions in setting emissions standards. For example, we note that Section 112 uses the concept of "best performing" sources in defining MACT, the level of stringency that major source standards must meet. Applying the concept of "best

performing" to a source that is malfunctioning presents significant difficulties. The goal of best performing sources is to operate in such a way as to avoid malfunctions of their units.

Moreover, even if malfunctions were considered a distinct operating mode, we believe it would be impracticable to take malfunctions into account in setting CAA section 112(d) standards for this (or any other) source category. As noted above, by definition, malfunctions are sudden and unexpected events and it would be difficult to set a standard that takes into account the myriad different types of malfunctions that can occur across all sources in the category. Moreover, malfunctions can vary in frequency, degree, and duration, further complicating standard setting.

In the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, EPA would, of course, determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, "sudden, infrequent, not reasonably preventable" and was not instead "caused in part by poor maintenance or careless operation." 40 CFR 63.2 (definition of malfunction).

In response to comments urging that EPA not apply the same standards to malfunctions as to normal operation, EPA recognizes that even equipment that is properly designed and maintained can sometimes fail and that such failure can sometimes cause (or in the case of 30-day averages, contribute to) an exceedance of the relevant emission standard. (*See, e.g.,* State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown (Sept. 20, 1999); Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions (Feb. 15, 1983)). EPA is therefore adding to the final rule an affirmative defense to civil penalties for exceedances of emission limits that are caused by malfunctions. *See* 40 CFR 63.1341 (defining "affirmative defense" to mean, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding). We also added other regulatory provisions to specify the elements that are necessary to establish this affirmative defense; the source must prove by a preponderance of the evidence that it has met all of the elements set forth in 63.1344. (*See* 40 CFR 22.24). The criteria ensure that the affirmative defense is available only where the event that causes an exceedance of the emission limit meets the narrow definition of malfunction in 40 CFR 63.2 (sudden, infrequent, not reasonable preventable and not caused by poor maintenance and or careless operation). The criteria also are designed to ensure that steps are taken to correct the malfunction, to minimize emissions in accordance with section 63.1348(d) and to prevent future malfunctions. In any judicial or administrative proceeding, the Administrator may challenge the assertion of the affirmative defense and, if the respondent has not met its burden of proving all of the requirements in the affirmative defense, appropriate penalties may be assessed in accordance with Section 113 of the Clean Air Act (*see also* 40 CFR Part 22.77).

5. What are EPA's final actions on compliance dates?

For existing sources we proposed a compliance date of 3 years after the promulgation of the new emission limits for mercury, THC, PM, and HCl to take effect. This is the maximum period allowed by law. *See* section 112(i)(3)(A). We continue to believe a 3 year compliance period is justified because most facilities will have to install emissions control devices (and in some cases multiple devices) to comply with the proposed emissions limits. Therefore, we have retained a 3 year compliance data in this final rule.

For new sources, the compliance date will be the effective date of this final rule or startup, whichever is later. Because this is a major rule as defined by the Congressional Review Act, the effective date of the rule is 60 days after publication of the **Federal Register**.

In determining the proposal date that determines if a source is existing or new, we have decided to select the proposal date of these final amendments, which is May 6, 2009, for all the standards.

At proposal, we considered three possible dates, including March 24, 1998; December 5, 2005; and the proposal date of these final amendments, which was May 6, 2009. As we noted at proposal, Section 112 (a)(4) of the Act states that a new source is a stationary source if "the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emissions standard applicable to such source." "First proposes" could refer to the date EPA first proposes standards for the source category as a whole, or could refer to the date the agency first proposes standards under a particular rulemaking record or first proposes the particular standards at issue. The definition is also ambiguous with regard to whether it refers to a standard for the source as a whole, or to a HAP-specific standard (so that there could be different new source standards for different HAP which are regulated at different times).[37] At proposal we chose the date of December 5, 2005, as the proposal date that determines if a source is new or existing for the mercury, HCl, and THC, and the May 6, 2009, date for PM.

After consideration of comments on the selection of the date for mercury, THC, and HCl, we believe that the May 6, 2009, date for all pollutants is more in keeping with the evident intent of Section 112(a)(4) that source should have sufficient notice that new source controls requirements can be considered in the initial design. We accept commenters' argument that sources coming into existence between the proposed date of the 2006 standards and the May 6, 2009, proposal date of these amendments would have no reasonable means of ascertaining the standards' final content and so lacked notice of what controls and strategies to adopt. Since this is antithetical to the policy underlying new source standards, EPA is adopting May 6, 2009, as the date which determines if a source is existing or new.

We note that there are currently sources subject to new source limits for mercury and THC contained in the December 20, 2006, rule. However, the mercury the new source standards in this final rule are significantly different than the limits in the December 20, 2006, rule, and we do not see how the affected sources could have anticipated this change prior to proposal of these amendments. Accordingly, we have selected a date that allows these facilities to design and install the required control equipment.

[37] *See also* 74 FR at 21158 n. 41 citing other statutory provisions indicating that the phrase "first proposes" can have a number of meanings.

B. What are EPA's final actions on 40 CFR part 60, subpart F?

1. What are the final kiln and clinker cooler emissions limits under 40 CFR part 60, subpart F?

For "new" affected facilities constructed, modified, or reconstructed after June 16, 2008, the final emission limits amend the existing rules as follows:

- Change the format of the PM emission limits from lb/ton of dry feed to lb/ton of clinker product;
- Reduce the PM emission limit for kilns from 0.3 lb/ton of dry feed to 0.01 lb/ton of clinker;
- Set a limit on NO_X emissions from kilns of 1.50 lb/ton of clinker; and
- Set a limit on SO_2 emissions from kilns of 0.4 lb/ton of clinker, or, as an alternative, demonstrate a reduction in SO_2 emissions from the kiln of at least 90 percent; and
- Reduce the PM emissions limit for clinker coolers from 0.1 lb/ton dry feed to 0.01 lb/ton of clinker.

The emission limits for affected facilities constructed, modified, or reconstructed before June 16, 2008, remain unchanged in this subpart. The rationale for these actions is discussed below.

a. NO_X Limits for Kilns

EPA proposed an NO_X limit of 1.5 lb/ton of clinker based on application of Selective Non-Catalytic Reduction (SNCR) to a new precalciner kiln. At proposal we also considered a level of 1.95 lb/ton clinker based on the use of SNCR control technology, and a limit of 0.5 lb/ton clinker based on the use of selective catalytic reduction (SCR) technology.

After evaluation of the comments, we have decided to adopt the level of 1.5 lb/ton clinker in this final rule, as proposed. In general, commenters agreed with the selection of SNCR as the basis of the standard (*i.e.,* it represents the performance of BDT). However, there was disagreement over the appropriate emission limit that represents BDT.

Industry commenters requested a higher limit, claiming that site specific properties of raw materials could create a situation where application of SNCR technology to a well designed preheater/precalciner kiln could not achieve the level of 1.5 lb/ton clinker without high ammonia injection rates that would result in significant ammonia emissions. To support their arguments they noted that EPA based the 1.5 lb/ton clinker level on the assumption that a well designed new preheater/precalciner kiln could meet a level of 3.0 lb/ton clinker without SNCR, so that this 3.0 lb/ton clinker should be the baseline from which performance of SNCR is evaluated. 73 FR at 34079. They pointed to several newer kilns that had difficulty meeting a level of 3.0 lb/ton clinker without SNCR, and attributed this difficulty to "hard to burn" raw materials at certain sites.

We have rejected the industry argument that 1.5 lb/ton clinker is not achievable for all new kilns using SNCR technology for the following reasons. First, the commenters note some kilns without SNCR cannot meet an NO_X level of 3.0 lb/ton clinker. However, they did not provide the actual levels of NO_X emissions the sources were designed to meet. The NO_X emissions for a new preheater/precalciner kiln are primarily a function of precalciner design. Though two kilns may have the same basic precalciner design, certain site specific design parameters will also affect NO_X emissions. A precalciner designed to meet a level above 3.0 lb/ton clinker, will not necessarily be designed exactly the same way as one designed to meet 3.0 lb/ton clinker. We are also aware that there are kiln precalciner designs that were installed that do not represent best design. We thus do not believe that these kilns' performance alters the baseline from which performance of SNCR is evaluated. In addition, we have enough examples of new preheater/precalciner kilns in various locations in the country to indicate to us that an NO_X limit of 3.0 lb/ton clinker is generally achievable, regardless of location, if the precalciner is properly designed. For example, several kilns in Florida and a kiln in California have NO_X emissions below 2.0 lb/ton clinker with no add-on controls. According to our information, raw materials in Florida can be considered "hard to burn" because of the significantly different hardness of Florida limestone and silica (limestone being soft which create a fine grind, the silica being harder which creates a more coarse grind) creates problems with size distribution for the raw material necessitating more fuel use and higher kiln temperatures with a consequent increase in NO_X emissions. Additional test data for two plants with reported "hard to burn" mix were 1.89 and 2.4 lb/ton. Given these facts, we believe the assumption that a new kiln without add-on controls can meet a level of 3.0 lb/ton clinker over the long term is very reasonable and so should represent a baseline for application of SNCR performance. *See also* 73 FR at 34079 noting many other examples of kilns without end-of-stack controls burning hard-to-burn inputs meeting a level of 2.5 lb/ton of clinker.

Second, although we based our 1.5 lb/ton clinker level on an SNCR emission reduction of 50 percent, there are numerous examples of SNCR systems achieving emission reductions greater than 50 percent and as high as 80 percent or more. *Id.* These reductions were achieved without appreciable ammonia slip. So even if a new kiln were to emit at levels above 3.0 lb/ton clinker without end-of-stack controls, application of SNCR would allow such a kiln to meet the 1.5 lb/ton clinker level. For example, a new kiln emitting at 4.0 lb/ton clinker would only need an emission reduction of 63 percent to meet the 1.5 lb/ton clinker level for NO_X.

Finally, the NO_X limit is based on a 30-day averaging period to be consistent with the averaging periods for other regulated kiln pollutants, and to allow for averaging of raw mill on and off emissions. *See* 74 FR at 21144. Compared to other averaging options (hourly or daily), this longer averaging time allows additional operating flexibility to meet the limit.

Based on comments received, we also considered setting an NO_X limit lower than 1.5 lb/ton clinker based on performance of SNCR. However, we also rejected that option. We do have data that indicate that some cement kilns are below 1.5 lb/ton clinker, but we do not believe the current data support that any new kiln, regardless of location (and consequent raw material inputs), could meet a level that low.

At proposal we also considered an NO_X emissions level of 0.5 lb/ton clinker based on performance of SCR. We rejected that option because at that time we did not believe that SCR was sufficiently demonstrated technology for this industry. We are aware that there have been three cement kilns in Europe that have successfully used SCR, and that SCR technology is a demonstrated control technology for NO_X control for other source categories, such as utility boilers. We also are aware that that one domestic cement company has agreed to install SCR technology on one kiln as part of a settlement agreement. However, we continue to question if SCR technology would be effective at all locations where new kilns might be installed. The main concern is the potential for dust buildup on the catalyst, which can be influenced by site specific raw material characteristics present in the facility's proprietary quarry, such as trace contaminants that may produce a stickier particulate than is experienced at sites where the technology has been installed. This

buildup could reduce the effectiveness of the SCR technology, and make cleaning of the catalyst difficult resulting in kiln downtime and significant costs. We were unable to estimate these costs and did not include these costs in our overall cost estimates for SCR. For these reasons, we have not selected SCR technology as the basis of BDT. We will continue to follow this technology as it is applied in the U.S., and will reconsider this decision in the next review of this standard.

Kilns equipped with alkali bypasses cannot be expected to meet the NO_X limit for the portion of the exhaust that goes to bypass. Bypass gases are quickly cooled and do not remain at a temperature long enough to treat using an SNCR system. For that reason, we have revised the rule to clarify that for kilns with an alkali bypass, only the main kiln exhaust gases are subject to the NO_X limit. Because all kilns do not require an alkali bypass and the bypass gas stream is a small fraction of the total kiln exhaust gas flow, any additional NO_X emission resulting from this exclusion will be minimal.

b. SO_2 Limits for Kilns

EPA proposed an emissions limit of 1.33 lb/ton clinker or 90 percent emissions reduction SO_2 based on the performance of a limestone wet scrubber applied to a kiln with high sulfur raw materials. 73 FR at 34080. Commenters noted that this level was considerably above the level of many of the recent best available control technology (BACT) determinations, and was also above the level actually achieved by the facility EPA used as the basis of this proposed standard.

At the time EPA proposed the 1.33 lb/ton clinker limit, we also considered a limit of 0.4 lb/ton clinker based on the average of recent BACT determinations for cement kilns. We chose the higher limit at proposal because the 0.4 lb/ton limit would have resulted in new kilns with moderate sulfur content raw materials experiencing a cost per ton of SO_2 removed of $6,000. However, we have changed our proposed decision for two reasons. First, as a result of the NESHAP requirement to meet a HCl emissions level of 3 ppmvd, we estimate that all new kilns will have to install wet scrubbers for HCl control. *See* section VI below. Hence, the cost of meeting the 0.4 lb/ton clinker limit in the NSPS is minimal, only the cost of the SO_2 CEM. Second, since proposal we have revised our costs for dry lime injection, which is the most cost-effective control technology for controlling a moderate sulfur raw material kiln to the 0.4 lb/ton clinker level. Based on our revised information, the cost of meeting a 0.4 lb/ton clinker emission limit now ranges from $470 to $1430/ton SO_2 for a kiln with high or moderate sulfur raw materials, even if these costs are attributed to the NSPS rather than to the NESHAP. Kilns with low sulfur raw materials can meet the 0.4 lb/ton clinker level with no add-on controls. We consider these to be reasonable costs, comparable with other costs for SO_2 control EPA has deemed reasonable such as those in the Clean Air Interstate Rule. *See* 70 FR at 25201 (May 12, 2005). So, even if a new facility is able to meet the NESHAP HCl limit without any acid gas controls, the cost per ton to meet a 0.4 lb/ton SO_2 NSPS limit is still reasonable.

In the proposal, we considered a SO_2 emissions level of 0.2 lb/ton clinker. However, this level adds little environmental benefit beyond the 0.4 lb/ton limit, and for many facilities would not be achievable based on the use of wet scrubber technology, which means these facilities would opt for the 90 percent emission reduction alternative (discussed below). For these reasons, we did not choose this level as BDT.

We also proposed a 90 percent reduction as an alternative limit to the 1.33 lb/ton emissions limit. We are retaining this alternative in the final rule.[38] The alternative 90 percent reduction is to account for situations where the sulfur content of the raw materials is so high that, even with the most efficient SO_2 control, a kiln cannot meet the 0.4 lb/ton of clinker emissions limit. Design and performance data indicate the 90 percent control is continuously achievable for a well designed and operated wet scrubber.[39] Compliance with the 90 percent reduction would be determined by continuously monitoring SO_2 at the control device inlet and outlet. Continuous monitoring of SO_2 at the inlet and outlet is a positive demonstration that the standard is being continuously met.

c. PM Emissions Limits for Kilns and Clinker Coolers

We proposed a PM emissions limit of 0.86 lb/ton clinker based on fabric filters using membrane bags. This specific level was chosen because it is representative of the performance of this technology and was equivalent to the new source limit contained in the Hazardous Waste Combustor (HWC) NESHAP for cement kilns burning hazardous waste. This rationale is no longer applicable, since EPA is reassessing the PM limit in the HWC NESHAP. *See* USEPA Motion for Voluntary Remand in # 05–1441 (DC Circuit, August 29, 2008).

As previously discussed in section IV.A., in this action we are setting PM limits under the Portland Cement NESHAP of 0.04 lb/ton clinker for existing sources and 0.01 lb/ton clinker for new sources based on a 30 day rolling average. We project that new cement kilns meeting the 0.01 lb/ton clinker limit will be using the same technology which formed the basis of the proposed NSPS PM limit, namely fabric filters and membrane bags. It should also be noted that we estimate that many new facilities will need to install fabric filters in series as part of mercury controls. This means that a new kiln will install PM controls required to meet the 0.01 lb/ton limit in any case, so establishing the same limit for PM in the NSPS not only is technically justified, but has no cost. We also assessed the costs of installing and operating fabric filters with membrane bags at proposal, and found this to be a cost-effective control technology in any case. 73 FR at 34077. The technology would now be evaluated as more cost-effective than at proposal, since greater PM reductions will result from its use. Therefore, we are establishing an NSPS PM limit of 0.01 lb/ton clinker in this final NSPS, averaged over 30 days (rolling average) and measured with a CEM. For reasons previously discussed, we are setting the same limit for clinker coolers. *See* section IV.A.g of this preamble above. *See* section V for a discussion on measuring compliance with a PM CEM.

d. Change in Format of the Standard From lb/ton Feed to lb/ton Clinker

The change in format of the standard from feed to lb/ton clinker was actually proposed in the NSPS. However, this issue was also raised in response to the proposed PM and mercury limits in the NESHAP, and was previously discussed in section IV.A.1.i.

e. Applicability of NSPS Limits to Modified Kilns

At proposal we had one set of emission limits for PM, SO_2 and NO_X that were applicable to all new, reconstructed, and modified kilns. Commenters expressed concerns of the ability of a modified kiln to meet the same limits as a newly constructed kiln.

The PM and SO_2 limits are based on control technologies that can be applied

[38] Section 111(b) specifically indicates that standards may be expressed as numerical limits or as percent reductions.

[39] Summary of Cement Kiln Wet Scrubber and Lime Injection Design and Performance Data, May 29, 2008.

to any kiln type and achieve the same control levels that would be expected with a new kiln at similar costs. We see no issue here as to technical feasibility. However, this is not necessarily the case with NO_X. New preheater/precalciner kilns with staged combustion achieve NO_X levels in the 2.0 to 3.0 lb/ton clinker range. As discussed above, in developing the NO_X limit, we assumed this level as baseline in assessing the level achievable with SNCR, which is the technology basis of BDT. However, older kiln designs can have much higher NO_X levels, ranging from 2.0 to 8.0 lb/ton clinker. Kilns in the higher end of the range might need to achieve an 80 percent emissions reduction to meet the 1.5 lb/ton clinker NO_X limit. Industry commenters requested that EPA either exempt modification from the NSPS, or set separate limits.

In this final rule we are still including modified kilns as an affected source. The suggestion that modified kilns be outright exempted from these NSPS revisions appears legally strained, given that modified sources are a type of new source for which EPA is obligated to develop, and review and revise as appropriate. Moreover, if we were to exempt modified kilns, then such sources would be free to increase emissions without application of BDT, a particular concern with respect to pollutants like NO_X which are not presently regulated by the NSPS. This would undermine the basis of section 111 standards, where Congress wanted to assure that BDT was applied to modified sources qualifying as "new." The purpose of the Act is to enhance the Nation's air quality (CAA section 101 (b)(1)), and new source performance standards under section 111 serve that goal. *Asarco* v. *EPA,* 578 F. 2d 319, 327 (DC Cir. 1978). Commenters had also claimed that other regulatory programs, most notably new source review, would result in a site specific BACT determination if emissions increased. Though we are always mindful of the interrelationship of different EPA regulatory programs and their effects, we do not see this as sufficient reason not to establish a NO_X emissions limits for modified kilns.

We further investigated whether we should set a different NO_X emissions limit for modified kilns. However, we believe the BDT is the same, and are therefore establishing the 1.5 lb/ton clinker as the limit for modified kilns. We have two reasons for doing so. First, we note that there are kilns of older design that meet levels below 1.5 lb/ton clinker, and in some cases below 1.0 lb/ton clinker, with SNCR control. Therefore, modified kilns would not necessarily be unable to meet the 1.5 lb/ton clinker limit. However, sources always have the option of adding sufficient NO_X control to avoid an hourly emissions increase and avoid thus triggering the modification provision. Cf. *Asarco,* 578 F. 2d at 328 ("the operator of an existing facility can make any alternations he wishes in the facility without becoming subject to the NSPS as long as the level of emissions from the altered facility does not increase. Thus, the level of emissions before alterations take place, rather than the strict NSPS, effectively defines the standard that an altered facility must meet"; the Court did not rule on the validity of these unchallenged provisions (*id.* at n. 32)). The NO_X controls available to cement kilns which could be utilized to prevent an increase in NO_X emissions, in addition to SNCR, are conversion to indirect firing, mid-kiln fuel injection, mid-kiln air injection, and substitution of steel slag for some limestone.

f. Regulation of VOC/CO

We are not establishing limits for CO or volatile organic compound (VOC) emissions from cement kilns. VOC emissions from new cement kilns will mainly result from organics in the raw materials. Organic constituents in the raw materials can be driven off in the kiln preheater prior to reaching temperature zone that would result in combustion. All new cement kilns will be subject to a continuous 24 ppmvd THC emissions limit by the Portland Cement NESHAP previously discussed. Because most of the THC are also VOC, the THC limit also directly limits VOC, and serves as the baseline for the NSPS analysis. This limit is also the new source limit based on the best performing source. Therefore we determined that no additional regulation of VOC emissions is necessary or feasible.

Emissions of CO can come from two sources, unburned fuel from the precalciner and CO evolved from the raw materials by the same mechanism as the THC emissions. Unburned fuel represents an economic loss to the facility. Therefore, new precalciners are designed to combust fuel as efficiently as possible, and CO emissions from fuel combustion are minimized, regardless of any potential emission limit.

Emissions of CO evolved from raw materials can be significant if there are substantial levels of organics in the raw material. As noted at proposal, the only control technology identified to reduce CO emissions is a RTO (which also would concurrently reduce any VOC emissions). However, we believe application of an RTO as BDT for CO would result in significant cost and adverse energy impacts. Therefore, we determined that no additional regulation of CO emissions is feasible.

We also noted that in no cases had add-on controls for CO (or VOC) been required as BACT under new source review.

g. Regulation of Greenhouse Gases (GHGs)

In the proposal we did not propose standards of performance covering GHGs due to concerns about "issues related to the regulation of GHGs under the CAA" and noted that we were in the process of evaluating avenues for addressing such concerns. *See* 73 FR at 34,084. These concerns were specifically related to the Prevention of Significant Deterioration and Title V permitting programs and the unmanageable permitting burden that we anticipated would arise should GHGs become subject to these programs as a result of regulation under the Act.

Since that time, we have issued regulations for GHG emissions under the CAA through the light duty vehicle rule (75 FR 25324, (May 7, 2010)) and have finalized the greenhouse gas "tailoring" rule (75 FR 31514 (June 3, 2010)) and the Johnson memo reconsideration (75 FR 17004 (April 2, 2010)). As a result of these actions, as of January 2, 2011, GHGs will become "subject to regulation" under the Act. Accordingly, the Agency has now finalized a framework addressing the concerns that were the basis of our decision not to propose standards of performance for GHG emissions from this industry at the time we proposed this 8-year review action.

Today's final rule does not include a standard of performance for GHG. There are two reasons for this. First, we did not propose such a standard. Promulgating such a standard without providing opportunity to comment on it would not be a logical outgrowth of the proposal and would, accordingly, violate the norms of notice and comment rulemaking. Second, we do not yet have adequate information about GHG emissions sufficient to set a standard. This information forms the basis of standards of performance, which must take into account achievability and cost of such controls.

This is not the end of the matter. To the contrary, based on our current knowledge we believe that it may be appropriate for the Agency to set a standard of performance for GHGs. We have historically declined to propose standards for a pollutant where it is emitting in low amounts or where we

determined that a BDT analysis would result in no control. *National Lime Assoc'n* v. *EPA,* 627 F.2d at 426. Based on current information we do not believe such circumstances are present here. Without prejudging the outcome of a future regulatory process, we note the following considerations.

First, Portland cement is one of the largest stationary source categories of GHG emissions, ranking as the third highest U.S. source of CO_2 emissions. Second, based on our initial evaluation it appears that there are cost-effective control strategies for this source category that would provide an appropriate basis for establishing a standard of performance for GHG emissions. *See* 73 FR 44491, July 30, 2008. These control strategies include, for example, energy efficiency measures, reductions in cement clinker content, and raw materials substitution. There may be other cost-effective controls as well.

Based upon this preliminary evaluation, the Agency is working towards a proposal for GHG standards from Portland cement facilities. We are not, however, proposing such standards at this time because in order to develop proposed standards we need additional information on site specific factors that affect performance of these controls, where they are currently applied, and control costs. We would also solicit information on overall facility energy management practices. To this end, the Agency will be sending out information requests to fill these information gaps so that we are able to propose a standard addressing GHGs in a timeframe that would allow the regulated community to make sound investment decisions in response to these MACT and NSPS requirements.

2. What is our final action on the other emission limits in the NSPS?

We did not propose changes to the other emissions limits in the NSPS, such as materials handling operations. We received one comment recommending that we promulgate NSPS limits for clinker storage piles, raw materials handling, and baghouse fall-out. Open clinker piles are being regulated as part of the NESHAP as previously discussed. Materials handling operations are currently regulated under NESHAP. We believe baghouse fall out would be regulated as part of materials handling standards.

3. What other changes are being promulgated?

As previously noted, cement kilns are potentially subject to both the NSPS and the Portland Cement NESHAP (40 CFR part 63, subpart LLL). In § 63.1356 of subpart LLL, we exempt any source subject to that subpart from applicable standards under the NSPS and the Metallic Minerals Processing NSPS (subpart OOO). That language was appropriate because the NSPS only regulated PM, and the PM limits in the NSPS and NESHAP were identical. At proposal, where the proposed new source PM limits in the NSPS and NESHAP were different, we proposed to add language in both the NSPS and the NESHAP to state that when there are emissions standards for a specific pollutant that apply to an affected source in both the NESHAP and the NSPS, the source should comply with the most stringent limit, and is not subject to the less stringent limit.

This proposed language is still applicable even though in this final rule we are setting identical new source PM standards in the NSPS and NESHAP rule. For example, a cement kiln that is an existing source under NESHAP subject to the 0.04 lb/ton clinker emissions limit could potentially become modified under NSPS and also be subject to the 0.01 lb/ton clinker emissions limit. In addition, there is always a possibility that other situation may occur where a source is subject to differing emission limits under NSPS and NESHAP as a result of rule changes.

4. What are the final testing requirements under subpart F?

There are no PM, NO_X or SO_2 compliance testing requirements; compliance is based on the use of a continuous emissions monitor (*see* below).

5. What are the final monitoring requirements under subpart F?

To demonstrate compliance with the PM emission limits, we are amending the monitoring requirements to require the installation and operation of a PM CEMS. The reason for this decision was previously discussed. Because this requirement is also part of the Portland Cement NESHAP, it will also apply to existing kilns currently subject to the NSPS. Consequently, affected facilities under this rule are not subject to an opacity standard to monitor compliance with the final PM standard. The PM CEMS must be installed and operated in accordance with the requirements of § 60.63(g).

We are also adding monitoring requirements for all emission sources that are subject to the 10 percent opacity standard—that is, emission sources other than the kiln and clinker cooler. We are requiring that they meet the monitoring requirements for these same emission points contained in the Portland Cement NESHAP, 40 CFR part 63, subpart LLL in order to make the two rules consistent.

Under the final amendments, compliance with the emission limits for NO_X and SO_2 are also determined using continuous emissions monitoring systems (CEMS). The requirements for the installation, operation, and calibration of each CEM, including minimum data requirements, are specified in the requirements in § 60.63(k) and (l). Under the final amendments, the owner or operator of kilns that elect to comply with the alternative SO_2 emission limit of 90 percent reduction are required to continuously monitor SO_2 emissions at the scrubber inlet as well as the outlet. These are the same requirements proposed. We received no comments on the NO_X monitoring provisions. Commenters objected to the SO_2 monitoring requirement for facilities that do not require SO_2 controls, suggesting stack tests every five years instead. However, in these cases, it is possible that a source might change a raw material and significantly increase SO_2 emissions beyond the standard. If monitoring is not in place, these excess emissions could be unchecked for five years before they were discovered. We believe the cost of the SO_2 monitor ($56,000) is reasonable to prevent these excess emissions. These monitors are well established technology that are already installed on over 30 cement kilns, including those without SO_2 controls.

C. What is EPA's sector-based approach?

Sector-based approaches are based on integrated assessments that consider multiple pollutants in a comprehensive and coordinated manner to manage emissions and CAA requirements. One of the many ways we can address sector-based approaches is by reviewing multiple regulatory programs together whenever possible. This approach essentially expands the technical analyses on costs and benefits of particular technologies, to consider the interactions of rules that regulate sources. The benefit of multi-pollutant and sector-based analyses and approaches include the ability to identify optimum strategies, considering feasibility, costs, and benefits across the different pollutant types while streamlining administrative and compliance complexities and reducing conflicting and redundant requirements, resulting in added certainty and easier implementation of control strategies for the sector under consideration.

In order to benefit from a sector-based approach for the cement industry, EPA analyzed how the NESHAP under reconsideration relates to other regulatory requirements currently under review for Portland cement facilities. In this analysis we looked at how the different control requirements that result from these requirement interact, including the different regulatory deadlines and control equipment requirement that result, the different reporting and recordkeeping requirements, and opportunities for States to account for reductions resulting for this rulemaking in their State implementation plans. The requirements analyzed affect HAP and/or criteria pollutant emissions from cement kilns and cover the NESHAP reconsideration, area source NESHAP, and the NSPS revision and their collateral impacts on other programs such as New Source Review (NSR), Regional Haze and the National Ambient Air Quality Standards (NAAQS).

As a result of the sector-based approach, this rulemaking will reduce conflicting and redundant requirements by setting the same PM emission limit requirement for both the Cement NESHAP and the Cement NSPS. Also the sector-based approach facilitated the streamlining of monitoring, record keeping and reporting requirements on both rules reducing administrative and compliance complexities associated with complying with both regulations. In addition, the sector-based approach promotes a comprehensive control strategy that maximizes the co-control of multiple regulated pollutants (*i.e.,* mercury and HCl) while obtaining SO_2 and $PM_{2.5}$ emission reductions as co-benefits. These collateral SO_2 and $PM_{2.5}$ emission reductions may be considered for "netting" and "offsets" purposes under the major NSR program or as credits that could help areas around the country with attainment of the SO_2 or $PM_{2.5}$ NAAQS.

For more information on our sector's analyses, its benefits and interaction with NSR, NAAQS and Regional Haze please refer to the preamble of the proposal of this rule (74 FR 21159–61).

V. Responses to Major Comments

This section presents a summary of responses to major comments. A summary of the comments received and our responses to those comments may be found in Docket ID No. EPA–HQ–OAR–2007–0877 for subpart F and Docket ID No. EPA–HQ–OAR–2002–0051 for subpart LLL.

A. What are the significant comments and responses on 40 CFR part 63, subpart LLL?

Comment: Many industry commenters (2830, 2832, 2836, 2841, 2844, 2845, 2858, 2859, 2863, 2864, 2874, 2890, 2908, 2910, 2914, 2915, 2916, and 2917) stated that setting MACT floors on a pollutant-by-pollutant basis violates the law and results in MACT floors that bear no relation to emission limits that are being achieved at the best performing existing sources. According to industry commenters, this method violates the plain language and intent of section 112(d) of the Clean Air Act (CAA) and its effect is a MACT floor that reflects a standard that no one plant in existence currently achieves. Industry commenters 2832, 2841, 2844, 2845, 2846, 2910, 2914, 2915, and 2916 stated that section 112(d)'s use of the terms *best-performing* and *existing* clearly means that sources in a category or subcategory that are used to set the MACT floor are to be real, not theoretical or hypothetical, sources (42 U.S.C. 7412(d), 2006 and *Northeast Maryland Waste Disposal Authority,* 358 F.3d at 954). They further contend that the phrase *achieved in practice* can only mean that Congress intended actual sources, performing under real-life conditions, to be the benchmark for determining the MACT floors. Furthermore, the language of the statute does not speak in terms of the best-performing source or sources for each listed pollutant or group of pollutants (42 U.S.C. 7412(d)). Rather, the focus is on the best existing source or sources for all pollutants, and what these sources truly can achieve on an overall basis. Industry commenters argue that EPA's pollutant-by-pollutant methodology is also at odds with the legislative history underlying section 112(d) (S. Rep. No. 228, 101st Cong., 1st Sess. 169, 1989).

According to the industry commenters, the focus on overall performance is not surprising because in the 1990 CAA Amendments Congress abandoned section 112's previous focus on individual pollutant standards, and adopted the technology-based multi-pollutant approach to regulating toxics in use under the Clean Water Act (CWA). *See* S. Rep. No. 228, 101st Cong., 1st Sess. 133–34 (1989). Thus, if one source can achieve a firm degree of control for one pollutant but not for another, there may be no justification for including it in the set of sources from which the floor is calculated (*Tanners' Council of America* v. *Train,* 540 F.2d 1188, 1193 (4th Cir. 1976) deeming CWA effluent limitations guidelines not achievable where plants in EPA's database were capable of meeting the limitations for some, but not all, of the pollutant parameters).

Some industry commenters (2845, 2910) stated that EPA's previous use of a pollutant-by-pollutant analysis was based on authorities not applicable to the CAA. EPA attempted to defend its practice of establishing pollutant-by-pollutant MACT standards by citing *Chemical Mfr. Ass'n.* v *EPA,* 870 F.2d 177, 239 (1989), clarified 885 F.2d 253, 264 (5th Cir. 1989), cert. denied, 495 U.S. 910, (1990), a case where the Court held that, under the CWA, *best available technology* (BAT) referred to the single best-performing plant on a pollutant-by-pollutant basis.

According to industry commenters 2845 and 2910, EPA's reliance on *Chemical Mfr. Ass'n* is misplaced as the CAA's procedure regarding the selection of MACT technologies differs on a textual basis from the CWA's procedure for identifying best available technology. Under the CWA, BAT standards are to be set based on the best practicable control technology currently available. 33 U.S.C. 1311(b)(1)(A)(i)(2006). This has led to pollutant-by-pollutant determinations. The CAA more narrowly limits the basis for MACT designation to what has been achieved at existing sources, not what could be hypothetically achievable on a per-pollutant basis.

One industry commenter (2890) stated that EPA appears to be forgetting that the floor is only the first step in the process. Once EPA has established a floor based on physical sources, it is directed to go back and look at options beyond the floor. Those *beyond the floor* options would include the best control for each pollutant on every source. By correcting the floor approach, EPA would also correct the issue identified by Judge Williams in his concurring opinion to the Brick vacatur, where a floor that is designed to represent what has been achieved is more stringent than what would be deemed achievable under a MACT.

Response: We disagree with the commenters who object to setting MACT floors on a pollutant-by pollutant basis. Contrary to the commenters' suggestion, section 112(d)(3) does not mandate a total facility approach. A reasonable interpretation of section 112(d)(3) is that MACT floors may be established on a HAP-by-HAP basis, so that there can be different pools of best performers for each HAP. Indeed, as illustrated below, the total facility approach not only is not compelled by the statutory language but can lead to results so arbitrary that the approach may simply not be legally permissible.

Section 112(d)(3) is ambiguous as to whether the MACT floor is to be based on the performance of an entire source or on the performance achieved in controlling particular HAP. Congress specified in section 112(d)(3) the minimum level of emission reduction that could satisfy the requirement to adopt MACT. For new sources, this floor level is to be "the emission control that is achieved in practice by the best controlled similar source." For existing sources, the floor level is to be "the average emission limitation achieved by the best performing 12 percent of the existing sources" for categories and subcategories with 30 or more sources, or "the average emission limitation achieved by the best performing 5 sources" for categories and subcategories with fewer than 30 sources. This language does not address whether floor levels can be established HAP-by-HAP or by any other means. The existing source MACT floor achieved by the average of the best performing 12 percent can reasonably be read as referring to the source as a whole or to performance as to a particular HAP. The reference in the new source MACT floor provision to "emission control achieved by the best controlled similar source" can mean emission control as to a particular HAP or emission control achieved by a source as a whole.

Industry commenters also stressed that section 112(d) requires that floors be based on actual performance from real facilities, pointing to such language as "existing source", "best performing", and "achieved in practice". EPA agrees that this language refers to sources' actual operation, but we repeat that the language says nothing about whether it is referring to performance as to individual HAP or to single facility's performance for all HAP. Industry commenters also said that Congress could have mandated a HAP-by-HAP result by using the phrase "for each HAP" at appropriate points in section 112(d). Doing so would have removed ambiguity from section 112(d), but does not compel any inference that Congress was *sub-silentio* mandating a different result when it left the provision ambiguous on this issue. The argument that MACT floors set HAP-by-HAP are based on the performance of a hypothetical facility, so that the limitations are not based on those achieved in practice, just re-begs the question of whether section 112(d)(3) refers to whole facilities or individual HAP. All of the limitations in the floors in this rule of course reflect sources' actual performance and were achieved in practice.

The reason EPA has long adopted the interpretation that the existing and new source MACT floors are to be applied on a HAP-by-HAP basis are that a whole plant approach likely yields least common denominator floors—that is floors reflecting mediocre or no control, rather than performance which is the average of what best performers have achieved. *See* 61 FR at 173687 (April 19, 1996); 62 FR at 48363–64 (September 15, 1997) (same approach adopted under the very similar language of section 129(a)(2)). For example, if the best performing 12 percent of facilities for HAP metals did not control organics as well as a different 12 percent of facilities, the floor for organics and metals would end up not reflecting best performance. For new sources, not only would the floor reflect unoptimized control, but EPA would have to make some type of value judgment between control of organics and metals just to decide which source was best controlled.[40]

Commenters provided no description of how their total facility approach would work in practice. Would a source that is a best performer for PM and worst for other HAP be in the pool? Would there be some overall summing of where the kiln fell for each pollutant? Would there have to be value judgments made among pollutants (is being a best performer for mercury worth more than for PM in a ranking process)? EPA evaluated an approach whereby every kiln was ranked for performance for each HAP and the results were summed with the lowest overall score being the best performer, and next lowest the second best, *etc.* (among other things yielding a tie for best performer with no non-arbitrary way to break the tie). Using this approach, and with the three lowest ranked kilns as the average of the best performers, standards (after applying the UPL equation) would be approximately 65 lb/MM tons of clinker for mercury, 90 ppm for THC (nearly four fold increase), and 0.12 for PM (over an order of magnitude increase). All but one kiln in the data base already meets the THC standard, 21 of 89 kilns would meet the mercury limit, and 27 of 46 kilns have stack test measurements less than the 30-day value for PM. *See* memorandum, "Total Facility Approach for Setting MACT Floors", August 6, 2010.[41] These inflated values, and especially the drastically inflated THC and PM values, simply do not reflect best performance.

These types of results are at odds with Congress' purpose in adopting MACT floors. The central purpose of the amended air toxics provisions was to apply strict technology-based emission controls on HAPs. *See, e.g.,* H. Rep. No. 952, 101st Cong. 2d sess. 338. The floor's specific purpose was to assure that consideration of economic and other impacts not be used to "gut the standards. While costs are by no means irrelevant, they should by no means be the determining factors. There needs to be a minimum degree of control in relation to the control technologies that have already been attained by the best existing sources." A Legislative History of the Clean Air Act *Vol. II* at 2897 (statement of Rep. Collins). An interpretation that the floor level of control must be limited by the performance of devices that only control some of these pollutants effectively "guts the standards" by including worse performers in the averaging process, whereas EPA's interpretation promotes the evident Congressional objective of having the floor reflect the average performance of best performing sources. Since Congress has not spoken to the precise question at issue, and the Agency's interpretation effectuates statutory goals and policies in a reasonable manner, its interpretation must be upheld. *See Chevron* v. *NRDC,* 467 U.S. 837 (1984).[42]

It is true that legislative history can sometimes be so clear as to give clear meaning to what is otherwise ambiguous statutory text. As just explained, EPA's HAP-by-HAP approach fulfills the evident statutory purpose and is supported by the most pertinent legislative history. A few

[40] Another industry commenter (2859) stated that it had three sources which were best performers for mercury and three other sources which were best performers for PM but that each would need to make upgrades for the pollutant not currently fully controlled. EPA views this as another least common denominator example whereby each of the floors would be diluted due to the coincidence that facilities are not optimizing control of all their emitted pollutants. See also Petitioners Brief in *Medical Waste Institute et al.* v. *EPA,* No. 09–1297 (DC Cir.) pointing out, in this context, that "the best performers for some pollutants are the worst performers for others" (p. 34) and "[s]ome of the best performers for certain pollutants are among the worst performers for others."

[41] This example could have been more extreme. One of the ultra-high mercury emitting sources is nearly a best performer for HCl (it is just outside the pool of three best performers). Inclusion as a best performer, under some methodologies, would have added these mercury emissions to the pool of "best performers", even though, for mercury, performance is the worst.

[42] Since industry commenters argued that the statute can only be read to allow floors to be determined on a single source basis, commenters offered no view of why their reading could be viewed as reasonable in light of the statute's goals and objectives. It is not evident how any statutory goal is promoted by an interpretation that allows floors to be determined in a manner likely to result in floors reflecting emissions from worst or mediocre performers.

industry commenters nonetheless indicated that a HAP-by-HAP approach is inconsistent with legislative history to section 112(d), citing to page 169 of the Senate Report. Since this Report was to a version of the bill which did not include a floor provision at all (much less the language at issue here), it is of no relevance. *National Lime II,* 233 F. 3d at 638.

Other industry commenters pointed out correctly that the section 112(d) air toxic provisions were modeled on the technology-based control scheme for water toxics in the Clean Water Act. S. Rep. No. 228, 101st Cong. 2d sess. 133–34. However, a HAP-by-HAP approach to standard setting has actually been adopted and upheld under the Clean Water Act. Section 301(b)(2)(A) of the Clean Water Act requires plants to control discharges of toxic pollutants to a degree reflecting performance of "best available technology economically achievable." In *Chemical Manufacturers Ass'n* v. *EPA,* 870 F. 2d 177, 238 (5th Cir. 1989) the Court held that this requirement could permissibly be applied on a pollutant-by-pollutant basis:

> The legislative history of the CWA indicates that the "best available technology" refers to the single best performing plant in an industrial field. The EPA urges that because the Act and the legislative history do not provide more particular guidance, it was free to determine the "best" plant on a pollutant-by-pollutant basis. The Supreme Court has stated that "it is by now commonplace that 'when faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration.'" This Court defers to the EPA's interpretation of the Act. The EPA's interpretation of the Act is rational and is not precluded by the legislative history" (internal citations omitted).

The Court reaffirmed its holding on this issue at 885 F. 253, 264 (5th Cir. 1989).

Industry commenters stated that the Clean Water Act requirement of Best Available Technology Economically Achievable and Best Practicable Technology is not the same as the Clean Air Act's requirement of maximum achievable control technology. These distinctions do not seem pertinent to the issue at hand. Both statutes require technology-based performance to control all toxics discharged or emitted, and both require standards to be achievable. The legislative history to section 112(d) makes clear that the CAA provisions are modeled after those in the Water Act (as industry commenters correctly noted). EPA does not see any more certainty in the CWA than in the Clean Air Act on this point and believes its interpretation that a pollutant-by-pollutant approach is justified is as reasonable under section 112(d)(3) of the CAA as it is under section 301(b)(2) of the Clean Water Act.[43]

Industry commenters also noted that EPA retains the duty to investigate and, if justifiable, to adopt beyond the floor standards, so that potential least common denominator floors resulting from the whole facility approach would not have to "gut the standards." That EPA may adopt more stringent standards based on what is "achievable" after considering costs and other factors is irrelevant to how EPA is required to set MACT floors. MACT floors must be based on the emission limitation achieved by the best performing 12 percent of existing sources, and, for new sources, on the level achieved by the best controlled similar source, and EPA must make this determination without consideration of cost. At best, standards reflecting a beyond-the-floor level of performance will have to be cost-justified; at worst, standards will remain at levels reflecting mediocre performance. Under either scenario, Congress' purpose in requiring floors is compromised.

EPA notes, however, that if optimized performance for different HAPs is not technologically possible due to mutually inconsistent control technologies (for example, metals performance decreases if organics reduction is optimized), then this would have to be taken into account by EPA in establishing a floor (or floors). The Senate Report indicates that if certain types of otherwise needed controls are mutually exclusive, EPA is to optimize the part of the standard providing the most environmental protection. S. Rep. No. 228, 101st Cong. 1st sess. 168 (although, as noted, the bill accompanying this Report contained no floor provisions). It should be emphasized, however, that "the fact that no plant has been shown to be able to meet all of the limitations does not demonstrate that all the limitations are not achievable." *Chemical Manufacturers Association* v. *EPA,* 885 F. 2d at 264 (upholding technology-based standards based on best performance for each pollutant by different plants, where at least one plant met each of the limitations but no single plant met all of them).

All available data for cement kilns indicate that there is no technical problem achieving the floor levels for each HAP simultaneously, using the MACT floor technology. For most kilns, compliance with the mercury limits will be accomplished using activated carbon injection followed by a second PM control consisting of a fabric filter. There is no technical impediment to using this same system for control of THC (or organic HAP). Note that the ACI system would have to be installed downstream of the existing PM control, therefore there would be no effect on the cement kiln dust collected in the existing PM control. One industry commenter claimed that carbon is not effective on mercury and THC at the same time. However, we see no basis for that statement as long as the correct type of carbon is used. Another industry commenter claimed ACI increases dioxin emissions. Considering the fact that ACI can actually be used to remove dioxins from kiln exhaust gas, we see no basis for that statement either.

After the ACI system, a wet scrubber can be used for HCl control. We would expect the wet scrubber to be the downstream control because it creates a moisture laden exhaust that would require reheating to then apply ACI. Again, there is no technical impediment to adding a wet scrubber after the ACI system, and the two control devices should not interfere with each other's performance. If the facility required an RTO to meet the THC limit, the RTO would be installed downstream of the wet scrubber in order to protect the RTO from any acid gases in the kiln exhaust. The wet scrubber/RTO combination has been demonstrated in cement kiln applications.

In order to meet the PM standard a facility could choose to modify their

[43] One industry commenter cited *Tanners' Council of America* v. *Train,* 540 F. 2d 1188, 1193 (4th Cir. 1976) for the proposition that technology-based effluent limitation guidelines under the Clean Water Act are not considered achievable "where plants in EPA's database were 'capable of meeting the limitation for some, but not all, of the pollutant parameters'". *Tanners' Council* involved a situation where EPA established standards for one source category based on a transfer of performance information from a different, unrelated source category. 540 F. 2d at 1192–93. Since the wastewater from the category from which the limits were transferred was easier to treat than tannery wastewater, the court was skeptical of EPA's undocumented assertions that the transfer of performance data (with certain upward adjustments) was permissible. *Id.* None of these circumstances apply here. EPA is not transferring performance from another category, but basing limits on documented performance of cement kilns. In addition, as noted in earlier preamble text, all of the kilns in the pool of best performers for each HAP is meeting the limit for that HAP, a strong showing of technical feasibility and technical achievability. Cf. *CPC International* v. *Train,* 540 F. 2d 1329, 1333 (8th Cir. 1976); *American Meat Inst.* v. *EPA,* 526 F. 2d 442, 458, 459 (7th Cir. 1975). Further, as discussed in the final part of this comment response, EPA has closely examined and is unaware of any situation whereby optimized performance for one HAP interferes with or otherwise precludes or impedes optimized performance for another.

existing PM control to meet the new limit, or design the baghouse downstream of the ACI injection point to meet the PM limit.

Though we have described some fairly complicated control scenarios, there are simpler applications of control technology that would likely be utilized successfully. One example would be simultaneous injection of alkaline materials (lime or sodium compounds) and activated carbon downstream of the existing PM control device followed by collection with a fabric filter. This type of injection scheme would potentially control acid gases (HCl and SO_2), THC (or organic HAP) mercury, and PM.

Industry commenters made much of the fact that no single facility is presently achieving all of the HAP limits proposed. But this only shows that plants will need to reduce their emissions of certain HAP to meet standards reflecting average of best industry performers for that HAP.

Impacts of Pollutant-by-Pollutant Approach

Comment: Industry commenters 2831, 2844, 2845, and 2874 stated that in evaluating the economic cost of achieving emission reductions, looking at one plant's emission control of only one pollutant to the exclusion of all other emission controls produces a disjointed view of cost implications and compliance feasibility. While an individual MACT floor for one pollutant might not appear cost-prohibitive, when combined with all of the other MACT floors for other pollutants, the total cost implications could become especially onerous. While the CAA was authored with the intent of reducing air pollution, Congress did not intend to disrupt the *productive capacity* of the United States through the promulgation of economically unachievable standards. 42 U.S.C. 7401(b)(1)(2006). By setting MACT floors individually and ignoring the collective cost implications of the entire NESHAP, EPA would effectively disregard the CAA's requirement that air pollution control be advanced while promoting the nation's *productive capacity. Id.*

Response: EPA is forbidden by law from considering costs in determining MACT floors. *NRDC* v. *EPA,* 489 F. 3d 1364, 1376 (DC Cir. 2007); *National Lime,* 233 F. 3d at 640. Although one of the overall goals of the Act is to protect and enhance the quality of the Nation's air and resources so as to promote the public health and welfare and the productive capacity of the population," CAA section 101 (b) (1), this overall goal does not somehow authorize EPA to adopt floors that either consider costs (overall or otherwise) or to base floors on other than what best performers achieve.

2.3.3 Lowest Emitters as Best Performers

Comment: One industry commenter (2834) stated that the Brick MACT ruling of the DC Circuit Court reinforces earlier holdings in *National Lime Association* vs. *EPA.* The Court again held that floors are to be based on the emission level actually achieved by the best performers (those with lowest emission levels), not the emission level achievable by all sources.

Response: In this rule, EPA is choosing as best performers those sources with lowest emissions of each HAP, on a normalized basis, with sources' variability taken into account in assessing which had the lowest emissions.

Comment: Many industry commenters (2841, 2844, 2845, 2846, 2858, and 2914) stated that EPA established its proposed floors equating best performing sources with those that have the lowest emissions for particular HAPs even though there are other ways to measure performance and, in some cases, other methodologies may comply with the statute where the "lowest emitter" approach does not. Industry commenter 2845 noted that equating best performer with lowest emitter contravenes a Congressional directive that, in developing MACT standards, EPA cannot require substitution of raw materials in mineral processing industries, such as cement manufacturing, quoting the Joint Explanatory Statement of the Committee of Conference for the 1990 CAA Amendments stated: For categories and subcategories of sources of [HAPs] engaged in mining, extraction, beneficiation, and processing of nonferrous ores, concentrates, minerals, metals, and related in-process materials, the Administrator shall not consider the substitution of, or other changes in, metal- or mineral-bearing raw materials that are used as feedstocks or material inputs * * * in setting emission standards, work practice standards, operating standards or other prohibitions or requirements or limitations under this section for such categories and subcategories. H.R. Rep. No. 101–952, at 339 (1990). According to the industry commenters, enormous amounts of limestone are fed into a kiln to manufacture clinker, and it is cost-prohibitive to import limestone from further away. If the plant's quarry contains limestone with high concentrations of mercury or high concentrations of organics, the kilns will emit more mercury or THC and potentially more organic HAPs. Because limestone with high mercury or organic emissions will result in higher HAP emissions, and it is not cost-effective to import limestone from far away, equating the lowest emitters with the best performing sources makes no sense in the context of cement facilities. It also would be squarely in opposition to the Joint Explanatory Statement.

Response: The industry commenter is citing to the "Joint Explanatory Statement" that accompanied the Conference Committee Report to the 1990 Clean Air Act Amendments. This legislative history is of limited utility here. As explained at 353 F. 3d 388: "The Joint Explanatory Statement describes how the differences between the Senate and House were resolved in the Conference Committee * * *. The Joint Explanatory Statement may be helpful in determining Congress's intent, but does not carry the same weight as the Conference Committee Report itself." *See* id. at 236–37. If there were some ambiguity in the statute, the Joint Conference Committee Report could shed some light on Congress' intent, but there is no exception to section 112(d)(2)(A)'s requirement that EPA consider "substitution of materials" for each source category. Thus, the statement cannot be read to negate the express statutory command that MACT is to be based on, among other things, measures, processes, or systems which reduce the volume of pollutant emissions through substitution of materials or other process modifications. Indeed, EPA's attempts to identify best performers by ignoring the contribution of raw material inputs have been soundly rejected. *Brick MACT,* 489 F. 3d at 882–883. In fact, brick and ceramic production, like Portland cement production, involves extraction of mined material from a quarry located proximate to the production facility because transport of raw material over long distances is "infeasible". 489 F. 3d at 879. The language from the Joint Explanatory Statement no more allows EPA to ignore raw material contribution to Portland cement plants' HAP emissions than it did raw material HAP contributions to brick and ceramic plants' HAP emissions.

Comment: Industry commenter 2844 stated that EPA could interpret section 112(d)(3) as *Brick MACT* appears to do, as one unitary concept meaning sources with the lowest emission levels, or EPA can interpret it as a more complex concept that EPA may determine the emission control (using any of the various definitions in the CAA) that

sources have achieved in practice (as estimated by reasonably predictive variability factors) and rank them according to their relative emissions levels (*i.e.,* a quantitative measure of achievement). Having done so, the Agency can then evaluate each of the lowest emitters in terms of whether they meet the Agency's criteria for best controlled similar source. With regard to best controlled, EPA may evaluate this from a purely quantitative angle (lowest emissions) or from more qualitative aspects, reduction efficiency, environmental and health (or cross-media) impacts, cost-effectiveness of reductions achieved, impacts on other HAP or pollutant emissions, and so on.

Industry commenter 2845 provided several examples of judicial MACT decisions endorsing a technology approach to setting the standards, in which EPA selected the best performing sources based on the relative performance of air pollution control technology.

Industry commenter 2844 stated that EPA also has the discretion to define best performers as sources other than those with the lowest achieved emission levels. In the current proposal, the many difficulties associated with evaluating the impact of HAP content in the raw material inputs to mercury emission control and other factors could support a decision by the agency to establish a standard based on efficiency (*i.e.,* a percent reduction standard) if not for the source category as a whole, then such a standard might be established for a particular subcategory as relevant, or as an alternative compliance strategy. EPA's discretion is sufficiently broad to encompass many reasonable decisions identifying and estimating the emission control of best performing sources on bases other than lowest emissions data, assuming the floor for the standard is based on a reasonable methodology estimating the percent reduction achieved in practice by the best performing sources under the reasonably foreseeable worst operating conditions.

Industry commenter 2844 stated that before EPA can determine a floor, EPA must define the following terms in regard to the selection of a best performer for new sources: Emission control; Achieved in practice; Best controlled; and Similar source.

To set the floor for existing sources, the industry commenter stated that EPA should define the following terms: Average emission limitation; Achieved; and Best performing.

Response: EPA must make determinations in each standard as to each of these terms and has done so here. In this rule, EPA is determining that the best controlled similar source is the source with the lowest emissions of the HAP in question on a normalized basis (for mercury and PM), and on a concentration basis (for THC and HCl) considering variability in determining both which source is best controlled and in estimating its achieved performance. EPA is adopting the same approach for existing sources in determining which are the 12 percent of best performing sources and the performance they achieve. This approach accounts for all HAP inputs and outputs (*i.e.,* accounts for HAP in all raw material and feed inputs as well as all emission controls), and is consistent with the case law.

With regard to the comment stating that the standard could be expressed as a per cent reduction, the industry commenter did not explain how this can be done without negating the contribution of HAPs in feed and fuel input into plant performance. Most particularly, for HAP which are uncontrolled, mercury being the chief example in this rule, there is no removal efficiency to evaluate. Moreover, even for HAP which are controlled, plants with higher removal efficiencies may also be the highest emitters if the levels of the inputs to the control device is high. For these reasons, EPA is not evaluating best performers based on removal efficiencies in this rule.

Comment: Industry commenters 2832, 2846, and 2890 stated that rather than selecting sources with the lowest emissions for particular HAP as best performing sources, EPA could use the relative performance of air pollution control technology to select the best performing sources, applying the best reasonable method for determining best-performers, which does not necessarily have to equate to lowest emissions.

Response: EPA discussed this issue at some length at proposal. *See* 74 FR at 21149. The problem with equating best performance with performance of pollution control alone is that it ignores the contribution of raw materials and fuels to HAP emissions. Basing standards exclusively on performance of control technology is legally permissible when the control technology is the sole factor influencing performance, which is not the case here. *National Lime,* 233 F. 3d at 633–34. EPA thus is not adopting these industry commenters' approach. *See* previous response as well.

Comment: Several industry commenters (2845, 2846, 2874, and 2915) stated that EPA is proposing to calculate MACT floors by averaging the top 12 percent of sources for which CEMS data are available (even if that amounts to less than 30 sources), rather than by considering the top 12 percent of sources for which EPA has emissions information. As a result, EPA is proposing to establish the MACT floor based on data from only 2 sources. The industry commenters stated that CAA section 112(d) obligates EPA to set the MACT floor looking at no fewer than 5 sources, recognizing the value of relying on the maximum amount of data available.

Industry commenter 2841 stated that the use of a minimum of five facilities should be adopted in the establishment of THC standards as well as the other standards in this proposed regulation. The establishment of requirements based on a small amount of data would run counter to the intent of the CAA in utilizing data that is truly representative of the best-performing facilities throughout an entire industry.

Industry commenter 2841 stated that in previous MACT rulemakings, EPA used the five best performing facilities if the number of facilities was less than 30. Consistent with these prior rulemakings, the industry commenter stated that this approach should be used for this proposed Portland Cement NESHAP rule and that EPA needs additional data points in order to appropriately set limits for the industry as a whole.

Response: EPA believes that it has discretion to use the data which most accurately measure sources' performance, which for THC case are data obtained from CEM-equipped sources. EPA also believes that it has a reasoned technical basis for not combining CEMS data with non-CEM data, since this would be a classic apples-to-oranges comparison due to the difference in measuring times and methods. EPA does not agree that section 112 (d)(3) mandates a minimum of 5 sources in all instances, notwithstanding the incongruity of having less data to establish floors for larger source categories than is mandated for smaller ones. The literal language of the provision appears to compel this result.

Comment: One environmental advocacy group commenter (2898) supported EPA's decision to not rank best performers based on their relative mercury removal efficiency. Relying on mercury removal efficiency in setting the MACT floor for the Portland cement manufacturing industry would downplay the role of HAP inputs on emissions. EPA characterizes *Brick MACT's* statement that best performers are those emitting the least HAP as appearing arguably in dicta. However, the Brick MACT Court itself

characterizes the statement as the holding of the *Cement Kiln* case. *Brick MACT,* 479 F.3d at 880 (relying on Cement Kiln's holding that § 7412(d)(3) requires floors based on the emission level actually achieved by the best performers or those with the lowest emission levels). The proposed alternative of setting the MACT floor on the basis of percentage of emission reduction achieved by sources would minimize, if not eliminate, the consideration of cleaner inputs in setting MACT floors, as EPA acknowledges, and is therefore contrary to statutory dictates and case law.

Response: EPA agrees that the chief legal issue with a percent reduction approach for expressing floors is that it undervalues the role of HAP inputs. EPA is not adopting that approach in this rulemaking.

Comment: Several industry trade association commenters (2831 and 2901) stated that EPA retains considerable discretion on how to set MACT floors. The commenters supported the Agency's authority to set floor standards based on control efficiency, or any method as long as their method reasonably estimates the performance of the relevant best performing plants. There is nothing in the Court's decisions that requires EPA to use the straight-emissions approach favored in this rule. The commenter stated that the Court has expressly decided that a straight emissions or arithmetical methodology is not required. EPA's technology based approach that estimated performance rather than deriving the standards through an arithmetic-straight emissions approach is supported by the Courts, as long as it results in a reasonable estimate of the performance of the best controlled units. According to the commenter (2901), *Brick MACT* does not endorse a straight emissions approach; nor could it. To do so would mean that the *Brick MACT* Court was overturning the Chevron step one holding in *Sierra Club* and *National Lime II,* something that it cannot do.

Response: EPA is adopting the straight emissions (so-called) approach in this rulemaking and believes that the approach is permissible under the statue and case law. Commenters also did not convincingly address the issue of how the alternative approaches they mention account for HAP inputs. Moreover, *Sierra Club* and *National Lime II* make clear that a straight emissions approach may not be mandated under the language of the statute, but also make clear that there must be a reasoned basis for estimating which performers are best. *National Lime II,* and later *Brick MACT* further make clear that contribution of HAP inputs in raw materials and fuels must be accounted for in making best performer determinations. *See* 233 F. 3d at 634, 639; 479 F. 3d at 882–83. Each panel viewed these holdings as consistent with the *Chevron* analysis in *Sierra Club.* 233 F. 3d at 631–32, 633–34; 479 F. 3d at 878.

Comment: One industry commenter (2844) stated that the CAA requires that lawfully promulgated NESHAP standards must be achievable. Section 112(d)(2) of the Act requires EPA to establish emission standards for HAPs that require the maximum degree of reduction in emissions taking into consideration the cost of the emission reduction and non-air quality health and environmental impacts and energy requirements, that the EPA Administrator determines is achievable for new or existing sources. Further, House Rep. 101–490, Part 1 (328) stated that "The Committee expects MACT to be meaningful, so that MACT will require substantial reductions in emissions from uncontrolled levels. However, MACT is not intended to require unsafe control measures, or to drive sources to the brink of shutdown." The commenter noted that the proposed Portland cement proposed NESHAP standards do not comply with § 112's achievability requirements.

Response: The industry commenter refers to legislative history to versions of the 1990 amendments which did not include floor requirements, so it is not directly applicable in interpreting the enacted provisions. Moreover, as held repeatedly by the DC Circuit, the "achievability" requirement in section 112 (d)(2) does not alter the minimum level of stringency requirements mandated by section 112 (d)(3)'s requirements. *See, e.g., Cement Kiln Recycling Coalition,* 255 F. 3d at 861–62.

Comment: Industry commenter 2844 stated that EPA's conclusion that section 112(d)(3) and/or *Brick MACT* requires or even permits the Agency to ignore the achievability requirements of section 112(d)(2) is an unreasonable reading of the statute and of *Brick MACT.* The Agency retains more than sufficient discretion to devise NESHAP standards that successfully bridge the tension between achieved and achievable in section 112's standard-setting provisions by appropriately using both subcategorization and variability methodologies.

Response: EPA believes that variability needs to be assessed in order to accurately measure both which performers are best and what their performance is. However, authority to subcategorize is discretionary and need not be exercised where there are rational grounds not to do so, such as not authorizing emissions of large amounts of a dangerous neurotoxin. *See also* previous response.

Comment: Industry commenter 2844 stated that EPA's floor setting methodology does not comply with three of *Brick MACT's* requirements: Floors must be based on emissions achieved in practice by best-performing sources; EPA's use of variability factors and methodologies to adjust reported emissions data must be based on demonstrated relationships, so that the floor setting methodology serves to reasonably estimate or predict the performance of the best performing sources; and EPA must consider the impact of nontechnology factors, such as raw material and fuel inputs, on a source's emission control levels.

Industry commenter 2844 stated that in the Portland cement proposal, EPA set MACT floor levels that reflect the specific conditions at the time the data were generated and do not include any of the operational variability. The commenter suggests that EPA must look beyond its snap shots of performance to make a reasoned evaluation and estimation of all operating conditions and factors that might impact the level of actual emissions from those kilns in practice, and adjust their reported short term test data appropriately. EPA can and should adjust raw emissions results to estimate sources' achieved emissions levels when setting MACT floors and standards. Since Brick MACT, EPA's methodology now must be able to reasonably estimate the impacts of variability associated with both technological and nontechnological factors over the full range of circumstances.

Response: EPA disagrees that it has based the floors for any of the HAP on snapshot levels of performance and has not accounted for potential variability in sources' performance. Each of the floors reflects a reasonable estimate of what the best performing sources (or source) will achieve over time. Also, each of the floors considers the impact of non-technology factors, notably HAP inputs in raw materials and fuels, on the source's emissions.

Specifically, for mercury the standard reflects 30 days of data for all mercury inputs, reasonable estimates of control device performance (for the few controlled sources), plus a reasonable statistical methodology to account for variability (including variability of mercury content of kiln inputs). EPA also used a pooled variability factor (pooling variability for all kilns in the

MACT pool), which increased variability estimates. Where commenters provided data showing that kilns' performance was underestimated because different inputs were used outside the sampling period, EPA adjusted those emissions estimates. EPA also used data on variability of kilns quarrying limestone from the same geologic formation as two of the best performing kilns to estimate intra-quarry variability of those two best performing kilns, and further applied this variability as part of the pooled variability. *See* IV.A.1.c of this preamble and 74 FR at 21142–44.

The standard for THC reflects hundreds of observations gathered continuously over time using a CEMS yielding a data set from which variability can be calculated directly. *See* IV.A.1.d of this preamble.

The floors for HCl are set at the minimum reliable quantification level, which is a factor of three above the actual measured levels, and are averaged over 30 days as well. EPA believes this fully accounts for performance variability.

Floors for PM are based on multiple stack measurements which have been adjusted by reasonable statistical methodologies to account for variability. *See* IV.A.1.f of this preamble, responding to the argument that measurement by means of a CEM makes the standard more stringent. Moreover, the PM standard reflects performance of fabric filters with membrane bags, which are known to perform independent of inputs and to have relatively small operating variability. 72 FR at 54879 (Sept. 27, 2007); 70 FR at 59449 (Oct. 12, 2005).

Consequently, for each HAP, EPA is assessing sources' performance over time in a reasonable manner and is not ignoring their operating variability.

Comment: Industry commenter 2844 also stated that EPA adopted a floor setting methodology that is based on using lowest reported emission results with minimal variability adjustments to estimate emission control achieved in practice by best performing sources. EPA considered test-to-test variability, but did not consider the inherent variability due to raw materials, product mix, fuels, operating conditions and plant types. The industry commenter stated that EPA has not evaluated or validated whether its methodology accurately estimates emissions control achieved in real world circumstances at sources.

Response: This industry comment is inaccurate on a number of counts. First, the statistical methodology used to estimate variability depends on the distribution of data to which the formula is applied. Any variation in that data—be it due to differences in raw material concentration, fuel composition, or device operation—is thereby accounted for. Indeed, the data base for mercury consists virtually entirely of raw material and fuel mercury levels from which emissions are projected on a worst case, mass balance basis (since virtually no kiln controls its mercury emissions). Consequently, EPA's methodology does evaluate variability of inputs as well as product mix, fuels, operating conditions, and does not just evaluate control device operating variability as the commenter maintains. Second, for mercury and THC, EPA gathered data over time, as explained in the preamble and in the previous response. Third, for mercury, industry had ample opportunity to provide longer term sampling data and (with a few exceptions, which EPA evaluated and accepted) did not do so. Fourth, use of a pooled variability factor (which for mercury includes the reasonably estimated long-term intra-quarry variability of the two best performers extrapolated to all other sources in the MACT pool) further accounts for long term variability.

Comment: Industry commenter 2844 stated that EPA cannot evaluate floors using methodologies that focus exclusively on technology if the resulting standards do not reflect actual average limitation[s] achieved (*Brick MACT,* 479 F.3d at 882). The industry commenter concludes that *Brick MACT* requires EPA to address the role of non-technological factors that impact emissions in setting floors and EPA must develop a methodology that accurately estimates the actual emissions achieved in practice by the best performing sources under a variety of operating conditions, taking into consideration testing and technological and non-technological variability. As proof that EPA failed to properly account for sources' variability in setting the standards, the industry commenter (and industry commenter 2845) included a chart purporting to demonstrate that the kilns comprising the pool of best performers for each HAP could not themselves meet the proposed standard.

Response: EPA believes that its methodology reasonably estimates the variability of the best performing sources, taking into account both technological (emission control device) and non-technological (varying inputs) variability. EPA disagrees that the record shows that the kilns comprising the MACT pool for each floor cannot themselves meet the promulgated standards (*see* previous response). In fact, for each pollutant, the record indicates that every kiln in the MACT pool (not just the kilns below the average of the best performers) would be in compliance. *See* section IV.A.1.b above.

Comment: One industry commenter (2845) stated that case law and policy dictate that EPA must consider variability in establishing MACT standards, and the approach used by EPA in Prevention of Significant Deterioration (PSD) permitting should also apply in establishing MACT standards. To evaluate the emission limits achieved by existing sources, EPA is required to develop methodologies for estimating the variability associated with all factors that impact a source's emissions, including process, operational and non-technological variables (*see Nat'l Lime Ass'n* v. *EPA,* 627 F.2d 416, 443, DC Cir. 1980). While Courts have affirmed EPA's authority to choose a methodology designed to estimate emissions in setting the MACT floor, the Courts have also made clear that EPA's method must allow a reasonable inference as to the performance of the top 12 percent of units (*Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855, 862 (DC Cir. 2001)) (citing *Sierra Club* v. *EPA,* 167 F.3d 658, 663, DC Cir. 1999). Accordingly, the Court of Appeals for the DC Circuit has stated that EPA must show not only that it believes its methodology provides an accurate picture of the relevant sources' actual performance, but also why its methodology yields the required estimate (*Cement Kiln Recycling Coalition,* 255 F.3d at 862).

Response: EPA agrees that sources' variability should be accounted for both in determining which sources are best performers and what their achieved performance is. EPA also believes that it has reasonably accounted for sources' variability here, including both variability in inputs and operating variability.

Comment: Industry commenters 2844, 2845, and 2916 objected to EPA's interpretation of CAA Sections 112(d)(2) and 112(d)(3) and the *Brick MACT* opinion (Industry commenter 2845 provided a white paper as an appendix to their comments for the HWIMI MACT proposal, dated December 01, 2008.). The paper, titled "Implications of the Brick MACT Decision on EPA's Discretion in Setting MACT Floors," discusses variability at some length. The paper's main points were:

- The Agency has chosen to focus on setting MACT floors based on lowest

emitting sources derived from limited test results that are not appropriately adjusted to account for stack test variability.

• The *Brick MACT* decision holds that EPA must base MACT floors on achieved emissions control rather than control technology, but it does not require EPA to ignore operational variability in determining those floors. Variability methodologies must reasonably estimate or predict emissions or variability through a demonstrated relationship between the data used and the performance intended to be estimated. Non-technological factors (*i.e.,* raw materials and fuel) must be considered in determining emission control achieved by best performers. It is within EPA's discretion to define the best performing sources.

• EPA should estimate variability in determining achieved emissions. The Agency can and must seek appropriate data from regulated entities and other stakeholders, and to develop appropriate fact-based estimating methodologies on the data available.

Response: EPA largely agrees with these general points and believes that it has adhered to these concepts in the final rule. EPA has also implored, and in many instances, compelled (through section 114 letters) industry to provide additional data to better gauge sources' performance.

Comment: A number of commenters including 2844 and 2845 argued that EPA should use an Upper Tolerance limit (UTL) rather than Upper Predictive Limit (UPL) statistical methodology to assess variability.

Response: EPA disagrees. An Upper Tolerance Limit is ordinarily utilized for large data sets and is intended to assure that predicted values are lower than a single highest observation. R. (Gibbons, Statistical Tolerance Limits for Ground-Water Monitoring,Vol. 29, No. 4, Ground Water, July–August, 1991) This methodology is intended to produce values that do not underestimate variability but for this reason tends to produce inflated predictions when applied to data sets containing multiple observations, which is the case for the MACT pools for each HAP in this rulemaking. This methodology would therefore overestimate performers' variability as applied in this rulemaking and EPA is therefore not utilizing it. EPA understands that they no longer regard use of UTL statistical methodology as necessitated here.

Comment: Several industry commenters (2832 and 2859) opposed the approach taken by EPA in its beyond-the-floor MACT analysis. Among other things, EPA failed to consider the creation of incremental greenhouse gas emissions associated with the construction, installation and operation of new emissions control equipment, and the minimal incremental environmental benefit associated with those controls. Also, EPA failed to consider the cost of carbon credit purchases by the industry.

Response: In all cases we declined to adopt beyond-the-floor standards based on consideration of costs, technical feasibility, and consideration of nonair environmental impacts. Evaluating other disbenefits for an option already rejected would have no purpose.

Comment: Many industry commenters (2830, 2845, 2846, 2855, 2858, 2859, 2879, 2887, and 2890) stated that CEMS are not a proven technology and should not be required to determine compliance.

Industry commenters 2588, 2844, 2845, 2846, 2858, and 2890 stated that EPA has no data showing that mercury CEMS are feasible on cement kilns and that emissions from cement kilns will likely be outside of the range of the current CEMS technology. The industry commenters stated that EPA must evaluate mercury CEMS through long-term field trials at cement plants in accordance with the proposed performance specifications and quality assurance procedures before imposing this regulatory requirement. The industry commenters proposed a mass-balance approach for monitoring, which is accurate and was used by EPA in setting the mercury standard.

Industry commenter 2855 stated that mercury sorbent trap monitoring systems have not been evaluated through long term field trials at cement plants in the United States (U.S.) in accordance with the proposed performance specifications and quality assurance procedures, so the reliability and performance of these measurement systems and the adequacy of the technical specifications cannot be determined.

Industry commenters 2855 and 2900 disagreed with EPA's interpretation of the operating experience with mercury CEMS in Germany. The industry commenters stated that mercury CEMS are inaccurate and difficult to maintain. Further, mercury CEMS operating in Germany are subject to monitoring regulations that are different than the U.S. regulations and are used in a different regulatory context than that proposed by EPA. The monitors used in Germany, or those available from other European or Asian manufacturers were not able to demonstrate acceptable performance in the Electric Power Research Institute (EPRI) Trimble County Mercury CEMS study.

Industry commenter 2855 stated that there is no legitimate technical basis on which to establish detailed performance specifications or quality assurance (QA) requirements for these CEMS. There is no legitimate technical basis to conclude that these CEMS could meet such requirements over any extended period when installed and operated at a cement plant. The industry commenter recommended that EPA evaluate the performance of mercury CEMS at cement kiln systems and acquire the information necessary to serve as the basis for technical specifications and requirements. After such information is available and analyzed, EPA should re-propose appropriate and demonstrated performance specifications and quality assurance procedures for mercury CEMS to monitor kiln and kiln/in-line raw mill mercury emissions.

Industry commenter 2855 disagreed with EPA's interpretation that mercury CEMS can be applied to the cement industry based on successful use on utility boilers. The commenter evaluated the following issues:

Number of Installations in the Utility Industry—There are 35–40 continuous mercury monitors (CMMs) installed and certified to date (not yet with a National Institute of Standards and Technology (NIST) traceable calibration source).

NIST Certification—In mercury CEMS certification requirements outlined in Performance Specification (PS)–12A, it states that all calibration and span gases must be NIST certified. The draft protocols were just released by NIST in July 2009. The major vendors of mercury CEMS are just now advertising NIST-certified calibration sources. Therefore, none of the mercury CEMS that have been previously installed are certified. NIST does not currently directly certify oxidized mercury calibrations. The Interim EPA Traceability Protocols now in place provide for certification of evaporative generators by certification of the individual components of the calibrator. Therefore, the language used in Section 7.0 that refers to a NIST trace oxidized mercury calibrator needs to be clarified or changed.

Difficulties Encountered in the Utility Industry—The industry commenter gave examples of power plants' difficulties with mercury CEMS.

Installation on Wet Stacks—Installing a mercury CEMS on a *wet* stack can result in problems: Plugging, corrosion, and buildup of solids. Although wet scrubbers are not currently common in the cement industry, under the proposed rule, they may be required to

a greater extent, and many of these same problems with mercury CEMS potentially could occur for the cement industry as well.

Data Output Requirements—There is no need for dry basis measurements under the proposed rule and the language in either Subpart LLL should be included to provide an exemption from this requirement for cement plants or PS–12A should be revised. This language needs to be clarified by EPA.

Cost—The industry commenter provided information about CEMS costs, estimating that if mercury CEMS were installed on all non-waste-burning U.S. cement facilities, the total capital costs would be approximately $45 million, with annual operating costs being about $25 million.

Industry commenter 2901 stated that CEMS should not be used as a compliance method for cement plants for the following reasons:

EPA reported in 1997 on an experiment where CEMS were installed on a cement kiln burning hazardous waste. The Agency found substantial problems regarding mercury CEMS measurement accuracy and precision, deciding not to require Mercury CEMS at cement plants. The industry commenter stated that the primary issue is whether there is a NIST traceable standard that can be used to calibrate the unit. Because compliance is based on the production rate and on using a 30-day average, it is difficult to know what range to calibrate these units.

The reliability of CEMS on cement kiln stacks has not been demonstrated in the U.S., where standards and requirements are different. Demonstrations in the U.S. at coal-fired power plants have different conditions than those at cement kilns.

There is no legal imperative for EPA to require CEMS. Under the CAA, EPA's monitoring requirements must provide a reasonable assurance of compliance with emission standards *Sierra Club* v. *EPA,* 353 F.3d 976, 990–991 (DC Cir 2004) (*Copper Smelters*) *citing Natural Res. Def. Council, Inc.* v. *EPA,* 194 F.3d 130, (DC Cir 1999).

Response: Several commenters questioned the applicability of current continuous instrumental gaseous mercury CEMS technologies to cement kilns. Several commenters also raised technical issues about specific performance criteria in Performance Specification 12A (PS 12A) for gaseous Hg CEMS and expressed concern as to the availability of National institute of Standards and Technology (NIST) traceable Hg gas standards. NIST has recently completed certification of a "NIST Prime" elemental mercury gas generator at concentrations of 41, 68, 85, 105, 140, 185, 230, 287, and 353 $\mu g/m^3$ and mercury gas generator vendors may now submit elemental mercury gas generators for certification to serve as "Vendor Primes". Therefore NIST traceable mercury gas standards can now be made available in concentrations that exceed the equivalent mass standards for both existing and new kilns by between one and two orders of magnitude, thus providing the capability to accurately report excursions well beyond either standard. We have provided responses to the comments on specific performance criteria regarding PS 12A in the response to comments document, and in several instances PS 12A has been revised in response to those comments. The Agency believes that the now revised PS 12A is fully capable of properly measuring the performance of gaseous Hg CEMS in many applications, including cement kilns.

Regarding the applicability of the current commercially available gaseous Hg CEMS to cement kilns, and to wet or high moisture stacks in particular, we have considered the potential physical and chemical characteristics of such kiln stacks and does not consider them to be substantively different from those of other source categories, particularly utility boilers, where technical solutions have been deployed to enable the successful application, certification, and operation of gaseous Hg CEMS. One of several U.S. Hg CEMS manufacturers advises they have now installed approximately 400 Hg CEMS units on coal-fired power plants to meet regulatory requirements, including some with flue gas desulfurization systems with the higher stack gas moisture levels typical of these systems. These installations have included performance guarantees for system certification and the manufacturer also indicated a willingness to guarantee the performance of their units on cement kiln stacks.

We recognize that each source will experience their own particular learning curve as with any new instrument, but if the source should experience an apparently insurmountable problem with a particular installation, they still have the option to either petition the Administrator for consideration of an alternative testing approach under § 63.7(f) or to monitor Hg using a sorbent trap monitoring system by Performance Specification 12B (PS 12B). We disagree with the comment that PS 12 B requires further demonstration. The same technology (Method 30B, 40 CFR Part 60, Appendix A) was successfully used on several cement kilns in the process of collecting data to establish the emission limits in this rule with good precision and accuracy, and has also been widely deployed in the data collection program for the current MACT rule development program for utility boilers. EPA also believes that the growing body of evidence of the successful use of Hg CEMS in the utility industry in the U.S. is further evidence that Hg CEMS can be used in the cement kiln industry. In addition to the knowledge regarding the use of Hg CEMS on cement kilns in Europe, EPA is aware of two instances where Hg CEMS have been installed on cement kilns in the U.S., with specific evidence of successful execution of seven day calibration drift checks, linearity (measurement error tests, as well as relative accuracy testing.

Comment: Industry commenter 2845 stated that EPA should require that compliance with HCl limits should be measured by periodic stack tests. Because the HCl floors were developed from HCl stack test data, the standard for HCl should be based on periodic stack testing. EPA must evaluate valid data from Method 321/ASTM D6348 stack tests instead of the data contained in Table 5 of the proposal. Using CEMS to measure compliance effectively makes the standard more stringent than what has been achieved by the best-performing sources. If CEMS compliance demonstration is retained, then the limit for CEMS compliance must be raised to reflect the added variability that will be measured by the CEMS. While continuous measurement will capture variability of emissions 24 hours per day, 7 days per week over the full range of process and control system operating conditions over the life of the plant and its associated quarry, the stack test is merely a snapshot in time. By definition, a stack test contains no parameter related to variability other than that obtained during the three hours of testing. In addition to the inherent variability of HCl emissions, a CEMS standard must also consider the inaccuracy of the CEMS as determined (and allowed) relative to the required stack test methods, the uncertainty of calibration standards/materials, and other factors affecting the sampling, transport, and analysis of HCl which is a highly reactive compound.

Response: HCl CEMS will be measuring HCl with the same technology that was used in the period stack tests (M321) used to set the standard. An allowance for variability has been built in through the process of setting the standard, including setting the standard based on the 99th percentile UPL and increasing the

standard to the practical quantitation limit of the analytic method.

Comment: Two industry commenters (2845 and 2859) said that EPA has not promulgated any regulations requiring PM CEMS at any source category due to its inability to address fundamental technical and policy issues and must resolve these issues through rulemaking before requiring PM CEMS at any cement plants. Furthermore EPA has not performed a legitimate technical analysis of emissions variability and compliance determination uncertainty to allow the use of PM CEMS for determining continuous compliance with a PM limit at cement plants.

The use of PM CEMS in Europe and other countries does not constitute a valid basis for application of PM CEMS at cement plants in the United States. Light scattering, light transmission, and extractive beta attenuation instruments are all inferential measurement devices and a correlation must be established to relate the device output to the actual PM concentration, then the accuracy and bias of the reference test and the uncertainty of the statistical correlation, as well as the stability of the correlation must be considered. Under the German TUV and the European monitoring standard (EN 14181) these uncertainties are considered; emissions are not considered to exceed the allowable limit until the lower bound of the confidence interval and/or tolerance interval exceeds the emission limit; emission standards may contain different averaging periods requiring different levels of conformance; and when a problem is encountered, the emphasis is on resolving the emission problem rather than direct enforcement and collection of financial penalties. All of these considerations place the European monitoring program in an entirely different regulatory context than the proposed PM monitoring requirements.

Response: We reject the industry commenters' assertions that PM CEMS have not been required via rulemaking because of unresolved fundamental technical or policy issues. Concerns about PM CEMS were identified and addressed prior to the January 2004 publication of Performance Specification 11 and Quality Assurance Procedure 2 for PM CEMS (69 FR 1786, January 12, 2004). As mentioned in that rule's preamble, "* * * we believe that the PM CEMS field demonstrations completed to date encompass a range of operating conditions and emission characteristics * * *" including those exhibited by sources such as cement kilns.

Moreover, we disagree with the assertion that our analysis of PM emissions variability is not legitimate, yielding an overly-stringent PM emissions limit. The PM limit is based on our analysis of PM emissions from test data, adjusted from an hourly to a 30-day averaging period and further adjusted for variability. As mentioned in the preamble to the Credible Evidence Rule (62 FR 8314, February 24, 1997), we have addressed and continue to address concerns about perceived "* * * limited number and distribution of test runs and the inherent variability in levels of emissions * * *" by a number of approaches, including changing emissions averaging periods.

Certainly a statistically-based adjustment to account for emissions variability, and which, in this case, increases the numerical value of the standard (and its longer averaging period) by fifty percent, does not make the standard more stringent.

Finally, the continuous collection of data used to assess compliance with this twice-adjusted standard does not create a limit more stringent that otherwise allowed. As discussed in the preamble to the Credible Evidence Rule, "* * * continuous monitoring of the standards (has) no effect on the stringency of the standard * * *" (62 FR at 8326, February 24, 1997).

Rather, consistent with the rulemaking description process given in Section 4.1.1 of the Credible Evidence Rule Response to Comment Document, we used our "* * * judgment, based on available information, to establish emissions standards at (appropriate) levels where the standards can be met on a continuous basis by a well operated and maintained source that employs best demonstrated technology * * *"[44]

Comment: Two industry commenters (2845 and 2859) had the following comments concerning technical issues associated with application of PM CEMS. EPA has not addressed nor resolved the primary technical issues limiting the effective application of PM CEMS at cement plants including:

- Inability to generate a sufficiently wide range of PM concentrations to establish an acceptable correlation (*i.e.,* calibration),
- Accuracy and precision limitations of reference method at PM levels necessary to generate valid correlation, and
- Subsequent changes in effluent matrix and/or PM (*i.e.,* particle size distribution, refractive index, particle density, *etc.*) that influence the stability of the correlation and hence, the relationship between the output of the inferential measurement device relative to actual PM concentration.

Valid PM CEMS correlations cannot be established for PM CEMS at cement plants due to limitations of process operation and control equipment in conjunction with the proposed emission limitation. The requirements in Appendix A, PS–11 for the PM CEMS correlation and in Appendix F, Procedure 2 do not provide a sufficiently reliable means to determine compliance with emission limitations.

Response: We have not identified problems cited by the commenters at existing installations. In fact, PS–11 and Procedure 2 are working well. We note that PS–11 has several features to address correlation issues. For example, PS–11 provides for the addition of a zero point, which enhances the ability to provide a calibration. We note that PS–11 has several features to address correlation issues due to any limitations of process operation and control equipment. PS–11 provides for the addition of a zero point. For example, if control equipment operations cannot be varied adequately to achieve higher PM concentrations, resulting in a cluster of data points at a very low level and making it difficult to achieve PS–11 criteria, then an artificial data point may be selected at zero that allows the correlation curve to be developed that meets the correlation criteria. It also strongly suggests the use of paired trains to insure that accuracy and precision is obtained. Changes in the effluent matrix could potentially be a problem with light scattering technologies but this has not been shown to be a problem with existing installations. This would not be a problem with beta attenuation monitors. Factors that influence the stability of the correlation are addressed in Procedure 2 (40 CFR, Appendix F). Procedure 2 describes the required audits to insure that subsequent measurements are stable and within acceptable limits, thereby ensuring reliable and stable compliance measurement data.

Comment: Two industry commenters (2845 and 2859) had the following comments concerning PS–11 and Procedure 2. The requirements at § 63.1349 for PM CEMS are incomplete and ambiguous and EPA has failed to specify important QA frequencies and other information relevant to the implementation of PM CEMS in accordance with PS–11 and Procedure 2. The proposed Subpart LLL revisions fail to address critical elements including the following sections of PS–11 and Procedure 2:

[44] See Section 4.1.2.1 of the Credible Evidence Rule Response to Comment Document, available at *http://www.epa.gov/ttncaaa1/t1/fr_notices/certcfin.pdf.*

• PS–11 3.20, species reference method as method defined in applicable regulations (Method 5 with 250 °F filtration temperature) but this is inadequate for low concentrations where Method 5I should be used, and is inapplicable to sources with PM that condenses between the stack temperature (mill on and mill off, if applicable) and 250 °F where Method 17 should be used or ASTM D 6831.

• PS–11, 6.2 You must ensure that the averaging time, the number of measurements in an average, the minimum data availability, and the averaging period for your CEMS conform to those specified in the applicable regulation—but none are specified.

• When using PS–11, 6.5 Your CEMS must sample the stack effluent such that the averaging time, the number of measurements in an average, the minimum sampling time, and the averaging procedure for reporting and determining compliance conform to those specified in the applicable regulation—but none are specified.

• Procedure 2, 10.3 You must conduct a response correlation audit (RCA) and a relative response audit (RRA) at the frequency specified in the applicable regulation * * * but none are specified.

• Procedure 2, 10.3, You must perform an RRA at the frequency specified in the applicable regulation * * * but none is specified.

• When using Procedure 2, 10.3(7) You must perform an RCA at the frequency specified in the applicable regulation * * * but none is specified.

• When using Procedure 2, 10.9 You must report the accuracy results for your PM CEMS at the frequency specified in the applicable regulation * * * but none is specified.

Response: We recognize that PS–11 does not specify a reference method; we have revised the final rule to specify Method 5 or Method 5I (40 CFR part 60, appendix A) as the reference method. Facilities with issues in application of these reference methods, may petition the Administrator for alternatives or modifications under § 60.8(b) or § 63.7(f). The averaging times and data reduction specifications have been added to §§ 60.63(c) and 63.1350(b) of the rule. There are no specific data availability requirements, §§ 60.63(g) and 63.1348(b) require that monitoring be conducted at all times the affected source is operating except for periods of monitoring system malfunctions, repairs, or quality assurance/quality control activities. The language of the final rule has been revised to specify the frequency of the Relative Response Audits (annually) and the Response Correlation Audits (every three years), for specifics, *see* §§ 60.63(c)(2) and 63.1350(b)(2). Absolute Correlation Audits are required by Procedure 2 on a quarterly basis.

Comment: One environmental advocacy group commenter (2786) stated that EPA should not eliminate opacity standards in the proposed rule. The commenter stated that there are benefits to having an opacity standard in conjunction with a particulate matter standard. Opacity measurements can be made by anyone who is trained to measure opacity, which can include members of the public and not just inspectors, and opacity measurements are a cheaper method of getting more frequent measurements.

Response: We disagree. Given the sensitivity of the BLD and PM CEMs, we find the opacity requirements to be redundant.

Comment: One environmental advocacy group commenter (2898) stated that EPA should require PM CEMS and retain the opacity monitoring requirements. EPA is proposing installation and operation of a BLD system, along with stack testing using EPA Method 5 conducted at a frequency of five years for demonstrating compliance with the proposed PM emissions limit. As an alternative, a PM CEMS that meets the requirements of PS–11 may be used, and EPA is proposing to eliminate the current requirement of using an opacity monitor. The proposed rule solicits comment on making the use of a PM CEMS a requirement. The commenter stated that EPA should both require CEMS and retain the use of opacity monitors.

EPA should abandon the BLD system requirement outlined in the proposed rule and mandate the use of PM CEMS instead. The agency previously concluded that PM CEMS is a superior monitoring technology that can be implemented at a reasonable price. EPA has found that BLD systems, standing alone, are inadequate to verify compliance and has also found that continuous opacity monitors (COMS) operate as a useful check on PM emissions and proper operation of PM CEMS.

Providing a superior level of compliance assurance is not the only benefit of PM CEMS. EPA has acknowledged that the assumptions to assure compliance are fewer and less conservative (direct measure of the standard is the top of the monitoring hierarchy), CEMS mean facilities need to monitor only one emissions parameter to assure compliance rather than multiple operating limits, often relevant to more than one standard, and that the cost of installing PM CEMS technology is reasonable.

Response: We would support the use of multi-metal CEMS, should they become available. We have not yet seen evidence that COMS are well-suited for continuous compliance as are BLD or PM CEMS, so that requiring their use as a backup system would add monitoring costs to no special environmental benefit.

Comment: Several industry commenters (2832 and 2859) opposed the proposed requirement to install CEMS in order to satisfy compliance assurance monitoring (CAM) for selected pollutants. Instead, the commenter proposed that CAM requirements be satisfied using periodic stack testing to the extent that stack testing is requested or required by State air permits. According to EPA's proposal, the MACT floor for new and existing sources in this industry will be determined by stack testing results of sources within the MACT pool. If EPA were to finalize a numeric emissions limitation based on this approach to setting the new and existing MACT floors, that limitation will be based on the same stack testing data. CEMs will have played no role in this process. It stands to reason that compliance assurance should be based on stack testing results, and not a CEMS data that has played no part in this process.

One industry trade association commenter (2916) stated that EPA can achieve a reasonable assurance of compliance without the use of CEMS. The requirement to use CEMS is unreasonably costly and unnecessary, given that other reliable means of showing compliance are available for all relevant pollutants. Raw material sampling and kiln parametric monitoring, in conjunction with periodic testing, would work well for THC and HCI. The sorbent trap method for mercury is a good alternative to mercury CEMS and should be retained in the final rule. EPA should refrain from requiring PM CEMS in the final rule. Bag leak detection systems and parametric monitoring of ESPs are proven methods for assuring ongoing compliance with PM limits.

Response: We disagree. In the case of THC, emissions may change significantly due to a process change without any advance indication. In addition, the THC emission limits were established using data from CEMS, and the standard itself is a 30-day average, requiring 30 monthly measurements (only practically obtainable with a CEM). Therefore, CEMS are the obvious

compliance assurance choice. In the case of mercury emissions, short term test data do not necessarily reflect the long term emissions. In addition, the performance of the available mercury controls may be significantly affected by operational factors. To devise a test plan to clearly establish the performance of mercury control under all conditions would be difficult, and for that reason it would be difficult to establish the proper control device operating parameters and operating limits. Therefore, mercury CEMS are essential in demonstrating continuous compliance with the mercury emissions limits. If the facility does not have a wet scrubber, changes in raw materials, or fuels could significantly increase emissions without any indications unless a CEMS is used.

B. What are the significant comments and responses on 40 CFR part 60, subpart F?

Comment: Several State and environment advocacy group commenters (62, 65, and 69) objected to EPA not proposing standards for greenhouse gas (GHG) emissions under the proposed NSPS. One State commenter (62) criticizes EPA's decision to not propose any NSPS for GHG emissions from Portland cement plants. The commenter states that even though the Courts have confirmed that GHGs are air pollutants subject to regulation under the CAA, EPA has not issued any such standards, instead issuing an Advance Notice of Proposed Rulemaking (ANPR) that seeks public comment on whether to regulate GHG emissions under the CAA at all. State commenter 62 protests this course of action, and requests that EPA revise the proposed rule to include NSPS for GHG emissions.

According to State commenter 62, EPA's failure to propose NSPS for GHGs in the proposed rule violates section 111 of the CAA (42 U.S.C. 7411), which requires EPA to determine whether GHG emissions emitted by cement plants may endanger public health or welfare, and to promulgate NSPS for each air pollutant emitted by cement plants that contributes significantly to global warming pollution. The State commenter states that as the second largest industrial source of carbon dioxide emissions in the United States (emitting 45.7 million metric tons of carbon dioxide in 2006), the cement industry contributes significantly to GHG emissions and there can be no serious dispute that GHG emissions endanger public health and/or welfare. The ANPR that EPA issued instead is no substitute for action and does not commit to regulating GHG emissions from any source. State and environmental advocacy group commenters 65 and 69 submitted several exhibits in support of their comments. A summary of the comments is presented here. To review the entire comment, please refer to the comment at *www.regulations.gov.* The State and environmental advocacy group commenters state that:

- EPA is required by section 111 to promulgate NSPS for all pollutants emitted by a regulated source category including CO_2 emission from cement plants and EPA's assertion that section 111 does not compel the agency to regulate CO_2 emissions is contrary to the Act's plain language.
- Congress has expressly directed that NSPS address the emissions of "any" air pollutant, a term that plainly encompasses CO_2.
- At a minimum, in directing that NSPS be established for sources that cause, or contribute significantly to air pollution which may reasonably be anticipated to endanger public health and welfare, Congress showed that it meant to require limits on emissions of any pollutants that cause or contribute to such endangerment. Because cement plants emit CO_2 in such amounts that those emissions significantly contribute to "air pollution which may reasonably be anticipated to endanger public health or welfare," EPA is legally required to issue standards of performance limiting those emissions. EPA cannot rationally assert that cement plant CO_2 emissions do not meet these criteria, and the Agency's refusal to promulgate standards of performance is therefore unlawful.
- EPA's contention that it can refuse to regulate CO_2 emissions on the basis of interactions with other CAA provisions is impossible to reconcile with section 111, because that section clearly contemplates that EPA will adopt standards of performance covering pollutants that have not previously been subject to regulation under the Act.
- Cement plants' emissions of CO_2 cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare and significantly contribute to global climate change.
- There are existing technologies that can reduce emissions of CO_2 from cement plants. In addition to the suggested technologies, other measures that would also have CO_2 reduction benefits include shifting from high carbon content fuels, such as coal, to lower carbon content fossil fuels, such as natural gas.
- Section 111(d) of the Act provides that EPA shall require States to implement and enforce standards of performance for existing sources when the pollutant at issue is not regulated as a criteria pollutant or hazardous air pollutant.
- EPA must also consult with the U.S. Fish and Wildlife Service and National Marine Fisheries Service to insure that the final rule is not likely to jeopardize recently-listed endangered species.

Response: Due to issues related to the regulation of GHGs under the CAA, no standards of performance for GHGs were included in the proposal and none are being included in the final amendments. Promulgating a standard without first proposing it does not follow the accepted process of proposal and public comment that is required of EPA rulemakings. Also, we have not gathered the information we need on GHG emissions and control strategies for the Portland cement industry. EPA's decisions and plans for regulating GHG from this industry are discussed earlier in this document (*see* section IV.B.1.g).

Comment: Several private, State and environmental advocacy group commenters (59, 60, 63, 68, 70, 71, 72) approve of the proposed limits for NO_X or believe more stringent limits are appropriate. One private commenter (59) states that the proposed standard is unjustifiably high, and will allow for greater NO_X emissions than can be achieved with the installation of off-the-shelf pollution control technology. The commenter recommends a standard of no greater than 0.5 lb NO_X/ton clinker and states that SCR is an effective and proven technology to reduce NO_X emissions from cement kilns and can reduce NO_X emissions from cement kilns by greater than 90 percent, consistent with what has been observed with SCR in other industries. According to the private commenter, SCR can achieve this performance with cost-effectiveness of approximately $1,500–$3,800/ton NO_X, easily within regulatory cost thresholds for many NO_X control programs. Regarding concerns over dust and plugging, the commenter cites three recent installations of SCR on cement kilns that show that SCR vendors can properly design and install units which manage the dust and successfully operate for many years. The commenter stated that numerous SCR companies believe that they can design and supply SCR systems for NO_X control at cement plants where they will have to guarantee performance levels in legal contracts, and thus they would be at significant financial risk to advertise and sell an SCR system that was actually going to fail. The effectiveness

of the technology to reduce NO_X and other pollutant emissions from cement kilns, as demonstrated by the SCR installations on cement kilns in Europe and the numerous SCR installations on other heavy industries like coal-fired power plants and waste incinerators, is supported by the marketing, technical assessments, and reports prepared by numerous experts on this subject, including: Three (3) cement companies, five (5) SCR manufacturers, an independent blue ribbon panel, the U.S. EPA (twice), and the European IPPC. State commenter 68 believes that EPA's proposed NO_X limit of 1.5 lb/ton clinker underestimates the reductions that are achievable with SCR technology and recommends that SCR be identified as BDT for this sector and is "the regulated future" for cement kilns. The commenter states that the agency has noted that hybrid combinations of SNCR and SCR could be used in new cement kilns to achieve greater reductions than would be possible with SNCR alone. SCR is also named by EPA as available technology for cement kilns in the Regulatory Impact Analysis for the Final Clean Air Visibility Rule or the Guidelines for Best Available Retrofit Technology (BART) Determinations Under the Regional Haze Regulations. As far back as 1999, EPA included SCR in a list of control technologies available for both dry and wet cement manufacturing processes, as did a Pechan & Associates Report prepared for EPA's Office of Air Quality Planning and Standards in September 2005. Therefore, SCR technology for the cement manufacturing sector has been considered feasible technology by EPA for some time.

One State commenter (60) states that the NO_X emission limit should be lowered to 1.0 lb/ton of clinker on a 24 hour rolling average for new PH/PC kilns and a limit added of 2.0 lb/ton of clinker on a 24-hour rolling average if reconstruction or modification of the kiln commences after June 16, 2008, and the final configuration is a long wet kiln or a long dry kiln. The State commenter states that the recommendations regarding PH and PH/C kilns should apply equally to projects at greenfield sites and brownfield sites stating that many of the advances in NO_X control in the U.S. and Europe have been made at brownfield sites whether they have involved new kilns or reconstruction or modification of existing kilns.

To support the State commenters recommended limits for NO_X, the commenter provided the following information and included several supporting documents as attachments to the comments:

- A long-term value of 1.46 pounds per ton (lb/ton) of NO_X clinker was achieved with no add-on control equipment when not accounting for slag use and 1.38 lb/ton when accounting for slag use at TXI Kiln 5 (a PH/C kiln) in Midlothian, Texas.
- A long-term value of 1.98 lb/ton was achieved with no add-on control equipment at Cemex Sta. Cruz (a PC/H kiln) in Davenport, California. The project involved an improvement to an existing calciner (commissioned in 1997) on an existing kiln to comply with an existing NO_X limitation.
- Titan America (a PH/C kiln) in Medley Florida and Giant Cement in South Carolina where average values of 1.62 and 1.88 lb NO_X/ton were documented for new kilns with no add-on control equipment at brownfield sites.
- The results from the existing SCANCEM (an affiliate of Lehigh) Skövde PH kiln where emissions were reduced from 4.4 lb NO_X/ton (1995) by installation of a SNCR system and which achieved 0.72 lb/ton in 2005.
- The results from the existing SCANCEM Slite PH/C kilns where emissions were reduced from 4.0 lb NO_X/ton (1995) by installation of an SNCR system and which achieved 1.01 lb/ton in 2005.
- The results from the existing Radici Cementeria di Monselice PH kiln where emission reductions to values as low as 0.20 lb NO_X/ton were demonstrated by installation of a SCR system. The supplier guaranteed reduction of 90 percent and realized reductions as high as 97 percent.

State commenter 60 states that based on the foregoing, reductions on the order of 75 percent are achieved by well-designed SNCR systems and 90 percent by SCR. Given that a new kiln can be designed such that emissions can be controlled to values between 1.5 and 2 lb/ton before add-on control, 1 lb/ton is achievable by SNCR. Given a kiln with less sophisticated design or particularly difficult raw materials achieving 3 to 5 lb/ton, SNCR or SCR or a combination of the two can reduce emissions to values much less than 1 lb/ton. The commenter states that the proposed averaging time of 30 days is a tremendous concession to the industry. The availability of reagent injection makes it easier to achieve the proposed standard on a 24-hour basis. The lowest permit limit for a project under construction in the United States applies to the Drake Cement in Arizona. The value is equivalent to 1.14 lb/ton on a 24-hour basis. A contract was awarded to F.L. Smidth who developed the calciner that achieves 2 lb/ton or less at TXI, Titan and Cemex as discussed above. The limit will be achievable using an SNCR system.

State commenter (60) states that because long wet and long dry kilns use much more energy to make a ton of clinker, a higher NO_X limit may be acceptable for these kilns. State commenter 60 agrees with EPA's assumption that new projects triggering the NSPS will actually result in a PH/C kiln. A project that might trigger a prevention of significant deterioration (PSD) review at a long kiln will probably incorporate emissions control measures to avoid PSD and a BACT determination for NO_X and SO_2. The measures to avoid PSD will also likely avoid the short-term emissions increases that would otherwise trigger the NSPS.

Finally, with respect to the reconstruction provisions, it is not likely that a company will actually invest 50 percent of the value of an existing long kiln without taking the opportunity to make it much more energy efficient through conversion to a PH/C kiln. The State commenter states that a separate standard for long kilns will avoid the unnecessary relaxation of the limits applicable to PH and PH/C kilns. The State commenter listed the following NO_X reduction technologies that have been demonstrated for long kilns and submitted supporting documentation as attachments to the comment:

- Conversion from direct to indirect firing in conjunction with the installation of a multi-channel (Low NO_X) burner;
- Mid-kiln fuel injection (including tires);
- Near mid-kiln pressurized air injection;
- SNCR at long kilns; and
- Combination of SNCR with air injection.

One State commenter (63) described the advances in technology for controlling NO_X emissions, especially SNCR and SCR, from Portland cement plants, and requests EPA consider the technological improvements and their applications when establishing NO_X emission limits. The State commenter states that EPA continues to play a crucial role in encouraging innovation and in mobilizing supply chains to deliver technologies that improve our air quality and environment including the continued tightening of emission limits. This encourages the industries such as the cement industry to work closely with equipment and component suppliers to ensure significant reductions in emissions in a timely and economical manner. The commenter states that with the improved processes

that lower uncontrolled NO_X emissions and with the addition of SCR, NO_X limits of 0.25–0.5 lb NO_X/ton clinker are achievable.

One State commenter (70) supports the proposed level for new, modified and reconstructed kilns of 1.50 lb/ton of clinker for NO_X. Facilities can meet the 1.50 lb/ton of clinker for NO_X, with SNCR alone or with SCR (either as a supplement or as an alternative to SNCR).

One State commenter (71) states that if new or modified systems would likely use the preheater/precalciner configuration, then what is achievable must be looked at and then apply the effect of the controls. If this approach is followed, the appropriate NO_X emission limit should be in the range of 1.14 lb/ton of clinker. According to State commenter 71, the traditional long dry cement kilns can attain a NO_X emission level of 2.73 lb/ton of clinker without utilizing SNCR control technology. Based on an SNCR control efficiency of 50 percent, a NO_X emission level of 1.3 lb/ton of clinker is achievable. As a result, cement kilns with SNCR control technology can achieve a NO_X emission level between 1.14 and 1.3 lb/ton of clinker. However, this State commenter believes that the NO_X emission level from cement kilns can be further reduced by utilizing SCR control technology. State commenter 71 states that EPA dismisses the SCR technology used in Europe and concedes that some mechanical problems were experienced in the early stages with plugging but these problems were resolved and the system remained in service for four years at the Solnhofen facility in Germany. According to the commenter, waste disposal should not be an issue because the spent catalyst could be added to the process as a source of alumina. State commenter 71 previously conducted a Best Available Retrofit Control Technology (BARCT) assessment for a cement plant in our area and recommended SCR as the BARCT for this facility.

One environmental advocacy group commenter (72) states that the NSPS emission rate for NO_X from cement plants should be lowered to 0.5 lb/ton of clinker on a 24 hour rolling average because of the ability of current plant designs to achieve very low rates of NO_X emissions without the addition of add-on pollution controls. Currently available add-on controls can reduce NO_X emission levels below the proposed 1.5 lbs of NO_X per ton of clinker. There is a considerable operational experience with SNCR that shows it's capable of reducing NO_X emissions to 1 lb or less/ton of clinker when combined with a modern-designed kiln. SCR has been demonstrated in the utility industry and Europe and can further reduce emissions.

Response: The starting point for the NO_X limit was the emission level that could be achieved with no add-on control device for NO_X. To achieve the lowest NO_X levels without add-on controls involves the use of state-of-the-art combustion technologies in conjunction with PH/PC kilns. In developing the proposed limits for NO_X, we used emissions data showing that three recently permitted kilns had achieved average NO_X levels of 1.62, 1.88, and 1.97 lb/ton of clinker through the use of combustion technologies such as low-NO_X burners and staged combustion in the calciner (SCC). We assumed that through advanced combustion technology, an emission level of 2.5 lb/ton of clinker was generally achievable. Following proposal, commenters supporting the limit, commenters recommending lower limits, and commenters recommending higher limits submitted additional data on NO_X emissions from U.S. kilns as well as kilns operating in other countries. The data are summarized below.

TABLE 9—CEMENT KILN NO_X EMISSIONS DATA

Kiln	Kiln type	Process controls	Add-on controls	NO_X emissions before add-on control (lb/ton clinker)
TXI, Midlothian, TX, Kiln 5 (2003)	PH/PC	LNB, slag	None	1.38
		LNB	None	1.46
Cemex, Santa Cruz, CA (2006–2007)	PH/PC	SCC	None	1.98
Titan America, Medley, FL (2007, 2008)	PH/PC	SCC	None	1.62
Giant Cement, Harleyville, SC (2006, 2007)	PH/PC	SCC	None	1.88
TXI Riverside, CA	Long Dry	Combustion, Process	None	1.5
	Long Dry	Combustion, Process	None	1.5
Lafarge Sugar Creek, MO (2004–2005)	PH/PC	LNB, SCC	None	3.58
Lafarge Calera, AL (2006–2007)	PH/PC	LNB, SCC	None	2.06
Lafarge, Alexandria, Egypt (2007)	PH/PC	LNB, SCC	None	2.03
Lafarge, Richmond, Canada (2007)	PH/PC	LNB, SCC	None	2.64
Lafarge, Port La Nouvelle, France (2007)	PH/PC	LNB, SCC	None	2.65
Lafarge, Ewekoro, Nigeria (2007)	PH/PC	LNB, SCC	None	3.38
Lafarge, Kujawy, Poland (2007)	PH/PC	LNB, SCC	None	3.4
Lafarge, Harleyville, U.S. (2007)	PH/PC	LNB, SCC	None	3.48
Lafarge, Tetouan, Morocco (2007)	PH/PC	LNB, SCC	None	4.07
			AVG	2.41

The average uncontrolled NO_X emissions for the listed kilns are 2.4 lb/ton of clinker. If the result for the long dry kiln is removed, the average is 2.5 lb/ton. This result is consistent with the baseline NO_X level used by EPA in the development of the proposed NO_X limits. To allow for variations in process, fuel or feed, EPA selected a baseline level of 3.0 lb/ton of clinker.

To arrive at the emissions limit for NO_X, we evaluated two add-on control technologies for BDT: SNCR and SCR. EPA agrees that SCR is a promising technology for the control of NO_X emissions from Portland cement plants. The Agency also agrees that SCR is an attractive control alternative in that it has the advantage of reducing emissions of other pollutants in addition to reducing NO_X by 80 to 90 percent. However, although SCR has been demonstrated at a few cement plants in Europe and has been demonstrated on coal-fired power plants in the U.S., the Agency is not satisfied that it has been

sufficiently demonstrated as an off-the-shelf control technology that is readily applicable to cement kilns. The experience with SCR use on coal-fired power plants in the U.S. is not directly transferrable to Portland cement plants with the main difference being the lower dust loadings at power plants than would occur at cement plants. (Note this is not an issue for CEMS because they can be located downstream of the PM controls.) The experience at European kilns showed long periods of trial and error before the technology was operating properly. In particular, problems with the high-dust installations and the resulting fouling of the catalyst were problematic. This and other problems were eventually overcome, although at one of the early facilities to add SCR, the use of the SCR was discontinued in favor of a selective noncatalytic reduction (SNCR) system while the facility owners and operators gathered additional data to assess the advantages and disadvantages of the SCR system in comparison to the SNCR system.

State commenters also noted that it would be possible to combine SNCR and SCR technology on the same kiln, thereby significantly reducing the amount of catalyst required. This could reduce the problem with catalyst fouling. We see no technical impediment to combining SNCR and SCR technology. But at the same time we have no data on this combined system to assess its effectiveness or potential for catalyst fouling.

At this time we therefore do not agree with the commenters that SCR can be considered best demonstrated technology and as a result have not established a NO_X emission limit based on that technology.

We determined SNCR to be BDT and applied a control efficiency for the SNCR to the baseline uncontrolled level to determine the appropriate NO_X level consistent with application of BDT. As discussed in the preamble to the proposed rule, SNCR performance varies depending on various factors, but especially the normalized molar ratio (NMR), or the molar ratio of ammonia injected to NO_X- higher removal efficiencies are associated with a higher NMR. SNCR performance has been shown to range from 20 to 80 percent NO_X removal. At proposal we used an efficiency of 50 percent as representative of SNCR performance on average. Since then, additional information on SNCR performance has become available including data supplied by State commenters as well as a 2008 report by the Portland Cement Association. These data are summarized below. Reported removal efficiencies range from 25 to over 90 percent. According to a 2008 PCA report, ammonia slip occurs at molar ratios generally above 1.0. The graph below illustrates the relationship between the ammonia molar ratio, or NMR, and the performance of SNCR. EPA also examined the data to determine if uncontrolled NO_X emissions affected SNCR performance since SNCR performance has been shown to improve with higher uncontrolled NO_X levels, but the data here did not show any effect between initial NO_X concentration and SNCR performance. Using the data below, the average removal efficiency of SNCR is 60 percent. Thus, EPA believes the 50 percent removal efficiency used to establish the NO_X emission limit is a reasonable estimate of the SNCR performance that allows for an operating margin considering reasonable worst-case conditions that can be expected within the industry or source category as a whole. This operating margin should be sufficient to allow facilities where a greater than 50 percent reduction may be necessary to meet the 1.5 lb/ton clinker limit to increase ammonia injection to achieve greater than 50 percent reduction without causing ammonia slip.

TABLE 10—SNCR NO_X REMOVAL EFFICIENCY

Kiln	NO_X emissions before SNCR (lb/ton clinker)	NO_X emissions with SNCR (lb/ton clinker)	Removal efficiency (%)	Ammonia molar ratio
SCANCEM Skovde, Sweden (1995,2005)	4.4	0.7	84	1–1.2
SCANCEM Slite, Sweden(1995,2005)	4.0	1.0	75	1.2–1.4
Ash Grove, Durkee OR (1994 test)	4.75	1.0	> 80 for most	.....
Suwannee American (2008)	Not reported	1.4	.....	.....
Florida Rock	3.1	1.7	47	0.1–0.65
	3.8	2.2	42	0–1
1	7.0	3.2	55	0.7
2	4.3	3.0	30	0.7
3	4.6	2.3	50	0.7
4	4.0	2.0	50	0.6–0.7
5	3.8	2.9	25	.....
6	4.0	2.4	40	0.25
6	4.0	2.0	50	0.5
7	3.4	1.7	50	0.5
7	3.6	0.9	75	0.8
7	3.2	0.6	81	1
8	5.0	0.4	92	1.0–1.2
8	5.0	1.1	78	1.0–1.2
9	.....	0.9	80–85	1.2–1.4
AVG.	4.2	1.7	60	.....

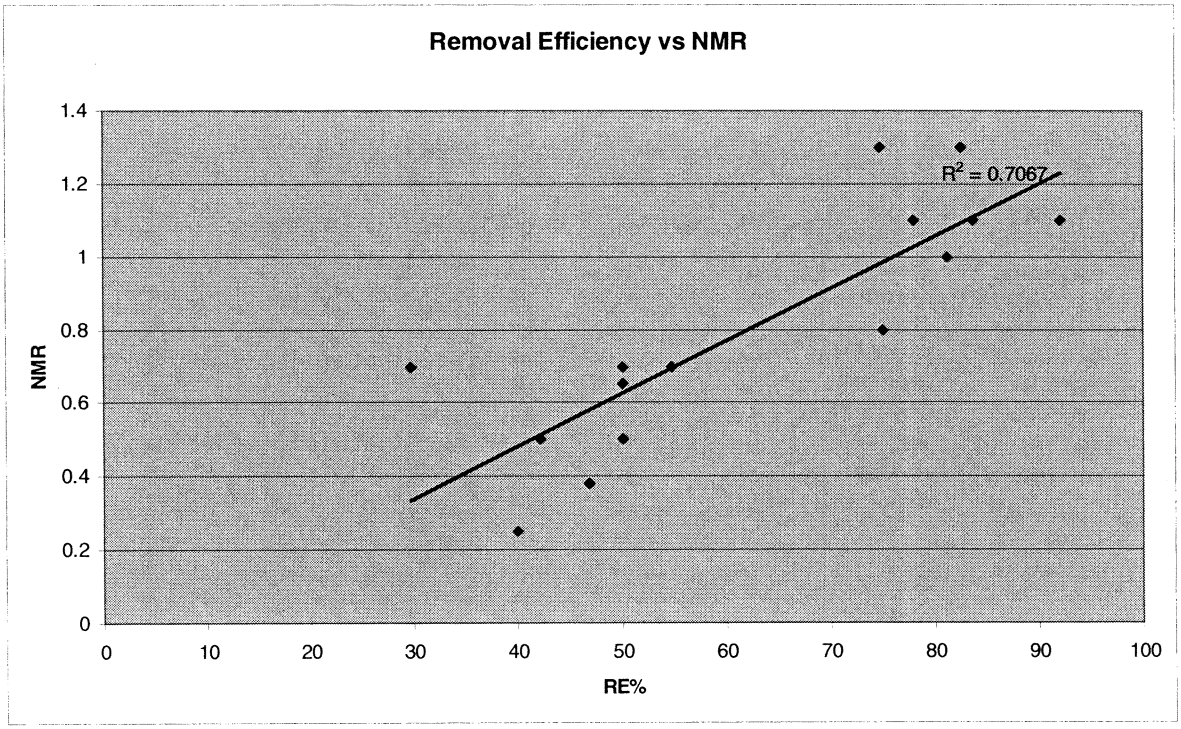


Figure 2, NOx Removal Efficiency vs. NMR

Comment: Several industry commenters (64, 73, 74, 75, 76, 77, 78) commented on the difficulty of consistently achieving the NOx limit of 1.5 lb/ton clinker limit over time and at all new kiln locations and favored a higher limit or no limit. They state that it is important to note that consistent, long term compliance with this proposed limit may be difficult to achieve and there will be instances where compliance may not be possible at all. According to the industry commenters, different factors can influence NO_X emissions such as:

(1) *Fuel type/quality*—Lower volatility solid fuels such as petcoke produce higher NO_X emissions. Also, any problems with fuel quality as delivered to the plant can have a negative impact on NO_X emissions;

(2) *Raw mix burnability*—Harder burnability will give higher NO_X emissions. Burnability is dependent on raw mix chemistry, fineness, and chemical deviation (impacted by homogeneity and operation of the quarry, which can vary over extended periods of time);

(3) *Kiln bypass system*—The size of the bypass for a given plant (if needed), and consequently the bypass emissions, depends on the chemistry of the raw mix and fuel(s) and the product standards that must be maintained to comply with regulations;

(4) *Size/type of the preheater*—New in-line calciners will normally give the lowest NO_X emissions; however, in cases where the type of fuel(s) used dictates the need for a separate calciner (such as may be applied to utilize waste materials), NO_X emissions will be higher. In addition, sometimes a new project will consist of upgrading an existing pyro system. In many of these cases the layout of the existing equipment is such that it cannot be modified to perform as well as a brand new calciner system, and will therefore have higher NO_X emissions;

(5) *Sub-standard operation and maintenance of the kiln system*—This is the responsibility of the cement producer, but it is also expected that NO_X emissions will increase slightly over a typical campaign between annual maintenance stoppages due to normal "wear and tear" of the system; and

(6) *SNCR efficiency and slippage*—The ability of an SNCR system to reduce NO_X emissions is not the same for all systems, especially for an existing pyro system that has been upgraded (due to potential lack of an optimum injection point) or a very large pyro system (due to lack of optimum mixing of ammonia and preheater gas).

One industry commenter (75) states that although the removal efficiency of SNCR can theoretically be improved by increasing the quantity of ammonia injection, there is a practical limit to this approach. As ammonia injection rates increase, the potential formation of a secondary plume due to "ammonia slip" increases. In addition, sulfur in the raw materials results in SO_2 and SO_3 in the exhaust, which decreases the efficiency of ammonia injection and leads to operational issues such as solids accumulation and plugging downstream of the SNCR. As the industry commenter noted in the permit application for its proposed kiln, facilities with lower BACT emission limits are also those facilities with lower sulfur raw materials, notably plants located in Florida, thereby improving the efficiency of SNCR. Given the baseline NO_X emissions expected at a new plant, industry commenter 75 would need a control level of at least 70 percent to meet the proposed limit of 1.5 lb/ton. Industry commenter (75) is not confident that this can be done with SNCR. Therefore, the industry commenter recommends that the NO_X standard be established at 1.95 lb/ton, which reflects a level of control achievable with the use of SNCR by all facilities without introducing the negative effects associated with pushing for high control levels.

One industry commenter (76) states that assuming a facility is already operating with best combustion practices (*i.e.,* indirect fired fuel supply systems, low primary air burners, *etc.*) then the burnability of the raw mix has

the greatest single impact on NO_X emissions. Statistically speaking, most preheater precalciner cement kiln plants worldwide emit an uncontrolled NO_X emission of 3.8 to 4.2 lb NO_X/ton of clinker. With a 50 percent NO_X reduction rate from the application of SNCR technology, a controlled emission rate of 1.9 to 2.1 lb NO_X/ton of clinker could be expected for most kilns. As such, a 1.95 lb NO_X/t clinker limit for all new kiln applications seems achievable. The issues arise when people arbitrarily apply the 50 percent reduction potential of SNCR to lower baseline emission numbers. (*i.e.,* at a 3.2 lb NO_X/ton of clinker uncontrolled emission, SNCR could reduce it to 1.6 lb NO_X/ton of clinker). While this might be true on an isolated case basis, it would be unwise to approach such a low level for a new NSPS limit for all new kilns because of the issue of burnability. In some cases it might be possible to reduce the baseline NO_X levels with integrated control systems, such as Multi-Stage Combustion (MSC) installed on low NO_X calciner system; but here again, the practicality of sustaining stable, continuous operation while simultaneously reducing the baseline NO_X by 10 to 30 percent is very site specific. Industry commenter 76 believes that a controlled emission rate of 1.95 lb NO_X/ton of clinker can be achieved by all new kiln applications providing SNCR is used as the principle measure to control NO_X emissions, but excluding that portion of gases that may be extracted through a bypass system.

One industry commenter (77) believes that under the worst-cast combinations of raw materials, fuels and cement specifications and with the application of SNCR technology, a controlled emission rate of 2.0 lbs of NO_X per ton of cement clinker can be achieved by all new kiln applications. However, if the kiln must incorporate a bypass for alkalis, chlorides or sulfur, the NSPS limits must allow for increased NO_X emissions on a plant by plant basis due to the fact that bypass amounts can be anywhere from 5 percent to 100 percent in size.

One industry commenter (78) states that very few kilns with alkali bypasses would have a chance of meeting the proposed limit long-term. One industry commenter (83) requested that EPA clarify whether the NO_X limit applies only to a kiln's main stack or both the main and bypass stacks.

One industry commenter (73) believes that EPA failed to appropriately consider variables that affect uncontrolled NO_X emissions from preheater/precalciner kilns employing SCC and LNB on an industry-wide basis. As a consequence, EPA relied upon a limited database that did not reflect these variables and then made assumptions reflecting an incomplete understanding of variability in uncontrolled NO_X that result from them. Industry commenter (73) recommends that EPA revise its proposed baseline NO_X emission standard from 1.5 to 2.0 lb/ton of clinker, and allow for adjustments of the standard upward from this value when bypasses are used, unusually hard burning raw mixes are used, or specific clinker types (such as oil well clinker) that require non-typical burning methods is being produced. When bypasses, hard burning mixes and/or clinker specifications require non-typical operational parameters, an adjustment factor should be allowed and evaluated on a case-by-case basis. The fact that individual kilns may be able to achieve a NO_X emission rate as proposed (or even lower rates) is not determinative of what is an appropriate standard for the NSPS.

Industry commenter (73) states that fuel volatility plays a major role in NO_X emission control. The uncontrolled NO_X generated in the precalciner alone can vary by as much as 1.4 g/kg of clinker (2.8 lb/ton clinker) based on fuel volatility. Industry commenter (73) states that modern preheater/precalciner kilns fire approximately 55–65 percent of their fuel in the precalciner. The nitrogen content in the fuel is the main factor affecting fuel NO_X formation. The fuel NO_X produced in the precalciner is not directly proportional to the nitrogen content of the fuel. It also depends on the chemical form of the nitrogen in the fuel and the volatility of the fuel. Typically, fuel nitrogen in coals used by PH/PC kilns varies between 1.0 and 2.0 percent. This difference can impact the uncontrolled NO_X by as much as 1.5 lb/ton of clinker.

Industry commenter 73 states that a PH/PC kiln system uses hot gases from the kiln to both dry and heat the raw materials prior to calcination. The effectiveness of this system is related to the moisture content of the raw materials and their ability to absorb heat from the gases. If additional heat is required to dry or heat the raw materials, gases from a separate fuel-fired furnace or the clinker cooler are ducted to the raw mill. As a result, the moisture content of the raw materials directly influences the NO_X emission rates. High moisture materials require additional energy to dry the materials in the raw mill and/or preheater. This increased need for energy contributes to the amount of NO_X emitted if the excess energy comes from burning additional fuel. Some plants may have up to 20–25 percent moisture content in their raw mix—which results in a 15 to 20 percent increase in the kiln's specific heat consumption, as compared to a "standard" raw mix that contains approximately 5 percent moisture. This additional energy need results in the combustion of more fuel which ultimately results in more uncontrolled NO_X.

On NO_X emissions from alkali bypasses, commenter 73 states that because the gases within the bypass are not allowed to remain in the optimal SNCR temperature range, SNCR is not a feasible control option for these gases. The commenter shows (in graph form in their comments) that for a certain size kiln, bypassing 25 percent of its kiln gases will have an incremental increase of approximately 0.42 lb/ton of clinker in the controlled NO_X emission rate.

Industry commenter 73 states that the three major kiln suppliers require a cement company to provide detailed information on raw materials (including moisture content), fuels, and clinker quality specifications prior to preparing a quotation and specifying emission guarantees. Uncontrolled 30-day average NO_X emissions can vary from less than 1.6 to greater than 4.6 lb/ton of clinker. SNCR has been demonstrated to reduce NO_X emissions from cement kilns; however, SNCR has not been used on cement kilns for an extended period of time. High removal efficiencies such as those stated in the preamble (*i.e.,* 63 percent at an ammonia-to-NO_X ratio of 1.0) may result in adverse product quality or environmental impacts that are undesirable. In addition, the use of SNCR on larger kilns (>2,000,000 ton/yr capacity) may not be as effective due to the larger calciner duct diameter and the inability of the ammonia-reagent to mix thoroughly with the combustion gases. Based on limited data, removal efficiencies of 25–50 percent appear to be achievable without these adverse impacts. Therefore, industry Commenter 73 believes that since NSPS is applicable to all new or reconstructed kilns, a reasonable baseline NSPS limit taking into account typical operating conditions and limitations stated above is 2.0 lb/ton of clinker. However, when non-typical conditions exist (bypass, hard burning mixes, and specific clinkers that require non-typical burning methods), an adjustment upward from the baseline value is appropriate and should be made on a case-by-case basis.

Industry Commenters (64, 73) stated that the proposed NO_X limitations are substantially more stringent than the most stringent NO_X limit that applies to cement plants in Europe, which

converts to approximately 2.5 lb/ton of clinker produced although EPA asserts that this should be considered the "baseline level of control that would occur with no additional regulatory action." The industry commenter states that there are several problems with that analysis: (1) It does not appear that this conclusion is based on a "statistically sound" analysis, as the statute requires; and (2) If the NSPS were set at 2.5 lbs of NO_X per ton of clinker, then all affected facilities would have to meet the limitation continuously, rather than the "average" performance of all affected facilities being at or below 2.5 lb/ton. Therefore, it would appear from EPA's rationale that setting an emission standard of 2.5 lb/ton would require some facilities, even if they have SCC and low-NO_X burners, to implement additional NO_X controls in order to comply continuously with that standard throughout the life of the facility.

The industry commenter states that there may be substantial differences between the NO_X emissions that can be achieved by new, greenfield kilns and what can be achieved by "reconstructed," brownfield kilns. NO_X emissions are a function of fuel type and of raw material type, as described above. Reconstructed cement plants usually will have little or no control over their raw materials and may have limited control over the fuel they can use.

The industry commenter states that EPA also needs to address the achievability of NO_X limitations at cement plants that have bypass stacks to control alkalinity because EPA has not presented any basis for concluding that SNCR is a demonstrated technology for meeting the proposed limits for facilities with bypass systems.

Likewise, while EPA acknowledges that burnability may have a significant influence on NO_X emissions, EPA has not explained how these differences are reflected in its analysis of the BDT and the proposed new NO_X limits. Cement plants with hard-to-burn raw materials face much greater challenges in meeting a NO_X limit and applying SNCR.

Industry commenter (64) agrees with EPA that SCR has not been demonstrated on preheater/precalciner kilns and that there are substantial unresolved issues about the potential for use of SCR at such cement plants. Industry commenter (64) also notes that, in addition to the cost which EPA identified as a disadvantage of a low dust SCR system, there would be substantial adverse energy usage and GHG consequences of re-heating the flue gas for a low-dust SCR system.

Industry commenter (64) also believes that EPA has not given adequate consideration to ammonia slip from the use of SCNR. EPA seems to acknowledge that it does not have data on how ammonia slip will contribute to condensable PM emissions, and what if anything could be done to mitigate that contribution. EPA has not conducted a sufficient technical analysis to support new NO_X emission limits that would effectively require use of SNCR without addressing the ammonia slip issues. Ammonia slip may be a particular problem when SNCR is applied to particular designs, such as pyro systems that have been modified or that are particularly large. The inability of these systems to promote the reaction of ammonia with NO_X also reduces potential control efficiency of SNCR on these systems.

Industry commenter (64) believes that the best approach is for EPA not to amend the NSPS to include NO_X limits. If EPA nevertheless insists on including NO_X in the revised subpart F NSPS, then industry commenter (64) recommends that for preheater/precalciner kilns (whether constructed at Greenfield or brownfield sites), a NO_X emission floor of 1.95 lb/ton of clinker be established as the NSPS limit. This limit would then be modified on a case-by-case basis to account for site-specific factors such as the presence of a bypass stack/duct or difficult to burn limestone or fuels, likely resulting in an emission limit in excess of the recommended floor.

Response: The previous response addresses the industry commenters' concerns regarding the appropriateness of the NO_X emissions limit. Based on the data received prior to proposal as well as data submitted after proposal, we feel confident that a well designed preheater/precalciner kiln using low NO_X process technology such as LNB and SCC will be able to achieve a NO_X emission level of 3 lb/ton of clinker or less and using a well designed and operated SNCR system will achieve NO_X removal efficiencies of at least 50 percent without excess ammonia slip. But should a case occur where NO_X emissions prior to application of SNCR are above 3.0 lb/ton clinker, we have set the limit sufficiently high that a facility could increase the NMR for SNCR to achieve removal efficiencies above 50 percent without causing excessive ammonia slip. Referring to Figure 2 above on NMR verses removal efficiency, we note that a NMR of 1 results in a removal efficiency above 75 percent, where a NRR of 1 equates to a point where excessive ammonia slip can occur.

The industry commenters point to numerous factors that can influence NO_X emissions, fuel volatility and type of fuel nitrogen being two factors mentioned. However, we note that facilities have a choice of fuels. If their current fuel creates a high NO_X situation, then they may need to modify their fuel choice. They again raise the issue of burnability but in the context of certain product types. Again we note that there are numerous facilities that achieve NO_X levels well below 3.0 lb/ton clinker located at various locations, some of which have "hard to burn" raw materials. The industry commenters provided no data to substantiate that the burnability issues associated with product types are any more severe that burnability issues associated with different raw materials. Given these different locations, we would surmise that they also use different coals and possible other fuels. Given the breadth of the data, we find it unlikely that we have not sufficiently covered all the variables that affect NO_X emissions. And also given the operating margin we have applied for SNCR (50 percent reduction on average versus a potential reduction of 75 percent), we continue to believe that the 1.5 lb/ton clinker emission limit is achievable under any reasonable foreseeable conditions without resulting in excessive ammonia slip (and the attendant potential to produce $PM_{2.5}$). Industry commenters note that a larger kiln may have problems with ammonia distribution and an attendant reduction in SNCR efficiency. However, they provided no data to substantiate that claim, and we note that some of the kilns achieving levels well below 3.0 lb/ton clinker are above 1 million tpy in size. For larger kilns, it should be possible to use a split exhaust dust if necessary to achieve the required ammonia distribution.

Some industry comments expressed concern that sources will have to actually be able to reduce emissions to below the NO_X limit in order to not exceed the limit. In proposing the NO_X limits, EPA took this into consideration when it set the NO_X limit as a 30-day average as opposed for example to a 24-hr limit. Doing so accommodates occasional daily excursions and accounts for operational variability.

EPA agrees with the industry commenters that kilns equipped with alkali bypasses cannot be expected to meet the NO_X limit for the portion of the exhaust that goes to bypass. Bypass gases are quickly cooled and do not remain at a temperature long enough to be treated using an SNCR systems. EPA has revised the rule to clarify that for kilns with alkali bypasses, only the main kiln exhaust gases are subject to the NO_X limit. Because all kilns do not

require an alkali bypass and the bypass gas stream is a small fraction of the total kiln exhaust gas flow, the emission of NO_X from the bypass will be minimal.

Comment: Several State and environmental advocacy group commenters (60, 68, 70, 71, 72) stated that the proposed limits for SO_2 were not sufficiently stringent. State commenter (60) recommends deleting the 90 percent reduction option, revising the limit for SO_2 to 0.5 lb/ton clinker on a 24-hr rolling average if the kiln is a PH or PH/PC kiln and adding a limit of 1.0 lb/ton clinker on a 24-hr rolling average if the kiln is a long wet or long dry kiln. State commenter (72) concurs on reducing the limit to 0.5 lb/ton for PH/PC kilns. State commenter (60) states that for PH and PH/C kilns the limit should apply equally to projects at greenfield sites and to projects at brownfield sites. Industry commenter (60) cites kiln performance at brownfield sites that have involved new kilns and reconstructed or modified of existing kilns.

Cement plants in Florida emit on the order of 0.10 lb SO_2/ton clinker. Although these kilns use low-sulfur feed materials, all use coal and rely on the fuel SO_2 control that is inherent in the PH and PH/C designs. The steps include reaction with alkali and incorporation into the clinker in the burning zone, dry scrubbing with finely divided lime in the calcination zone and moist limestone scrubbing in the raw mill. State commenters (60) and (72) cite the performance of the kilns used by EPA to establish the proposed limit. The key kiln (kiln 5 at TXI Midlothian, TX) upon which EPA based the proposed SO_2 standard of 1.33 lb/ton has actually operated at 0.37 to 0.57 lb/ton.

State commenters (60) and (72) state that raw materials in the Midlothian area are known to be high-sulfur and the TXI kiln has a wet scrubber to reduce (non-fuel) SO_2 emissions. The limit for kiln 5 is now approximately 0.95 lb/ton following a production increase authorized by the Texas Commission on Environmental Quality (TCEQ). TXI Midlothian Kiln 5 and two other PH/C kilns (Kilns 1 and 2) operated by Holcim in the same city are controlled by wet scrubbers. All three have wet scrubbers yet there is a vast difference in performance between the TXI Kiln 5 and the Holcim Kilns 1 and 2. The commenter presented data on the SO_2 performance of the 3 scrubber controlled kilns. According to the commenter, the TXI Kiln 5 can consistently achieve SO_2 emissions less than 0.5 lb/ton if required by a permit limit. The higher SO_2 values for the Holcim kilns (>4 lb/ton) represent the first year of joint operation. Thereafter, Holcim Kilns 1 and 2 were operated at levels between 2 and 3 lb/ton. The commenter states that they can choose to run one to four pumps providing reductions in SO_2 emissions ranging from 51 percent with a single pump in operation to 91 percent with four pumps in operation.

State commenters (60) and (72) state that the Ash Grove Chanute PH/C kiln in Kansas achieves less than 0.30 lb SO_2/ton despite high sulfur in the raw materials without even using a wet scrubber. State commenter (60) states that this performance is attained using important innovations (The F.L. Smidth DeSOx system and Envirocare Micromist Lime system) not yet assessed by EPA. Attachments provided as part of the comment describe these technologies. State commenter (60) states that without controls, the proposed Chanute kiln would emit SO_2 at the high rate of 12 lb/ton from raw material sources alone (*i.e.,* exclusive of fuel SO_2). According to state commenter (60), using the described technology, actual emissions from the Ash Grove Chanute kiln are less than 0.25 lb SO_2/ton.

According to State commenter (60), the Holcim Siggenthal PH kiln in Switzerland achieves approximately 0.05 lb SO_2/ton using the POLVITEC coke filter installed in the 1990's. The POLVITEC system is used with various concurrent operational practices to control NH3 (from an SNCR system), SO_2, PM and metals. Among several functions, the coke filter captures the non-fuel SO_2 generated in the PH. The coke is subsequently crushed and then burned with fuel in the main kiln burner. The SO_2 from the PH then behaves like fuel SO_2 and is incorporated into the clinker. Further details are available in an attachment submitted with the comment. The State commenter also states that SO_2 emissions would be significantly less than 0.10 lb/ton of clinker. According to the State commenter, the Siggenthal plant emits much less SO_2 than the average of Holcim cement plants in Switzerland and clearly less than 0.10 lb SO_2/ton.

State commenters (60) and (72) state that the Holcim Untervaz plant in Switzerland achieves between 0.04 and 0.21 lb SO_2/ton using a wet scrubber despite, according to State commenter (72), the presence in the limestone of iron sulfide. Holcim initially installed a dry scrubber at the Untervaz plant in the late 1980's. Recent data provided by the State commenter indicate significant reductions in SO_2 emissions since 2002 largely due to the replacement of the older dry scrubber with a more efficient and economic wet scrubber.

According to State commenter (60), the areas where medium sulfur raw materials are present can implement programs similar to the Ash Grove installation without installing large wet scrubbers, dry scrubbers or coke filters. Finally selective mining of the available raw materials with respect to sulfur content is an important SO_2 control strategy for any new project. In summary, State commenter (60) recommends an NSPS SO_2 limit of 0.50 lb/ton of clinker on a 24-hour basis for PH and PH/C kilns. State commenter (60) states that because long wet and long dry kilns use more energy to make a ton of clinker, a higher SO_2 limit may be acceptable. State commenter (60) agrees with EPA's assumption that new projects triggering the NSPS will result in a PH/C kiln. According to the State commenter, projects that might trigger a PSD review at a long wet or long dry kiln will probably incorporate emissions control measures to avoid PSD and a BACT determination. The measures to avoid PSD will also likely avoid the short-term emissions increases that would otherwise trigger the NSPS. With respect to the reconstruction provisions, the commenter states that it is not likely that a company will actually invest 50 percent of the (undepreciated) value of an existing long kiln without taking the opportunity to make it much more energy efficient through conversion to a PH/C kiln. Nevertheless, the State commenter states that it is advisable to separate out the (unlikely) long kiln projects that trigger the NSPS without resulting in PH or PH/C kilns in order to avoid the unnecessary relaxation of the limits applicable to the much more likely PH and PH/C kilns. According to the State commenter, scrubbers are available for long kilns just as they are available for PH and PH/C kilns. Other suggested strategies cited by the commenter include (1) Near mid-kiln pressurized air injection; and (2) Chains near the entrance of the kiln that can improve contact between the incoming wet limestone and the SO_2-laden exhaust gases containing both raw material and fuel sulfur.

State commenter (60) states that good SO_2 control will make it possible to employ more aggressive NO_X control and that the control of NO_X and SO_2 will also minimize the formation of ozone and fine PM in the environment.

State commenters (68, 70, 71) stated that State and local experts, who have had long experience with this industry, believe that the proposed NSPS limit for SO_2 does not reflect what most plants are capable of achieving. Even taking

into account regional variability in the pyritic sulfur content of the raw materials, these State commenters find that most cement kilns already achieve lower SO_2 emissions than the 1.33 lb/ton of clinker proposed.

State commenter (70) stated that after addressing raw materials in their most recent BACT review, SO_2 limitations were 0.9 lb/ton of clinker (30-day average) and 1.6 lb/ton of clinker (24-hr average); considerably lower than the 1.33 lb/ton of clinker (30 day average) proposed.

Response: Most kilns have low SO_2 emissions because of the widespread availability of raw materials with low to moderate sulfur levels and the inherent scrubbing effects of modern PH/PC kilns with in-line raw mills. In fact, these two reasons have been cited as BACT in several NSR reviews. Sulfur in the fuel is typically not a problem because the sulfur content is relatively low and the sulfur has ample opportunity to react with clinker and dust both in the kiln and raw mill before the exhaust gases are discharged to the atmosphere. The sulfur that usually results in higher SO_2 emissions is due to pyritic sulfur contained in the raw materials, especially the limestone. Where kilns have high levels of pyritic sulfur in their raw feed, wet scrubbers may be necessary to meet the limit for SO_2.

We note that in our analysis of the NESHAP, all new kilns will have to apply wet scrubbers to meet the HCl emissions limit. If this indeed occurs then costs of wet scrubbing to meet the SO_2 will be negligible. Even in the absence of the NESHAP requirements, the application of a wet scrubber to a kiln that has high uncontrolled SO_2 emissions is a cost effective approach to reducing SO_2 emissions. At higher uncontrolled emission levels, wet scrubbers achieve emission reductions of 90 to 95 percent. However, at lower uncontrolled SO_2 levels, removal efficiency declines resulting in an increase in cost-effectiveness. But at this point other cost-effective control techniques, such as lime injection, are available. Based on these facts, we have lowered the SO_2 emission limit in this final rule to 0.4 lb/ton clinker or a 90 percent reduction in SO_2 emissions, which addresses the comments that the proposed SO_2 limit was too high.

Comment: Several industry commenters (64, 74, 75) expressed concerns that the proposed limits for SO_2 are too stringent. One industry commenter (64) recommends that EPA not include SO_2 limitations because EPA recognizes that there are only "a few locations" where the raw materials contain high levels of sulfur, and in those few situations State regulations already impose SO_2 emission limitations that require the type of technology EPA proposes as the basis for the proposed SO_2 limitations. The industry commenter states that EPA assumes that one out of five new kilns will be sited where the raw materials are high in sulfur, requiring an SO_2 scrubber or a lime injection system when in fact at existing plants there have only been a handful of situations where high-sulfur materials have been determined to justify wet scrubbers. According to the industry commenter, of 28 BACT determinations for SO_2 for cement kilns since 1998 reported in the RACT/BACT/LAER Clearinghouse (RBLC), only 5 were based on wet scrubbers, and 1 specified a dry scrubber or hydrated lime injection while the majority required no add-on controls because of low-sulfur raw materials or reliance on the inherent process absorption of SO_2. The industry commenter states that the preamble information that the fact that only 5 kilns out of 178 kilns currently use a wet scrubber indicates that uncontrolled SO_2 emissions are rarely high enough to justify add-on controls.

The industry commenter states that EPA acknowledges in the preamble that EPA is not obligated to promulgate NSPS for every pollutant emitted by sources in the source category. According to the industry commenter, the fact that very few cement kilns have been required to employ add-on controls for SO_2 is evidence that there are few instances where cement kilns are contributing to SO_2 NAAQS nonattainment, so there is no need for an SO_2 NSPS to address ambient air quality problems.

Industry commenter (64) states that allowing State and site-specific requirements to address SO_2 at plants with high-sulfur raw materials would address weaknesses in EPA's proposed SO_2 standards. For example, although EPA assumes that the proposed SO_2 standards will require add-on controls only at facilities with high-sulfur raw materials, EPA has proposed a limit of 1.33 lb of SO_2 per ton of clinker, whereas the average emission rate from just 18 data points from tests at facilities with moderate levels of sulfur in raw materials was 1.3 lb/ton. EPA's assumption that facilities with low and moderate levels of sulfur in raw materials would not have to install controls to meet the proposed SO_2 standards is not justified by those data. Requiring facilities with moderate uncontrolled SO_2 emission levels to use add-on controls for SO_2 would result in excessively high costs per ton of SO_2 removed, as EPA has recognized. Also, the energy penalty associated with wet scrubbers could more appropriately be evaluated on a case-by-case basis, where it can be weighed against factors such as the level of uncontrolled SO_2 emissions at the particular plant and the need for further SO_2 reductions at that location for attainment and maintenance of SO_2 ambient air quality standards.

Industry commenter (64) states that because there is so little experience with add-on SO_2 controls, EPA has relatively little data about the performance of those controls, and is proposing NSPS for SO_2 based solely on a recent BACT determination. The few kilns that will be subject to the proposed subpart F NSPS can be addressed through requirements for SO_2 control derived through the RACT process or through NSR.

Industry commenter (64) states that if EPA persists in setting SO_2 standards, there are a number of problems with the standards as proposed. For example, the percentage reduction alternative does not indicate that it is to be calculated on a 30-day basis or how the percentage reduction is to be calculated. The industry commenter infers from the monitoring provisions that EPA intends for a source to compare the SO_2 concentration at the inlet to the scrubber to the SO_2 concentration at the outlet from the scrubber, but this does not reflect the substantial reduction in SO_2 emissions that occurs from contact with alkaline materials in the process. The industry commenter states that cement plants with moderate uncontrolled SO_2 emissions may have to install controls and the 90 percent reduction standard likely would be unachievable when applied to the relatively low inlet concentrations to the control device. The industry commenter states that it is even less clear how EPA would apply the percentage reduction standard to cement plants that choose to use lime injection.

Industry commenter (64) states that the proposed regulations lack any discussion of whether the SO_2 limitations apply during periods of startup, shutdown, and malfunction. Since substantial reduction of SO_2 occurs naturally in the cement-making process because of the alkaline nature of the raw feed, industry commenter (64) states it would be reasonable to provide an exemption so that a wet scrubber or a lime injection system need not be operating, or operating at maximum efficiency, during periods of startup, shutdown, or malfunction. The industry commenter states that several recent BACT determinations involving

scrubbers include special provisions for startup, shutdown, or malfunction.

Industry commenter (64) states that the proposed limits for SO_2 appear inconsistent with their stated technology basis, when compared to actual experience and to BACT determinations. According to the commenter, the majority of BACT determinations in the past 10 years that rely only on inherent SO_2 reduction established limits higher than 1.33 lb/ton of clinker, except for plants in Florida, where the BACT determinations often recognized that raw materials are low in sulfur. According to the industry commenter, NSPS should be based on demonstrated technology that can be applied to the sector as a whole, rather than based on raw materials that are available only in a limited area of the country. These BACT determinations also undermine EPA's stated assumption that 1.3 lb/ton represents a "moderate uncontrolled SO_2 emission rate" and 13 lb/ton would be "a high uncontrolled SO_2 emission level," since almost all BACT determinations for plants other than those in Florida imposed SO_2 emission limits based on no add-on controls higher than 1.3 lb/ton, and a number were higher than 13 lb/ton.

Industry commenter (64) states that if EPA insists on promulgating NSPS for SO_2, it is essential that the standards retain the proposed option of meeting either a pounds per ton of clinker or a percentage reduction limit; but both limits should be higher than proposed. According to the commenter, the three wet scrubbers operated by Holcim were not designed to achieve 90 percent reduction, and the one BACT determination that contains an estimated percentage reduction in the RBLC uses 85 percent reduction. Importantly, cement plants in arid venues may not have the option to use a wet scrubber because of water restrictions. Especially if EPA persists in applying the revised NSPS to existing, modified or reconstructed facilities, wet scrubbers cannot be considered demonstrated available technology for all facilities in the source category. EPA does not, and industry commenter (64) believes EPA cannot, support a 90 percent reduction requirement using dry scrubbers or lime injection. According to the industry commenter, to qualify as a limit based on demonstrated technology, the limit should be achievable at all types of plants, raw materials, and locations, and should be based on actual performance data rather than what is "reportedly" achievable or anticipated.

Industry commenter (64) states that 1.33 lb/ton does not represent even the technology basis—alkaline wet scrubber on high-sulfur raw materials—that EPA has identified. The industry commenter states that EPA describes one kiln where uncontrolled SO_2 emissions are "about 13 lb/ton of clinker." Achieving 90 percent reduction of that uncontrolled emission rate would just meet the proposed mass limit, with no margin of compliance. And in any event, at least four of the BACT determinations for cement kilns in the past 10 years reported in the RBLC reflect uncontrolled SO_2 emission rates over 20.0 lb/ton. The proposed limit of 1.33 lb/ton thus does not reflect a limit that has been demonstrated as achievable applying wet scrubber technology to the range of sulfur contents present in cement plant raw materials.

One industry commenter (74) states that the proposed SO_2 limit may be achievable in most cases but different plants will require different solutions to achieve that limit. Due to the large variations in the elemental and pyritic sulfur from plant to plant, industry commenter (74) does not believe that it is fair to have a set SO_2 limit for all plants. Each plant's limit should be considered on a case-by-case basis considering the elemental or pyritic sulfur level in the raw materials and a reasonable target for the cost per short ton of removal to determine the controls that are used. In some cases this will give a limit lower than 1.33 lb/ton clinker and in other cases it will give a higher limit.

One industry commenter (75) states that: (1) Given the range of pyritic sulfur in our raw material, we would need to have a wet scrubber to meet this limit; (2) Lime injection is an effective control with less secondary impacts on water supply and energy use; and (3) A limit of 4 lb/ton of clinker should be adopted. This would allow greater use of lime injection, providing significant SO_2 reductions while avoiding secondary adverse environmental impacts and energy use of wet scrubbing. The industry commenter does not believe that the proposed limit adequately reflects the inherent variability of kiln emission rates, which are dictated by the characteristics of the raw feed to a kiln. Industry commenter (75)'s kiln feed is locally mined raw materials used for over 100 years, with plans to continue the present mining operation for many years in the future. The standard, as proposed, would impose economic and environmental impacts beyond those considered by EPA.

Response: EPA disagrees with the industry commenter that the Agency is under no obligation to set standards for SO_2 as evidenced by the lack of any SO_2 limits previously or the infrequent need for scrubbers (5 out of 20 new kilns expected to need scrubbers). The absence of SO_2 limits in the NSPS previously was due to the lack of a demonstrated add-on control technology applied to cement kilns during EPA's last review of the NSPS in 1988. Since then, wet scrubbers have been installed on no less than five kilns and operate continuously. Other scrubbers, dry and wet, are installed on other kilns and operate as needed. In reference to the industry commenters' observations regarding permitted kilns in the RBLC database, EPA notes that three kilns for which scrubbers are reported as an add-on control device have permit limits far in excess of the NSPS SO_2 limits indicating a clear need for national standards for SO_2 emissions from cement kilns. Furthermore, controlling SO_2 emissions will control emissions of condensable fine particulate matter, leading to very significant environmental benefits. *See* Table 13 in Section VI. Control is consequently in keeping with the ultimate goals of the Act in general and section 111 in particular: protecting and enhancing the Nation's air quality. *See Asarco* v. *EPA,* 578 F. 2d at 327.

In response to the industry commenters' argument that kilns utilizing raw materials with moderate sulfur levels may have to install controls to comply with the SO_2 limit, EPA agrees that in a few instances those kilns may need to reduce their SO_2 emissions. However, these kilns only need moderate reductions in SO_2 and have options other than adding wet scrubbers (assuming no wet scrubbers are needed to meet the NESHAP HCl standard). In addition to the inherent scrubbing that occurs with the raw mill, cement plants can and do also practice careful selection of their raw materials to avoid high sulfur materials. There are cement plants that already limit the sulfur in their raw materials through their mining practices and through screening the raw materials they purchase. Owners and operators also reduce SO_2 emissions by not burning sulfur-containing coal and by burning natural gas during kiln preheating, shutdown and during other maintenance periods when the kiln and/or raw mill are down. In those instances when some additional reduction is necessary, a less expensive alternative to wet scrubbing is lime injection. Lime injection can achieve up to 70 percent reduction and may only be necessary during periods of higher SO_2 emissions, for example when the raw mill is off.

In response to the industry commenter's questions of how the 90 percent reduction is to be determined, they are correct that the reduction is to be measured across the scrubber (in other words, measurements must be made to measure the SO_2 entering the scrubber and the SO_2 exiting the scrubber). Like the SO_2 standard, the rule states explicitly that the 90 percent reduction is to be based on a 30-day average. In the case of lime injection, EPA believes this add-on control will only be used in situations requiring a modest reduction in SO_2 emissions and these kilns will be able to meet the SO_2 emissions limit.

EPA disagrees with the industry commenter's suggestion that EPA provide some allowance for periods of startup, shutdown or malfunction as SO_2 emissions are affected by whether the raw mill is operating or not. The industry commenter requested that EPA allow that during these periods, scrubbers or lime injection systems need not operate or at least need not operate at maximum efficiency. The industry commenter provided no data to indicate that, given the long averaging periods, a facility's raw mill up time versus down time is significantly affected by periods of startup and shutdown. In fact, the reason for the 30 day averaging period was specifically to allow a long enough averaging period that the higher emissions that occur for SO_2 when the raw mill is down could be averages with long periods when the raw mill is operating.

EPA disagrees with the industry commenter's statement that the proposed limits for SO_2 appear inconsistent with their stated technology bases, when compared to actual experience and to BACT determinations. The standard was based on the performance of a scrubber-equipped kiln that processed high sulfur limestone. The alternative to the SO_2 emission limit is to demonstrate a 90 percent removal efficiency across the scrubber. EPA could not ignore the performance of this control technology, *i.e.,* wet scrubbers, which are currently used full time at 5 cement plants. In reviewing the RBLC database, it is obvious that, in some cases, permit limits are not as stringent as they could be. One entry in the RBLC database even stated that the permit limit did not account for the reduction that would be achieved by the scrubber installed to control SO_2.

We note that industry commenters have stated that some new facilities may be located in areas where there is not sufficient water to operate a wet scrubber. However, we are not mandating the use of wet scrubber technology in these regulations, and we believe that sufficient alternative controls exist for SO_2 controls that this issue would not preclude a facility from meeting these emissions limits. As previously noted, these alternative technologies include dry lime injection, injection of sodium compounds, selective mining, injection of a finely divided lime slurry, use of lower sulfur fuels, and careful screening of purchased raw materials. Regarding the industry commenter's statements that the emission limit and alternative percent reduction should be less stringent, EPA notes that the kiln upon which the emission limit was based actually operates at levels under 0.6 lb/ton clinker based on information supplied by another commenter (60). The same industry commenter states that the limit for the kiln was reduced in 2007 from 1.33 to 0.95 lb/ton following a production increase authorized by the Texas Commission on Environmental Quality. To support its statement that a 90 percent removal efficiency is too high, the industry commenter noted that three Holnam (now Holcim) plants use scrubbers that are designed to operate at less than 90 percent efficiency. Our data for the scrubbers at the Texas plant shows that the removal efficiency depends on the number of pumps in operation, with 91 percent efficiency when all four pumps are operating. The scrubbers at the Holnam facility in Michigan have not operated continuously due to various issues encountered. We also note that SO_2 scrubbers in the utility industry have consistently achieved 90 percent SO_2 since the 1970s. We see no technical reason that the same removal levels are not achievable in the cement industry. Therefore, where add-on controls are necessary to comply, scrubbers designed to achieve at least a 90 percent efficiency or greater are expected to be able to meet the 90 percent efficiency alternative; cement plants may be able to meet the emission limit by utilizing scrubbers with less than 90 percent efficiency or with lime injection if the uncontrolled SO_2 levels are at moderate levels (assuming that wet scrubbers are not needed to comply with other requirements, such as the HCl standard in the NESHAP).

EPA does not agree with the industry commenter that the limit of 1.33 lb/ton based on uncontrolled SO_2 emissions of 13 lb/ton of clinker and a 90 percent reduction leaves no margin for compliance. First, there are scrubbers with efficiencies higher than 90 percent removal efficiency, which, even if they can't meet the 1.33 (or the 0.4) lb/ton clinker emission limit, will be able to consistently meet 90 percent removal. Secondly, based on an industry commenter, the SO_2 emissions from a PH/PC kiln are not likely to be as high as 13 lb/ton of clinker due to the scrubbing effects of the raw mill, but more in the range of 4–5 lb/ton of clinker (75). This is supported by data from a 2001 survey of cement plants showing that average SO_2 emissions from PH kilns was 1.39 lb/ton of clinker (maximum of 6.54) and from PC kilns was 1.92 lb/ton of clinker (maximum of 8.83). Based on these data, use of a wet scrubber should be able to meet the proposed SO_2 limit of 1.33 and the final limit of 0.4 lb/ton clinker. In some cases, a less expensive control such as lime injection may be adequate. Regarding the industry commenters reference to determinations reported in the RBLC that reflect uncontrolled SO_2 emission rates over 20.0 lb/ton, these rates (if they are accurate) are associated with old wet kilns that do not have inline raw mills. In the case of one the two Michigan kilns, the quarries raw materials are known to have extremely high sulfur contents that are not seen at other locations. However, even if this location decided to build a new kiln, or to modify or reconstruct an existing kiln, they would still have the option to meet the 90 percent removal option.

In response to the industry commenter that states it is not fair to have a set SO_2 limit for all plants and that each plant's limit should be considered on a case-by-case basis, EPA points out that the standards gives plants an alternative to the SO_2 limit recognizing, just as the industry commenter states, that some plants may not be able to meet the SO_2 limit due to the presence of pyritic sulfur in its limestone. Where plants cannot meet the SO_2 limit, they have the option of complying with the alternative limit of showing a 90 percent reduction in SO_2 emissions.

EPA disagrees with one industry commenter's suggestion of setting the SO_2 limit at 4 lb/ton clinker in order to allow greater use of lime injection systems. Given that there are cost-effective controls to achieve much lower levels, a limit of 4 lb/ton clinker simply cannot be considered BDT. We also note that EPA does not specify the type of control that must be used to meet the limit, or, for that matter, that any specific control has to be used. Plant owners may use any add-on control, such as lime injection if a control is necessary, or process control, such as selective mining, or a combination of add-on and process controls to meet the

limit. The industry commenter states that it mined its materials locally for over 100 years and plans to continue to do so. However, almost all cement plants in the country could make a similar statement, and it has no relevance and does not change the facts that cost-effective SO_2 controls are available to achieve SO_2 emission levels of 0.4 lb/ton clinker.

Comment: One industry commenter (64) supports EPA's decision not to set separate limits for condensable PM, $PM_{2.5}$, or PM_{10} stating that these fractions of PM will be adequately controlled by facilities utilizing control equipment sufficient to meet the proposed limits for PM. The industry commenter also concurs that EPA does not have adequate data on the emissions or the demonstrated capability of various control technologies to meet any specified level of these fractions of PM. The industry commenter states that they are not aware of any demonstrated or emerging technology that would provide better control of $PM_{2.5}$, PM_{10}, or condensable PM emissions specifically.

Response: The PM limits address filterable PM, including $PM_{2.5}$ and PM_{10}, but not condensable PM. EPA does not currently have sufficient information on emissions of condensable PM from cement kilns to set emission limits and the limited information we do have is highly uncertain. We also believe that these emissions will be controlled via controls on HCl in the NESHAP and SO_2 in the NSPS. EPA has recently promulgated a new test method for condensable PM (Method 202) which will allow for more reliable assessments of condensable PM. We anticipate that better data will be available at the time of the next review of the NSPS.

Comment: Several industry commenters (64, 73, 74, 83) expressed concerns over the proposed NSPS for PM of 0.086 lb/ton of clinker. Industry commenter (64) states that the proposed limit of 0.086 lb/ton of clinker is not supported by the data available from new plants with the identified technology: It does not allow for deterioration of performance over time, and it does not allow for an adequate margin of compliance. Industry commenters believe that EPA used insufficient data to develop the standard and failed to consider situations where gases from kilns, clinker coolers, and coal mills are combined for energy recovery purposes. Industry commenter (73) has spoken to major suppliers of cement kiln systems and believes that baghouse technology with membrane bags is capable of achieving a continuous outlet grain loading rate of 0.010 gr/dscf. Applying EPA's factors for standardized volumetric flow and feed-to-clinker ratio (54,000 dscf/ton of feed and 1.65 tons feed/ton clinker), an appropriate NSPS PM standard would be 0.127 lb/ton of clinker for cement kilns and clinker coolers. Industry commenter (73) and (74) also believe that when clinker cooler and kiln gases are combined, the standard for these systems should be additive.

The industry commenters stated that the standards must be set at a level that recognizes that there will be some deterioration in performance over time. According to the industry commenters, in most cases, emission rates achieved immediately after installation of pollution control equipment will not be representative of the performance over the life of the source, as the bags and the baghouse itself age and experience normal wear, even with proper operation and maintenance. Industry commenter (73) agrees with EPA that "fabric filters control generally to the same concentration irrespective of the PM loading to the filter inlet, though some variability in PM emissions from fabric filters does occur due to seepage and leakage." It is the seepage and leakage that becomes an issue as baghouses age. Industry commenter (64) states that the PM stack testing data used by EPA in their analyses were obtained from kiln-baghouse systems that had operated for less than 5 years and, therefore, EPA has not demonstrated that they have proposed a limit that new sources can sustain long term. EPA has recognized this in numerous other rulemakings, including in setting emission standards for hazardous air pollutants at new cement kilns burning hazardous waste where they amended the PM limits for new sources in that NESHAP based on data demonstrating that the original PM standard was "overly stringent in that it does not fully reflect the variability of the best performing source over time."

Response: As noted in the previous comments on the NESHAP PM limit, we have reevaluated the performance of PM controls for this source category and have determined that the appropriate NESHAP new source standard is 0.1 lb/ton clinker based on a 30 day rolling average. Because all new sources will be required to meet this limit, we see no reason to set a different limit for the NSPS. We note the industry commenter's performance concerns. However, in setting the NESHAP limit we reviewed test data from a number of facilities. Some facilities had average emissions as low as 0.007 lb/ton clinker based on short term testing, and the average of the best performing five facilities was 0.019 lb/ton (based on multiple short term testing). Based on this information, we believe that if the PM control is properly designed and maintained, PM levels well below the level we proposed, or the levels suggested by the commenter are possible. In addition, the data discussed were short term tests. Compliance will be based on a 30-day rolling average, which allows facilities to average out potential short term transients.

VI. Summary of Cost, Environmental, Energy, and Economic Impacts

A. What are the impacts of the final amendments to subpart LLL and subpart F?

We are presenting a combined discussion of the estimates of the impacts for these final amendments to 40 CFR part 60, subpart F and 40 CFR part 63, subpart F. The cost, environmental, and economic impacts presented in this section are expressed as incremental differences between the impacts of a Portland cement plant complying with the amendments to 40 CFR 63 subpart LLL 40 CFR part 60 subpart F and the baseline, *i.e.,* the standards before these amendments. The impacts are presented for the year 2013, which will be the year that all existing kilns will have to be in compliance, and also the year that will represent approximately 5 years of new kiln construction subject to the amended NSPS emissions limits. The analyses and the documents referenced below can be found in Docket ID Nos. EPA–HQ–OAR–2007–0877 and EPA–HQ–OAR–2002–0051.

1. What are the affected sources?

We expect that by 2013, the year when all existing sources will be required to come into compliance, there will be 100 Portland cement manufacturing facilities located in the U.S. and Puerto Rico that we expect to be affected by these final amendments. Of these facilities, approximately 5 are complete new greenfield facilities. These facilities will operate 158 cement kilns and associated clinker coolers. We have no estimate of the number of raw material dryers that are separate from the kilns.

Based on capacity expansion data provided by the Portland Cement Association, we anticipate that by 2013 there will be 16 kilns and their associated clinker coolers subject to NESHAP new source emission limits for mercury, HCl, and THC, and seven kilns and clinker coolers subject to the amended NSPS for NO_X and SO_2. Some of these new kilns will be built at existing facilities and some at new

greenfield facilities. The location of the kiln (greenfield or currently existing facility) has no bearing on our estimated cost and environmental impacts (since there are no longer separate standards for so-called greenfield new sources).

As previously noted there are two kilns with unusually high mercury emissions that we believe cannot meet the mercury emissions limit without using more than one control technique. In developing the cost impacts, we assume that they would require multiple mercury controls. The only mercury controls available for which we have detailed cost data are ACI and wet scrubbers, so we costed both controls to develop what we consider to be a reasonable cost estimate for these facilities. This does not imply that we believe these facilities will specifically use a combination of a wet scrubber and ACI to meet the mercury limit, but we do believe the combination of these control results in a reasonable estimate of cost.

2. How are the impacts for this proposal evaluated?

For these final Portland Cement NESHAP amendments, EPA utilized three models to evaluate the impacts of the regulation on the industry and the economy. Typically in a regulatory analysis, EPA determines the regulatory options suitable to meet statutory obligations under the CAA. Based on the stringency of those options, EPA then determines the control technologies and monitoring requirements that sources might rationally select to comply with the regulation. This analysis is documented in an Engineering Analysis. The selected control technologies and monitoring requirements are then evaluated in a cost model to determine the total annualized control costs. The annualized control costs serve as inputs to an Economic Impact Analysis model that evaluates the impacts of those costs on the industry and society as a whole.

The Economic Impact Analysis model uses a single-period static partial-equilibrium model to compare a pre-policy cement market baseline with expected post-policy outcomes in cement markets. This model was used in previous EPA analyses of the Portland cement industry (EPA, 1998; EPA, 1999b). The benchmark time horizon for the analysis is assumed to be short and producers have some constraints on their flexibility to adjust factors of production. This time horizon allows us to capture important transitory impacts of the program on existing producers. The model uses traditional engineering costs analysis as "exogenous" inputs (*i.e.,* determined outside of the economic model) and computes the associated economic impacts of the final regulation.

For the Portland Cement NESHAP, EPA also utilized the Industrial Sector Integrated Solutions (ISIS) model which conducts both the engineering cost analysis and the economic analysis in a single modeling system. The ISIS model is a dynamic and integrated model that simulates potential decisions made in the cement industry to meet an environmental policy under a regulatory scenario. ISIS simultaneously estimates (1) optimal industry operation to meet the demand and emission reduction requirements, (2) the suite of control technologies needed to meet the emission limit, (3) the engineering cost of controls, and (4) economic impacts of demand response of the policy, in an iterative loop until the system achieves the optimal solution. The peer review of the ISIS model can be found in the docket.[45] This model was revised based on peer review comments and comments on the proposed rule and was used to develop cost and economic impacts of the final rule.

In a Technical Memo to the docket, we provide a comparison of these models to provide an evaluation of how the differences between the models may impact the resulting estimates of the impacts of the regulation. For example, the Engineering Analysis and Economic Impact Analysis evaluate a snapshot of implementation of the final rule in a given year (*i.e.,* 2013, based on 2005 dollars) while ISIS evaluates impacts of compliance dynamically over time (*i.e.,* 2005–2013). In general, given the optimization nature of ISIS, ISIS accounts for more flexibility when estimating the impacts of the regulation. For example, when optimizing to meet an emission limit, ISIS allows for the addition of new kilns, as well as kiln retirements, replacements, expansions and the installation of controls. In the Engineering Analysis the existing kiln population is assumed to be constant even though normal kiln retirements occur. Based on these differences, the total control costs from the Engineering Analysis are higher than the total control cost estimated in ISIS.

We have not yet developed ISIS modules to calculate non-air environmental impacts and energy impacts. Therefore, these sections only contain impacts calculated by the traditional engineering methods.

[45] *See* Industrial Sector Integrated Solutions Model and Review of ISIS Documentation Packages dated August, 2010.

In addition, we have not yet developed ISIS modules to calculate non-air environmental impacts and energy impacts. Therefore, these sections only contain impacts calculated by the traditional engineering methods.

3. What are the air quality impacts?

For the Portland Cement NESHAP and NSPS, we estimated the emission reductions that will occur due to the implementation of the final emission limits. EPA estimated emission reductions based on both the control technologies selected by the engineering analysis and the ISIS model. These emission reductions are based on the estimated kiln population in 2013.

Under the final limit for mercury, we have estimated that the emissions reductions will be 14,700 lb/yr for kilns subject to the exiting source emissions limits. For kilns subject to new source emissions limits, the emissions reductions will be 1,900 lb/year in 2013.

Under the final limits for THC, we have estimated that the emissions reductions will be 9,800 tpy for kilns subject to existing source limits, which represents an organic HAP reduction of 3,400 tpy. For kilns subject to new source limits, THC emissions will be reduced by 720 tpy. This represents an organic HAP reduction of 250 tpy.

Under the final limit for HCl, we have estimated that emissions will be reduced by 4,700 tpy for kilns subject to exiting source limits and 1,100 tpy for kiln subject to new source limits.

The final emission limits for PM represent a lowering of the PM limit from 0.5 lb/ton of clinker to .04 lb/ton of clinker for existing kilns and for new kilns, a lowering to 0.01 lb/ton of clinker. These new limits are based on 30-day rolling averages measured with a CEM. We have estimated that PM emissions will be reduced by 9,500 tpy for kilns subject to the existing source limits and 2,000 tpy for kilns subject to the new source limit. These estimates include only direct PM reductions, and do not include secondary PM reductions that occur as a result of concurrent control of SO_2 discussed below. The PM emission reductions that occur as a result of the final NSPS limits are included in the totals shown above since the final NSPS PM limit is equal to the new source NESHAP limit.

The control strategies likely adopted to meet the final standards for mercury, THC and HCl will also result in concurrent control of SO_2 emissions. For kilns that use an RTO to comply with the THC emissions limit, it is necessary to install an alkaline scrubber upstream of the RTO to control acid gas and to provide additional control of PM

and to avoid plugging and fouling of the RTO. Scrubbers will also be used to control HCl and mercury emissions. Reductions in SO_2 emissions associated with controls for mercury, THC and HCl are estimated at 230 tpy, 11,200 tpy, and 98,400 tpy, respectively, so that total reduction in SO_2 emissions from existing kilns will be an estimated 95,500 tpy. The SO_2 emission reduction totals also include the reduction that will result from the final NSPS limit for SO_2. If we were to break out the NSPS SO_2 reduction separately, a new 1.2 million tpy kiln equipped with a scrubber will reduce SO_2 emissions by 190 tpy on average or about 14,300 tpy in 2013.

These controls will also reduce ambient concentrations of secondary $PM_{2.5}$ as well. This is PM that results from atmospheric transformation processes of precursor gases, including SO_2. Note that the PM emission reductions above do not reflect reductions in secondary PM formation. For these rules, the reduction in secondary PM formation represents a large fraction of the total reduction in ambient levels of PM, which is discussed in the benefits section of the preamble below. However, with the data available, we are unable to estimate the fraction of ambient PM reduction resulting specifically from the reduction in SO_2 emissions.

Under the final limit for NO_X, we estimated that the emission reduction for a 1.2 million tpy model kiln will be 600 tpy. The nationwide emissions reduction 5 years after promulgation of the final standards was estimated at 6,600 tpy.

In addition to this traditional estimation of emission reductions, EPA employed the ISIS model to estimate emission reductions from the NESHAP and NSPS. The estimation of emission reductions in the ISIS model accounts for the optimization of the industry and includes the addition of new kilns, kiln retirements, replacements, and expansions as well as installation of controls. Using the ISIS model, in 2013 we estimate reductions of 12,627 lbs of mercury, 10,809 tons of THC, 4,307 tons of HCl, 5,729 tons of PM (does not include reductions in secondary PM), and 80,245 tons of SO_2, and 14,159 tons of NO_X compared to emissions that would occur in 2013 in the absence of the NESHAP and NSPS. As noted, the ISIS model estimates lower SO_2 reductions because the model optimizes kiln retirements, replacements, and expansions as well as installation of controls. We did not determine ambient PM benefits based on the ISIS model's predicted emission reductions. However, even with this lower SO_2 reduction estimate, the secondary PM impacts would likely constitute a majority of the total ambient PM impacts. More information on the ISIS Model and results can be found in the ISIS TSD and in a Technical Memo to the docket.

Under the final standards, new monitoring requirements are being added. Particulate matter CEMS are being required on kilns and clinker coolers. For cement kilns, CEMS are required for measurement of THC, NO_X and SO_2. For kilns that do not have wet scrubbers, CEMS are required to monitor HCl emissions. Continuous emission measurement (CEMS or sorbent traps) are required for measurement of mercury emissions. There is insufficient data to quantify the emissions reduction that will result from these requirements. However, emissions reductions will occur as a result of the availability of continuous information on kiln and control device performance and a reduction in the length of time that operations are outside of acceptable conditions. Also, periods of excursions from acceptable conditions will be identified more quickly with continuous monitoring than with less frequent approaches, thus reducing the duration of such excursions.

4. What are the water quality impacts?

We estimated no water quality impacts for the proposed amendments. The requirements that might result in the use of alkaline scrubbers will produce a scrubber slurry liquid waste stream. However, we assume the scrubber slurry produced will be dewatered and added back into the cement-making process as gypsum. Water from the dewatering process will be recycled back to the scrubber. The four facilities (five kilns) that currently use wet scrubbers in this industry report no water releases at any time.[46] We requested comment in the Portland Cement NEHSAP proposal on the potential for water releases due to wet scrubber system purges and any regulations that might apply. Though commenters raised concerns of the possibility of water impacts, they did not provide a rationale of why it would be expected when it is not occurring at the four facilities that currently use wet scrubbers, due to their on-site reuse of water. If discharges did occur, there would be a potential for water quality issues. But given these facts, we believe our estimate of no water quality impacts resulting from production of waste water by wet scrubbers is reasonable.

The addition of scrubbers will increase water usage by about 4,200 million gallons per year. For a new 1.2 million tpy kiln, water usage will be 72 million gallons per year or 630 million gallons by 2013 for all kilns subject to new source limits for HCl and NSPS limits.

We did receive comments that in some areas there is not sufficient water available to support this increase in water use. We do not have sufficient data to perform an analysis of this situation, but we note that other less water intensive controls (dry injection of various sorbents, spray dryers) are available for control of HCl. This is further discussed in the cost impacts section.

5. What are the solid waste impacts?

The potential for solid waste impacts are associated with greater PM control for kilns, waste generated by ACI systems and solids resulting from solids in scrubber slurry water. As explained above, we have assumed little or no solid waste is expected from the generation of scrubber slurry because the solids from the slurry are used in the finish mill as a raw material. All of the facilities currently using wet scrubber use mix the gypsum created in the scrubber with clinker in the finish mill. A commenter noted that the synthetic gypsum can be difficult to dewater, but currently operating facilities seem to have solved this issue. Another commenter notes that facilities with low SO_2 levels may produce such small amounts of gypsum. Theoretically, this could result in a situation where it is impractical to dewater the gypsum, and it must be land filled. However, we anticipate that the total amounts of waste will not be significant and the cost impact (compared to the total scrubber costs) will be minimal.

The PM captured in the kiln fabric filter (cement kiln dust) is essentially recaptured raw material, intermediate materials, or product. Based on the available information, it appears that most captured PM is typically recycled back to the kilns to the maximum extent possible. Therefore we estimate that any additional PM captured will also be recycled to the kiln to the extent possible.

Where equipped with an alkali bypass, the bypass will have a separate PM control device and that PM is typically disposed of as solid waste. An alkali bypass is not utilized on all kilns. Where one is present, the amount of solid waste generated from the alkali bypass is minimal, usually about 1

[46] Summary of Responses to Requests for Water Impacts Information. August 5, 2010.

percent of total CKD in control devices, because the bypass gas stream is a small percentage of total kiln exhaust gas flow and the bypass gas stream does not contact the feed stream in the raw mill.

Waste collected in the polishing baghouse associated with ACI that might be added for mercury or THC control cannot be recycled to the kiln and will be disposed of as solid waste. An estimated 122,000 tpy of solid waste will be generated from the use of ACI systems on existing kilns. A typical new kiln subject to new source mercury standards equipped with an ACI system will be expected to generate 1,800 tons of solid waste per kiln or, assuming all 16 of the kilns subject to new source standards will add ACI systems, about 35,000 tpy in the year 2013.

In addition to the solid waste impacts described above, there is a potential for an increase in solid waste generation if a facility elects to control its mercury emissions by increasing the amount of CKD wasted rather than returned to process. This will be a site-specific decision, and we have no data to estimate the potential solid waste that may be generated by this practice. However, we expect the total amount to be small for two reasons. First, wasting cement kiln dust for mercury control represents a significant expense to a facility because it will be essentially wasting either raw materials or product. We anticipate this option will not be used if the amount of CKD wasted will be large. Second, we believe that cement manufacturers will add the additional CKD to the finish mill to the maximum extent possible rather than waste the material.

6. What are the secondary impacts?

Indirect or secondary air quality impacts include impacts that will result from the increased electricity usage associated with the operation of control devices as well as water quality and solid waste impacts (which were just discussed) that will occur as a result of these final revisions. We estimate these final revisions will increase emissions of criteria pollutants from utility boilers that supply electricity to the Portland cement facilities. We estimate increased energy demand associated with the installation of scrubbers, ACI systems, and RTO. The increases for kilns subject to existing source standards are estimated to be 1,700 tpy of NO_X, 900 tpy of CO, 3,000 tpy of SO_2 and about 90 tpy of PM. For kilns subject to new source standards, increases in secondary air pollutants are estimated to be 440 tpy of NO_X, 230 tpy of CO, 760 tpy of SO_2 and 20 tpy of PM. We also estimated increases of CO_2 to be 0.9 million tpy for kilns subject to existing source standards and 209,000 tpy for kilns subject to new source standards.

The increase in electricity usage for the pumps used in the SNCR system to deliver reagent to the kiln are negligible.

7. What are the energy impacts?

The addition of alkaline scrubbers, ACI systems, and RTO added to comply with the final amendments will result in increased energy use due to the electrical requirements for the scrubber and ACI systems and increased fan pressure drops, and natural gas to fuel the RTO. We estimate the additional national electrical demand to be 800 million kWhr per year and the natural gas use to be 1.2 million MMBtu per year for kilns subject to existing source standards. For kilns subject to new source standards, the electrical demand is estimated to be 199 million kWhr per year.

8. What are the cost impacts?

Under the final amendments, existing kilns are expected to add one or more control devices to comply with the final emission limits. In addition, kiln and clinker coolers will be required to install varying numbers of CEMS or continuous emissions monitors. We performed two separate cost analyses for this final rule. In the engineering cost analysis, we estimated the cost of the final amendments based on the type of control device that was assumed to be necessary to comply with the final emission standards. Based on baseline emissions of mercury, THC, HCl and PM for each kiln and the removal efficiency necessary to comply with the final emission limit for each HAP, an appropriate control device was identified. In assigning control devices to each kiln where more than one control device will be capable of reducing emissions of a particular HAP below the limit, we assumed that the least costly control will be installed. For example, if a kiln could use either a scrubber or ACI to comply with the final limit for mercury, it was assumed that ACI will be selected over a scrubber because an ACI system will be less costly. ACI also is expected to achieve a higher removal efficiency than a scrubber for mercury (90 percent versus 80 percent). In some instances, a more expensive technology was considered appropriate because the selected control reduced emissions of multiple pollutants. For example, even though ACI will be less costly than a scrubber for controlling mercury, if the kiln also had to reduce HCl (and, for new kilns subject to the NSPS amendments SO_2) emissions, we assumed that a scrubber will be applied to control HCl as well as mercury because ACI will not control HCl. However, for many kilns, our analysis assumes that multiple controls will have to be added because more than one control will be needed to control all HAP. For example, ACI may be considered necessary to meet the limits for THC/organic HAP and/or mercury. For the same kiln, a scrubber will also be required to reduce HCl emissions. In this case we allocate the cost of the control to controlling mercury emissions, not to the cost of controlling HCl emissions. In addition, once we assigned a particular control device, in most cases we assumed mercury, HCl and THC/organic HAP emissions reductions will equal the control device efficiency, and not the minimum reduction necessary to meet the emissions limit. We believe this assumption is warranted because it matches costs with actual emissions reductions. In the case of PM, we assumed the controlled facility will emit at the average level necessary to meet the standard (*i.e.,* we assumed for PM that the controlled facility will emit at 0.01 lb/ton clinker, the average emission level, not 0.04 lb/ton clinker, the actual emissions limit), because the final emissions levels are extremely low.

As previously discussed, in the case of the two facilities that require mercury emission reduction of 98 percent or more, we estimated the cost impacts by costing the two mercury control for which we have cost data, ACI and wet scrubbers. We believe this estimate is a conservative estimate of the costs these facilities will ultimately incur to meet the mercury emissions limit, based on the fact that they may be able to meet the limit using dust shuttling and/or treatment of cement kiln dust, which, based on the limited amount and size of equipment required, is expected to have lower costs than wet scrubbing.

In a separate analysis performed using the ISIS model, we input into ISIS the baseline and controlled emissions rates for each pollutant, along with the maximum percent reduction achievable for a particular control technology, and allowed ISIS to base the control required on optimizing total production costs. In addition, the ISIS model accounts for normal kiln retirements that will occur even in the absence of any regulatory action (*i.e.,* as new kilns come on-line, older, less efficient and more costly to operate kilns are retired). In the first cost analysis, total national annual costs assume that all kilns currently operating continue to operate while 20 new kilns come on-line. In the ISIS model, the two highest mercury emitting kilns requiring a 98+ percent

mercury control are assumed to shut down in 2013 because no single mercury control applied to these kilns can meet a 98+ percent mercury reduction.

Table 11 presents the resulting add-on controls each approach estimated was necessary to meet the final emissions limits.

TABLE 11—CONTROL INSTALLATION COMPARISON

	LWS	ACI	LWS + ACI	MB	FF	WS + RTO	RTO	SNCR
Engineering Analysis	115	151	2	28	0	10	0	7
ISIS Model	30	42	29	6	2	6	15	7

In the engineering analysis, we estimated the total capital cost of installing alkaline scrubbers and ACI systems for mercury control, including monitoring systems, will be $339 million with an annualized cost of $113 million. Most of the ACI systems installed for mercury control will also control organic HAP and THC. Where ACI does not provide sufficient control of organic HAP and THC, RTO/wet scrubbers are used. The estimated capital cost of installing RTO/wet scrubbers to reduce THC emissions will be $253 million with annualized cost of $49 million. The capital cost of adding scrubbers for the control of HCl is estimated to be $1,882 million with an annualized cost of $261 million. The capital cost of adding membrane bags to existing fabric will be $57 million with annualized cost of $16 million. The total capital cost for the final amendments for kilns subject to existing source emissions limits will be an estimated $2.2 billion with an annualized cost of $377 million.

The estimated emission control capital cost per new 1.2 million tpy kiln is $3.2 million and the annualized costs are estimated at $1.2 million for mercury and THC/organic HAP control, and $3.6 million for HCl control. Because the new kiln will be equipped with a baghouse even in the absence of the rule and because the ACI system, which includes a polishing baghouse, will be installed for mercury and organic HAP control, there will be no additional cost for PM control. Under the NSPS, 7 new kilns will install SNCR to control NO_X and add NO_X CEMS at a capital cost of $19.6 million and an annualized cost of $10.9 million. The control of SO_2 under the NSPS will be accomplished by wet scrubbers installed for HCl control under the NESHAP so that no control costs are attributable to the NSPS. There will be SO_2 monitoring cost estimated at $1.1 million capital cost and $0.3 million annualized cost for the 7 new kilns subject to the NSPS. Flow monitoring devices are needed in conjunction with CEMS for NO_X and SO_2. Capital costs for flow monitoring devices will be $0.25 million capital and $0.1 million annualized costs. National annualized cost by the end of the fifth year for all new kilns will be an estimated $80.6 million.

In the ISIS results, we are not able to separate costs by pollutant because the model provides an overall optimization of the production and air pollution control costs. The total annual costs of the ISIS model for the NESHAP and NSPS are $350 million in 2013. This estimate is significantly lower than the total costs estimated by traditional methods.

It should be noted that for cases where more than a 50 percent reduction in HCl was required, we costed a wet scrubber. We note that some commenters have stated that some new and existing facilities may be located in areas where there is not sufficient water to operate a wet scrubber. However, in this rule we are not mandating wet scrubber control technology. Other control techniques are available (hydrated finely ground lime, spray dryers, fuel and additive switching) that we believe would allow a cement kiln to meet the HCl emission limits in areas where sufficient water for a wet scrubber is not available. However, we do not have data available on costs for these alternatives controls or techniques, some of which would be site specific. We would anticipate that costs of these techniques would be no more expensive that a wet scrubber. Therefore we believe that by costing wet scrubber technology in these situations we have not underestimated costs.

9. What are the economic impacts?

EPA employed both a partial-equilibrium economic model and the ISIS model to analyze the impact on the industry and the economy.

The Economic Impact Analysis model estimates the average national price for Portland cement could be 5.4 percent higher with the NESHAP and NSPS, or $4.50 per metric ton, while annual domestic production may fall by 11 percent, or 10 million tons per year. Because of higher domestic prices, imports are expected to rise by 3 million metric tons per year. Operating profits fall by $241 million.

Precise job effect estimates cannot be estimated with certainty. Ideally, whenever a regulatory change results in a reallocation of labor or other factors of production in an economy, a general equilibrium approach should be applied to estimate the attendant economic impacts. Unfortunately, time and resource constraints prevented the creation of a model with the spatial and sectoral resolution necessary to analyze the final rule. However, Morgenstern *et al.* (2002) provides a theoretical framework which allows us to approximate some of the relevant general equilibrium effects by identifying three economic mechanisms by which pollution abatement activities can indirectly influence: Higher production costs raise market prices, higher prices reduce consumption, and employment within an industry falls ("demand effect"); pollution abatement activities require additional labor services to produce the same level of output ("cost effect"); and post-regulation production technologies may be more or less labor intensive (*i.e.,* more/less labor is required per dollar of output) ("factor-shift effect").

Several empirical studies, including Morgenstern *et al.* (2002), suggest the net employment decline is zero or economically small (*e.g.,* Cole and Elliot, 2007; Berman and Bui, 2001). However, others show the question has not been resolved in the literature (Henderson, 1996; Greenstone, 2002). Morgenstern *et al.* use a 6-year panel (U.S. Census data for plant-level prices, inputs [(including labor], outputs, and environmental expenditures) to econometrically estimate the production technologies and industry-level demand elasticities. Their identification strategy leverages repeat plant-level observations over time and uses plant-level and year fixed effects (*e.g.,* dummy variables for plant and years). After estimating their model, Morgenstern show and compute the change in employment associated with an additional $1 million ($1987) in environmental spending. Their estimates cover four manufacturing

industries (pulp and paper, plastics, petroleum, and steel) and Morgenstern *et al.* present results separately for the cost, factor shift, and demand effects, as well as the net effect. They also estimate and report an industry-wide average parameter that combines the four industry-wide estimates and weight them by each industry's share of environmental expenditures.

Historically, EPA has most often estimated employment changes associated with plant closures due to environmental regulation or changes in output for the regulated industry (EPA, 1999a; EPA, 2000). This partial equilibrium approach focuses only on the "demand" portion of the projected change in employment and neglects other employment changes. EPA provides this estimate because it employs the most detailed modeling for the industry being regulated even if it does not capture all types of employment impacts. In addition to the employment effects identified by Morgenstern *et al.,* we also expect that the substitutes for cement (*e.g.,* asphalt) would expand production as consumers shift away from cement to other products. This would also lead to increased employment in those industries. Focusing only on the "demand effect", it can be seen that the estimate from the historical approach is within the range presented by the Morgenstern "demand effect" portion. This strengthens our comfort in the reasonableness of both estimates. In April of this year, EPA started including an estimate based on the Morgenstern approach because it is thought to be a broader measure of the employment impacts of this type of environmental regulation. Thus, this analysis goes beyond what EPA has typically done because the parameters estimated in the Morgenstern paper were used to estimate all three effects ("demand," "cost," and "factor shift"). This transfer of results from the Morgenstern study is uncertain but avoids ignoring the "cost effect" and the "factor-shift effect."

Using the historical approach, we calculated "demand effect" employment changes by assuming that the number of jobs declines proportionally with the economic model's simulated output changes. As shown in Table 3–10, using this limited approach, the employment falls by an 1,500 jobs, or approximately −10 percent.[47] By comparison, using the Morgenstern approach, we estimate that the net employment effects could range between 600 job losses to 1,300 job gains.

EPA has solely used this historical estimate in the past as a measure of the projected employment change associated with a regulation. However there are a number of serious shortcomings with this approach. First, and foremost, the historical approach only looks at the employment effects on the regulated industry from reduced output. Second, to arrive at that estimate, EPA needed to string together a number of strong assumptions. The employment impacts are independent of the performance of the overall economy. This rule takes effect in three years. If the economy is strong, the demand for cement strong, it is unlikely that any contraction in the industry will take place, even with the regulation. Second, we assume that all plants have the same limited ability to pass on the higher costs. In reality, plants should be modeled as oligopolists for each of their regional markets. Finally, EPA assumed that employment is directly proportional to output. This is unlikely, and biases the results towards higher employment losses. The Morgenstern methodology is a more complete consideration of probable impacts of a regulation on the economy.

TABLE 12—JOB LOSSES/GAINS ASSOCIATED WITH THE FINAL RULE

Method	1,000 Jobs
Partial equilibrium model (demand effect only)	−1.5
Literature-based estimate (net effect [A + B + C below])	0.3 (−0.6 to +1.3).
A. Literature-based estimate: Demand effect	−0.8 (−1.7 to +0.1).
B. Literature-based estimate: Cost effect	0.5 (+0.2 to +0.9).
C. Literature-based estimate: Factor shift effect	0.6 (+0 to +1.2).

We calculated a similar "demand effect" estimate that used the Morgenstern paper. EPA selected this paper because the parameter estimates (expressed in jobs per million [$1987] of environmental compliance expenditures) provide a transparent and tractable way to transfer estimates for an employment effects analysis. Similar estimates were not available from other studies. To do this, we multiplied the point estimate for the total demand effect (−3.56 jobs per million [$1987] of environmental compliance expenditure) by the total environmental compliance expenditures used in the partial equilibrium model. For example, the jobs effect estimate for is estimated to be 807 jobs ($-3.56 \times \$378$ million $\times 0.6$).[48] Demand effect results are provided in Table 12. It is not appropriate to substitute the data from that approach in to the Morgenstern due to the incompatibilities of the underlying data. Since the result from the historical approach is within the confidence bounds for the Morgenstern results for the "demand effect", we are comfortable that the more general Morgenstern result is a good representation of the change in employment.

We also present the results of using the Morgenstern paper to estimate employment "cost" and "factor-shift" effects. Although using the Morgenstern parameters to estimate these "cost" and "factor-shift" employment changes is uncertain, it is helpful to compare the potential job gains from these effects to the job losses associated with the "demand" effect. Table 12 shows that using the "cost" and "factor shift" employment effects may offset employment loss estimates using either "demand" effect employment losses. The 95 percent confidence intervals are shown for all of the estimates based on

[47] To place this reduction in context, it is similar to the decline experienced during the latest economic downturn; approximately 2,000 jobs (see Appendix A, Table A–3).

[48] Since Morgenstern's analysis reports environmental expenditures in 1987 dollars, we make an inflation adjustment to the engineering cost analysis using the consumer price index ((195.3/113.6) = 0.6).

the Morgenstern parameters. As shown, at the 95 percent confidence level, we cannot be certain if net employment changes are positive or negative.

Although the Morgenstern paper provides additional information about the potential job effects of environmental protection programs, there are several qualifications EPA considered as part of the analysis. First, EPA has used the weighted average parameter estimates for a narrow set of manufacturing industries (pulp and paper, plastics, petroleum, and steel). Absent other data and estimates, this approach seems reasonable and the estimates come from a respected peer-reviewed source. However, EPA acknowledges the final rule covers an industry not considered in the original empirical study. By transferring the estimates to the cement sector, we make the assumption that estimates are similar in size. In addition, EPA assumes also that Morgenstern *et al.'*s estimates derived from the 1979–1991 are still applicable for policy taking place in 2013, almost 20 years later. Second, the economic impact model only considers near-term employment effects in the cement industry where production technologies are fixed. As a result, the economic impact model places more emphasis on the short-term "demand effect," whereas the Morgenstern paper emphasizes other important long-term responses. For example, positive job gains associated with "factor shift effects" are more plausible when production choices become more flexible over time and industries can substitute labor for other production inputs. Third, the Morgenstern paper estimates rely on sector demand elasticities that are different (typically bigger) from the demand elasticity parameter used in the cement model. As a result, the demand effects are not directly comparable with the demand effects estimated by the cement model. Fourth, Morgenstern identifies the industry average as economically and statistically insignificant effect (*i.e.,* the point estimates are small, measured imprecisely, and not distinguishable from zero). EPA acknowledges this fact and has reported the 95 percent confidence intervals in Table 12. Fifth, Morgenstern's methodology assumes large plants bear most of the regulatory costs. By transferring the estimates, EPA assumes a similar distribution of regulatory costs by plant size and that the regulatory burden does not disproportionately fall on smaller plants.

EPA identified ten domestic plants with significant utilization changes that could temporarily idle until market demand conditions improve. It should be noted that some of these plant may be idled even in the absence of this action based on a review of recent history of this industry. The plants are small capacity plants with unit compliance costs close to $8 per ton and $241 million total change in operating profits. Since these plants account for approximately 8 percent of domestic capacity, a decision to permanently shut down these plants will reduce domestic supply and lead to additional projected market price increases. If any plants closed or idled there would also be a savings from not having to incur pollution control costs. A rough estimate of the change in social cost if all ten were to idle or close is a reduction in social cost of $24 million.[49]

The estimated domestic social cost of the final amendments is $926 to $950 million. There is an estimated $121 million surplus gain for other countries producing cement. The social cost estimates are significantly higher than the engineering analysis estimates, which estimated annualized costs of $466 million. This is a direct consequence of EPA's assumptions about existing domestic plants' pricing behavior. Under baseline conditions without regulation, the existing domestic cement plants are assumed to choose a production level that is less than the level produced under perfect competition. The imposition of additional regulatory costs tends to widen the gap between price and marginal cost in these markets and contributes to additional social costs. For more detail see the Regulatory Impact Analysis (RIA).

Using the ISIS model, we estimated 12 kilns (9 million tons of capacity) may be idled as a result of this final rulemaking. ISIS estimates a range of 1,105–1,134 jobs lost associated with the capacity idling. In ISIS, kilns are modeled producing at their capacity levels after taking into consideration normal downtime days. If the kilns owners decide to operate the kilns at a lower utilization rate a lower the number of kilns idling is expected to be lower.

As a result of this action, ISIS projects cement industry revenues are projected to decline by 4.5 percent, or $421 million. We estimate cement demand to drop 5.7 percent in 2013 or 7.0 million tons as a result of this action. The drop in demand will affect the domestic production and imports. Domestic production may fall by 9.6 percent or 9.0 million tons in 2013 compared to the baseline. Imports are likely to rise by 2.0 million tons. ISIS estimates that the average national price for Portland cement in 2013 could be 6.8 percent higher, or $5.79 per metric ton. More information on this model can be found in the ISIS TSD and in a Technical Memo to the docket.

10. What are the benefits?

We estimated the monetized benefits of this final regulatory action to be $7.4 billion to $18 billion (2005$, 3 percent discount rate) in the implementation year (2013). The monetized benefits of the final regulatory action at a 7 percent discount rate are $6.7 billion to $16 billion (2005$). Using alternate relationships between $PM_{2.5}$ and premature mortality supplied by experts, higher and lower benefits estimates are plausible, but most of the expert-based estimates fall between these two estimates.[50] A summary of the avoided health benefits and the associated monetized benefits estimates at discount rates of 3 percent and 7 percent are provided in Table 13 of this preamble.

TABLE 13—SUMMARY OF THE AVOIDED HEALTH INCIDENCES AND MONETIZED $PM_{2.5}$ BENEFITS ESTIMATES FOR THE FINAL PORTLAND CEMENT NESHAP AND NSPS

	Avoided health incidences	Monetized benefits (millions of 2005$, 3% discount rate)	Monetized benefits (millions of 2005$, 7% discount rate)
Avoided Premature Mortality	960 to 2,500	$7,600 to $19,000	$6,900 to $17,000.

[49] In addition to the ten plants identified that could temporarily idle or permanently shut down, there are two plants with unusually high mercury emissions that cannot meet the mercury emission limit using any single control system. However, we are assuming that they will apply multiple controls to meet the limit and have accounted for multiple controls in our cost analysis.

[50] Roman *et al.,* 2008. Expert Judgment Assessment of the Mortality Impact of Changes in Ambient Fine Particulate Matter in the U.S. Environ. Sci. Technol., 42, 7, 2268–2274.

TABLE 13—SUMMARY OF THE AVOIDED HEALTH INCIDENCES AND MONETIZED $PM_{2.5}$ BENEFITS ESTIMATES FOR THE FINAL PORTLAND CEMENT NESHAP AND NSPS—Continued

	Avoided health incidences	Monetized benefits (millions of 2005$, 3% discount rate)	Monetized benefits (millions of 2005$, 7% discount rate)
Avoided Morbidity:			
Chronic Bronchitis	650	$19	$19.
Acute Myocardial Infarction	1,500	$11	$11.
Hospital Admissions, Respiratory	240	$0.2	$0.2.
Hospital Admissions, Cardiovascular	500	$0.9	$0.9.
Emergency Room Visits, Respiratory	1,000	$0.03	$0.03.
Acute Bronchitis	1,500	$0.01	$0.01.
Work Loss Days	130,000	$1.2	$1.2.
Asthma Exacerbation	17,000	$0.06	$0.06.
Minor Restricted Activity Days	750,000	$3.0	$3.0.
Lower Respiratory Symptoms	18,000	$0.02	$0.02.
Upper Respiratory Symptoms	14,000	$0.03	$0.03.

Note: All estimates are for the implementation year (2013), and are rounded to two significant figures so numbers may not sum across rows. All fine particles are assumed to have equivalent health effects. Benefits from reducing hazardous air pollutants (HAPs) are not included. These estimates do not include the energy disbenefits of $210 to $470 million.

These benefits estimates represent the human health benefits associated with reducing exposure to fine particulate matter ($PM_{2.5}$). The PM reductions are the result of emission limits on PM as well as emission limits on other pollutants, including hazardous air pollutants (HAPs) for the NESHAP and criteria pollutants for the NSPS. To estimate the human health benefits, we used the environmental Benefits Mapping and Analysis Program (BenMAP) model to quantify the changes in $PM_{2.5}$-related health impacts and monetized benefits based on changes in air quality. This approach is consistent with the recently proposed Transport Rule RIA.[51]

For this final rule, we have expanded and updated the analysis since the proposal in several important ways. Using the Comprehensive Air Quality Model with extensions (CAMx) model, we are able to provide cement sector-specific air quality impacts attributable to the emission reductions anticipated from this final rule. We believe that this modeling provides a superior representation of the geographic distribution of air quality impacts than the national average benefit-per-ton estimates used for the proposal analysis. Furthermore, CAMx modeling allows us to model the reduced mercury deposition that would occur as a result of the estimated reductions of mercury emissions.

Although we are unable to model mercury methylation and human consumption of mercury-contaminated fish, the mercury deposition maps provide an improved qualitative characterization of the mercury benefits associated with this final rulemaking. Lastly, we added qualitative descriptions of the benefits categories that we are unable to quantify and monetize, including the benefits of reducing hazardous air pollutants and ecosystem effects.

In addition, the $PM_{2.5}$ benefits for this final rulemaking reflect EPA's current interpretation of the economic literature on mortality valuation by using the value-of-a-statistical life (VSL) based on a meta-analysis of 26 studies.[52] The $PM_{2.5}$ benefits are generally consistent with the methodology used in the proposal after adjusting for the revised VSL, and these estimates reflect EPA's decision to remove the arbitrarily assumed threshold from the health impact function.

For these rules the SO_2 reductions represent a large fraction of the total monetized benefits from reducing $PM_{2.5}$, but it is not possible to isolate the portion if the total monetized benefits attributable to the emission reductions of SO_2 resulting from the application of HCl controls. The benefits models assume that all fine particles, regardless of their chemical composition, are equally potent in causing premature mortality because there is no clear scientific evidence that would support the development of differential effects estimates by particle type.

For context, it is important to note that the magnitude of the $PM_{2.5}$ benefits is largely driven by the concentration response function for premature mortality. Experts have advised EPA to consider a variety of assumptions, including estimates based both on empirical (epidemiological) studies and judgments elicited from scientific experts, to characterize the uncertainty in the relationship between $PM_{2.5}$ concentrations and premature mortality. For this final rulemaking we cite two key empirical studies, one based on the American Cancer Society cohort study[53] and the extended Six Cities cohort study.[54]

Alternate models identified by experts describing the relationship between $PM_{2.5}$ and premature mortality would yield higher and lower estimates depending upon the assumptions that they made, but most of the expert-based estimates fall between the two epidemiology-based estimates (Roman *et al.* 2008).

EPA strives to use the best available science to support our benefits analyses. We recognize that interpretation of the science regarding air pollution and health is dynamic and evolving. The question of whether or not to assume a threshold in calculating the benefits associated with reductions in $PM_{2.5}$ is an issue that affects the benefits calculations not only for this rule but for many other EPA rulemakings and analyses. Due to these implications, we solicited comment on appropriateness of both the no-threshold and threshold model for PM benefits analysis as part of the proposal of this rule.

[51] U.S. Environmental Protection Agency, 2010. Proposed RIA for the Transport Rule. Prepared by Office of Air and Radiation. June. Available on the Internet at *http://www.epa.gov/ttn/ecas/ria.html.*

[52] In June 2009, EPA's Office of Air and Radiation revised the VSL used in air regulations to be consistent with the estimate used by the rest of the agency. Until updated guidance is available, EPA determined that a single peer-reviewed estimate applied consistently across the agency best reflects the advice it has received.

[53] Pope *et al.,* 2002. "Lung Cancer, Cardiopulmonary Mortality, and Long-Term Exposure to Fine Particulate Air Pollution." *Journal of the American Medical Association* 287:1132–1141.

[54] Laden *et al.,* 2006. "Reduction in Fine Particulate Air Pollution and Mortality." *American Journal of Respiratory and Critical Care Medicine.* 173: 667–672.

Three commenters did not support adopting a no-threshold model because it would obscure the greater uncertainty associated with calculated premature mortality at low PM concentrations and because it would be premature prior to the conclusion of the PM NAAQS review.

Shortly after the end of the comment period, EPA finalized the Integrated Science Assessment for Particulate Matter,[55] which was reviewed twice by EPA's Clean Air Scientific Advisory Committee, and concluded that the scientific literature consistently finds that a no-threshold log-linear model most adequately portrays the PM-mortality concentration-response relationship while recognizing potential uncertainty about the exact shape of the concentration-response function. In addition, the Human Health Subcommittee of EPA's Science Advisory Board recently concluded, "The HES fully supports EPA's decision to use a no-threshold model to estimate mortality reductions. This decision is supported by the data, which are quite consistent in showing effects down to the lowest measured levels. Analyses of cohorts using data from more recent years, during which time PM concentrations have fallen, continue to report strong associations with mortality. Therefore, there is no evidence to support a truncation of the CRF [concentration-response function]." [56]

After reviewing the public comments in conjunction with our review of the scientific literature and the Science Advisory Board's comments, we have determined that the no-threshold model is the most appropriate model for assessing the mortality benefits associated with reducing $PM_{2.5}$ exposure. Consistent with this recent scientific advice, we are replacing the previous threshold sensitivity analysis with a new "Lowest Measured Level" (LML) assessment. While an LML assessment provides some insight into the level of uncertainty in the estimated PM mortality benefits, EPA does not view the LML as a threshold and continues to quantify PM-related mortality impacts using a full range of modeled air quality concentrations.

Most of the estimated PM-related benefits in this rule accrue to populations exposed to higher levels of $PM_{2.5}$. Using the Pope *et al.* (2002) study, about 94 percent occur among populations with baseline exposure to annual mean $PM_{2.5}$ levels at or above 7.5 $\mu g/m^3$. Using the Laden *et al.* (2006) study, about 58 percent occur among populations with baseline exposure to annual mean $PM_{2.5}$ levels at or above 10 $\mu g/m^3$. It is important to emphasize that we have high confidence in $PM_{2.5}$-related effects down to the lowest LML of the major cohort studies. This fact is important, because as we estimate PM-related mortality among populations exposed to levels of $PM_{2.5}$ that are successively lower, our confidence in the results diminishes. However, our analysis shows that the great majority of the impacts occur at higher exposures.

It should be emphasized that the monetized benefits estimates provided above do not include benefits from several important benefit categories, including reducing other air pollutants, ecosystem effects, and visibility impairment. The benefits from reducing other pollutants have not been monetized in this analysis, including reducing 4,400 tons of NO_X, 5,800 tons of hydrochloric acid, 5,200 tons of organic HAPS, and over 16,000 pounds of mercury each year. In addition, we were unable to quantify the additional emission reductions that would occur if cement facilities temporarily idle or reduce capacity utilization as a result of this regulation, or the unquantifiable amount of reductions in condensable PM. Although we do not have sufficient information or modeling available to provide monetized estimates for this rulemaking, we include a qualitative assessment of the health effects of these air pollutants in the RIA for this rule, which is available in the docket.

In addition, the monetized benefits estimates provided in Table 13 do not reflect the disbenefits associated with increased electricity usage from operation of the control devices. We estimate that the increases in emissions of NO_X, SO_2, PM, and CO_2 would have disbenefits valued at $210 million to $470 million at a 3% discount rate. The total monetized benefits estimates of $7.4 billion to $18 billion (2005$, 3 percent discount rate) and $6.7 billion to $17 billion (2005$, 7% discount rate) reflect these energy disbenefits.

This analysis does not include the type of detailed uncertainty assessment found in the 2006 $PM_{2.5}$ NAAQS RIA or 2008 Ozone NAAQS RIA. However, the benefits analyses in these RIAs provide an indication of the sensitivity of our results to various assumptions, including the use of alternative concentration-response functions and the fraction of mortality impacts at low $PM_{2.5}$ levels.

The social costs of this rulemaking are estimated at $880 million (2005$) in the year of full implementation, and the benefits are estimated at $7.4 billion to $18 billion (2005$, 3 percent discount rate) for that same year. The benefits at a 7 percent discount rate are $6.7 billion to $16 billion (2005$). Thus, net benefits of this rulemaking are estimated at $6.5 billion to $17 billion (2005$, 3 percent discount rate). The net benefits at a 7 percent discount rate are $5.8 billion to $16 billion (2005$). Using alternate relationships between $PM_{2.5}$ and premature mortality supplied by experts, higher and lower benefits estimates are plausible, but most of the expert-based estimates fall between these two estimates. EPA believes that the benefits are likely to exceed the costs by a significant margin even when taking into account the uncertainties in the cost and benefit estimates.

A final issue on benefits concerns the air impacts of increases in imports. When a regulation leads to increases in imports and only the domestic emission changes are considered in a benefit analysis, the question of the impact of emissions from the increased production in other countries should be examined. The extra emissions may have an impact on the regulating country (the U.S.) and the other countries. The location of these extra emissions and the pollutants involved are both important. Our economic modeling does not involve estimates of the origin of the imports. We also do not have information about the level of control for facilities in other countries. Thus, estimating disbenefits associated with these increased emissions in other countries was beyond what we were able to do in this analysis.

However, another limitation of our analysis produces a bias in the opposite direction. The economic impact analysis estimated a 10 million ton decrease in domestic production. No emission reductions were estimated as a result of this change in production. The benefit analysis was based on emission reductions associated with control being applied to all facilities with no change in capacity utilization. The increase in imports was estimated to be 3 million tons. Thus we omitted an emission reduction associated with a 10 million ton decrease in production in this country while also omitting an increase in emissions for an increase in

[55] U.S. Environmental Protection Agency (U.S. EPA). 2009. Integrated Science Assessment for Particulate Matter (Final Report). EPA–600–R–08–139F. National Center for Environmental Assessment—RTP Division. December. Available on the Internet at *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=216546.*

[56] U.S. Environmental Protection Agency—Science Advisory Board (U.S. EPA–SAB). 2010. Review of EPA's DRAFT Health Benefits of the Second Section 812 Prospective Study of the Clean Air Act. EPA–COUNCIL–10–001. June. Available on the Internet at *http://yosemite.epa.gov/sab/sabproduct.nsf/0/72D4EFA39E48CDB28525774500738776/$File/EPA-COUNCIL-10-001-unsigned.pdf.*

production in other countries of less than a third of the domestic decrease. Of course the net result of these two omissions depends on the relative emission rates of the countries involved. Analysis of benefits for either of these two types of emissions is beyond the current scope of the benefit analysis.

For more information, please refer to the RIA for this final rule that is available in the docket.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), this action is an "economically significant regulatory action" because it is likely to have an annual effect on the economy of $100 million or more. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under E.O. 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action. In addition, EPA prepared a Regulatory Impact Analysis (RIA) of the potential costs and benefits associated with this action.

When estimating the $PM_{2.5}$-related human health benefits and compliance costs in Table 14 below, EPA applied methods and assumptions consistent with the state-of-the-science for human health impact assessment, economics and air quality analysis. EPA applied its best professional judgment in performing this analysis and believes that these estimates provide a reasonable indication of the expected benefits and costs to the nation of this rule. The Regulatory Impacts Analysis (RIA) available in the docket describes in detail the empirical basis for EPA's assumptions and characterizes the various sources of uncertainties affecting the estimates below.

When characterizing uncertainty in the PM-mortality relationship, EPA has historically presented a sensitivity analysis applying alternate assumed thresholds in the PM concentration-response relationship. In its synthesis of the current state of the PM science, EPA's 2009 Integrated Science Assessment (ISA) for Particulate Matter concluded that a no-threshold log-linear model most adequately portrays the PM-mortality concentration-response relationship. In the RIA accompanying this rule, rather than segmenting out impacts predicted to be associated levels above and below a "bright line" threshold, EPA includes a "lowest-measured-level (LML)" that illustrates the increasing uncertainty that characterizes exposure attributed to levels of $PM_{2.5}$ below the LML for each study. Figures provided in the RIA show avoided PM mortality impacts predicted relative to the baseline $PM_{2.5}$ levels experienced by the population receiving the $PM_{2.5}$ mortality benefit, as well as the lowest air quality levels measured in each of the epidemiology cohort studies. This information allows readers to determine the portion of PM-related mortality benefits occurring above or below the LML of each study; in general, our confidence in the size of the estimated reduction $PM_{2.5}$-related premature mortality decreases in areas where annual mean $PM_{2.5}$ levels are further below the LML in the cohort studies. Using the Pope *et al.* (2002) study, about 94 percent occur among populations with baseline exposure to annual mean $PM_{2.5}$ levels at or above 7.5 $\mu g/m^3$. Using the Laden *et al.* (2006) study, about 58 percent occur among populations with baseline exposure to annual mean $PM_{2.5}$ levels at or above 10 $\mu g/m^3$. While the LML analysis provides some insight into the level of uncertainty in the estimated PM mortality benefits, EPA does not view the LML as a threshold and continues to quantify PM-related mortality impacts using a full range of modeled air quality concentrations.

Table 14 shows the results of the cost and benefits analysis for this rule.

TABLE 14—SUMMARY OF THE MONETIZED BENEFITS, SOCIAL COSTS, AND NET BENEFITS FOR THE FINAL PORTLAND CEMENT NESHAP AND NSPS IN 2013

[Millions of 2005$] [1]

	3% Discount rate	7% Discount rate
Final NESHAP and NSPS		
Total Monetized Benefits [2]	$7,400 to $18,000	$6,700 to $16,000.
Total Social Costs [3]	$926 to $950	$926 to $950.
Net Benefits	$6,500 to $17,000	$5,800 to $15,000
Non-monetized Benefits	4,400 tons of NO_X (includes energy disbenefits).	
	5,200 tons of organic HAPs.	
	5,900 tons of HCl.	
	16,400 pounds of mercury.	
	Health effects from HAPs, NO_2, and SO_2 exposure.	
	Ecosystem effects.	
	Visibility impairment.	
Final NSPS only		
Total Monetized Benefits [2]	$510 to $1,300	$460 to $1,100.
Total Social Costs [3]	$72	$72.
Net Benefits	$440 to $1,200	$390 to $1,000.
Non-monetized Benefits	6,600 tons of NO_X.	
	520 tons of HCl.	

TABLE 14—SUMMARY OF THE MONETIZED BENEFITS, SOCIAL COSTS, AND NET BENEFITS FOR THE FINAL PORTLAND CEMENT NESHAP AND NSPS IN 2013—Continued

[Millions of 2005$] [1]

	3% Discount rate	7% Discount rate
	Health effects from HAPs, NO_2, and SO_2 exposure.	
	Ecosystem effects.	
	Visibility impairment.	
Final NESHAP only		
Total Monetized Benefits [2]	$7,400 to $18,000	$6,700 to $16,000.
Total Social Costs [3]	$904 to $930	$904 to $930.
Net Benefits	$6,500 to $17,000	$5,800 to $16,000.
Non-monetized Benefits	5,200 tons of organic HAPs.	
	5,900 tons of HCl.	
	16,000 pounds of mercury.	
	Health effects from HAPs, SO_2 exposure.	
	Ecosystem effects.	
	Visibility impairment.	
Alternative: More Stringent NSPS and Final NESHAP		
Total Monetized Benefits [2]	$7,400 to $18,000	$6,700 to $16,000.
Total Social Costs [3]	$955 to $979	$955 to $979.
Net Benefits	$6,500 to $17,000	$5,700 to $15,000.
Non-monetized Benefits	7,800 tons of NO_X (includes energy disbenefits).	
	5,200 tons of organic HAPs.	
	5,900 tons of HCl.	
	16,400 pounds of mercury.	
	Health effects from HAPs, NO_2, and SO_2 exposure.	
	Ecosystem effects.	
	Visibility impairment.	

[1] All estimates are for the implementation year (2013), and are rounded to two significant figures.

[2] The total monetized benefits reflect the human health benefits associated with reducing exposure to $PM_{2.5}$ through reductions of directly emitted $PM_{2.5}$ and $PM_{2.5}$ precursors such as NO_X and SO_2. It is important to note that the monetized benefits include many but not all health effects associated with $PM_{2.5}$ exposure. Benefits are shown as a range from Pope *et al.* (2002) to Laden *et al.* (2006). These models assume that all fine particles, regardless of their chemical composition, are equally potent in causing premature mortality because there is no clear scientific evidence that would support the development of differential effects estimates by particle type. The total monetized benefits include the energy disbenefits.

[3] The methodology used to estimate social costs for one year in the multimarket model using surplus changes results in the same social costs for both discount rates.

For more information on the benefits analysis, please refer to the RIA for this rulemaking, which is available in the docket.

B. Paperwork Reduction Act

1. Subpart F

The information requirements in the final amendments to subpart F have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2307.01.

The final amendments to the NSPS for Portland cement plants apply to affected facilities constructed, modified, or reconstructed after June 16, 2008. The owner or operator of a new kiln is required to keep daily records of clinker production, install and operate PM CEMS, and operate NO_X and SO_2 CEMS. These requirements are based on the recordkeeping and reporting requirements in the NSPS General Provisions (40 CFR part 60, subpart A) which are mandatory for all operators subject to new source performance standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 2,559 labor-hours per year at a cost

of $240,064 per year. The annualized capital costs are estimated at $45,626 per year and operation and maintenance costs are estimated at $52,450 per year. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

2. Subpart LLL

The information collection requirements in this final rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1801.07.

In most cases, new and existing kilns and in-line kiln/raw mills at major and area sources that are not already subject to emission limits for THC, mercury, and PM will become subject to the limits and associated compliance provisions in the current rule. Sources will have to install and operate CEMS for mercury, PM, and THC. Records of all calculations and data will be required. New compliance procedures will also apply to area sources subject to a PM limit in a format of lbs/ton of clinker. Cement plants also will be subject to new limits for HCl and associated compliance provisions which include compliance tests using EPA Method 321 and continuous monitoring for HCl for facilities that do not use a wet scrubber for HCl control. These requirements are based on the recordkeeping and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A) which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 79,790 labor-hours per year at a cost of $7.75 million per year. The average annualized capital costs are estimated at $61.7 million per year and average operation and maintenance costs are estimated at $192,578 per year. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations 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 impact of this rule on small entities, small entity is defined as: (1) A small business whose parent company has no more than 750 employees depending on the size definition for the affected NAICS code (as defined by Small Business Administration (SBA) size standards found at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf*); (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.

1. Subpart F

After considering the economic impact of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We estimate that 3 of the 26 existing Portland cement entities are small entities which will not incur any impacts under these final amendments unless an affected facility is constructed, modified, or reconstructed. Based on our economic analysis, 7 new kilns may be constructed during the next five years that will be subject to these NSPS amendments. One of these kilns may be operated by a Portland cement entity that is classified as a small entity according to the SBA small business size standards. Of these 7 kilns, this small entity is expected to incur an annualized compliance cost of between 1.0 and 3.0 percent of sales to comply with the final action.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities by the selection of an emission level based on highly cost-effective controls and specifying monitoring requirements that are the minimum to insure compliance. In the case where there are overlapping standards between this NSPS and the Portland Cement NESHAP, we have exempted sources from the least stringent requirement thereby eliminated overlapping monitoring, testing and reporting requirements by requiring that the source comply with only the more stringent of the standards.

2. Subpart LLL

After considering the economic impact of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We estimate that up to 3 of the 26 existing Portland cement plants are small entities.

EPA performed a screening analysis for impacts on the three affected small entities by comparing compliance costs to entity revenues. EPA's analysis found that the ratio of compliance cost to company revenue for one small entity (a Tribal government) will have an annualized cost of less than 1 percent of sales. The other two small businesses will have an annualized cost of between 1 and three percent of sales.

Although this final rule will not impact a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities by setting the final emissions limits at the MACT floor, the least stringent level allowed by law. In the case where there are overlapping standards between this NESHAP and the Portland Cement NSPS, we have exempted sources from the least stringent requirement thereby eliminating the overlapping monitoring, testing and reporting requirements by requiring that the source comply with only the more stringent of the standards. In addition, we applied MACT for HCl emissions to major sources only. The reduced compliance costs for two of the three small entities by a factor of 4.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and Tribal governments and

the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

1. Subpart F

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. As discussed earlier in this preamble, the estimated expenditures for the private sector in the fifth year after promulgation are $50 million. Thus, this final rule is not subject to the requirements of section 202 and 205 of the UMRA.

This final action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This final action contains no requirements that apply to such governments, imposes no obligations upon them, and will not result in expenditures by them of $100 million or more in any one year or any disproportionate impacts on them.

2. Subpart LLL

This rule contains a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Accordingly, EPA has prepared under section 202 of the UMRA a written statement which is summarized below.

In developing this rule, EPA consulted with small governments under a plan developed pursuant to section 203 of UMRA concerning the regulatory requirements in the rule that might significantly or uniquely affect small governments. EPA has determined that this final action contains regulatory requirements that might significantly or uniquely affect small governments because we identified one of the facilities affected by the final rule as Tribally owned. EPA developed a plan to permit this Tribal entity to have meaningful and timely input into its development.

Consistent with the intergovernmental consultation provisions of section 204 of the UMRA, EPA initiated consultations with the governmental entities affected by this rule. EPA directly contacted the facility in question to insure it was appraised of this rulemaking and potential implications. This facility indicated it was aware of the rulemaking and was participating in meetings with the industry trade association concerning this rulemaking. The facility did not indicate any special issues other than those expressed by the industry in general, We are assuming that they have the same concerns as those expressed by the other non-Tribally owned facilities during the development of this final rule. Subsequent to proposal, EPA again contacted the Tribal Government by letter with an offer of consultation. We received no response to that letter.

Consistent with section 205, EPA has identified and considered a reasonable number of regulatory alternatives. EPA carefully examined regulatory alternatives, and selected the lowest cost/least burdensome alternative that EPA deems adequate to address Congressional concerns and to effectively reduce emissions of mercury, THC and PM. EPA has considered the costs and benefits of the final rule, and has concluded that the costs will fall mainly on the private sector (approximately $479 million). EPA estimates that an additional facility owned by a Tribal government will incur approximately $1.2 million in costs per year. Furthermore, we believe it is unlikely that State, local and Tribal governments would begin operating large industrial facilities, similar to those affected by this rulemaking operated by the private sector. EPA has selected regulatory alternatives that represent the MACT floor level of control, which is the least stringent level allowed by law.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

These two final rules do not have federalism implications. They 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. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to these final rules.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has Tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with Tribal officials early in the process of developing the regulation and develops a Tribal summary impact statement.

1. Subpart F

This final action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. The final rule imposes requirements on owners and operators of specified industrial facilities and not Tribal governments. The only Tribally owned source is not affected by the amendments to subpart F. Thus, Executive Order 13175 does not apply to this action.

2. Subpart LLL

EPA has concluded that this action will have Tribal implications, because it will impose substantial direct compliance costs on Tribal governments, and the Federal government will not provide the funds necessary to pay those costs. One of the facilities affected by this final rule is Tribally owned. We estimate this facility will incur direct compliance costs that are between 1 to 3 percent of sales. Accordingly, EPA provides the following Tribal summary impact statement as required by section 5(b).

EPA consulted with Tribal officials early in the process of developing this regulation to provide them meaningful and timely input into its development. EPA directly contacted the facility in question to insure it was appraised of this rulemaking and potential

implications. This facility indicated it was aware of the rulemaking and was participating in meetings with the industry trade association concerning this rulemaking. The facility did not indicate any specific concern, and we are assuming that they have the same concerns as those expresses by the other non-Tribally owned facilities during the development of this rule.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a "significant energy action" as defined in Executive Order 13211, (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects. This rule will result in the addition of control equipment and monitoring systems for existing and new sources.

The final rule under subpart F will result in the addition of alkaline scrubbers to certain kilns to reduce SO_2 emissions. We estimate the additional electrical demand to be 6.9 million kWhr per year by the end of the 2013.

We estimate that under the final subpart LLL rule the additional electrical demand will be 1 billion kWhr per year and the natural gas use will be 1.2 million MMBtu for existing sources. At the end of 2013, electrical demand from new sources will be 180 million kWhr per year.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

Consistent with the NTTAA, EPA conducted searches through the Enhanced NSSN Database managed by the American National Standards Institute (ANSI). We also contacted VCS organizations, and accessed and searched their databases.

1. Subpart F

This final rulemaking involves technical standards. EPA has decided to use the VCS ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses," for its manual methods of measuring the content of the exhaust gas. These parts of ASME PTC 19.10–1981 are acceptable alternatives to EPA Methods 3B, 6, 6A, 7, and 7C. This standard is available from the American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016–5990.

While the Agency has identified 12 other VCS as being potentially applicable to this rule, we have decided not to use these VCS in this rulemaking. The use of these VCS would have been impractical because they do not meet the objectives of the standards cited in this rule. *See* the docket for this rule for the reasons for these determinations.

2. Subpart LLL

This final rulemaking involves technical standards. EPA will use ASTM D6348–03, "Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy," as an acceptable alternative to EPA Method 320 providing the following conditions are met:

(1) The test plan preparation and implementation in the Annexes to ASTM D 6348–03, Sections A1 through A8 are mandatory;

(2) In ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent R must be determined for each target analyte (Equation A5.5). In order for the test data to be acceptable for a compound, percent R must be $70 \leq R \leq 130$. If the percent R value does not meet this criterion for a target compound, the test data is not acceptable for that compound and the test must be repeated for that analyte (*i.e.,* the sampling and/or analytical procedure should be adjusted before a retest). The percent R value for each compound must be reported in the test report, and all field measurements must be corrected with the calculated percent R value for that compound by using the following equation: Reported Result = Measured Concentration in the Stack × 100 ÷ percent R.

While the Agency has identified eight other VCS as being potentially applicable to this rule, we have decided not to use these VCS in this rulemaking. The use of these VCS would have been impractical because they do not meet the objectives of the standards cited in this rule. *See* the docket for this rule for the reasons for these determinations.

Under 40 CFR 60.13(i) of the NSPS General Provisions and 63.7 (f) of the NESHAP General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule and amendments.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 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.

EPA has determined that this rule 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 populations. Additionally, the Agency has reviewed this rule to determine if there was existing disproportionately high and adverse human health or environmental effects on minority or low-income populations that could be mitigated by this rulemaking. An analysis of demographic data showed that the average of populations in close proximity to the sources, and thus most likely to be affected by the sources, were similar in demographic composition to national averages.

In determining the aggregate demographic makeup of the communities near affected sources, EPA

used census data at the block group level to identify demographics of the populations considered to be living near affected sources, such that they have notable exposures to current emissions from these sources. In this approach, EPA reviewed the distributions of different socio-demographic groups in the locations of the expected emission reductions from this rule. The review identified those census block groups within a circular distance of a half, 3, and 5 miles of affected sources and determined the demographic and socio-economic composition (*e.g.,* race, income, education, *etc.*) of these census block groups. The radius of 3 miles (or approximately 5 kilometers) has been used in other demographic analyses focused on areas around potential sources.[57] [58] [59] [60] EPA's demographic analysis has shown that these areas in aggregate have similar proportions of American Indians, African-Americans, Hispanics, Whites, and "Other and Multi-racial" populations, and similar proportions of families with incomes below the poverty level as the national average.[61]

EPA defines "Environmental Justice" to include meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and polices.

This final action establishes national emission standards for new and existing cement kilns. EPA estimates that there are 100 facilities covered by this rule. The final rule will reduce emissions of all the listed hazardous air pollutants emitted from this source category. This includes emissions of cadmium, HCl, lead, Hg, and organic hazardous air pollutants. Adverse health effects from these pollutants include cancer, irritation of the lungs, skin, and mucus membranes, effects on the central nervous system, and damage to the kidneys, and acute health disorders. The rule will also result in substantial reductions of criteria pollutants such as NO_X, PM (total and fine), and SO_2. SO_2 and NO_2 are precursors for the formation of $PM_{2.5}$ and ozone. Reducing these emissions will reduce ozone and $PM_{2.5}$ formation and associated health effects, such as adult premature mortality, chronic and acute bronchitis, asthma, and other respiratory and cardiovascular diseases. (Please refer to the RIA contained in the docket for this rulemaking.)

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a "major rule" as defined by 5 U.S.C. 804(2). These final rules will be effective November 8, 2010.

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: August 6, 2010.

Lisa P. Jackson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

■ 2. Section 60.17 is amended by revising paragraph (h)(4) to read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(h) * * *

(4) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], IBR approved for § 60.56c(b)(4) of subpart Ec, § 60.63(f)(2) and (f)(4) of subpart F, § 60.106(e)(2) of subpart J, §§ 60.104a(d)(3), (d)(5), (d)(6), (h)(3), (h)(4), (h)(5), (i)(3), (i)(4), (i)(5), (j)(3), and (j)(4), 60.105a(d)(4), (f)(2), (f)(4), (g)(2), and (g)(4), 60.106a(a)(1)(iii), (a)(2)(iii), (a)(2)(v), (a)(2)(viii), (a)(3)(ii), and (a)(3)(v), and 60.107a(a)(1)(ii), (a)(1)(iv), (a)(2)(ii), (c)(2), (c)(4), and (d)(2) of subpart Ja, tables 1 and 3 of subpart EEEE, tables 2 and 4 of subpart FFFF, table 2 of subpart JJJJ, and § 60.4415(a)(2) and (a)(3) of subpart KKKK of this part.

* * * * *

Subpart F—[Amended]

■ 3. Section 60.62 is revised to read as follows:

§ 60.62 Standards.

(a) On and after the date on which the performance test required to be conducted by § 60.8 is completed, you may not discharge into the atmosphere from any kiln any gases which:

(1) Contain particulate matter (PM) in excess of:

(i) 0.30 pound per ton of feed (dry basis) to the kiln if construction, reconstruction, or modification of the kiln commences after August 17, 1971 but on or before June 16, 2008.

(ii) 0.01 pound per ton of clinker on a 30-operating day rolling average if construction, reconstruction, or modification of the kiln commenced after June 16, 2008. An operating day includes all valid data obtained in any daily 24-hour period during which the kiln operates and excludes any measurements made during the daily 24-hour period when the kiln was not operating.

(2) Exhibit greater than 20 percent opacity, except that this opacity limit does not apply to any kiln subject to a PM limit in paragraph (a)(1) of this section that uses a PM continuous emissions monitoring system (CEMS).

(3) Exceed 1.50 pounds of nitrogen oxide (NO_X) per ton of clinker on a 30-operating day rolling average if construction, reconstruction, or modification of the kiln commences

[57] U.S. GAO (Government Accountability Office). *Demographics of People Living Near Waste Facilities.* Washington DC: Government Printing Office; 1995.

[58] Mohai P, Saha R. "Reassessing Racial and Socio-economic Disparities in Environmental Justice Research". *Demography.* 2006;43(2): 383–399.

[59] Mennis J. "Using Geographic Information Systems to Create and Analyze Statistical Surfaces of Populations and Risk for Environmental Justice Analysis". *Social Science Quarterly,* 2002;83(1): 281–297.

[60] Bullard RD, Mohai P, Wright B, Saha R, *et al. Toxic Waste and Race at Twenty 1987–2007.* United Church of Christ. March, 2007.

[61] The results of the demographic analysis are presented in "Review of Environmental Justice Impacts", June 2010, a copy of which is available in the docket.

after June 16, 2008, except this limit does not apply to any alkali bypass installed on the kiln. An operating day includes all valid data obtained in any daily 24-hour period during which the kiln operates and excludes any measurements made during the daily 24-hour period when the kiln was not operating.

(4) Exceed 0.4 pounds of sulfur dioxide (SO_2) per ton of clinker on a 30-operating day rolling average if construction, reconstruction, or modification commences after June 16, 2008, unless you are demonstrating a 90 percent SO_2 emissions reduction measured across the SO_2 control device. An operating day includes all valid data obtained in any daily 24-hour period during which the kiln operates, and excludes any measurements made during the daily 24-hour period when the kiln was not operating.

(b) On and after the date on which the performance test required to be conducted by § 60.8 is completed, you may not discharge into the atmosphere from any clinker cooler any gases which:

(1) Contain PM in excess of:

(i) 0.10 pound per ton of feed (dry basis) to the kiln if construction, reconstruction, or modification of the clinker cooler commenced after August 17, 1971 but on or before June 16, 2008.

(ii) 0.01 pound per ton of clinker on a 30-operating day rolling average if construction, reconstruction, or modification of the clinker cooler commences after June 16, 2008. An operating day includes all valid data obtained in any daily 24-hour period during which the kiln operates, and excludes any measurements made during the daily 24-hour period when the kiln was not operating.

(2) Exhibit 10 percent opacity, or greater, except that this opacity limit does not apply to any clinker cooler subject to a PM limit in paragraph (b)(1) of this section that uses a PM CEMS.

(3) If the kiln and clinker cooler exhaust are combined for energy efficiency purposes and sent to a single control device, the appropriate kiln PM limit may be adjusted using the procedures in § 63.1343(b) of this chapter.

(4) If the kiln has a separate alkali bypass stack, you must combine the PM emissions from the bypass stack with the PM emissions from the main kiln exhaust to determine total PM emissions.

(c) On and after the date on which the performance test required to be conducted by § 60.8 is completed, you may not discharge into the atmosphere from any affected facility other than the kiln and clinker cooler any gases which exhibit 10 percent opacity, or greater.

(d) If you have an affected source subject to this subpart with a different emission limit or requirement for the same pollutant under another regulation in title 40 of this chapter, you must comply with the most stringent emission limit or requirement and are not subject to the less stringent requirement.

■ 4. Section 60.63 is revised to read as follows:

§ 60.63 Monitoring of operations.

(a) [Reserved]

(b) *Clinker production monitoring requirements.* For any kiln subject to an emissions limitation on PM, NO_X, or SO_2 emissions (lb/ton of clinker), you must:

(1) Determine hourly clinker production by one of two methods:

(i) Install, calibrate, maintain, and operate a permanent weigh scale system to measure and record weight rates of the amount of clinker produced in tons of mass per hour. The system of measuring hourly clinker production must be maintained within ±5 percent accuracy.

(ii) Install, calibrate, maintain, and operate a permanent weigh scale system to measure and record weight rates of the amount of feed to the kiln in tons of mass per hour. The system of measuring feed must be maintained within ±5 percent accuracy. Calculate your hourly clinker production rate using a kiln specific feed-to-clinker ratio based on reconciled clinker production determined for accounting purposes and recorded feed rates. This ratio should be updated monthly. Note that if this ratio changes at clinker reconciliation, you must use the new ratio going forward, but you do not have to retroactively change clinker production rates previously estimated;

(2) Determine, record, and maintain a record of the accuracy of the system of measuring hourly clinker or feed production before initial use (for new sources) or within 30 days of the effective date of this rule (for existing sources). During each quarter of source operation, you must determine, record, and maintain a record of the ongoing accuracy of the system of measuring hourly clinker or feed production.

(3) Record the daily clinker production rates and kiln feed rates; and

(4) Develop an emissions monitoring plan in accordance with paragraphs (i)(1) through (i)(4) of this section.

(c) You must monitor PM emissions of a kiln or clinker cooler subject to a PM emissions limit in § 60.62(a)(1)(ii) or (b)(1)(ii) according to the applicable requirements below:

(1) Install and operate a PM CEMS in accordance with Performance Specification 11 of appendix B and Procedure 2 of appendix F to part 60 of this chapter. The performance test method and the correlation test method for Performance Specification 11 shall be Method 5 or Method 5i of appendix A to this part. The owner or operator must also develop an emissions monitoring plan in accordance with paragraphs (i)(1) through (i)(4) of this section.

(2) Perform Relative Response Audits annually and Response Correlation Audits every 3 years.

(3) Collect readings at least every 15 minutes in order to calculate the 30-operating day rolling average to determine PM emissions. Calculate the 30-operating day rolling average using equation 1 of this section:

$$\text{30-operating day rolling average} = \frac{1}{n}\sum_{i=1}^{n} PM_{15\ \text{minutes}} \qquad \text{(Eq. 1)}$$

Where:

$PM_{15\ \text{minutes}}$ = PM emissions from a 15-minute period.

n = number of 15 minute periods with valid data over the preceding 30 operating days.

(d) You must install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration by volume of NO_X emissions into the atmosphere for any kiln subject to the NO_X emissions limit in § 60.62(a)(3). If the kiln has an alkali bypass, NO_X emissions from the alkali bypass do not need to be monitored, and NO_X emission monitoring of the kiln exhaust may be done upstream of any comingled alkali bypass gases.

(e) You must install, operate, calibrate, and maintain an instrument for continuously monitoring and

recording the concentration by volume of SO_2 emissions into the atmosphere for any kiln subject to the SO_2 emissions limit in § 60.62(a)(4). If you are complying with the alternative 90 percent SO_2 emissions reduction emission limit, you must also continuously monitor and record the concentration by volume of SO_2 present at the wet scrubber inlet.

(f) You must install, operate, and maintain according to Performance Specification 2 (40 CFR part 60, appendix B) and the requirements in paragraphs (f)(1) through (5) of this section each CEMS required under paragraphs (c), (d) and (e) of this section.

(1) The span value of each NO_X monitor must be set at 125 percent of the maximum estimated hourly potential NO_X emission concentration that translates to the applicable emission limit at full clinker production capacity.

(2) You must conduct performance evaluations of each NO_X monitor according to the requirements in § 60.13(c) and Performance Specification 2 of Appendix B to part 60. The owner or operator must use Methods 7, 7A, 7C, 7D, or 7E of appendix A–4 to part 60 for conducting the relative accuracy evaluations. The method ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 7 or 7C of Appendix A–4 to part 60.

(3) The span value for the SO_2 monitor must be set at 125 percent of the maximum estimated hourly potential SO_2 emission concentration that translates to the applicable emission limit at full clinker production capacity.

(4) You must conduct performance evaluations of each SO_2 monitor according to the requirements in § 60.13(c) and Performance Specification 2 of Appendix B to part 60. You must use Methods 6, 6A, or 6C of Appendix A–4 to part 60 for conducting the relative accuracy evaluations. The method ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 6 or 6A of Appendix A–4 to part 60.

(5) You must comply with the quality assurance requirements in Procedure 1 of Appendix F to part 60 for each monitor, including quarterly accuracy determinations for monitors, and daily calibration drift tests.

(g) For each CEMS required under paragraphs (c) through (e) of this section:

(1) You must operate the monitoring system and collect data at all required intervals at all times the affected source is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments).

(2) You may not use data recorded during the monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or control activities in calculations used to report emissions or operating levels. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. An owner or operator must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

(3) You must meet the requirements of § 60.13(h) when determining the 1-hour averages of emissions data.

(h) You must install, operate, calibrate, and maintain instruments for continuously measuring and recording the pollutant per mass flow rate to the atmosphere for each kiln subject to the PM emissions limits in § 60.62(a)(1)(i) and (ii), the NO_X emissions limit in § 60.62(a)(3), or the SO_2 emissions limit in § 60.62(a)(4) according to the requirements in paragraphs (h)(1) through (10) of this section.

(1) The owner or operator must install each sensor of the flow rate monitoring system in a location that provides representative measurement of the exhaust gas flow rate at the sampling location of the NO_X, SO_2 or PM CEMS, taking into account the manufacturer's recommendations. The flow rate sensor is that portion of the system that senses the volumetric flow rate and generates an output proportional to that flow rate.

(2) The flow rate monitoring system must be designed to measure the exhaust gas flow rate over a range that extends from a value of at least 20 percent less than the lowest expected exhaust flow rate to a value of at least 20 percent greater than the highest expected exhaust gas flow rate.

(3) The flow rate monitoring system must have a minimum accuracy of 5 percent of the flow rate.

(4) The flow rate monitoring system must be equipped with a data acquisition and recording system that is capable of recording values over the entire range specified in paragraph (h)(2) of this section.

(5) The signal conditioner, wiring, power supply, and data acquisition and recording system for the flow rate monitoring system must be compatible with the output signal of the flow rate sensors used in the monitoring system.

(6) The flow rate monitoring system must be designed to complete a minimum of one cycle of operation for each successive 15-minute period.

(7) The flow rate sensor must have provisions to determine the daily zero and upscale calibration drift (CD) (*see* sections 3.1 and 8.3 of Performance Specification 2 in Appendix B to part 60 of this chapter for a discussion of CD).

(i) Conduct the CD tests at two reference signal levels, zero (*e.g.,* 0 to 20 percent of span) and upscale (*e.g.,* 50 to 70 percent of span).

(ii) The absolute value of the difference between the flow monitor response and the reference signal must be equal to or less than 3 percent of the flow monitor span.

(8) You must perform an initial relative accuracy test of the flow rate monitoring system according to section 8.2 of Performance Specification 6 of Appendix B to part 60 of the chapter, with the exceptions noted in paragraphs (h)(8)(i) and (ii).

(i) The relative accuracy test is to evaluate the flow rate monitoring system alone rather than a continuous emission rate monitoring system.

(ii) The relative accuracy of the flow rate monitoring system shall be no greater than 10 percent of the mean value of the reference method data.

(9) You must verify the accuracy of the flow rate monitoring system at least once per year by repeating the relative accuracy test specified in paragraph (h)(8).

(10) You must operate the flow rate monitoring system and record data during all periods of operation of the affected facility including periods of startup, shutdown, and malfunction, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments.

(i) *Development and Submittal (Upon Request) of Monitoring Plans.* If you demonstrate compliance with any applicable emission limit through performance stack testing or other

emissions monitoring, you must develop a site-specific monitoring plan according to the requirements in paragraphs (i)(1) through (4) of this section. This requirement also applies to you if you petition the EPA Administrator for alternative monitoring parameters under paragraph (h) of this section and § 63.8(f). If you use a BLDS, you must also meet the requirements specified in paragraph § 63.1350(m)(10) of this chapter.

(1) For each continuous monitoring system (CMS) required in this section, you must develop, and submit to the permitting authority for approval upon request, a site-specific monitoring plan that addresses paragraphs (i)(1)(i) through (iii) of this section. You must submit this site-specific monitoring plan, if requested, at least 60 days before the initial performance evaluation of your CMS.

(i) Installation of the CEMS sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.,* on or downstream of the last control device);

(ii) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction systems; and

(iii) Performance evaluation procedures and acceptance criteria (*e.g.,* calibrations).

(2) In your site-specific monitoring plan, you must also address paragraphs (i)(2)(i) through (iii) of this section.

(i) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (c)(3), and (c)(4)(ii);

(ii) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(iii) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(3) You must conduct a performance evaluation of each CMS in accordance with your site-specific monitoring plan.

(4) You must operate and maintain the CMS in continuous operation according to the site-specific monitoring plan.

■ 5. Section 60.64 is revised to read as follows:

§ 60.64 Test methods and procedures

(a) In conducting the performance tests required in § 60.8, you must use reference methods and procedures and the test methods in appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) Compliance with the PM standards in § 60.62 is determined using the procedures specified in § 60.63.

(1) The PM emission rate is calculated using Equation 2 of this section:

$$E = (C_S Q_S)/(PK) \qquad \text{(Eq. 2)}$$

Where:

E = emission rate of particulate matter, lb/ton of kiln feed;

C_s = concentration of particulate matter, gr/scf;

Q_s = volumetric flow rate of effluent gas, where C_s and Q_s are on the same basis (either wet or dry), dscf/hr;

P = total kiln feed (dry basis) rate, ton/hr. For kilns constructed, modified or reconstructed on or after June 16, 2008,

p = total kiln clinker production rate; and

K = conversion factor, 7000 gr/lb.

(2) Suitable methods shall be used to determine the kiln feed rate (P), except fuels.

(3) Method 9 and the procedures in § 60.11 must be used to determine opacity.

(4) Any sources other than kilns (including associated alkali bypass and cooler) subject to the 10 percent opacity limit must follow the appropriate monitoring procedures in § 63.1350(f), (m)(1) through (4), (m)(10) through (11), (o), and (p) of this chapter.

(5) If your kiln is not equipped with a PM CEMS meeting the requirements of Performance Specification 11 of Appendix B to part 60, and the kiln (including any associated alkali bypass and clinker cooler) was constructed, modified or reconstructed on or after June 16, 2008, you must conduct a performance test every 5 years following the initial performance test. Kilns (including any associated alkali bypass and clinker cooler) constructed, reconstructed, or modified after August 17, 1971 but on or before June 16, 2008 must conduct a performance test every 5 years if not equipped with a PM CEMS meeting the requirements of Performance Specification 11 of Appendix B to part 60.

(c) You must calculate and record the 30-operating day rolling emission rate of NO_X and SO_2 as the total of all hourly emissions data for a cement kiln in the preceding 30 days, divided by the total tons of clinker produced in that kiln during the same 30-operating day period using Equation 3 of this section:

$$E = (C_S Q_S)/(PK) \qquad \text{Eq. 3}$$

Where:

E = emission rate of NO_X or SO_2, lb/ton of clinker production;

C_s = concentration of NO_X or SO_2, gr/scf;

Q_s = volumetric flow rate of effluent gas, where C_s and Q_s are on the same basis (either wet or dry), scf/hr;

P = total kiln clinker production rate, ton/hr; and

K = conversion factor, 7000 gr/lb.

(d) As of December 31, 2011 and within 60 days after the date of completing each performance evaluation or test, as defined in § 63.2, conducted to demonstrate compliance with this subpart, you must submit the relative accuracy test audit data and performance test data, except opacity data, to EPA by successfully submitting the data electronically to EPA's Central Data Exchange (CDX) by using the Electronic Reporting Tool (ERT) (*see http://www.epa.gov/ttn/chief/ert/ert_tool.html/*).

■ 6. Section 60.66 is revised to read as follows:

§ 60.66 Delegation of authority.

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a State, local, or Tribal agency. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or Tribal agency within your State.

(b) In delegating implementation and enforcement authority to a State, local, or Tribal agency, the approval authorities contained paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S EPA and are not transferred to the State, local, or Tribal agency.

(1) Approval of an alternative to any non-opacity emissions standard.

(2) Approval of a major change to test methods under § 60.8(b). A "major change to test method" is defined in 40 CFR 63.90.

(3) Approval of a major change to monitoring under § 60.13(i). A "major change to monitoring" is defined in 40 CFR 63.90.

(4) Approval of a major change to recordkeeping/reporting under § 60.7(b) through (f). A "major change to recordkeeping/reporting" is defined in 40 CFR 63.90.

Appendix B—[Amended]

■ 7. Appendix B to 40 CFR Part 60 is amended as follows:

■ a. Revise Performance Specification 12A.

■ b. Add Performance Specification 12B.

Appendix B to Part 60—Performance Specifications

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Performance Specification 12A—Specifications and Test Procedures for Total Vapor Phase Mercury Continuous Emission Monitoring Systems in Stationary Sources

1.0 Scope and Application

1.1 Analyte. The analyte measured by these procedures and specifications is total vapor phase mercury (Hg) in the flue gas, which represents the sum of elemental Hg (Hg°, CAS Number 7439–97–6) and oxidized forms of gaseous Hg (Hg^{+2}), in concentration units of micrograms per cubic meter ($\mu g/m^3$).

1.2 Applicability.

1.2.1 This specification is for evaluating the acceptability of total vapor phase Hg continuous emission monitoring systems (CEMS) installed at stationary sources at the time of or soon after installation and whenever specified in the regulations. The Hg CEMS must be capable of measuring the total concentration in $\mu g/m^3$ of vapor phase Hg, regardless of speciation, and recording that concentration at standard conditions on a wet or dry basis. These specifications do not address measurement of particle bound Hg.

1.2.2 This specification is not designed to evaluate an installed CEMS's performance over an extended period of time nor does it identify specific calibration techniques and auxiliary procedures to assess the CEMS's performance. The source owner or operator, however, is responsible to calibrate, maintain, and operate the CEMS properly. The Administrator may require, under section 114 of the Clean Air Act, the operator to conduct CEMS performance evaluations at other times besides the initial performance evaluation test. *See* §§ 60.13(c) and 63.8(e)(1).

1.2.3 Mercury monitoring approaches not entirely suited to these specifications may be approvable under the alternative monitoring or alternative test method provisions of § 60.13(i) and § 63.8(f) or § 60.8(b)(3) and § 63.7(f), respectively.

2.0 Summary of Performance Specification

Procedures for determining CEMS relative accuracy, linearity, and calibration drift are outlined. CEMS installation and measurement location specifications, data reduction procedures, and performance criteria are included.

3.0 Definitions

3.1 *Continuous Emission Monitoring System (CEMS)* means the total equipment required to measure a pollutant concentration. The system generally consists of the following three major subsystems:

3.2 *Sample Interface* means that portion of the CEMS used for one or more of the following: sample acquisition, sample transport, sample conditioning, and protection of the monitor from the effects of the stack effluent.

3.3 *Hg Analyzer* means that portion of the Hg CEMS that measures the total vapor phase Hg mass concentration and generates a proportional output.

3.4 *Data Recorder* means that portion of the CEMS that provides a permanent electronic record of the analyzer output. The data recorder may provide automatic data reduction and CEMS control capabilities.

3.5 *Span Value* means the measurement range as specified in the applicable regulation or other requirement. If the span is not specified in the applicable regulation or other requirement, then it must be a value approximately equivalent to two times the emission standard. Unless otherwise specified, the span value may be rounded up to the nearest multiple of 10.

3.6 *Measurement Error Test* means a test procedure in which the accuracy of the concentrations measured by a CEMS at three or more points over its measurement range is evaluated using reference gases. For Hg CEMS, elemental and oxidized Hg (Hg^0 and mercuric chloride, $HgCl_2$) gas standards of known concentration are used for this procedure.

3.7 *Measurement Error (ME)* means the absolute value of the difference between the concentration indicated by the CEMS and the known concentration of a reference gas, expressed as a percentage of the span value, when the entire CEMS, including the sampling interface, is challenged.

3.8 *Calibration Drift (CD)* means the absolute value of the difference between the CEMS output response and either an upscale Hg reference gas or a zero-level Hg reference gas, expressed as a percentage of the span value, when the entire CEMS, including the sampling interface, is challenged after a stated period of operation during which no unscheduled maintenance or repair took place.

3.9 *Relative Accuracy Test Procedure* means a test procedure consisting of at least nine test runs, in which the accuracy of the concentrations measured by a CEMS is evaluated by comparison against concurrent measurements made with a reference method (RM). Relative accuracy tests repeated on a regular, on-going basis are referred to as relative accuracy test audits or RATAs.

3.10 *Relative Accuracy (RA)* means the absolute mean difference between the pollutant concentrations determined by the CEMS and the values determined by the RM plus the 2.5 percent error confidence coefficient of a series of tests divided by the mean of the RM tests. Alternatively, for sources with an average RM concentration less than 5.0 micrograms per standard cubic meter (µg/scm), the RA may be expressed as the absolute value of the difference between the mean CEMS and RM values.

4.0 Interferences [Reserved]

5.0 Safety

The procedures required under this performance specification may involve hazardous materials, operations, and equipment. This performance specification may not address all of the safety problems associated with these procedures. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicable regulatory limitations prior to performing these procedures. The CEMS user's manual and materials recommended by the RM should be consulted for specific precautions to be taken.

6.0 Equipment and Supplies

6.1 CEMS Equipment Specifications.

6.1.1 Data Recorder Scale. The Hg CEMS data recorder output range must include the full range of expected Hg concentration values in the gas stream to be sampled including zero and the span value.

6.1.2 The Hg CEMS design should also provide for the determination of CD and ME at a zero value (zero to 20 percent of the span value) and at upscale values (between 50 and 100 percent of the span value). The Hg CEMS must be constructed to permit the introduction of known concentrations of Hg and $HgCl_2$ separately into the sampling system of the CEMS immediately preceding the sample extraction filtration system such that the entire CEMS can be challenged.

6.2 Reference Gas Delivery System. The reference gas delivery system must be designed so that the flowrate exceeds the sampling system flow requirements of the CEMS and that the gas is delivered to the CEMS at atmospheric pressure.

6.3 Other equipment and supplies, as needed by the reference method used for the Relative Accuracy Test Procedure. *See* Section 8.6.2.

7.0 Reagents and Standards

7.1 Reference Gases. Reference gas standards are required for both elemental and oxidized Hg (Hg and mercuric chloride, $HgCl_2$). The use of National Institute of Standards and Technology (NIST)-traceable standards and reagents is required. The following gas concentrations are required.

7.1.1 Zero-level. 0 to 20 percent of the span value.

7.1.2 Mid-level. 50 to 60 percent of the span value.

7.1.3 High-level. 80 to 100 percent of the span value.

7.2 Reference gas standards may also be required for the reference methods. *See* Section 8.6.2.

8.0 Performance Specification Test Procedure

8.1 Installation and Measurement Location Specifications.

8.1.1 CEMS Installation. Install the CEMS at an accessible location downstream of all pollution control equipment. Place the probe outlet or other sampling interface at a point or location in the stack (or vent) representative of the stack gas concentration of Hg. Since the Hg CEMS sample system normally extracts gas from a single point in the stack, a location that has been shown to be free of stratification for Hg or, alternatively, SO_2 is recommended. If the cause of failure to meet the RA test requirement is determined to be the measurement location and a satisfactory correction technique cannot be established, the Administrator may require the CEMS to be relocated. Measurement locations and points or paths that are most likely to provide data that will meet the RA requirements are described in Sections 8.1.2 and 8.1.3 below.

8.1.2 Measurement Location. The measurement location should be (1) at least two equivalent diameters downstream of the nearest control device, point of pollutant generation or other point at which a change of pollutant concentration may occur, and (2) at least half an equivalent diameter upstream

from the effluent exhaust. The equivalent duct diameter is calculated according to Method 1 in appendix A–1 to this part.

8.1.3 Hg CEMS Sample Extraction Point. Use a sample extraction point either (1) no less than 1.0 meter from the stack or duct wall, or (2) within the centroidal velocity traverse area of the stack or duct cross section. This does not apply to cross-stack, in-situ measurement systems.

8.2 Measurement Error (ME) Test Procedure. Sequentially inject each of at least three elemental Hg reference gases (zero, mid-level, and high level, as defined in Section 7.1), three times each for a total of nine injections. Inject the gases in such a manner that the entire CEMS is challenged. Do not inject the same gas concentration twice in succession. At each reference gas concentration, determine the average of the three CEMS responses and subtract the average response from the reference gas value. Calculate the measurement error (ME) using Equation 12–1 by expressing the absolute value of the difference between the average CEMS response (A) and the reference gas value (R) as a percentage of the span (*see* example data sheet in Figure 12A–1). For each elemental Hg reference gas, the absolute value of the difference between the CEMS response and the reference value must not exceed 5 percent of the span value. If this specification is not met, identify and correct the problem before proceeding. Repeat the measurement error test procedure using oxidized Hg reference gases. For each oxidized Hg reference gas, the absolute value of the difference between the CEMS response and the reference value shall not exceed 10 percent of the span value. If this specification is not met, identify and correct the problem before proceeding.

$$ME = \frac{|R - A|}{Span} x100 \qquad \text{(Equation 12A-1)}$$

8.3 Seven-Day Calibration Drift (CD) Test Procedure.

8.3.1 CD Test Period. While the affected facility is operating normally, or as specified in an applicable regulation, determine the magnitude of the CD once each day (at 24-hour intervals, to the extent practicable) for 7 consecutive unit operating days according to the procedures in Sections 8.3.2 and 8.3.3. The 7 consecutive unit operating days need not be 7 consecutive calendar days. Use either Hg° or $HgCl_2$ standards for this test.

8.3.2 The purpose of the CD measurement is to verify the ability of the CEMS to conform to the established CEMS response used for determining emission concentrations or emission rates. Therefore, if periodic automatic or manual adjustments are made to the CEMS zero and upscale response settings, conduct the CD test immediately before these adjustments, or conduct it in such a way that the CD can be determined.

8.3.3 Conduct the CD test using the zero gas specified and either the mid-level or high-level gas as specified in Section 7.1. Sequentially introduce the reference gases to the CEMS at the sampling system of the CEMS immediately preceding the sample extraction filtration system. Record the CEMS response (A) for each reference gas and, using Equation 12A–2, subtract the corresponding reference value (R) from the CEMS value, and express the absolute value of the difference as a percentage of the span value (*see also* example data sheet in Figure 12A–2). For each reference gas, the absolute value of the difference between the CEMS response and the reference value must not exceed 5 percent of the span value. If these specifications are not met, identify and correct the problem before proceeding.

$$CD = \frac{|R - A|}{Span} x100 \qquad \text{(Equation 12A-2)}$$

8.4 Relative Accuracy (RA) Test Procedure.

8.4.1 RA Test Period. Conduct the RA test according to the procedure given in Sections 8.4.2 through 8.4.6 while the affected facility is operating normally, or as specified in an applicable subpart. The RA test may be conducted during the CD test period.

8.4.2 Reference Methods (RM). Unless otherwise specified in an applicable subpart of the regulations, use Method 29, Method 30A, or Method 30B in appendix A–8 to this part or American Society of Testing and Materials (ASTM) Method D6784–02 (incorporated by reference, *see* § 60.17) as the RM for Hg concentration. For Method 29 and ASTM Method D6784–02 only, the filterable portion of the sample need not be included when making comparisons to the CEMS results. When Method 29, Method 30B, or ASTM D6784–02 is used, conduct the RM test runs with paired or duplicate sampling systems and use the average of the vapor phase Hg concentrations measured by the two trains. When Method 30A is used, paired sampling systems are not required. If the RM and CEMS measure on a different moisture basis, data derived with Method 4 in appendix A–3 to this part must also be obtained during the RA test.

8.4.3 Sampling Strategy for RM Tests. Conduct the RM tests in such a way that they will yield results representative of the emissions from the source and can be compared to the CEMS data. The RM and CEMS locations need not be immediately adjacent. Locate the RM measurement points in accordance with section 8.1.3 of Performance Specification 2 (PS 2) in this appendix. It is preferable to conduct moisture measurements (if needed) and Hg measurements simultaneously, although moisture measurements that are taken within an hour of the Hg measurements may be used to adjust the Hg concentrations to a consistent moisture basis. In order to correlate the CEMS and RM data properly, note the beginning and end of each RM test period for each paired RM run (including the exact time of day) on the CEMS chart recordings or other permanent record of output.

8.4.4 Number and Length of RM Test Runs. Conduct a minimum of nine RM test runs. When Method 29, Method 30B, or ASTM D6784–02 is used, only test runs for which the paired RM trains meet the relative deviation criteria (RD) of this PS must be used in the RA calculations. In addition, for Method 29 and ASTM D6784–02, use a minimum sample time of 2 hours and for Methods 30A and 30B use a minimum sample time of 30 minutes.

Note: More than nine sets of RM test runs may be performed. If this option is chosen, RM test run results may be excluded so long as the total number of RM test run results used to determine the CEMS RA is greater than or equal to nine. However, all data must be reported including the excluded test run data.

8.4.5 Correlation of RM and CEMS Data. Correlate the CEMS and the RM test data as to the time and duration by first determining from the CEMS final output (the one used for reporting) the integrated average pollutant concentration for each RM test period. Consider system response time, if important, and confirm that the results are on a consistent moisture basis with the RM test. Then, compare each integrated CEMS value against the corresponding RM value. When Method 29, Method 30B, or ASTM D6784–02 is used, compare each CEMS value against the corresponding average of the paired RM values.

8.4.6 Paired RM Outliers.

8.4.6.1 When Method 29, Method 30B, or ASTM D6784–02 is used, outliers are identified through the determination of relative deviation (RD) of the paired RM tests. Data that do not meet the RD criteria must be flagged as a data quality problem and may not be used in the calculation of RA. The primary reason for performing paired RM sampling is to ensure the quality of the RM data. The percent RD of paired data is the parameter used to quantify data quality. Determine RD for paired data points as follows:

$$RD = \frac{|C_a - C_b|}{C_a + C_b} x100 \qquad \text{(Equation 12A-3)}$$

Where:

C_a and C_b are the Hg concentration values determined from the paired samples.

8.4.6.2 The minimum performance criteria for RM Hg data is that RD for any data pair must be ≤ 10 percent as long as the mean Hg concentration is greater than 1.0 $\mu g/m^3$. If the mean Hg concentration is less than or equal to 1.0 $\mu g/m^3$, the RD must be ≤ 20 percent or ≤ 0.2 $\mu g/m^3$ absolute difference. Pairs of RM data exceeding these RD criteria should be eliminated from the data set used to develop a Hg CEMS correlation or to assess CEMS RA.

8.4.7 Calculate the mean difference between the RM and CEMS values in the units of micrograms per cubic meter ($\mu g/m^3$), the standard deviation, the confidence coefficient, and the RA according to the procedures in Section 12.0.

8.5 Reporting. At a minimum (check with the appropriate EPA Regional Office, State or local Agency for additional requirements, if any), summarize in tabular form the results of the CD tests, the linearity tests, and the RA test or alternative RA procedure, as appropriate. Include all data sheets, calculations, charts (records of CEMS responses), reference gas concentration certifications, and any other information necessary to confirm that the CEMS meets the performance criteria.

9.0 Quality Control [Reserved]

10.0 Calibration and Standardization [Reserved]

11.0 Analytical Procedure

For Method 30A, sample collection and analysis are concurrent. For the other RM, post-run sample analyses are performed. Refer to the RM employed for specific analytical procedures.

12.0 Calculations and Data Analysis

Calculate and summarize the RA test results on a data sheet similar to Figure 12A–3.

12.1 Consistent Basis. All data from the RM and CEMS must be compared in units of micrograms per standard cubic meter (µg/scm), on a consistent and identified moisture basis. The values must be standardized to 20°C, 760 mm Hg.

12.1.1 Moisture Correction (as applicable). If the RM and CEMS measure Hg on a different moisture basis, they will need to be corrected to a consistent basis. Use Equation 12A–4a to correct data from a wet basis to a dry basis.

$$Concentration_{(dry)} = \frac{Concentration_{(wet)}}{(1 - B_{ws})} \qquad \text{(Equation 12A-4a)}$$

Use Equation 12A–4b to correct data from a dry basis to a wet basis.

$$Concentration_{(wet)} = Concentration_{(dry)} \times (1 - B_{ws}) \qquad \text{(Equation 12A-4b)}$$

Where:

B_{ws} is the moisture content of the flue gas from Method 4, expressed as a decimal fraction (*e.g.,* for 8.0 percent H_2O, B_{ws}= 0.08).

12.2 Arithmetic Mean. Calculate $\overline{d}$, the arithmetic mean of the differences (d_i) of a data set as follows:

$$\overline{d} = \frac{1}{n}\sum_{i=1}^{n} d_i \qquad \text{(Equation 12A-5)}$$

Where:

n = Number of data points.

12.3 Standard Deviation. Calculate the standard deviation, S_d, as follows:

$$S_d = \left[\frac{\sum_{i=1}^{n} d_i^2 - \frac{\left[\sum_{i=1}^{n} d_i\right]^2}{n}}{n-1} \right]^{\frac{1}{2}} \qquad \text{(Equation 12A-6)}$$

Where:

$\sum_{i=1}^{n} d_i$ = Algebraic sum of the individual differences d_i.

12.3 Confidence Coefficient (CC). Calculate the 2.5 percent error confidence coefficient (one-tailed), CC, as follows:

$$CC = t_{0.975}\frac{S_d}{\sqrt{n}} \qquad \text{(Equation 12A-7)}$$

12.4 Relative Accuracy. Calculate the RA of a set of data as follows:

$$RA = \frac{\left|\left|\overline{d}\right| + \left|CC\right|\right|}{\overline{RM}} x\ 100 \qquad \text{(Equation 12A-8)}$$

Where:

$|\overline{d}|$ = Absolute value of the mean of the differences (from Equation 12A–5)

$|CC|$ = Absolute value of the confidence coefficient (from Equation 12A–7)

$\overline{RM}$ = Average reference method value

13.0 Method Performance

13.1 Measurement Error (ME). For Hg^0, the ME must not exceed 5 percent of the span value at the zero-, mid-, and high-level reference gas concentrations. For $HgCl_2$, the ME must not exceed 10 percent of the span value at the zero-, mid-, and high-level reference gas concentrations.

13.2 Calibration Drift (CD). The CD must not exceed 5 percent of the span value on any of the 7 days of the CD test.

13.3 Relative Accuracy (RA). The RA of the CEMS must be no greater than 20 percent of the mean value of the RM test data in terms of units of µg/scm. Alternatively, if the mean RM is less than 5.0 µg/scm, the results are acceptable if the absolute value of the difference between the mean RM and CEMS values does not exceed 1.0 µg/scm.

14.0 Pollution Prevention [Reserved]

15.0 Waste Management [Reserved]

16.0 Alternative Procedures [Reserved]

17.0 Bibliography

17.1 40 CFR part 60, appendix B, "Performance Specification 2—Specifications and Test Procedures for SO_2 and NO_X Continuous Emission Monitoring Systems in Stationary Sources."

17.2 40 CFR part 60, appendix A, "Method 29—Determination of Metals Emissions from Stationary Sources."

17.3 40 CFR part 60, appendix A, "Method 30A—Determination of Total Vapor Phase Mercury Emissions From Stationary Sources (Instrumental Analyzer Procedure).

17.4 40 CFR part 60, appendix A, "Method 30B—Determination of Total Vapor Phase Mercury Emissions From Coal-Fired Combustion Sources Using Carbon Sorbent Traps."

17.5 ASTM Method D6784–02, "Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method)."

18.0 Tables and Figures

TABLE 12A–1—T-VALUES

n[a]	$t_{0.975}$	n[a]	$t_{0.975}$	n[a]	$t_{0.975}$
2	12.706	7	2.447	12	2.201
3	4.303	8	2.365	13	2.179
4	3.182	9	2.306	14	2.160
5	2.776	10	2.262	15	2.145
6	2.571	11	2.228	16	2.131

[a] The values in this table are already corrected for n–1 degrees of freedom. Use n equal to the number of individual values.

FIGURE 12A–1—ME DETERMINATION

	Date	Time	Reference gas value (μg/m³)	CEMS measured value (μg/m³)	Absolute difference (μg/m³)	ME (% of span value)
Zero level						
	Average					
Mid level						
	Average					
High level						
	Average					

FIGURE 12A–2—7-DAY CALIBRATION DRIFT DETERMINATION

	Date	Time	Reference gas value (μg/m³)	CEMS measured value (μg/m³)	Absolute difference (μg/m³)	CD (% of span value)
Zero level						

FIGURE 12A–2—7-DAY CALIBRATION DRIFT DETERMINATION—Continued

	Date	Time	Reference gas value (μg/m³)	CEMS measured value (μg/m³)	Absolute difference (μg/m³)	CD (% of span value)
Upscale (Mid or High)						

FIGURE 12A–3—RELATIVE ACCURACY TEST DATA

Run No.	Date	Begin time	End time	RM value (μg/m³)	CEMS value (μg/m³)	Difference (μg/m³)	Run used? (Yes/No)	RD[1]
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
Average Values								
Arithmetic Mean Difference: Standard Deviation: Confidence Coefficient: T-Value: % Relative Accuracy: $\lvert (RM)_{avg} - (CEMS)_{avg} \rvert$:								

[1] Calculate the RD only if paired samples are taken using RM 30B, RM 29, or ASTM 6784–08. Express RD as a percentage or, for very low RM concentrations (≤ 1.0 μg/m³), as the absolute difference between C_a and C_b.

Performance Specification 12B—Specifications and Test Procedures for Monitoring Total Vapor Phase Mercury Emissions From Stationary Sources Using a Sorbent Trap Monitoring System

1.0 Scope and Application

The purpose of Performance Specification 12B (PS 12B) is to establish performance benchmarks for, and to evaluate the acceptability of, sorbent trap monitoring systems used to monitor total vapor-phase mercury (Hg) emissions in stationary source flue gas streams. These monitoring systems involve continuous repetitive in-stack sampling using paired sorbent media traps with periodic analysis of the time-integrated samples. Persons using PS 12B should have a thorough working knowledge of Methods 1, 2, 3, 4, 5 and 30B in appendices A–1 through A–3 and A–8 to this part.

1.1 Analyte. The analyte measured by these procedures and specifications is total vapor phase Hg in the flue gas, which represents the sum of elemental Hg (Hg^0, CAS Number 7439–97–6) and gaseous forms of oxidized Hg (*i.e.,* Hg^{+2}) in mass concentration units of micrograms per dry standard cubic meter (μg/dscm).

1.2 Applicability

1.2.1 These procedures are only intended for use under relatively low particulate conditions (*e.g.,* monitoring after all pollution control devices). This specification is for evaluating the acceptability of total

vapor phase Hg sorbent trap monitoring systems installed at stationary sources at the time of, or soon after, installation and whenever specified in the regulations. The Hg monitoring system must be capable of measuring the total concentration of vapor phase Hg (regardless of speciation), in units of µg/dscm.

1.2.2 This specification contains routine procedures and specifications designed to evaluate an installed sorbent trap monitoring system's performance over time; Procedure 5 of appendix F to this part contains additional procedures and specifications which may be required for long term operation. In addition, the source owner or operator is responsible to calibrate, maintain, and operate the monitoring system properly. The Administrator may require the owner or operator, under section 114 of the Clean Air Act, to conduct performance evaluations at other times besides the initial test to evaluate the CEMS performance. *See* § 60.13(c) and 63.8(e)(1).

2.0 Principle

Known volumes of flue gas are continuously extracted from a stack or duct through paired, in-stack, pre-spiked sorbent media traps at appropriate nominal flow rates. The sorbent traps in the sampling system are periodically exchanged with new ones, prepared for analysis as needed, and analyzed by any technique that can meet the performance criteria. For quality-assurance purposes, a section of each sorbent trap is spiked with Hg^0 prior to sampling. Following sampling, this section is analyzed separately and a specified minimum percentage of the spike must be recovered. Paired train sampling is required to determine method precision.

3.0 Definitions

3.1 *Sorbent Trap Monitoring System* means the total equipment required for the collection of gaseous Hg samples using paired three-partition sorbent traps.

3.2 *Relative Accuracy Test Procedure* means a test procedure consisting of at least nine runs, in which the accuracy of the total vapor phase Hg concentrations measured by the sorbent trap monitoring system is evaluated by comparison against concurrent measurements made with a reference method (RM). Relative accuracy tests repeated on a regular, on-going basis are referred to as relative accuracy test audits or RATAs.

3.3 *Relative Accuracy (RA)* means the absolute mean difference between the pollutant (Hg) concentrations determined by the sorbent trap monitoring system and the values determined by the reference method (RM) plus the 2.5 percent error confidence coefficient of a series of tests divided by the mean of the RM tests. Alternatively, for low concentration sources, the RA may be expressed as the absolute value of the difference between the mean sorbent trap monitoring system and RM values.

3.4 *Relative Deviation (RD)* means the absolute difference of the Hg concentration values obtained with a pair of sorbent traps divided by the sum of those concentrations, expressed as a percentage. RD is used to assess the precision of the sorbent trap monitoring system.

3.5 *Spike Recovery* means the mass of Hg recovered from the spiked trap section, expressed as a percentage of the amount spiked. Spike recovery is used to assess sample matrix interference.

4.0 Interferences [Reserved]

5.0 Safety

The procedures required under this performance specification may involve hazardous materials, operations, and equipment. This performance specification may not address all of the safety problems associated with these procedures. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicable regulatory limitations prior to performing these procedures.

6.0 Equipment and Supplies

6.1 Sorbent Trap Monitoring System Equipment Specifications.

6.1.1 Monitoring System. The equipment described in Method 30B in appendix A–8 to this part must be used to continuously sample for Hg emissions, with the substitution of three-section traps in place of two-section traps, as described below. A typical sorbent trap monitoring system is shown in Figure 12B–1.

6.1.2 Three-Section Sorbent Traps. The sorbent media used to collect Hg must be configured in traps with three distinct and identical segments or sections, connected in series, to be separately analyzed. Section 1 is designated for primary capture of gaseous Hg. Section 2 is designated as a backup section for determination of vapor-phase Hg breakthrough. Section 3 is designated for quality assurance/quality control (QA/QC) purposes. Section 3 must be spiked with a known amount of gaseous Hg^0 prior to sampling and later analyzed to determine the spike (and hence sample) recovery efficiency.

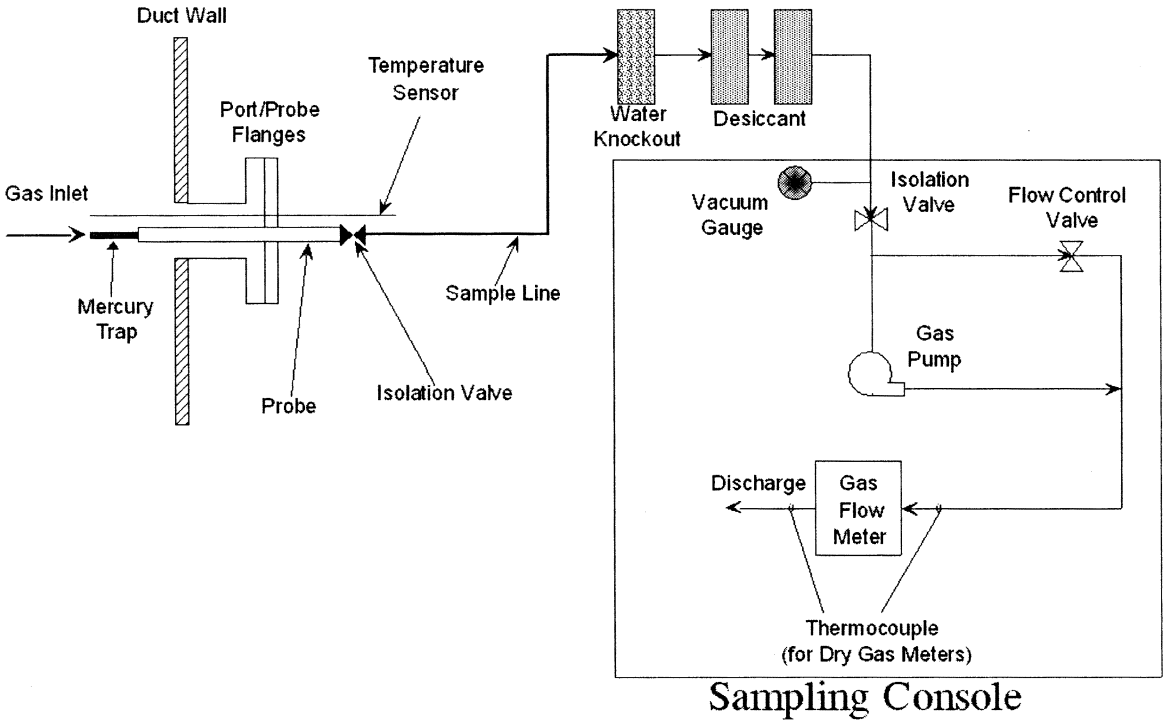


Figure 12B-1. Typical Sorbent Trap Monitoring System (only one trap and associated sampling system is illustrated).

6.1.3 Gaseous Hg^0 Sorbent Trap Spiking System. A known mass of gaseous Hg^0 must be spiked onto section 3 of each sorbent trap prior to sampling. Any approach capable of quantitatively delivering known masses of Hg^0 onto sorbent traps is acceptable. Several technologies or devices are available to meet this objective. Their practicality is a function of Hg mass spike levels. For low levels, NIST-certified or NIST-traceable gas generators or tanks may be suitable, but will likely require long preparation times. A more practical, alternative system, capable of delivering almost any mass required, employs NIST-certified or NIST-traceable Hg salt solutions (*e.g.,* $Hg(NO_3)_2$). With this system, an aliquot of known volume and concentration is added to a reaction vessel containing a reducing agent (*e.g.,* stannous chloride); the Hg salt solution is reduced to Hg^0 and purged onto section 3 of the sorbent trap by using an impinger sparging system.

6.1.4 Sample Analysis Equipment. Any analytical system capable of quantitatively recovering and quantifying total gaseous Hg from sorbent media is acceptable provided that the analysis can meet the performance criteria in Table 12B–1 in Section 9 of this performance specification. Candidate recovery techniques include leaching, digestion, and thermal desorption. Candidate analytical techniques include ultraviolet atomic fluorescence (UV AF); ultraviolet atomic absorption (UV AA), with and without gold trapping; and in-situ X-ray fluorescence (XRF).

7.0 Reagents and Standards

Only NIST-certified or NIST-traceable calibration gas standards and reagents must be used for the tests and procedures required under this performance specification. The sorbent media may be any collection material (*e.g.,* carbon, chemically treated filter, *etc.*) capable of quantitatively capturing and recovering for subsequent analysis, all gaseous forms of Hg in the emissions from the intended application. Selection of the sorbent media must be based on the material's ability to achieve the performance criteria contained in this method as well as the sorbent's vapor phase Hg capture efficiency for the emissions matrix and the expected sampling duration at the test site.

8.0 Performance Specification Test Procedure

8.1 Installation and Measurement Location Specifications.

8.1.1 Selection of Monitoring Site. Sampling site information should be obtained in accordance with Method 1 in appendix A–1 to this part. Place the probe inlet at a point or location in the stack (or vent) downstream of all pollution control equipment and representative of the stack gas concentration of Hg. A location that has been shown to be free of stratification for Hg or, alternatively, SO_2 is recommended. An estimation of the expected stack Hg concentration is required to establish a target sample flow rate, total gas sample volume, and the mass of Hg^0 to be spiked onto section 3 of each sorbent trap.

8.1.2 Pre-sampling Spiking of Sorbent Traps. Based on the estimated Hg concentration in the stack, the target sample rate and the target sampling duration, calculate the expected mass loading for section 1 of each sorbent trap (*see* Section 12.1 of this performance specification). The pre-sampling spike to be added to section 3 of each sorbent trap must be within ± 50 percent of the expected section 1 mass loading. Spike section 3 of each sorbent trap at this level, as described in Section 6.1.3 of this performance specification. For each sorbent trap, keep a record of the mass of Hg^0 added to section 3. This record must include, at a minimum, the identification number of the trap, the date and time of the spike, the name of the analyst performing the procedure, the method of spiking, the mass of Hg^0 added to section 3 of the trap (µg), and the supporting calculations.

8.1.3 Pre-monitoring Leak Check. Perform a leak check with the sorbent traps in place in the sampling system. Draw a vacuum in each sample train. Adjust the vacuum in each sample train to ~15″ Hg. Use the gas flow meter to determine leak rate. The leakage rate must not exceed 4 percent of the target

sampling rate. Once the leak check passes this criterion, carefully release the vacuum in the sample train, then seal the sorbent trap inlet until the probe is ready for insertion into the stack or duct.

8.1.4 Determination of Flue Gas Characteristics. Determine or measure the flue gas measurement environment characteristics (gas temperature, static pressure, gas velocity, stack moisture, *etc.*) in order to determine ancillary requirements such as probe heating requirements (if any), sampling rate, proportional sampling conditions, moisture management, *etc.*

8.2 Monitoring.

8.2.1 System Preparation and Initial Data Recording. Remove the plug from the end of each sorbent trap and store each plug in a clean sorbent trap storage container. Remove the stack or duct port cap and insert the probe(s) with the inlet(s) aligned perpendicular to the stack gas flow. Secure the probe(s) and ensure that no leakage occurs between the duct and environment. Record initial data including the sorbent trap ID, start time, starting gas flow meter readings, initial temperatures, set points, and any other appropriate information.

8.2.2 Flow Rate Control. Set the initial sample flow rate at the target value from section 8.1.1 of this performance specification. Then, for every operating hour during the sampling period, record the date and time, the sample flow rate, the gas flow meter reading, the stack temperature (if needed), the flow meter temperatures (if needed), temperatures of heated equipment such as the vacuum lines and the probes (if heated), and the sampling system vacuum readings. Also, record the stack gas flow rate and the ratio of the stack gas flow rate to the sample flow rate. Adjust the sampling flow rate to maintain proportional sampling, *i.e.,* keep the ratio of the stack gas flow rate to sample flow rate within ± 25 percent of the reference ratio from the first hour of the data collection period (*see* section 12.2 of this performance specification). The sample flow rate through a sorbent trap monitoring system during any hour (or portion of an hour) that the unit is not operating must be zero.

8.2.3 Stack Gas Moisture Determination. If data from the sorbent trap monitoring system will be used to calculate Hg mass emissions, determine the stack gas moisture content using a continuous moisture monitoring system or other means acceptable to the Administrator, such as the ones described in § 75.11(b) of this chapter. Alternatively, for combustion of coal, wood, or natural gas in boilers only, a default moisture percentage from § 75.11(b) of this chapter may be used.

8.2.4 Essential Operating Data. Obtain and record any essential operating data for the facility during the test period, *e.g.,* the barometric pressure for correcting the sample volume measured by a dry gas meter to standard conditions. At the end of the data collection period, record the final gas flow meter reading and the final values of all other essential parameters.

8.2.5 Post-monitoring Leak Check. When the monitoring period is completed, turn off the sample pump, remove the probe/sorbent trap from the port and carefully re-plug the end of each sorbent trap. Perform a leak check with the sorbent traps in place, at the maximum vacuum reached during the monitoring period. Use the same general approach described in section 8.1.3 of this performance specification. Record the leakage rate and vacuum. The leakage rate must not exceed 4 percent of the average sampling rate for the monitoring period. Following the leak check, carefully release the vacuum in the sample train.

8.2.6 Sample Recovery. Recover each sampled sorbent trap by removing it from the probe and seal both ends. Wipe any deposited material from the outside of the sorbent trap. Place the sorbent trap into an appropriate sample storage container and store/preserve it in an appropriate manner.

8.2.7 Sample Preservation, Storage, and Transport. While the performance criteria of this approach provide for verification of appropriate sample handling, it is still important that the user consider, determine, and plan for suitable sample preservation, storage, transport, and holding times for these measurements. Therefore, procedures in recognized voluntary consensus standards such as those in ASTM D6911–03 "Standard Guide for Packaging and Shipping Environmental Samples for Laboratory Analysis" should be followed for all samples.

8.2.8 Sample Custody. Proper procedures and documentation for sample chain of custody are critical to ensuring data integrity. Chain of custody procedures in recognized voluntary consensus standards such as those in ASTM D4840–99 "Standard Guide for Sample Chain-of-Custody Procedures" should be followed for all samples (including field samples and blanks).

8.3 Relative Accuracy (RA) Test Procedure

8.3.1 For the initial certification of a sorbent trap monitoring system, a RA Test is required. Follow the basic RA test procedures and calculation methodology described in Sections 8.4.1 through 8.4.7 and 12.4 of PS 12A in this appendix, replacing the term "CEMS" with "sorbent trap monitoring system".

8.3.2 Special Considerations. The type of sorbent material used in the traps must be the same as that used for daily operation of the monitoring system; however, the size of the traps used for the RA test may be smaller than the traps used for daily operation of the system. Spike the third section of each sorbent trap with elemental Hg, as described in section 8.1.2 of this performance specification. Install a new pair of sorbent traps prior to each test run. For each run, the sorbent trap data must be validated according to the quality assurance criteria in Table 12B–1 in Section 9.0, below.

8.3.3 Acceptance Criteria. The RA of the sorbent trap monitoring system must be no greater than 20 percent of the mean value of the RM test data in terms of units of µg/scm. Alternatively, if the RM concentration is less than or equal to 5.0 µg/scm, then the RA results are acceptable if the absolute difference between the means of the RM and sorbent trap monitoring system values does not exceed 1.0 µg/scm.

9.0 Quality Assurance and Quality Control (QA/QC)

Table 12B–1 summarizes the QA/QC performance criteria that are used to validate the Hg emissions data from a sorbent trap monitoring system. Failure to achieve these performance criteria will result in invalidation of Hg emissions data, except where otherwise noted.

TABLE 12B–1—QA/QC CRITERIA FOR SORBENT TRAP MONITORING SYSTEM OPERATION AND CERTIFICATION

QA/QC test or specification	Acceptance criteria	Frequency	Consequences if not met
Pre-monitoring leak check	≤4% of target sampling rate	Prior to monitoring	Monitoring must not commence until the leak check is passed.
Post-monitoring leak check	≤4% of average sampling rate	After monitoring	Invalidate the data from the paired traps or, if certain conditions are met, report adjusted data from a single trap (see Section 12.7.1.3).
Ratio of stack gas flow rate to sample flow rate.	Hourly ratio may not deviate from the reference ratio by more than ± 25%..	Every hour throughout monitoring period.	Invalidate the data from the paired traps or, if certain conditions are met, report adjusted data from a single trap (*see* Section 12.7.1.3).
Sorbent trap section 2 breakthrough.	≤5% of Section 1 Hg mass	Every sample	Invalidate the data from the paired traps or, if certain conditions are met, report adjusted data from a single trap (*see* Section 12.7.1.3).

TABLE 12B–1—QA/QC CRITERIA FOR SORBENT TRAP MONITORING SYSTEM OPERATION AND CERTIFICATION—Continued

QA/QC test or specification	Acceptance criteria	Frequency	Consequences if not met
Paired sorbent trap agreement	≤10% Relative Deviation (RD) if the average concentration is > 1.0 μg/m³. ≤20% RD if the average concentration is ≤ 1.0 μg/m³. Results also acceptable if absolute difference between concentrations from paired traps is ≤ 0.03 μg/m³.	Every sample	Either invalidate the data from the paired traps or report the results from the trap with the higher Hg concentration.
Spike Recovery Study	Average recovery between 85% and 115% for each of the 3 spike concentration levels.	Prior to analyzing field samples and prior to use of new sorbent media.	Field samples must not be analyzed until the percent recovery criteria has been met.
Multipoint analyzer calibration	Each analyzer reading within ± 10% of true value and $r^2 \geq 0.99$.	On the day of analysis, before analyzing any samples.	Recalibrate until successful
Analysis of independent calibration standard..	Within ± 10% of true value	Following daily calibration, prior to analyzing field samples.	Recalibrate and repeat independent standard analysis until successful.
Spike recovery from section 3 of both sorbent traps.	75–125% of spike amount	Every sample	Invalidate the data from the paired traps or, if certain conditions are met, report adjusted data from a single trap (*see* Section 12.7.1.3).
Relative Accuracy	RA ≤20.0% of RM mean value; or if RM mean value ≤5.0 μg/scm, absolute difference between RM and sorbent trap monitoring system mean values ≤1.0 μg/scm.	RA specification must be met for initial certification.	Data from the system are invalid until a RA test is passed.
Gas flow meter calibration	An initial calibration factor (Y) has been determined at 3 settings; for mass flow meters, initial calibration with stack gas has been performed. For subsequent calibrations, Y within ± 5% of average value from the most recent 3-point calibration.	At 3 settings prior to initial use and at least quarterly at one setting thereafter.	Recalibrate meter at 3 settings to determine a new value of Y.
Temperature sensor calibration	Absolute temperature measured by sensor within ± 1.5% of a reference sensor.	Prior to initial use and at least quarterly thereafter.	Recalibrate; sensor may not be used until specification is met.
Barometer calibration	Absolute pressure measured by instrument within ± 10 mm Hg of reading with a NIST-traceable barometer.	Prior to initial use and at least quarterly thereafter.	Recalibrate; instrument may not be used until specification is met.

10.0 Calibration and Standardization

10.1 Gaseous and Liquid Standards. Only NIST certified or NIST-traceable calibration standards (*i.e.,* calibration gases, solutions, *etc.*) must be used for the spiking and analytical procedures in this performance specification.

10.2 Gas Flow Meter Calibration. The manufacturer or supplier of the gas flow meter should perform all necessary set-up, testing, programming, *etc.,* and should provide the end user with any necessary instructions, to ensure that the meter will give an accurate readout of dry gas volume in standard cubic meters for the particular field application.

10.2.1 Initial Calibration. Prior to its initial use, a calibration of the flow meter must be performed. The initial calibration may be done by the manufacturer, by the equipment supplier, or by the end user. If the flow meter is volumetric in nature (*e.g.,* a dry gas meter), the manufacturer, equipment supplier, or end user may perform a direct volumetric calibration using any gas. For a mass flow meter, the manufacturer, equipment supplier, or end user may calibrate the meter using a bottled gas mixture containing 12 ± 0.5% CO_2, 7 ± 0.5% O_2, and balance N_2, or these same gases in proportions more representative of the expected stack gas composition. Mass flow meters may also be initially calibrated on-site, using actual stack gas.

10.2.1.1 Initial Calibration Procedures. Determine an average calibration factor (Y) for the gas flow meter, by calibrating it at three sample flow rate settings covering the range of sample flow rates at which the sorbent trap monitoring system typically operates. Either the procedures in section 10.3.1 of Method 5 in appendix A–3 to this part or the procedures in section 16 of Method 5 in appendix A–3 to this part may be followed. If a dry gas meter is being calibrated, use at least five revolutions of the meter at each flow rate.

10.2.1.2 Alternative Initial Calibration Procedures. Alternatively, the initial calibration of the gas flow meter may be performed using a reference gas flow meter (RGFM). The RGFM may be either: (1) A wet test meter calibrated according to section 10.3.1 of Method 5 in appendix A–3 to this part; (2) A gas flow metering device calibrated at multiple flow rates using the procedures in section 16 of Method 5 in appendix A–3 to this part; or (3) A NIST-traceable calibration device capable of measuring volumetric flow to an accuracy of 1 percent. To calibrate the gas flow meter using the RGFM, proceed as follows: While the sorbent trap monitoring system is sampling the actual stack gas or a compressed gas mixture that simulates the stack gas composition (as applicable), connect the RGFM to the discharge of the system. Care should be taken to minimize the dead volume between the sample flow meter being tested and the RGFM. Concurrently measure dry gas volume with the RGFM and the flow meter being calibrated for a minimum of 10 minutes at each of three flow rates covering the typical range of operation of the sorbent trap monitoring system. For each 10-minute (or longer) data collection period, record the total sample volume, in units of dry standard cubic meters (dscm),

measured by the RGFM and the gas flow meter being tested.

10.2.1.3 Initial Calibration Factor. Calculate an individual calibration factor Yi at each tested flow rate from section 10.2.1.1 or 10.2.1.2 of this performance specification (as applicable), by taking the ratio of the reference sample volume to the sample volume recorded by the gas flow meter. Average the three Yi values, to determine Y, the calibration factor for the flow meter. Each of the three individual values of Yi must be within ±0.02 of Y. Except as otherwise provided in sections 10.2.1.4 and 10.2.1.5 of this performance specification, use the average Y value from the three level calibration to adjust all subsequent gas volume measurements made with the gas flow meter.

10.2.2 Initial On-Site Calibration Check. For a mass flow meter that was initially calibrated using a compressed gas mixture, an on-site calibration check must be performed before using the flow meter to provide data. While sampling stack gas, check the calibration of the flow meter at one intermediate flow rate typical of normal operation of the monitoring system. Follow the basic procedures in section 10.2.1.1 or 10.2.1.2 of this performance specification. If the onsite calibration check shows that the value of Yi, the calibration factor at the tested flow rate, differs by more than 5 percent from the value of Y obtained in the initial calibration of the meter, repeat the full 3-level calibration of the meter using stack gas to determine a new value of Y, and apply the new Y value to all subsequent gas volume measurements made with the gas flow meter.

10.2.3 Ongoing Quality Control. Recalibrate the gas flow meter quarterly at one intermediate flow rate setting representative of normal operation of the monitoring system. Follow the basic procedures in section 10.2.1.1 or 10.2.1.2 of this performance specification. If a quarterly recalibration shows that the value of Yi, the calibration factor at the tested flow rate, differs from the current value of Y by more than 5 percent, repeat the full 3-level calibration of the meter to determine a new value of Y, and apply the new Y value to all subsequent gas volume measurements made with the gas flow meter.

10.3 Calibration of Thermocouples and Other Temperature Sensors. Use the procedures and criteria in section 10.3 of Method 2 in appendix A–1 to this part to calibrate in-stack temperature sensors and thermocouples. Calibrations must be performed prior to initial use and at least quarterly thereafter. At each calibration point, the absolute temperature measured by the temperature sensor must agree to within ±1.5 percent of the temperature measured with the reference sensor, otherwise the sensor may not continue to be used.

10.4 Barometer Calibration. Calibrate the barometer against another barometer that has a NIST-traceable calibration. This calibration must be performed prior to initial use and at least quarterly thereafter. At each calibration point, the absolute pressure measured by the barometer must agree to within ±10 mm Hg of the pressure measured by the NIST-traceable barometer, otherwise the barometer may not continue to be used.

10.5 Calibration of Other Sensors and Gauges. Calibrate all other sensors and gauges according to the procedures specified by the instrument manufacturer(s).

10.6 Analytical System Calibration. *See* section 11.1 of this performance specification.

11.0 Analytical Procedures

The analysis of the Hg samples may be conducted using any instrument or technology capable of quantifying total Hg from the sorbent media and meeting the performance criteria in section 9 of this performance specification.

11.1 Analyzer System Calibration. Perform a multipoint calibration of the analyzer at three or more upscale points over the desired quantitative range (multiple calibration ranges must be calibrated, if necessary). The field samples analyzed must fall within a calibrated, quantitative range and meet the necessary performance criteria. For samples that are suitable for aliquotting, a series of dilutions may be needed to ensure that the samples fall within a calibrated range. However, for sorbent media samples that are consumed during analysis (*e.g.,* thermal desorption techniques), extra care must be taken to ensure that the analytical system is appropriately calibrated prior to sample analysis. The calibration curve range(s) should be determined based on the anticipated level of Hg mass on the sorbent media. Knowledge of estimated stack Hg concentrations and total sample volume may be required prior to analysis. The calibration curve for use with the various analytical techniques (*e.g.,* UV AA, UV AF, and XRF) can be generated by directly introducing standard solutions into the analyzer or by spiking the standards onto the sorbent media and then introducing into the analyzer after preparing the sorbent/standard according to the particular analytical technique. For each calibration curve, the value of the square of the linear correlation coefficient, *i.e.,* r^2, must be ≥ 0.99, and the analyzer response must be within ±10 percent of reference value at each upscale calibration point. Calibrations must be performed on the day of the analysis, before analyzing any of the samples. Following calibration, an independently prepared standard (not from same calibration stock solution) must be analyzed. The measured value of the independently prepared standard must be within ±10 percent of the expected value.

11.2 Sample Preparation. Carefully separate the three sections of each sorbent trap. Combine for analysis all materials associated with each section, *i.e.,* any supporting substrate that the sample gas passes through prior to entering a media section (*e.g.,* glass wool, polyurethane foam, *etc.*) must be analyzed with that segment.

11.3 Spike Recovery Study. Before analyzing any field samples, the laboratory must demonstrate the ability to recover and quantify Hg from the sorbent media by performing the following spike recovery study for sorbent media traps spiked with elemental mercury. Using the procedures described in sections 6.2 and 12.1 of this performance specification, spike the third section of nine sorbent traps with gaseous Hg^0, *i.e.,* three traps at each of three different mass loadings, representing the range of masses anticipated in the field samples. This will yield a 3 × 3 sample matrix. Prepare and analyze the third section of each spiked trap, using the techniques that will be used to prepare and analyze the field samples. The average recovery for each spike concentration must be between 85 and 115 percent. If multiple types of sorbent media are to be analyzed, a separate spike recovery study is required for each sorbent material. If multiple ranges are calibrated, a separate spike recovery study is required for each range.

11.4 Field Sample Analyses. Analyze the sorbent trap samples following the same procedures that were used for conducting the spike recovery study. The three sections of each sorbent trap must be analyzed separately (*i.e.,* section 1, then section 2, then section 3). Quantify the total mass of Hg for each section based on analytical system response and the calibration curve from section 11.1 of this performance specification. Determine the spike recovery from sorbent trap section 3. The spike recovery must be no less than 75 percent and no greater than 125 percent. To report the final Hg mass for each trap, add together the Hg masses collected in trap sections 1 and 2.

12.0 Calculations, Data Reduction, and Data Analysis

12.1 Calculation of Pre-Sampling Spiking Level. Determine sorbent trap section 3 spiking level using estimates of the stack Hg concentration, the target sample flow rate, and the expected monitoring period. Calculate M_{exp}, the expected Hg mass that will be collected in section 1 of the trap, using Equation 12B–1. The pre-sampling spike must be within ±50 percent of this mass.

$$M_{\exp} = \left[Q_s \; t_s \; C_{est} \right] x 10^{-3} \qquad \text{(Equation 12B-1)}$$

Where:

M_{exp} = Expected sample mass (μg)
Q_s = Sample flow rate (L/min)
t_s = Expected monitoring period (min)
C_{est} = Estimated Hg concentration in stack gas (μg/m³)
10^{-3} = Conversion factor (m³/L)

Example calculation: For an estimated stack Hg concentration of 5 μg/m³, a target sample rate of 0.30 L/min, and a monitoring period of 5 days:

M_{exp} = (0.30 L/min)(1440 min/day)(5 days)(10^{-3} m^3/L)(5 µg/m^3) = 10.8 µg

A pre-sampling spike of 10.8 µg ±50 percent is, therefore, appropriate.

12.2 Calculations for Flow-Proportional Sampling. For the first hour of the data collection period, determine the reference ratio of the stack gas volumetric flow rate to the sample flow rate, as follows:

$$R_{ref} = \frac{KQ_{ref}}{F_{ref}} \qquad \text{(Equation 12B-2)}$$

Where:

R_{ref} = Reference ratio of hourly stack gas flow rate to hourly sample flow rate

Q_{ref} = Average stack gas volumetric flow rate for first hour of collection period (scfh)

F_{ref} = Average sample flow rate for first hour of the collection period, in appropriate units (*e.g.,* liters/min, cc/min, dscm/min)

K = Power of ten multiplier, to keep the value of R_{ref} between 1 and 100. The appropriate K value will depend on the selected units of measure for the sample flow rate.

Then, for each subsequent hour of the data collection period, calculate ratio of the stack gas flow rate to the sample flow rate using Equation 12B–3:

$$R_h = \frac{KQ_h}{F_h} \qquad \text{(Equation 12B-3)}$$

Where:

R_h = Ratio of hourly stack gas flow rate to hourly sample flow rate

Q_h = Average stack gas volumetric flow rate for the hour (scfh)

F_h = Average sample flow rate for the hour, in appropriate units (*e.g.,* liters/min, cc/min, dscm/min)

K = Power of ten multiplier, to keep the value of R_h between 1 and 100. The appropriate K value will depend on the selected units of measure for the sample flow rate and the range of expected stack gas flow rates.

Maintain the value of R_h within ±25 percent of R_{ref} throughout the data collection period.

12.3 Calculation of Spike Recovery. Calculate the percent recovery of each section 3 spike, as follows:

$$\%R = \frac{M_3}{M_s} \times 100 \qquad \text{(Equation 12B-4)}$$

Where:

%R = Percentage recovery of the pre-sampling spike

M_3 = Mass of Hg recovered from section 3 of the sorbent trap, (µg)

M_s = Calculated Hg mass of the pre-sampling spike, from section 8.1.2 of this performance specification, (µg)

12.4 Calculation of Breakthrough. Calculate the percent breakthrough to the second section of the sorbent trap, as follows:

$$\%B = \frac{M_2}{M_1} \times 100 \qquad \text{(Equation 12B-5)}$$

Where:

%B = Percent breakthrough

M_2 = Mass of Hg recovered from section 2 of the sorbent trap, (µg)

M_1 = Mass of Hg recovered from section 1 of the sorbent trap, (µg)

12.5 Calculation of Hg Concentration. Calculate the Hg concentration for each sorbent trap, using the following equation:

$$C = \frac{M^*}{V_t} \qquad \text{(Equation 12B-6)}$$

Where:

C = Concentration of Hg for the collection period, (µg/dscm)

M* = Total mass of Hg recovered from sections 1 and 2 of the sorbent trap, (µg)

V_t = Total volume of dry gas metered during the collection period, (dscm). For the purposes of this performance specification, standard temperature and pressure are defined as 20 °C and 760 mm Hg, respectively.

12.6 Calculation of Paired Trap Agreement. Calculate the relative deviation (RD) between the Hg concentrations measured with the paired sorbent traps:

$$RD = \frac{|C_a - C_b|}{C_a + C_b} x100 \qquad \text{(Equation 12B-7)}$$

Where:

RD = Relative deviation between the Hg concentrations from traps "a" and "b" (percent)

C_a = Concentration of Hg for the collection period, for sorbent trap "a" (µg/dscm)

C_b = Concentration of Hg for the collection period, for sorbent trap "b" (µg/dscm)

12.7 Calculation of Relative Accuracy. Calculate the relative accuracy as described in Section 12.4 of PS 12A in this appendix.

12.8 Data Reduction. Typical monitoring periods for normal, day-to-day operation of a sorbent trap monitoring system range from about 24 hours to 168 hours. For the required RA tests of the system, smaller sorbent traps are often used, and the "monitoring period" or time per run is considerably shorter (*e.g.,* 1 hour or less). Generally speaking, to validate sorbent trap monitoring system data, the acceptance criteria for the following five QC specifications in Table 12B–1 above must be met for both traps: (a) the post-monitoring leak check; (b) the ratio of stack gas flow rate to sample flow rate; (c) section 2 breakthrough; (d) paired trap agreement; and (e) section 3 spike recovery.

12.8.1 For routine day-to-day operation of a sorbent trap monitoring system, when both traps meet the acceptance criteria for all five QC specifications, the two measured Hg concentrations must be averaged arithmetically and the average value must be applied to each hour of the data collection period.

12.8.2 To validate a RA test run, both traps must meet the acceptance criteria for all five QC specifications. However, as specified in Section 12.8.3 below, for routine day-to-day operation of the monitoring system, a monitoring period may, in certain instances, be validated based on the results from one trap.

12.8.3 For the routine, day-to-day operation of the monitoring system, when one of the two sorbent trap samples or sampling systems either: (a) Fails the post-monitoring leak check; or (b) has excessive section 2 breakthrough; or (c) fails to maintain the proper stack flow-to-sample flow ratio; or (d) fails to achieve the required section 3 spike recovery, provided that the other trap meets the acceptance criteria for all four of these QC specifications, the Hg concentration measured by the valid trap may be multiplied by a factor of 1.111 and then used for reporting purposes. Further, if both traps meet the acceptance criteria for all four of these QC specifications, but the acceptance criterion for paired trap agreement is not met, the owner or operator may report the higher of the two Hg concentrations measured by the traps, in lieu of invalidating the data from the paired traps.

12.8.4 Whenever the data from a pair of sorbent traps must be invalidated and no quality-assured data from a certified backup Hg monitoring system or Hg reference method are available to cover the hours in the data collection period, treat those hours in the manner specified in the applicable regulation (*i.e.,* use missing data substitution procedures or count the hours as monitoring system down time, as appropriate).

13.0 Monitoring System Performance

These monitoring criteria and procedures have been successfully applied to coal-fired utility boilers (including units with post-combustion emission controls), having vapor-phase Hg concentrations ranging from 0.03 µg/dscm to approximately 100 µg/dscm.

14.0 Pollution Prevention [Reserved]

15.0 Waste Management [Reserved]

16.0 Alternative Procedures [Reserved]

17.0 Bibliography

17.1 40 CFR Part 60, Appendix B, "Performance Specification 2—Specifications and Test Procedures for SO_2 and NO_X Continuous Emission Monitoring Systems in Stationary Sources."

17.2 40 CFR Part 60, Appendix B, "Performance Specification 12A—Specifications and Test Procedures for Total Vapor Phase Mercury Continuous Emission Monitoring Systems in Stationary Sources."

Appendix F—[Amended]

■ 8. Appendix F to 40 CFR part 60 is amended to add and reserve Procedures 3 and 4, and add Procedure 5, to read as follows:

Appendix F to Part 60—Quality Assurance Procedures

* * * * *

Procedure 3. [Reserved]

Procedure 4. [Reserved]

Procedure 5. Quality Assurance Requirements for Vapor Phase Mercury Continuous Emissions Monitoring Systems and Sorbent Trap Monitoring Systems Used for Compliance Determination at Stationary Sources

1.0 Applicability and Principle

1.1 Applicability. The purpose of Procedure 5 is to establish the minimum requirements for evaluating the effectiveness of quality control (QC) and quality assurance (QA) procedures as well as the quality of data produced by vapor phase mercury (Hg) continuous emissions monitoring systems (CEMS) and sorbent trap monitoring systems. Procedure 5 applies to Hg CEMS and sorbent trap monitoring systems used for continuously determining compliance with emission standards or operating permit limits as specified in an applicable regulation or permit. Other QA/QC procedures may apply to other auxiliary monitoring equipment that may be needed to determine Hg emissions in the units of measure specified in an applicable permit or regulation.

Procedure 5 covers the measurement of Hg emissions as defined in Performance Specification 12A (PS 12A) and Performance Specification 12B (PS 12B) in appendix B to this part, *i.e.,* total vapor phase Hg representing the sum of the elemental (Hg°, CAS Number 7439–97–6) and oxidized (Hg^{+2}) forms of gaseous Hg.

Procedure 5 specifies the minimum requirements for controlling and assessing the quality of Hg CEMS and sorbent trap monitoring system data submitted to EPA or a delegated permitting authority. You must meet these minimum requirements if you are responsible for one or more Hg CEMS or sorbent trap monitoring systems used for compliance monitoring. We encourage you to develop and implement a more extensive QA program or to continue such programs where they already exist.

You must comply with the basic requirements of Procedure 5 immediately following successful completion of the initial performance test described in PS 12A or PS 12B in appendix B to this part (as applicable).

1.2 Principle. The QA procedures consist of two distinct and equally important functions. One function is the assessment of the quality of the Hg CEMS or sorbent trap monitoring system data by estimating accuracy. The other function is the control and improvement of the quality of the CEMS or sorbent trap monitoring system data by implementing QC policies and corrective actions. These two functions form a control loop: When the assessment function indicates that the data quality is inadequate, the quality control effort must be increased until the data quality is acceptable. In order to provide uniformity in the assessment and reporting of data quality, this procedure explicitly specifies assessment methods for calibration drift, system integrity, and accuracy. Several of the procedures are based on those of PS 12A and PS 12B in appendix B to this part. Because the control and corrective action function encompasses a variety of policies, specifications, standards, and corrective measures, this procedure treats QC requirements in general terms to allow each source owner or operator to develop a QC system that is most effective and efficient for the circumstances.

2.0 Definitions

2.1 *Mercury Continuous Emission Monitoring System (Hg CEMS)* means the equipment required for the determination of the total vapor phase Hg concentration in the stack effluent. The Hg CEMS consists of the following major subsystems:

2.1.1 *Sample Interface* means that portion of the CEMS used for one or more of the following: sample acquisition, sample transport, sample conditioning, and protection of the monitor from the effects of the stack effluent.

2.1.2 *Hg Analyzer* means that portion of the Hg CEMS that measures the total vapor phase Hg concentration and generates a proportional output.

2.1.3 *Data Recorder* means that portion of the CEMS that provides a permanent electronic record of the analyzer output. The data recorder may provide automatic data reduction and CEMS control capabilities.

2.2 *Sorbent Trap Monitoring System* means the total equipment required for the collection of gaseous Hg samples using paired three-partition sorbent traps as described in PS 12B in appendix B to this part.

2.3 *Span Value* means the measurement range as specified for the affected source category in the applicable regulation and/or monitoring performance specification.

2.4 *Zero, Mid-Level, and High Level Values* means the reference gas concentrations used for calibration drift assessments and system integrity checks on a Hg CEMS, expressed as percentages of the span value (*see* section 7.1 of PS 12A in appendix B to this part).

2.5 *Calibration Drift (CD)* means the absolute value of the difference between the CEMS output response and either the upscale Hg reference gas or the zero-level Hg reference gas, expressed as a percentage of the span value, when the entire CEMS, including the sampling interface, is challenged after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

2.6 *System Integrity (SI) Check* means a test procedure assessing transport and measurement of oxidized Hg by a Hg CEMS. In particular, system integrity is expressed as the absolute value of the difference between the CEMS output response and the reference value of either a mid- or high-level mercuric chloride ($HgCl_2$) reference gas, as a percentage of span, when the entire CEMS, including the sampling interface, is challenged.

2.7 *Relative Accuracy (RA)* means the absolute mean difference between the pollutant concentrations determined by a continuous monitoring system (*e.g.,* Hg CEMS or sorbent trap monitoring system) and the values determined by a reference method (RM) plus the 2.5 percent error confidence coefficient of a series of tests divided by the mean of the RM tests. Alternatively, for sources with an average RM concentration less than 5.0 micrograms per standard cubic meter (μg/scm), the RA may be expressed as the absolute value of the difference between the mean CEMS and RM values.

2.8 *Relative Accuracy Test Audit (RATA)* means an audit test procedure consisting of at least nine runs, in which the accuracy of the total vapor phase Hg concentrations measured by a CEMS or sorbent trap monitoring system is evaluated by comparison against concurrent measurements made with a reference test method.

2.9 *Quarterly Gas Audit (QGA)* means an audit procedure in which the accuracy of the total vapor phase Hg concentrations measured by a CEMS is evaluated by challenging the CEMS with a zero and two upscale reference gases.

3.0 QC Requirements

3.1 Each source owner or operator must develop and implement a QC program. At a minimum, each QC program must include written procedures which should describe in detail, complete, step-by-step procedures and operations for each of the following activities (as applicable):

(a) Calibration drift (CD) checks of Hg CEMS.

(b) CD determination and adjustment of Hg CEMS.

(c) Weekly system integrity check procedures for Hg CEMS.

(d) Routine operation, maintenance, and QA/QC procedures for sorbent trap monitoring systems.

(e) Routine and preventive maintenance procedures for Hg CEMS (including spare parts inventory).

(f) Data recording, calculations, and reporting.

(g) Accuracy audit procedures for Hg CEMS and sorbent trap monitoring systems including sampling and analysis methods.

(h) Program of corrective action for malfunctioning Hg CEMS and sorbent trap monitoring systems.

These written procedures must be kept on record and available for inspection by the responsible enforcement agency. Also, as noted in Section 5.2.4, below, whenever excessive inaccuracies of a Hg CEMS occur for two consecutive quarters, the source owner or operator must revise the current written procedures or modify or replace the CEMS or sorbent trap monitoring system to correct the deficiency causing the excessive inaccuracies.

4.0 Calibration Drift (CD) Assessment

4.1 CD Requirement. As described in 40 CFR 60.13(d) and 63.8(c), source owners and operators of Hg CEMS must check, record, and quantify the CD at two concentration values at least once daily (approximately 24 hours) in accordance with the method prescribed by the manufacturer. The Hg CEMS calibration must, as minimum, be adjusted whenever the daily zero (or low-level) CD or the daily high-level CD exceeds two times the limits of the applicable PS in appendix B of this part.

4.2 Recording Requirement for Automatic CD Adjusting CEMS. CEMS that

automatically adjust the data to the corrected calibration values (*e.g.,* microprocessor control) must either be programmed to record the unadjusted concentration measured in the CD prior to resetting the calibration, if performed, or to record the amount of adjustment.

4.3 Criteria for Excessive CD. If either the zero (or low-level) or high-level CD result exceeds twice the applicable drift specification in section 13.2 of PS 12A in appendix B to this part for five, consecutive, daily periods, the CEMS is out-of-control. If either the zero (or low-level) or high-level CD result exceeds four times the applicable drift specification in PS 12A during any CD check, the CEMS is out-of-control. If the CEMS is out-of-control, take necessary corrective action. Following corrective action, repeat the CD checks.

4.3.1 Out-Of-Control Period Definition. The beginning of the out-of-control period is the time corresponding to the completion of the fifth, consecutive, daily CD check with a CD in excess of two times the allowable limit, or the time corresponding to the completion of the daily CD check preceding the daily CD check that results in a CD in excess of four times the allowable limit. The end of the out-of-control period is the time corresponding to the completion of the CD check following corrective action that results in the CD's at both the zero (or low-level) and high-level measurement points being within the corresponding allowable CD limit (*i.e.,* either two times or four times the allowable limit in the applicable PS in appendix B).

4.3.2 CEMS Data Status During Out-of-Control Period. During the period the CEMS is out-of-control, the CEMS data may not be used either to determine compliance with an emission limit or to meet a minimum data availability requirement specified in an applicable regulation or permit.

5.0 Data Accuracy Assessment

5.1 Hg CEMS Audit Requirements. For each Hg CEMS, an accuracy audit must be performed at least once each calendar quarter. Successive quarterly audits must, to the extent practicable, be performed no less than 2 months apart. The audits must be conducted as follows:

5.1.1 Relative Accuracy Test Audit (RATA). A RATA of the Hg CEMS must be conducted at least once every four calendar quarters, except as otherwise noted in section 5.1.4 of this appendix. Perform the RATA as described in section 8.5 of PS 12A in appendix B to this part. Calculate the results according to section 12.4 of PS 12A.

5.1.2 Quarterly Gas Audit. A quarterly gas audit (QGA) may be conducted in three of four calendar quarters, but in no more than three quarters in succession. To perform a QGA, challenge the CEMS with a zero-level and two upscale level audit gases of known concentrations, first of elemental Hg and then of oxidized Hg, within the following ranges:

Audit point	Audit range
1	20 to 30% of span value.
2	50 to 60% of span value.

Sequentially inject each of the three audit gases (zero and two upscale), three times each for a total of nine injections. Inject the gases in such a manner that the entire CEMS is challenged. Do not inject the same gas concentration twice in succession.

Use elemental Hg and oxidized Hg (mercuric chloride, $HgCl_2$) audit gases that are National Institute of Standards and Technology (NIST)-certified or NIST-traceable following an EPA Traceability Protocol. If audit gas cylinders are used, do not dilute gas when challenging the Hg CEMS. For each reference gas concentration, determine the average of the three CEMS responses and subtract the average response from the reference gas value. Calculate the measurement error at each gas level using Equation 12A–1 in section 8.2 of PS 12A.

5.1.3 Relative Accuracy Audit (RAA). As an alternative to the QGA, a RAA may be conducted in three of four calendar quarters, but in no more than three quarters in succession. To conduct a RAA, follow the RATA test procedures in section 8.5 of PS 12A in appendix B to this part, except that only three test runs are required.

5.1.4 Alternative Quarterly Audits. Alternative quarterly audit procedures may be used as approved by the Administrator for three of four calendar quarters. One RATA is required at least every four calendar quarters, except in the case where the affected facility is off-line (does not operate) in the fourth calendar quarter since the quarter of the previous RATA. In that case, the RATA must be performed in the quarter in which the unit recommences operation. Also, quarterly gas audits (or RAAs, if applicable) are not required for calendar quarters in which the affected facility does not operate.

5.2 Sorbent Trap Monitoring System Audit Requirements. For each sorbent trap monitoring system, a RATA must be conducted at least once every four calendar quarters, except as otherwise noted in section 5.1.4 of this appendix. Perform the RATA as described in section 8.3 of PS 12B in appendix B to this part. Calculate the results according to section 12.4 of PS 12A.

5.3 Excessive Audit Inaccuracy. If the results of a RATA, QGA, or RAA exceed the applicable criteria in section 5.3.3, the Hg CEMS or sorbent trap monitoring system is out-of-control. If the Hg CEMS or sorbent trap monitoring system is out-of-control, take necessary corrective action to eliminate the problem. Following corrective action, the source owner or operator must audit the CEMS or sorbent trap monitoring system using the same type of test that failed to meet the accuracy criterion. For instance, a RATA must always be performed following an out-of-control period resulting from a failed RATA. Whenever audit results show the Hg CEMS or sorbent trap monitoring system to be out-of-control, the owner or operator must report both the results of the failed test and the results of the retest following corrective action showing the CEMS to be operating within specifications.

5.3.1 Out-Of-Control Period Definition. The beginning of the out-of-control period is the hour immediately following the completion of a RATA, RAA, QGA or system integrity check that fails to meet the applicable performance criteria in section 5.3.3, below. The end of the out-of-control period is the time corresponding to the completion of a subsequent successful test of the same type.

5.3.2 Monitoring Data Status During Out-Of-Control Period. During the period the monitor is out-of-control, the monitoring data may not be used to determine compliance with an applicable emission limit or to meet a minimum data availability requirement in an applicable regulation or permit.

5.3.3 Criteria for Excessive Audit Inaccuracy. Unless specified otherwise in an applicable regulation or permit, the criteria for excessive inaccuracy are:

(a) For the RATA, the allowable RA in the applicable PS in appendix B (*e.g.,* PS 12A or PS 12B).

(b) For the QGA, ±15 percent of the average audit value or ±0.5 $\mu g/m^3$, whichever is greater.

(c) For the RAA, ±20 percent of the three run average or ±10 percent of the applicable standard, whichever is greater.

5.3.4 Criteria for Acceptable QC Procedures. Repeated excessive inaccuracies (*i.e.,* out-of-control conditions resulting from the quarterly audits) indicates the QC procedures are inadequate or that the CEMS or sorbent trap monitoring system is incapable of providing quality data. Therefore, whenever excessive inaccuracies occur for two consecutive quarters, the source owner or operator must revise the QC procedures (*see* Section 3) or modify, repair, or replace the CEMS or sorbent trap monitoring system.

6.0 Reporting Requirements

6.1 Data Assessment Report. At the reporting interval specified in the applicable regulation or permit, report for each Hg CEMS and/or sorbent trap monitoring system the accuracy assessment results from Section 5, above. For Hg CEMS, also report the CD assessment results from Section 4, above. Report this information as a Data Assessment Report (DAR), and include the appropriate DAR(s) with the emissions report required under the applicable regulation or permit.

6.2 Contents of the DAR. At a minimum, the DAR must contain the following information:

6.2.1 Facility name and address including identification of source owner/operator.

6.2.2 Identification and location of each Hg CEMS and/or sorbent trap monitoring system.

6.2.3 Manufacturer, model, and serial number of each Hg CEMS and/or sorbent trap monitoring system.

6.2.4 CD Assessment for each Hg CEMS, including the identification of out-of-control periods.

6.2.5 System integrity check data for each Hg CEMS.

6.2.6 Accuracy assessment for each Hg CEMS and/or sorbent trap monitoring system, including the identification of out-of-control periods. The results of all required RATAs, QGAs, RAAs, and audits of auxiliary equipment must be reported. If an accuracy audit shows a CEMS or sorbent trap monitoring system to be out-of-control, report both the audit results that caused the out-of-control period and the results of the retest following corrective action, showing the

monitoring system to be operating within specifications.

6.2.6. Summary of all corrective actions taken when the Hg CEMS and/or sorbent trap monitoring system was determined to be out-of-control.

6.3 Data Retention. As required in 40 CFR 60.7(d) and 63.10(b), all measurements from CEMS and sorbent trap monitoring systems, including the quality assurance data required by this procedure, must be retained by the source owner for at least 5 years.

7.0 Bibliography

7.1 Calculation and Interpretation of Accuracy for Continuous Emission Monitoring Systems (CEMS). Section 3.0.7 of the Quality Assurance Handbook for Air Pollution Measurement Systems, Volume III, Stationary Source Specific Methods. EPA–600/4–77–027b. August 1977. U.S. Environmental Protection Agency. Office of Research and Development Publications, 26 West St. Clair Street, Cincinnati, OH 45268.

PART 63—[AMENDED]

■ 9. The authority citation for part 63 continues to read as follows:

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

■ 10. Section 63.14 is amended by revising paragraph (b)(54) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(b) * * *

(54) ASTM D6348–03, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, incorporation by reference (IBR) approved for § 63.1349(b)(4)(iii) of subpart LLL and table 4 to subpart DDDD of this part as specified in the subpart.

* * * * *

Subpart LLL—[Amended]

■ 11. Section 63.1340 is revised to read as follows:

§ 63.1340 What parts of my plant does this subpart cover?

(a) The provisions of this subpart apply to each new and existing portland cement plant which is a major source or an area source as defined in § 63.2.

(b) The affected sources subject to this subpart are:

(1) Each kiln including alkali bypasses, except for kilns that burn hazardous waste and are subject to and regulated under subpart EEE of this part;

(2) Each clinker cooler at any portland cement plant;

(3) Each raw mill at any portland cement plant;

(4) Each finish mill at any portland cement plant;

(5) Each raw material dryer at any portland cement plant;

(6) Each raw material, clinker, or finished product storage bin at any portland cement plant;

(7) Each conveying system transfer point including those associated with coal preparation used to convey coal from the mill to the kiln at any portland cement plant;

(8) Each bagging and bulk loading and unloading system at any portland cement plant; and

(9) Each open clinker pile at any portland cement plant.

(c) Crushers are not covered by this subpart regardless of their location.

(d) If you are subject to any of the provisions of this subpart you are also subject to title V permitting requirements.

■ 12. Section 63.1341 is amended by adding definitions for "Affirmative defense," "Clinker," "Crusher," "Enclosed storage pile," "Inactive clinker pile," "New source," "Operating day," "Sorbent," "Total organic HAP" and "Totally enclosed conveying system transfer point" in alphabetic order, and revising the definition of "Kiln" to read as follows:

§ 63.1341 Definitions.

* * * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

Clinker means the product of the process in which limestone and other materials are heated in the kiln and is then ground with gypsum and other materials to form cement.

* * * * *

Crusher means a machine designed to reduce large rocks from the quarry into materials approximately the size of gravel.

* * * * *

Enclosed storage pile means any storage pile that is completely enclosed in a building or structure consisting of a solid roof and walls.

* * * * *

Inactive clinker pile is a pile of clinker material that has not been disturbed, removed, and/or added to as a result of loading, unloading, and/or transferring activities for 30 (thirty) consecutive days.

* * * * *

Kiln means a device, including any associated preheater or precalciner devices, inline raw mills, or alkali bypasses that produces clinker by heating limestone and other materials for subsequent production of portland cement. Because the inline raw mill is considered an integral part of the kiln, for purposes of determining the appropriate emissions limit, the term kiln also applies to the exhaust of the inline raw mill.

* * * * *

New source means any source that commenced construction after May 6, 2009, for purposes of determining the applicability of the kiln, clinker cooler and raw material dryer emissions limits for mercury, PM, THC, and HCl, and the requirements for open clinker storage piles.

* * * * *

Operating day means any daily 24-hour period during which the kiln operates. For 30-day rolling averages, *operating days* include only days of normal operation and do not include periods of operation during startup or shutdown. For 7-day rolling averages, *operating days* include only days of operation during startup and shutdown and do not include periods of normal operation. Data attributed to an *operating day* includes all valid data obtained during the daily 24-hour period and excludes any measurements made when the kiln was not operating.

* * * * *

Sorbent means activated carbon, lime, or any other type of material injected into kiln exhaust for the purposes of capturing and removing any hazardous air pollutant.

* * * * *

Total organic HAP means, for the purposes of this subpart, the sum of the concentrations of compounds of formaldehyde, benzene, toluene, styrene, m-xylene, p-xylene, o-xylene, acetaldehyde, and naphthalene as measured by EPA Test Method 320 of appendix A to this part or ASTM D6348–03. Only the measured concentration of the listed analytes that are present at concentrations exceeding one-half the quantitation limit of the analytical method are to be used in the sum. If any of the analytes are not detected or are detected at concentrations less than one-half the quantitation limit of the analytical method, the concentration of those analytes will be assumed to be zero for the purposes of calculating the total organic HAP for this subpart.

* * * * *

Totally enclosed conveying system transfer point means a conveying

system transfer point that is enclosed on all sides, top, and bottom.

* * * * *

■ 13. Section 63.1343 is revised to read as follows:

§ 63.1343 What standards apply to my kilns, clinker coolers, raw material dryers, and open clinker piles?

(a) *General.* The provisions in this section apply to each kiln and any alkali bypass associated with that kiln, clinker cooler, and raw material dryer. All dioxin D/F, HCl, and total hydrocarbon (THC) emission limits are on a dry basis. The D/F, HCl and THC limits for kilns are corrected to 7 percent oxygen except during periods of startup and shutdown. The raw material dryer THC limits are corrected to 19 percent oxygen except during startup and shutdown. During startup and shutdown no oxygen correction is applied. All (THC) emission limits are measured as propane. Standards for mercury, PM, and THC are based on a 30-day rolling average, except for periods of startup and shutdown, where the standard is based on a 7-day rolling average. The 30-day and 7-day periods mean 30 and 7 consecutive operating days, respectively, where an operating day is any daily 24-hour period during which the kiln operates. Data attributed to an operating day includes all valid data obtained during the daily 24-hour period and excludes any measurements made when the kiln was not operating. If using a CEMS to determine compliance with the HCl standard, this standard is based on a 30-day rolling average, except for periods of startup and shutdown, where the standard is based on a 7-day rolling average. You must ensure appropriate corrections for moisture are made when measuring flowrates used to calculate particulate matter (PM) and mercury emissions.

(b)(1) *Kilns, clinker coolers, raw material dryers, raw mills, and finish mills.* The emission limits for these sources are shown in table 1 below.

TABLE 1—EMISSIONS LIMITS FOR KILNS (ROWS 1–8), CLINKER COOLERS (ROWS 9–12), RAW MATERIAL DRYERS (ROWS 13–15), RAW AND FINISH MILLS (ROW 16)

	If your source is	And the operating mode is:	And if is located	Your emissions limits are:	And the units of the emissions limit are:	The oxygen correction factor is:
1.	An existing kiln	Normal operation	At a major or area source.	PM—0.04	lb/ton clinker	NA.
				D/F—0.2[1]	ng/dscm (TEQ)	7 percent.
				Mercury—55	lb/MM tons clinker	NA.
				THC—24[2,3]	ppmvd	7 percent.
2.	An existing kiln	Normal operation	At a major source	HCl—3	ppmvd	7 percent.
3.	An existing kiln	Startup and shutdown.	At a major or area source.	PM—0.004	gr/dscf	NA.
				D/F—0.2[1]	ng/dscm (TEQ)	NA.
				Mercury—10	ug/dscm	NA.
				THC—24[2,3]	ppmvd	NA.
4.	An existing kiln	Startup and shutdown.	At a major source	HCl—3[4]	ppmvd	NA.
5.	A new kiln	Normal operation	At a major or area source.	PM—0.01	lb/ton clinker	NA.
				D/F—0.2[1]	ng/dscm (TEQ)	7 percent.
				Mercury—21	lb/MM tons clinker	NA.
				THC—24[2,3]	ppmvd	7 percent.
6.	A new kiln	Normal operation	At a major source	HCl—3[4]	ppmvd	7 percent.
7.	A new kiln	Startup or shutdown	At a major or area source.	PM—0.0008	gr/dscf	NA.
				D/F—0.2[1]	ng/dscm (TEQ)	NA.
				Mercury—4	ug/dscm	NA.
				THC—24[2,3]	ppmvd	NA.
8.	A new kiln	Startup and shutdown.	At a major source	HCl—3	ppmvd	NA.
9.	An existing clinker cooler.	Normal operation	At a major or area source.	PM—0.04	lb/ton clinker	NA.
10.	An existing clinker cooler.	Startup and shutdown.	At a major or area source.	PM—0.004	gr/dscf	NA.
11.	A new clinker cooler.	Normal operation	At a major or area source.	PM—0.01	lb/ton clinker	NA.
12.	A new clinker cooler.	Startup and shutdown.	At a major or area source.	PM—0.0008	gr/dscf	NA.
13.	An existing or new raw material dryer.	Normal operation	At a major or area source.	THC—24[2,3]	ppmvd	19 percent.
14.	An existing or new raw material dryer.	Startup and shutdown.	At a major or area source.	THC—24[2,3]	ppmvd	NA.
15.	An existing or new raw material dryer.	All operating modes	At a major source	Opacity—10	percent	NA.
16.	An existing or new raw or finish mill.	All operating modes		Opacity—10	percent	NA.

[1] If the average temperature at the inlet to the first particulate matter control device (fabric filter or electrostatic precipitator) during the D/F performance test is 400 °F or less this limit is changed to 0.4 ng/dscm (TEQ).

[2] Measured as propane.

[3] Any source subject to the 24 ppmvd THC limit may elect to meet an alternative limit of 9 ppmvd for total organic HAP. If the source demonstrates compliance with the total organic HAP under the requirements of § 63.1349 then the source's THC limit will be adjusted to equal the average THC emissions measured during the organic HAP compliance test.

[4] If the kiln does not have a HCl CEM, the emissions limit is zero.

(2) When there is an alkali bypass associated with a kiln, the combined PM emissions from the kiln or in-line kiln/raw mill and the alkali bypass stack are subject to the PM emissions limit. Existing kilns that combine the clinker cooler exhaust with the kiln exhaust for energy efficiency purposes and send the combined exhaust to the PM control device as a single stream may meet an alternative PM emissions limit. This limit is calculated using the equation 1 of this section:

$$PM_{alt} = 0.004 \times 1.65 \times (Q_k + Q_c)/7000 \qquad \text{(Eq. 1)}$$

Where:

0.004 is the PM exhaust concentration (gr/dscf) equivalent to 0.04 lb per ton clinker where clinker cooler and kiln exhaust gas are not combined.

1.65 is the conversion factor of lb feed per lb clinker

Q_k is the exhaust flow of the kiln (dscf/ton raw feed)

Q_c is the exhaust flow of the clinker cooler (dscf/ton raw feed).

For new kilns that combine kiln exhaust and clinker cooler gas the limit is calculated using the equation 2 of this section:

$$PM_{alt} = 0.0008 \times 1.65 \times ((Q_k + Q_c)/7000 \qquad \text{(Eq. 2)}$$

Where:

0.0008 is the PM exhaust concentration (gr/dscf) equivalent to 0.01 lb per ton clinker where clinker cooler and kiln exhaust gas are not combined

1.65 is the conversion factor of lb feed per lb clinker

Q_k is the exhaust flow of the kiln (dscf/ton raw feed)

Q_c is the exhaust flow of the clinker cooler (dscf/ton raw feed).

(c) If clinker material storage and handling activities occur more than 1,000 feet from the facility property-line you must comply with the following:

(1) Utilize a three-sided barrier with roof, provided the open side is covered with a wind fence material of a maximum 20 percent porosity, allowing a removable opening for vehicle access. The removable wind fence for vehicle access may be removed only during minor or routine maintenance activities, the creation or reclamation of outside storage piles, the importation of clinker from outside the facility, and reclamation of plant clean-up materials. The removable opening must be less than 50 percent of the total surface area of the wind fence and the amount of time must be minimized to the extent feasible.

(2) Contain storage and handling of material that is immediately adjacent to the three-sided barrier within an area next to the structure with a wind fence on at least two sides, with at least a 5-foot freeboard above the top of the storage pile to provide wind sheltering, and completely cover the material with an impervious tarp, revealing only the active disturbed portion during material loading and unloading activities.

(3) Storage and handling of other active clinker material must be conducted within an area surrounded on three sides by a barrier or wind fences with one side of the wind fence facing the prevailing wind and at least a 5-foot freeboard above the top of the storage pile to provide wind sheltering. The clinker must remain completely covered at all times with an impervious tarp, revealing only the active disturbed portion during material loading and unloading activities. The barrier or wind fence must extend at least 20 feet beyond the active portion of the material at all times.

(4) Inactive clinker material may be alternatively stored using a continuous and impervious tarp, covered at all times, provided records are kept demonstrating the inactive status of such stored material.

(d) If clinker material storage and handling activities occur 1,000 feet or less from the facility property-line these activities must be in an enclosed storage area that meets the emissions limits specified in § 63.1345.

■ 14. Section 63.1344 is revised to read as follows:

§ 63.1344 Affirmative defense for exceedance of emission limit during malfunction.

In response to an action to enforce the standards set forth in paragraph § 63.1343(b) you may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined at 40 CFR 63.2. Appropriate penalties may be assessed, however, if the respondent fails to meet its burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(a) To establish the affirmative defense in any action to enforce such a limit, the owners or operators of facilities must timely meet the notification requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that:

(1) The excess emissions:

(i) Were caused by a sudden, short, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner, and

(ii) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(iii) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(iv) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(2) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(3) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(4) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, severe personal injury, or severe property damage; and

(5) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health; and

(6) All emissions monitoring and control systems were kept in operation if at all possible; and

(7) Your actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(8) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions; and

(9) The owner or operator has prepared a written root cause analysis to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(b) *Notification.* The owner or operator of the facility experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission as soon as possible, but no later than two business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 30 days of the initial occurrence of the exceedance of the standard in § 63.1343(b) to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (a) of this section.

■ 15. Section 63.1345 is revised to read as follows:

§ 63.1345 Emissions limits for affected sources other than kilns; in-line kiln/raw mills; clinker coolers; new and reconstructed raw material dryers; and raw and finish mills, and open clinker piles.

The owner or operator of each new or existing raw material, clinker, or finished product storage bin; conveying system transfer point; bagging system; and bulk loading or unloading system; and each existing raw material dryer, at a facility which is a major source subject to the provisions of this subpart must not cause to be discharged any gases from these affected sources which exhibit opacity in excess of ten percent.

16. Section 63.1346 is revised to read as follows:

§ 63.1346 Operating limits for kilns.

(a) The owner or operator of a kiln subject to a D/F emission limitation under § 63.1343 must operate the kiln such that the temperature of the gas at the inlet to the kiln particulate matter control device (PMCD) and alkali bypass PMCD, if applicable, does not exceed the applicable temperature limit specified in paragraph (b) of this section. The owner or operator of an in-line kiln/raw mill subject to a D/F emission limitation under § 63.1343 must operate the in-line kiln/raw mill, such that:

(1) When the raw mill of the in-line kiln/raw mill is operating, the applicable temperature limit for the main in-line kiln/raw mill exhaust, specified in paragraph (b) of this section and established during the performance test when the raw mill was operating is not exceeded, except during periods of startup/shutdown when the temperature limit may be exceeded by no more than 10 percent.

(2) When the raw mill of the in-line kiln/raw mill is not operating, the applicable temperature limit for the main in-line kiln/raw mill exhaust, specified in paragraph (b) of this section and established during the performance test when the raw mill was not operating, is not exceeded, except during periods of startup/shutdown when the temperature limit may be exceeded by no more than 10 percent.

(3) If the in-line kiln/raw mill is equipped with an alkali bypass, the applicable temperature limit for the alkali bypass specified in paragraph (b) of this section and established during the performance test, with or without the raw mill operating, is not exceeded, except during periods of startup/shutdown when the temperature limit may be exceeded by no more than 10 percent.

(b) The temperature limit for affected sources meeting the limits of paragraph (a) of this section or paragraphs (a)(1) through (a)(3) of this section is determined in accordance with § 63.1349(b)(3)(iv).

(c) For an affected source subject to a D/F emission limitation under § 63.1343 that employs sorbent injection as an emission control technique you must operate the sorbent injection system in accordance with paragraphs (c)(1) and (c)(2) of this section.

(1) The three-hour rolling average activated sorbent injection rate must be equal to or greater than the sorbent injection rate determined in accordance with § 63.1349(b)(3)(vi).

(2) You must either:

(i) Maintain the minimum activated carbon injection carrier gas flow rate, as a three-hour rolling average, based on the manufacturer's specifications. These specifications must be documented in the test plan developed in accordance with § 63.7(c), or

(ii) Maintain the minimum activated carbon injection carrier gas pressure drop, as a three-hour rolling average, based on the manufacturer's specifications. These specifications must be documented in the test plan developed in accordance with § 63.7(c).

(d) Except as provided in paragraph (e) of this section, for an affected source subject to a D/F emission limitation under § 63.1343 that employs carbon injection as an emission control technique you must specify and use the brand and type of sorbent used during the performance test until a subsequent performance test is conducted, unless the site-specific performance test plan contains documentation of key parameters that affect adsorption and the owner or operator establishes limits based on those parameters, and the limits on these parameters are maintained.

(e) For an affected source subject to a D/F emission limitation under § 63.1343 that employs carbon injection as an emission control technique you may substitute, at any time, a different brand or type of sorbent provided that the replacement has equivalent or improved properties compared to the sorbent specified in the site-specific performance test plan and used in the performance test. The owner or operator must maintain documentation that the substitute sorbent will provide the same or better level of control as the original sorbent.

(f) No kiln may use as a raw material or fuel any fly ash where the mercury content of the fly ash has been increased through the use of activated carbon, or any other sorbent, unless the facility can demonstrate that the use of that fly ash will not result in an increase in mercury emissions over baseline emissions (*i.e.,* emissions not using the fly ash). The facility has the burden of proving there has been no emissions increase over baseline. Once the kiln must comply with a mercury limit specified in § 63.1343, this paragraph no longer applies.

■ 17. Section 63.1347 is revised to read as follows:

§ 63.1347 Operation and maintenance plan requirements.

(a) You must prepare, for each affected source subject to the provisions of this subpart, a written operations and maintenance plan. The plan must be submitted to the Administrator for review and approval as part of the application for a part 70 permit and must include the following information:

(1) Procedures for proper operation and maintenance of the affected source and air pollution control devices in order to meet the emission limits and operating limits of §§ 63.1343 through 63.1348;

(2) Corrective actions to be taken when required by paragraph § 63.1350(f)(3);

(3) Procedures to be used during an inspection of the components of the combustion system of each kiln and each in-line kiln raw mill located at the facility at least once per year.

(b) Failure to comply with any provision of the operations and maintenance plan developed in accordance with this section is a violation of the standard.

■ 18. Section 63.1348 is revised to read as follows:

§ 63.1348 Compliance requirements.

(a) *Initial compliance requirements.* For an affected source subject to this subpart, you must demonstrate initial compliance with the emissions standards and operating limits by using the test methods and procedures in §§ 63.1349 and 63.7.

(1) *PM compliance.* If you are subject to limitations on PM emissions under § 63.1343(b), you must demonstrate initial compliance with the PM emissions standards by using the test methods and procedures in § 63.1349(b)(1).

(i) You must demonstrate initial compliance by conducting a performance test as specified in § 63.1349(b)(1)(i).

(ii) Compliance with the PM emissions standard must be determined based on the first 30 operating days you operate a PM CEMS.

(2) *Opacity compliance.* If you are subject to the limitations on opacity under § 63.1345, you must demonstrate initial compliance with the opacity emissions standards by using the performance test methods and procedures in § 63.1349(b)(2). The maximum 6-minute average opacity exhibited during the performance test period must be used to determine whether the affected source is in initial compliance with the standard.

(3) *D/F compliance.*

(i) If you are subject to limitations on D/F emissions under § 63.1343(b), you must demonstrate initial compliance with the D/F emissions standards by using the performance test methods and procedures in § 63.1349(b)(3). The owner or operator of a kiln with an in-line raw mill must demonstrate initial compliance by conducting separate performance tests while the raw mill is operating and the raw mill is not operating. The D/F concentration must be determined for each run and the arithmetic average of the concentrations measured for the three runs must be calculated to determine compliance.

(ii) If you are subject to a D/F emission limitation under § 63.1343(b), you must demonstrate initial compliance with the temperature operating limits specified in § 63.1344 by using the performance test methods and procedures in § 63.1349(b)(3)(ii) through (b)(3)(iv). The average of the run temperatures will determine the applicable temperature limit.

(iii) If activated carbon injection is used and you are subject to a D/F emission limitation under § 63.1343(b), you must demonstrate initial compliance with the activated carbon injection rate operating limits specified in § 63.1344 by using the performance test methods and procedures in § 63.1349(b)(3)(v). The average of the run injection rates will determine the applicable injection rate limit.

(iv) If activated carbon injection is used, you must also develop a carrier gas parameter during the performance test conducted under § 63.1349(b)(3) that meets the requirements of § 63.1349(b)(3)(vi). Compliance is demonstrated if the system is maintained within ± 5 percent accuracy during the performance test.

(4)(i) *THC compliance.* If you are subject to limitations on THC emissions under § 63.1343(b), you must demonstrate initial compliance with the THC emissions standards by using the performance test methods and procedures in § 63.1349(b)(4)(i). The average THC concentration obtained during the first 30 operating days must be used to determine initial compliance.

(ii) *Total organic HAP emissions tests.* If you elect to demonstrate compliance with the total organic HAP emissions limit under § 63.1343(b) in lieu of the THC emissions limit, you must demonstrate initial compliance with the total organic HAP emissions standards by using the performance test methods and procedures in § 63.1349(b)(4)(iii) and (b)(4)(iv).

(iii) If you are demonstrating initial compliance, you must conduct the separate performance tests as specified in § 63.1349(b)(4)(iii) while the raw mill kiln is operating and while the raw mill of the kiln is not operating.

(iv) The average total organic HAP concentration measured during the initial performance test specified by § 63.1349(b)(4)(iii) must be used to determine initial compliance.

(v) The average THC concentration measured during the initial performance test specified by § 63.1349(b)(4)(iv) must be used to determine the site-specific THC limit. This limit should be a weighted average of the THC levels measured during raw mill on and raw mill off testing.

(5) *Mercury compliance.* If you are subject to limitations on mercury emissions in § 63.1343(b), you must demonstrate initial compliance with the mercury standards by using the performance test methods and procedures in § 63.1349(b)(5). You must demonstrate initial compliance by operating a mercury CEMS or a sorbent trap based integrated monitor. The first 30 operating days of daily mercury concentration data must be used to determine initial compliance.

(6) *HCl compliance.* If you are subject to limitations on HCl emissions under § 63.1343(b), you must demonstrate initial compliance with the HCl standards by using the performance test methods and procedures in § 63.1349(b)(6).

(i) For an affected source that is equipped with a wet scrubber or tray tower, you must demonstrate initial compliance by conducting a performance test as specified in § 63.1349(b)(6)(i). The HCl concentration must be determined for each run and the arithmetic average of the concentrations measured for the three runs must be calculated to determine compliance. You must also have established appropriate site-specific parameter limits.

(ii) For an affected source that is not equipped with a wet scrubber or tray tower, you must demonstrate initial compliance by operating a CEMS as specified in § 63.1349(b)(6)(ii). The average hourly HCl concentration obtained during the first 30 operating days must be used to determine initial compliance.

(b) *Continuous compliance requirements.* You must demonstrate continuous compliance with the emissions standards and operating limits by using the performance test methods and procedures in §§ 63.1350 and 63.8 for each affected source.

(1) *General requirements.*

(i) You must monitor and collect data according to § 63.1350 and the site-specific monitoring plan required by § 63.1350(o).

(ii) Except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments), you must operate the monitoring system and collect data at all required intervals at all times the affected source is operating. Any period for which data collection is required and the operation of the CEMS is not otherwise exempt and for which the monitoring system is out-of-control and data are not available for required calculations constitutes a deviation from the monitoring requirements.

(iii) You may not use data recorded during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or control activities in calculations used to report emissions or operating levels. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. The owner or operator must use all the data collected during all other periods in assessing the operation of the control device and associated control system

(iv) *Clinker production.* If you are subject to limitations on PM emissions (lb/ton of clinker) or mercury (lb/MM tons of clinker) under § 63.1343(b), you must demonstrate continuous compliance with the PM emissions standards by determining the hourly production rate of clinker according to the requirements of § 63.1350(d).

(2) *PM compliance.* If you are subject to limitations on PM emissions under § 63.1343(b), you must demonstrate continuous compliance with the PM emissions standards by using the monitoring methods and procedures in § 63.1350(b) and (d).

(i) *PM CEMS.* You must demonstrate continuous compliance with the PM emissions standards by using the monitoring methods and procedures in § 63.1350(b) for each affected source subject to PM emissions limitations. Continuous compliance is demonstrated by a 30-day rolling average PM emissions in lb/ton clinker, except for periods of startup and shutdown, where the compliance is demonstrated based on a 7-day rolling average.

(3) *Opacity compliance.* If you are subject to the limitations on opacity under § 63.1345, you must demonstrate continuous compliance with the opacity emissions standards by using the monitoring methods and procedures in § 63.1350(f).

(i) Continuous compliance is demonstrated by conducting specified visible emissions observations and follow up opacity readings, as indicated in § 63.1350(f)(1) and (f)(2). The maximum 6-minute average opacity exhibited during the performance test period must be used to determine whether the affected source is in compliance with the standard. Corrective actions must be initiated within one hour of detecting visible emissions.

(ii) *COMS.* If you install a COMS in lieu of conducting the daily visible emissions testing, you must demonstrate continuous compliance by operating and maintaining the COMS such that it meets the requirements of § 63.1350(f)(4)(i).

(iii) *BLDS.* If you install a BLDS on a raw mill or finish mill in lieu of conducting the daily visible emissions testing, you must demonstrate continuous compliance by operating and maintaining the BLDS such that it meets the requirements of § 63.1350(f)(4)(ii).

(4) *D/F compliance.* If you are subject to a D/F emission limitation under § 63.1343(b), you must demonstrate continuous compliance with the temperature operating limits specified in § 63.1346 by using the installing, operating, and maintaining a continuous monitor to record the temperature of specified gas streams such that it meets the requirements of § 63.1350(g). Continuous compliance is demonstrated by a 3-hour rolling average temperature.

(5)(i) *Activated carbon injection compliance.* If activated carbon injection is used and you are subject to a D/F emission limitation under § 63.1343(b), you must demonstrate continuous compliance with the activated carbon injection rate operating limits specified in § 63.1346 by installing, operating, and maintaining a continuous monitor to record the rate of activated carbon injection that meets the requirements of § 63.1350(h)(1). Continuous compliance is demonstrated by a 3-hour rolling average injection rate.

(ii) If you are subject to a D/F emission limitation under § 63.1343(b), you must demonstrate continuous compliance with the activated carbon injection system gas parameter by installing, operating, and maintaining a continuous monitor to record the gas parameter that meets the requirements of § 63.1350(h)(2). Continuous compliance is demonstrated by a 3-hour rolling average of the parameter value.

(6) THC compliance. If you are subject to limitations on THC emissions under § 63.1343(b), you must demonstrate continuous compliance with the THC emissions standards by using the monitoring methods and procedures in § 63.1350 (i) and (j). Continuous compliance is demonstrated by a 30-day rolling average THC concentration, except for periods of startup and shutdown, where the standard is based on a 7-day rolling average.

(7) Mercury compliance. If you are subject to limitations on mercury emissions in § 63.1343(b), you must demonstrate continuous compliance with the mercury standards by using the monitoring methods and procedures in § 63.1350(k). Continuous compliance is demonstrated by a 30-day rolling average mercury emission rate in lb/MM tons clinker, except for periods of startup and shutdown, where the standard is based on a 7-day rolling average mercury concentration.

(8) *HCl compliance.* If you are subject to limitations on HCl emissions under § 63.1343(b), you must demonstrate continuous compliance with the HCl standards by using the performance test methods and procedures in § 63.1349(b)(6).

(i) For an affected source that is not equipped with a wet scrubber or tray tower, you must demonstrate continuous compliance by using the monitoring methods and procedures in § 63.1350(l)(1). Continuous compliance is demonstrated by a 30-day rolling average HCl concentration, except for periods of startup and shutdown, where the standard is based on a 7-day rolling average.

(ii) For an affected source that is equipped with a wet scrubber or tray tower, you must demonstrate continuous compliance by using the monitoring methods and procedures in § 63.1350(l)(2). Continuous compliance is demonstrated by a 30-day rolling average of the required parameters, except for periods of startup and shutdown, where the standard is based on a 7-day rolling average.

(c) *Changes in operations.*

(1) If you plan to undertake a change in operations that may adversely affect compliance with an applicable standard, operating limit, or parametric monitoring value under this subpart, the source must conduct a performance test as specified in § 63.1349(b).

(2) In preparation for and while conducting a performance test required in § 63.1349(b), you may operate under the planned operational change conditions for a period not to exceed 360 hours, provided that the conditions in (c)(2)(i) through (c)(2)(iv) of this section are met. You must submit temperature and other monitoring data that are recorded during the pretest operations.

(i) You must provide the Administrator written notice at least 60 days prior to undertaking an operational change that may adversely affect compliance with an applicable standard under this subpart for any source, or as soon as practicable where 60 days advance notice is not feasible. Notice provided under this paragraph must include a description of the planned change, the emissions standards that may be affected by the change, and a schedule for completion of the performance test required under paragraph (c)(1) of this section,

including when the planned operational change period would begin.

(ii) The performance test results must be documented in a test report according to § 63.1349(a).

(iii) A test plan must be made available to the Administrator prior to performance testing, if requested.

(iv) The performance test must be conducted completed within 360 hours after the planned operational change period begins.

(d) *General duty to minimize emissions.* At all times you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

■ 19. Section 63.1349 is revised to read as follows:

§ 63.1349 Performance testing requirements.

(a) Performance test results must be documented in complete test reports that contain the information required by paragraphs (a)(1) through (a)(10) of this section, as well as all other relevant information. As described in § 63.7(c)(2)(i), the site-specific plan to be followed during performance testing must be made available to the Administrator prior to testing, if requested.

(1) A brief description of the process and the air pollution control system;

(2) Sampling location description(s);

(3) A description of sampling and analytical procedures and any modifications to standard procedures;

(4) Test results;

(5) Quality assurance procedures and results;

(6) Records of operating conditions during the performance test, preparation of standards, and calibration procedures;

(7) Raw data sheets for field sampling and field and laboratory analyses;

(8) Documentation of calculations;

(9) All data recorded and used to establish parameters for monitoring; and

(10) Any other information required by the performance test method.

(b)(1) *PM emissions tests.*

(i)(A) If you are subject to the limitations on emissions of PM, you must install, operate, calibrate, and maintain a PM CEMS in accordance with the requirements in § 63.1350(b).

(B) You must determine, record, and maintain a record of the accuracy of the volumetric flow rate monitoring system according to the procedures in § 63.1350(m)(5).

(C) The initial compliance test must be based on the first 30 operating days in which the affected source operates using a CEMS. Hourly PM concentration and stack gas volumetric flow rate data must be obtained.

(ii) You must determine the clinker production rate using the methods in § 63.1350(d).

(iii) The emission rate, E, of PM (lb/ton of clinker) must be computed for each run using equation 3 of this section:

$$E = (C_S Q_S)/(PK) \qquad \text{(Eq. 3)}$$

Where:

E = emission rate of particulate matter, lb/ton of clinker production;

C_s = concentration of particulate matter, gr/scf;

Q_s = volumetric flow rate of effluent gas, where C_s and Q_s are on the same basis (either wet or dry), scf/hr;

P = total kiln clinker production rate, ton/hr; and

K = conversion factor, 7000 gr/lb.

(iv) When there is an alkali bypass associated with a kiln, the main exhaust and alkali bypass of the kiln must be tested simultaneously and the combined emission rate of particulate matter from the kiln and alkali bypass must be computed for each computed for each run using equation 4 of this section:

$$E_c = \frac{\left[(C_{sk} Q_{sk}) + (C_{sb} Q_{sb})\right]}{K P} \qquad \text{(Eq. 4)}$$

Where:

E_c = combined emission rate of particulate matter from the kiln or in-line kiln/raw mill and bypass stack, lb/ton of kiln clinker production;

C_{sk} = concentration of particulate matter in the kiln or in-line kiln/raw mill effluent gas, gr/scf;

Q_{sk} = volumetric flow rate of kiln or in-line kiln/raw mill effluent gas, where C_{sk} and Q_{sk} are on the same basis (either wet or dry), scf/hr;

C_{sb} = concentration of particulate matter in the alkali bypass gas, gr/scf;

Q_{sb} = volumetric flow rate of alkali bypass effluent gas, where C_{sb} and Q_{sb} are on the same basis (either wet or dry), scf/hr;

P = total kiln clinker production rate, ton/hr; and

K = conversion factor, 1000 g/kg (7000 gr/lb).

(2) *Opacity tests.* If you are subject to limitations on opacity under this subpart, you must conduct opacity tests in accordance with Method 9 of appendix A–4 to part 60 of this chapter. The duration of the Method 9 performance test must be 3 hours (30 6-minute averages), except that the duration of the Method 9 performance test may be reduced to 1 hour if the conditions of paragraphs (b)(2)(i) through (b)(2)(ii) of this section apply. For batch processes that are not run for 3-hour periods or longer, compile observations totaling 3 hours when the unit is operating.

(i) There are no individual readings greater than 10 percent opacity;

(ii) There are no more than three readings of 10 percent for the first 1-hour period.

(3) *D/F emissions tests.* If you are subject to limitations on D/F emissions under this subpart, you must conduct a performance test using Method 23 of appendix A–7 to part 60 of this chapter. The owner or operator of a kiln or in-line kiln/raw mill equipped with an alkali bypass must conduct simultaneous performance tests of the kiln or in-line kiln/raw mill exhaust and the alkali bypass. However, the owner or operator of an in-line kiln/raw mill may conduct a performance test of the alkali bypass exhaust when the raw mill of the in-line kiln/raw mill is operating or not operating.

(i) Each performance test must consist of three separate runs conducted under representative conditions. The duration of each run must be at least 3 hours, and the sample volume for each run must be at least 2.5 dscm (90 dscf).

(ii) The temperature at the inlet to the kiln or in-line kiln/raw mill PMCD, and, where applicable, the temperature at the inlet to the alkali bypass PMCD must be continuously recorded during the period of the Method 23 test, and the continuous temperature record(s) must be included in the performance test report.

(iii) Hourly average temperatures must be calculated for each run of the performance test.

(iv) The run average temperature must be calculated for each run, and the average of the run average temperatures must be determined and included in the performance test report and will determine the applicable temperature limit in accordance with § 63.1344(b).

(v)(A) If sorbent injection is used for D/F control, the rate of sorbent injection to the kiln or in-line kiln/raw mill exhaust, and where applicable, the rate of sorbent injection to the alkali bypass exhaust, must be continuously recorded during the period of the Method 23 test in accordance with the conditions in § 63.1350(m)(9), and the continuous injection rate record(s) must be included

in the performance test report. Sorbent injection rate parameters must be determined in accordance with paragraphs (b)(3)(vi) of this section.

(B) The performance test report must include the brand and type of sorbent used during the performance test.

(C) The owner or operator must maintain a continuous record of either the carrier gas flow rate or the carrier gas pressure drop for the duration of the performance test. If the carrier gas flow rate is used, the owner or operator must determine, record, and maintain a record of the accuracy of the carrier gas flow rate monitoring system according to the procedures in appendix A to part 75 of this chapter. If the carrier gas pressure drop is used, the owner or operator must determine, record, and maintain a record of the accuracy of the carrier gas pressure drop monitoring system according to the procedures in § 63.1350(m)(6).

(vi) The run average sorbent injection rate must be calculated for each run and the average of the run average injection rates must be determined and included in the performance test report and will determine the applicable injection rate limit in accordance with § 63.1344(c)(1).

(4)(i) *THC CEMS relative accuracy test.*

(A) If you are subject to limitations on THC emissions, you must operate a continuous emissions monitoring system (CEMS) in accordance with the requirements in § 63.1350(1). For the purposes of conducting the accuracy and quality assurance evaluations for CEMS, the THC span value (as propane) is 50 ppmvd. You demonstrate compliance with a RATA when the accuracy between the CEMS and the test audit is within 20 percent or when the test audit results are within 10 percent of the standard

(B) The initial compliance test must be based on the first 30 operating days of operation in which the affected source operates using a CEMS.

(ii) *Total organic HAP emissions tests.* Instead of conducting the performance test specified in paragraph (b)(4)(i) of this section, you may conduct a performance test to determine emissions of total organic HAP by following the procedures in paragraphs (b)(4)(iii) through (b)(4)(iv) of this section.

(iii) Method 320 of appendix A to this part or ASTM D6348–03 (incorporated by reference—*See* § 63.14) must be used to determine emissions of total organic HAP. Each performance test must consist of three separate runs under the conditions that exist when the affected source is operating at the representative performance conditions in accordance with § 63.7(e). Each run must be conducted for at least 1 hour.

(iv) At the same time that you are conducting the performance test for total organic HAP, you must also determine THC emissions by operating a CEMS in accordance with the requirements of § 63.1350(j). The duration of the performance test must be 3 hours and the average THC concentration (as calculated from the 1-minute averages) during the 3-hour test must be calculated.

(5) *Mercury emissions tests.* If you are subject to limitations on mercury emissions, you must operate a mercury CEMS in accordance with the requirements of § 63.1350(k). The initial compliance test must be based on the first 30 operating days in which the affected source operates using a CEMS. Hourly mercury concentration and stack gas volumetric flow rate data must be obtained. If you use a sorbent trap monitoring system, daily data must be obtained with each day assumed to equal the daily average of the sorbent trap collection period covering that day.

(i) If you are using a mercury CEMS, you must install, operate, calibrate, and maintain an instrument for continuously measuring and recording the exhaust gas flow rate to the atmosphere according to the requirements in § 63.1350(k)(4).

(ii) The emission rate must be computed by dividing the average mercury emission rate by the clinker production rate during the same 30-day rolling period using the equation 5 of this section:

$$E = (C_s Q_s)/(PK) \qquad \text{(Eq. 5)}$$

Where:

E = emission rate of mercury, lb/million tons of clinker production;

C_s = concentration of mercury, g/scm;

Q_s = volumetric flow rate of effluent gas, where C_s and Q_s are on the same basis (wet or dry), scm/hr;

P = total kiln clinker production rate, million ton/hr; and

K = conversion factor, 1000 g/kg (454 g/lb).

(6) *HCl emissions tests*. For a source subject to limitations on HCl emissions you must conduct performance testing by one of the following methods:

(i)(A) If the source is equipped with a wet scrubber, or tray tower, you must conduct performance testing using Method 321 of appendix A to this part unless you have installed a CEMS that meets the requirements § 63.1350(l)(1) .

(B) You must establish site specific parameter limits by using the CPMS required in§ 63.1350(l)(1). Measure and record the pressure drop across the scrubber and/or liquid flow rate and pH in intervals of no more than 15 minutes during the HCl test. Compute and record the 24-hour average pressure drop, pH, and average scrubber water flow rate for each sampling run in which the applicable emissions limit is met.

(ii)(A) If the source is not controlled by a wet scrubber, you must operate a CEMS in accordance with the requirements of § 63.1350(l)(1). The initial performance test must be the first 30 operating days you use the CEMS.

(B) The initial compliance test must be based on the 30 operating days in which the affected source operates using a CEMS. Hourly HCl concentration and stack gas volumetric flow rate data must be obtained.

(c) *Performance test frequency.* Except as provided in § 63.1348(b), performance tests are required for affected sources that are subject to a dioxin, total organic HAP, or HCl, emissions limit and must be repeated every 30 months except for pollutants where that specific pollutant is monitored using CEMS.

(d) *Performance test reporting requirements.*

(1) You must submit the information specified in paragraphs (d)(1)(i) and (d)(2) of this section no later than 60 days following the initial performance test. All reports must be signed by the facility's manager.

(i) The initial performance test data as recorded under paragraph (b) of this section.

(ii) The values for the site-specific operating limits or parameters established pursuant to paragraphs (b)(3), (b)(4)(iii), (b)(5)(ii), and (b)(6)(i) of this section, as applicable, and a description, including sample calculations, of how the operating parameters were established during the initial performance test.

(2) As of December 31, 2011 and within 60 days after the date of completing each performance evaluation or test, as defined in § 63.2, conducted to demonstrate compliance with this subpart, you must submit the relative accuracy test audit data and performance test data, except opacity data, to EPA by successfully submitting the data electronically to EPA's Central Data Exchange (CDX) by using the Electronic Reporting Tool(ERT) (*see http://www.epa.gov/ttn/chief/ert/ert_tool.html/*).

(e) Performance tests must be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Upon request, you must make available to the Administrator such records as may be

necessary to determine the conditions of performance tests.

20. Section 63.1350 is revised to read as follows:

§ 63.1350 Monitoring requirements.

(a) All continuous monitoring data for periods of startup and shutdown must be compiled and averaged separately from data gathered during periods of normal operation.

(b) *PM monitoring requirements for sources using PM CEMS.*

(1) For a kiln or clinker cooler subject to emissions limitation on particulate matter emissions in § 63.1343(b) and using a PM CEMS, you must install and operate a continuous emissions monitor in accordance with Performance Specification 11 of appendix B and Procedure 2 of appendix F to part 60 of this chapter. The performance test method and the correlation test method for Performance Specification 11 must be Method 5 or Method 5i of appendix A to Part 60 of this chapter. You must also develop an emissions monitoring plan in accordance with paragraphs (o)(1) through (o)(4) of this section.

(2) You must perform Relative Response Audits annually and Response Correlation Audits every 3 years.

(3) If you are using a PM CEMS, you must install, operate, calibrate, and maintain an instrument for continuously measuring and recording the exhaust gas flow rate to the atmosphere according to the requirements in paragraphs (n)(1) through (n)(10) of this section.

(4) In order to calculate the 30-day or 7-day rolling average, collect readings at least every 15 minutes. Sum the hourly data to daily data and then into a 30-day rolling average. You must use all data, except those recorded during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or control activities, in calculations.

(c) [Reserved]

(d) *Clinker production monitoring requirements.* If you are subject to an emissions limitation on particulate matter, mercury, NO_X, or SO_2 emissions (lb/ton of clinker), you must:

(1) Determine hourly clinker production by one of two methods:

(i) Install, calibrate, maintain, and operate a permanent weigh scale system to measure and record weight rates in tons-mass per hour of the amount of clinker produced. The system of measuring hourly clinker production must be maintained within ±5 percent accuracy.

(ii) Install, calibrate, maintain, and operate a permanent weigh scale system to measure and record weight rates in tons-mass per hour of the amount of feed to the kiln. The system of measuring feed must be maintained within ±5 percent accuracy. Calculate your hourly clinker production rate using a kiln specific feed to clinker ratio based on reconciled clinker production determined for accounting purposes and recorded feed rates. This ratio must be updated monthly. Note that if this ratio changes at clinker reconciliation, you must use the new ratio going forward, but you do not have to retroactively change clinker production rates previously estimated.

(2) Determine, record, and maintain a record of the accuracy of the system of measuring hourly clinker production (or feed mass flow if applicable) before initial use (for new sources) or within 30 days of the effective date of this rule (for existing sources). During each quarter of source operation, you must determine, record, and maintain a record of the ongoing accuracy of the system of measuring hourly clinker production (or feed mass flow).

(3) Record the daily clinker production rates and kiln feed rates; and

(4) Develop an emissions monitoring plan in accordance with paragraphs (o)(1) through (o)(4) of this section.

(e) [Reserved]

(f) *Opacity monitoring requirements.* If you are subject to a limitation on opacity under § 63.1345, you must conduct required emissions monitoring in accordance with the provisions of paragraphs (f)(1)(i) through (f)(1)(vii) of this section and in accordance with the operation and maintenance plan developed in accordance with § 63.1347. You must conduct emissions monitoring in accordance with paragraphs (f)(2)(i) through (f)(2)(iii) of this section and in accordance with the operation and maintenance plan developed in accordance with (p)(1) through (p)(4) of this section. You must also develop an opacity emissions monitoring plan in accordance with paragraphs (o)(1) through (o)(4) and paragraph (o)(5), if applicable, of this section.

(1)(i) You must conduct a monthly 10-minute visible emissions test of each affected source in accordance with Method 22 of appendix A–7 to part 60 of this chapter. The performance test must be conducted while the affected source is in operation.

(ii) If no visible emissions are observed in six consecutive monthly tests for any affected source, the owner or operator may decrease the frequency of performance testing from monthly to semi-annually for that affected source. If visible emissions are observed during any semi-annual test, you must resume performance testing of that affected source on a monthly basis and maintain that schedule until no visible emissions are observed in six consecutive monthly tests.

(iii) If no visible emissions are observed during the semi-annual test for any affected source, you may decrease the frequency of performance testing from semi-annually to annually for that affected source. If visible emissions are observed during any annual performance test, the owner or operator must resume performance testing of that affected source on a monthly basis and maintain that schedule until no visible emissions are observed in six consecutive monthly tests.

(iv) If visible emissions are observed during any Method 22 performance test, of appendix A–7 to part 60 of this chapter, you must conduct five 6-minute averages of opacity in accordance with Method 9 of appendix A–4 to part 60 of this chapter. The Method 9 performance test, of appendix A–4 to part 60 of this chapter, must begin within 1 hour of any observation of visible emissions.

(v) The requirement to conduct Method 22 visible emissions monitoring under this paragraph do not apply to any totally enclosed conveying system transfer point, regardless of the location of the transfer point. "Totally enclosed conveying system transfer point" must mean a conveying system transfer point that is enclosed on all sides, top, and bottom. The enclosures for these transfer points must be operated and maintained as total enclosures on a continuing basis in accordance with the facility operations and maintenance plan.

(vi) If any partially enclosed or unenclosed conveying system transfer point is located in a building, you must have the option to conduct a Method 22 performance test, of appendix A–7 to part 60 of this chapter, according to the requirements of paragraphs (f)(1)(i) through (f)(1)(iv) of this section for each such conveying system transfer point located within the building, or for the building itself, according to paragraph (f)(1)(vii) of this section.

(vii) If visible emissions from a building are monitored, the requirements of paragraphs (f)(1)(i) through (f)(1)(iv) of this section apply to the monitoring of the building, and you must also test visible emissions from each side, roof, and vent of the building for at least 10 minutes.

(2)(i) For a raw mill or finish mill, you must monitor opacity by conducting daily visual emissions observations of the mill sweep and air separator

particulate matter control devices (PMCD) of these affected sources in accordance with the procedures of Method 22 of appendix A–7 to part 60 of this chapter. The duration of the Method 22 performance test must be 6 minutes.

(ii) Within 24 hours of the end of the Method 22 performance test in which visible emissions were observed, the owner or operator must conduct a follow up Method 22 performance test of each stack from which visible emissions were observed during the previous Method 22 performance test.

(iii) If visible emissions are observed during the follow-up Method 22 performance test required by paragraph (a)(5)(ii) of this section from any stack from which visible emissions were observed during the previous Method 22 performance test required by paragraph (a)(5)(i) of the section, you must conduct a visual opacity test of each stack from which emissions were observed during the follow up Method 22 performance test in accordance with Method 9 of appendix A–4 to part 60 of this chapter. The duration of the Method 9 test must be 30 minutes.

(3) *Corrective actions.* If visible emissions are observed during any Method 22 visible emissions test conducted under paragraphs (f)(1) or (f)(2) of this section, you must initiate, within one-hour, the corrective actions specified in the site specific operating and maintenance plan provisions in § 63.1347.

(4) The requirements under paragraph (f)(2) of this section to conduct daily Method 22 testing do not apply to any specific raw mill or finish mill equipped with a continuous opacity monitoring system (COMS) or bag leak detection system (BLDS).

(i) If the owner or operator chooses to install a COMS in lieu of conducting the daily visual emissions testing required under paragraph (f)(2) of this section, then the COMS must be installed at the outlet of the PM control device of the raw mill or finish mill and the COMS must be installed, maintained, calibrated, and operated as required by the general provisions in subpart A of this part and according to PS–1 of appendix B to part 60 of this chapter.

(ii) If you choose to install a BLDS in lieu of conducting the daily visual emissions testing required under paragraph (f)(2) of this section, the requirements in paragraphs (m)(1) through (m)(4), (m)(10) and (m)(11) of this section apply.

(g) *D/F monitoring requirements.* If you are subject to an emissions limitation on D/F emissions, you must comply with the monitoring requirements of paragraphs (g)(1) through (g)(6) and paragraphs (m)(1) through (m)(4) of this section to demonstrate continuous compliance with the D/F emissions standard. You must also develop an emissions monitoring plan in accordance with paragraphs (p)(1) through (p)(4) of this section.

(1) You must install, calibrate, maintain, and continuously operate a continuous monitor to record the temperature of the exhaust gases from the kiln, in-line kiln/raw mill, and alkali bypass, if applicable, at the inlet to, or upstream of, the kiln, in-line kiln/raw mill and/or alkali bypass PMCDs.

(i) The temperature recorder response range must include zero and 1.5 times the average temperature established according to the requirements in § 63.1349(b)(3)(iv).

(ii) The calibration reference for the temperature measurement must be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system or alternate reference, subject to approval by the Administrator.

(iii) The calibration of all thermocouples and other temperature sensors must be verified at least once every three months.

(2) You must monitor and continuously record the temperature of the exhaust gases from the kiln, in-line kiln/raw mill, and alkali bypass, if applicable, at the inlet to the kiln, in-line kiln/raw mill and/or alkali bypass PMCD.

(3) The required minimum data collection frequency must be one minute.

(4) Each hour, calculate the three-hour average temperature for the previous 3 hours of process operation using all of the one-minute data available (*i.e.,* the CMS is not out-of-control.)

(5) When the operating status of the raw mill of the in-line kiln/raw mill is changed from off to on or from on to off, the calculation of the three-hour rolling average temperature must begin anew, without considering previous recordings.

(h) *Monitoring requirements for sources using sorbent injection.* If you are subject to an operating limit on D/F emissions that employs carbon injection as an emission control technique, you must comply with the additional monitoring requirements of paragraphs (h)(1) and (h)(2) and paragraphs (m)(1) through (m)(4) and (m)(9) of this section. You must also develop an emissions monitoring plan in accordance with paragraphs (p)(1) through (p)(4) of this section.

(1) Install, operate, calibrate, and maintain a continuous monitor to record the rate of activated carbon injection. The accuracy of the rate measurement device must be ±1 percent of the rate being measured.

(i) Verify the calibration of the device at least once every three months.

(ii) Each hour, calculate the three-hour rolling average activated carbon injection rate for the previous 3 hours of process operation using all of the one-minute data available (*i.e.,* the CMS is not out-of-control.)

(iii) When the operating status of the raw mill of the in-line kiln/raw mill is changed from off to on or from on to off, the calculation of the three-hour rolling average activated carbon injection rate must begin anew, without considering previous recordings.

(2)(i) Install, operate, calibrate, and maintain a continuous monitor to record the activated carbon injection system carrier gas parameter (either the carrier gas flow rate or the carrier gas pressure drop) established during the D/F performance test in accordance with § 63.1349(b)(3).

(ii) Each hour, calculate the three-hour rolling average of the selected parameter value for the previous 3 hours of process operation using all of the one-minute data available (*i.e.,* the CMS is not out-of-control.)

(i) *THC Monitoring Requirements.* If you are subject to an emissions limitation on THC emissions, you must comply with the monitoring requirements of paragraphs (i)(1) and (i)(2) and (m)(1) through (m)(4) of this section. You must also develop an emissions monitoring plan in accordance with paragraphs (p)(1) through (p)(4) of this section.

(1) You must install, operate, and maintain a THC continuous emission monitoring system in accordance with Performance Specification 8 of appendix B to part 60 of this chapter and comply with all of the requirements for continuous monitoring systems found in the general provisions, subpart A of this part. The owner or operator must operate and maintain each CEMS according to the quality assurance requirements in Procedure 1 of appendix F in part 60 of this chapter.

(2) For sources equipped with an alkali bypass stack, instead of installing a CEMS, you may use the results of the initial or subsequent performance test to demonstrate compliance with the THC emission limit.

(j) *Total organic HAP monitoring requirements.* If you are complying with the total organic HAP emissions limits, you must continuously monitor THC according to paragraph (i)(1) and (2) or

in accordance with Performance Specification 15 of appendix B to part 60 of this chapter and comply with all of the requirements for continuous monitoring systems found in the general provisions, subpart A of this part. You must operate and maintain each CEMS according to the quality assurance requirements in Procedure 1 of appendix F in part 60 of this chapter. In addition, your must follow the monitoring requirements in paragraphs (m)(1) through (m)(4) of this section. You must also develop an emissions monitoring plan in accordance with paragraphs (p)(1) through (p)(4) of this section.

(k) *Mercury monitoring requirements.* If you have a kiln or in-line kiln/raw mill subject to an emissions limitation on mercury emissions, you must install and operate a mercury continuous emissions monitoring system (Hg CEMS) in accordance with Performance Specification 12A of appendix B to part 60 of this chapter or a sorbent trap-based integrated monitoring system in accordance with Performance Specification 12B of appendix B to part 60 of this chapter. You must continuously monitor mercury according to paragraphs (k)(1) through (k)(3) and (m)(1) through (m)(4) of this section. You must also develop an emissions monitoring plan in accordance with paragraphs (p)(1) through (p)(4) of this section.

(1) The span value for any Hg CEMS must include the intended upper limit of the mercury concentration measurement range during normal "mill on" operation which may be exceeded during "mill off" operation or other short term conditions lasting less than 24 consecutive kiln operating hours. However, the span should be at least equivalent to approximately two times the emissions standard and it may be rounded to the nearest multiple of 10 $\mu g/m^3$ of total mercury.

(2) You must operate and maintain each Hg CEMS or sorbent trap-based integrated monitoring system according to the quality assurance requirements in Procedure 5 of appendix F to part 60 of this chapter.

(3) Relative accuracy testing of mercury monitoring systems under Performance Specification 12A, Performance Specification 12B, or Procedure 5 must be at normal operating conditions with the raw mill on.

(4) If you use a mercury CEMS, you must install, operate, calibrate, and maintain an instrument for continuously measuring and recording the exhaust gas flow rate to the atmosphere according to the requirements in paragraphs (n)(1) through (n)(10) of this section.

(l) *HCl Monitoring Requirements.* If you are subject to an emissions limitation on HCl emissions in § 63.1343, you must continuously monitor HCl according to paragraph (l)(1) and (2) and paragraphs (m)(1) through (m)(4) of this section. You must also develop an emissions monitoring plan in accordance with paragraphs (p)(1) through (p)(4) of this section.

(1) Continuously monitor compliance with the HCl limit by operating a continuous emission monitor in accordance with Performance Specification 15 of appendix B to part 60 of this chapter. You must operate and maintain each CEMS according to the quality assurance requirements in Procedure 1 of 40 CFR of appendix F to part 60 of this chapter except that the Relative Accuracy Test Audit requirements of Procedure 1 must be replaced with the validation requirements and criteria of sections 11.1.1 and 12.0 of Performance Specification 15, or

(2) Install, operate, and maintain a CMS to monitor wet scrubber parameters as specified in paragraphs (m)(5) and (m)(7) of this section.

(m) *Parameter monitoring requirements.* If you have an operating limit that requires the use of a CMS, you must install, operate, and maintain each continuous parameter monitoring system (CPMS) according to the procedures in paragraphs (n)(1) through (4) of this section by the compliance date specified in § 63.1351. You must also meet the applicable specific parameter monitoring requirements in paragraphs (m)(5) through (m)(11) that are applicable to you.

(1) The CMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four successive cycles of operation to have a valid hour of data.

(2) You must conduct all monitoring in continuous operation at all times that the unit is operating.

(3) Determine the 3-hour block average of all recorded readings.

(4) Record the results of each inspection, calibration, and validation check.

(5) *Liquid flow rate monitoring requirements.* If you have an operating limit that requires the use of a flow measurement device, you must meet the requirements in paragraphs (m)(5)(i) through (iv) of this section.

(i) Locate the flow sensor and other necessary equipment in a position that provides a representative flow.

(ii) Use a flow sensor with a measurement sensitivity of 2 percent of the flow rate.

(iii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iv) Conduct a flow sensor calibration check at least semiannually.

(6) *Specific pressure monitoring requirements.* If you have an operating limit that requires the use of a pressure measurement device, you must meet the requirements in paragraphs (m)(6)(i) through (vi) of this section.

(i) Locate the pressure sensor(s) in a position that provides a representative measurement of the pressure.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Use a gauge with a minimum tolerance of 1.27 centimeters of water or a transducer with a minimum tolerance of 1 percent of the pressure range.

(iv) Check pressure tap pluggage daily.

(v) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(vi) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(7) *Specific pH monitoring requirements.* If you have an operating limit that requires the use of a pH measurement device, you must meet the requirements in paragraphs (m)(7)(i) through (iii) of this section.

(i) Locate the pH sensor in a position that provides a representative measurement of scrubber effluent pH.

(ii) Ensure the sample is properly mixed and representative of the fluid to be measured.

(iii) Check the pH meter's calibration on at least two points every 8 hours of process operation.

(8) [Reserved]

(9) *Mass flow rate (for sorbent injection) monitoring requirements.* If you have an operating limit that requires the use of equipment to monitor sorbent injection rate (*e.g.,* weigh belt, weigh hopper, or hopper flow measurement device), you must meet the requirements in paragraphs (m)(9)(i) through (iii) of this section.

(i) Locate the device in a position(s) that provides a representative measurement of the total sorbent injection rate.

(ii) Install and calibrate the device in accordance with manufacturer's procedures and specifications.

(iii) At least annually, calibrate the device in accordance with the manufacturer's procedures and specifications.

(10) *Bag leak detection monitoring requirements.* If you elect to use a fabric filter bag leak detection system to comply with the requirements of this subpart, you must install, calibrate, maintain, and continuously operate a bag leak detection system as specified in paragraphs (m)(10)(i) through (viii) of this section.

(i) You must install and operate a bag leak detection system for each exhaust stack of the fabric filter.

(ii) Each bag leak detection system must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations and in accordance with the guidance provided in EPA–454/R–98–015, September 1997.

(iii) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 or fewer milligrams per actual cubic meter.

(iv) The bag leak detection system sensor must provide output of relative or absolute particulate matter loadings.

(v) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(vi) The bag leak detection system must be equipped with an alarm system that will alert an operator automatically when an increase in relative particulate matter emissions over a preset level is detected. The alarm must be located such that the alert is detected and recognized easily by an operator.

(vii) For positive pressure fabric filter systems that do not duct all compartments of cells to a common stack, a bag leak detection system must be installed in each baghouse compartment or cell.

(viii) Where multiple bag leak detectors are required, the system's instrumentation and alarm may be shared among detectors.

(11) For each BLDS, the owner or operator must initiate procedures to determine the cause of every alarm within 8 hours of the alarm. The owner or operator must alleviate the cause of the alarm within 24 hours of the alarm by taking whatever corrective action(s) are necessary. Corrective actions may include, but are not limited to the following:

(i) Inspecting the fabric filter for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in PM emissions;

(ii) Sealing off defective bags or filter media;

(iii) Replacing defective bags or filter media or otherwise repairing the control device;

(iv) Sealing off a defective fabric filter compartment;

(v) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system; or

(vi) Shutting down the process producing the PM emissions.

(n) *Continuous emissions rate monitoring system.* You must install, operate, calibrate, and maintain instruments, according to the requirements in paragraphs (n)(1) and (2) of this section, for continuously measuring and recording the pollutant per mass flow rate to the atmosphere from sources subject to an emissions limitation that has a pounds per ton of clinker unit.

(1) You must install each sensor of the flow rate monitoring system in a location that provides representative measurement of the exhaust gas flow rate at the sampling location of the mercury or PM CEMS, taking into account the manufacturer's recommendations. The flow rate sensor is that portion of the system that senses the volumetric flow rate and generates an output proportional to that flow rate.

(2) The flow rate monitoring system must be designed to measure the exhaust flow rate over a range that extends from a value of at least 20 percent less than the lowest expected exhaust flow rate to a value of at least 20 percent greater than the highest expected exhaust flow rate.

(3) The flow rate monitoring system must have a minimum accuracy of 5 percent of the flow rate or greater.

(4) The flow rate monitoring system must be equipped with a data acquisition and recording system that is capable of recording values over the entire range specified in paragraph (n)(1) of this section.

(5) The signal conditioner, wiring, power supply, and data acquisition and recording system for the flow rate monitoring system must be compatible with the output signal of the flow rate sensors used in the monitoring system.

(6) The flow rate monitoring system must be designed to complete a minimum of one cycle of operation for each successive 15-minute period.

(7) The flow rate sensor must have provisions to determine the daily zero and upscale calibration drift (CD) (*see* sections 3.1 and 8.3 of Performance Specification 2 in appendix B to Part 60 of this chapter for a discussion of CD).

(i) Conduct the CD tests at two reference signal levels, zero (*e.g.,* 0 to 20 percent of span) and upscale (*e.g.,* 50 to 70 percent of span).

(ii) The absolute value of the difference between the flow monitor response and the reference signal must be equal to or less than 3 percent of the flow monitor span.

(8) You must perform an initial relative accuracy test of the flow rate monitoring system according to Section 8.2 of Performance Specification 6 of appendix B to Part 60 of the chapter with the exceptions in paragraphs (n)(8)(i) and (n)(8)(ii) of this section.

(i) The relative accuracy test is to evaluate the flow rate monitoring system alone rather than a continuous emission rate monitoring system.

(ii) The relative accuracy of the flow rate monitoring system shall be no greater than 10 percent of the mean value of the reference method data.

(9) You must verify the accuracy of the flow rate monitoring system at least once per year by repeating the relative accuracy test specified in paragraph (n)(8).

(10) You must operate the flow rate monitoring system and record data during all periods of operation of the affected facility including periods of startup, shutdown, and malfunction, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments).

(o) *Alternate monitoring requirements approval.* You may submit an application to the Administrator for approval of alternate monitoring requirements to demonstrate compliance with the emission standards of this subpart, except for emission standards for THC, subject to the provisions of paragraphs (n)(1) through (n)(6) of this section.

(1) The Administrator will not approve averaging periods other than those specified in this section, unless you document, using data or information, that the longer averaging period will ensure that emissions do not exceed levels achieved during the performance test over any increment of time equivalent to the time required to conduct three runs of the performance test.

(2) If the application to use an alternate monitoring requirement is approved, you must continue to use the original monitoring requirement until approval is received to use another monitoring requirement.

(3) You must submit the application for approval of alternate monitoring requirements no later than the notification of performance test. The

application must contain the information specified in paragraphs (m)(3)(i) through (iii) of this section:

(i) Data or information justifying the request, such as the technical or economic infeasibility, or the impracticality of using the required approach;

(ii) A description of the proposed alternative monitoring requirement, including the operating parameter to be monitored, the monitoring approach and technique, the averaging period for the limit, and how the limit is to be calculated; and

(iii) Data or information documenting that the alternative monitoring requirement would provide equivalent or better assurance of compliance with the relevant emission standard.

(4) The Administrator will notify you of the approval or denial of the application within 90 calendar days after receipt of the original request, or within 60 calendar days of the receipt of any supplementary information, whichever is later. The Administrator will not approve an alternate monitoring application unless it would provide equivalent or better assurance of compliance with the relevant emission standard. Before disapproving any alternate monitoring application, the Administrator will provide:

(i) Notice of the information and findings upon which the intended disapproval is based; and

(ii) Notice of opportunity for you to present additional supporting information before final action is taken on the application. This notice will specify how much additional time is allowed for you to provide additional supporting information.

(5) You are responsible for submitting any supporting information in a timely manner to enable the Administrator to consider the application prior to the performance test. Neither submittal of an application, nor the Administrator's failure to approve or disapprove the application relieves you of the responsibility to comply with any provision of this subpart.

(6) The Administrator may decide at any time, on a case-by-case basis that additional or alternative operating limits, or alternative approaches to establishing operating limits, are necessary to demonstrate compliance with the emission standards of this subpart.

(p) *Development and submittal (upon request) of monitoring plans.* If you demonstrate compliance with any applicable emission limit through performance stack testing or other emissions monitoring, you must develop a site-specific monitoring plan according to the requirements in paragraphs (p)(1) through (4) of this section. This requirement also applies to you if you petition the EPA Administrator for alternative monitoring parameters under paragraph (n) of this section and § 63.8(f). If you use a BLDS, you must also meet the requirements specified in paragraph (o)(5) of this section.

(1) For each continuous monitoring system (CMS) required in this section, you must develop, and submit to the permitting authority for approval upon request, a site-specific monitoring plan that addresses paragraphs (o)(1)(i) through (iii) of this section. You must submit this site-specific monitoring plan, if requested, at least 60 days before your initial performance evaluation of your CMS.

(i) Installation of the CMS sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.,* on or downstream of the last control device);

(ii) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction systems; and

(iii) Performance evaluation procedures and acceptance criteria (*e.g.,* calibrations).

(2) In your site-specific monitoring plan, you must also address paragraphs (o)(2)(i) through (iii) of this section.

(i) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (c)(3), and (c)(4)(ii);

(ii) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(iii) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(3) You must conduct a performance evaluation of each CMS in accordance with your site-specific monitoring plan.

(4) You must operate and maintain the CMS in continuous operation according to the site-specific monitoring plan.

(5) *BLDS monitoring plan.* Each monitoring plan must describe the items in paragraphs (o)(5)(i) through (v) of this section. At a minimum, you must retain records related to the site-specific monitoring plan and information discussed in paragraphs (m)(1) through (4), (m)(10) and (m)(11) of this section for a period of 5 years, with at least the first 2 years on-site;

(i) Installation of the BLDS;

(ii) Initial and periodic adjustment of the BLDS, including how the alarm set-point will be established;

(iii) Operation of the BLDS, including quality assurance procedures;

(iv) How the BLDS will be maintained, including a routine maintenance schedule and spare parts inventory list;

(v) How the BLDS output will be recorded and stored.

■ 21. Section 63.1351 is revised to read as follows:

§ 63.1351 Compliance dates.

(a) Except as noted in paragraph (b) of this section, the compliance date for an owner or operator of an existing affected source subject to the provisions of this subpart is June 14, 2002.

(b) The compliance date for existing sources with the PM, mercury, THC, and HCl emissions limits in § 63.1343(b) which became effective in November 8, 2010 will be September 9, 2013.

(c) Except as noted in paragraph (d) of this section, the compliance date for an owner or operator of an affected source subject to the provisions of this subpart that commences new construction or reconstruction after March 24, 1998, is June 14, 1999, or upon startup of operations, whichever is later.

(d) The compliance date for new sources with the PM, mercury, THC, and HCl emissions limits in § 63.1343(b) is November 8, 2010 or startup, whichever is later.

■ 22. Section 63.1352 is revised to read as follows:

§ 63.1352 Additional test methods.

(a) If you are conducting tests to determine the rates of emission of HCl from kilns and associated bypass stacks at portland cement manufacturing facilities, for use in applicability determinations under § 63.1340, you may use Method 320 or Method 321 of appendix A of this part.

(b) Owners or operators conducting tests to determine the rates of emission of specific organic HAP from raw material dryers, kilns and in-line kiln/raw mills at Portland cement manufacturing facilities, solely for use in applicability determinations under § 63.1340 of this subpart are permitted to use Method 320 of appendix A to this part, or Method 18 of appendix A to part 60 of this chapter.

■ 23. Section 63.1354 is amended by adding paragraphs (b)(9)(vi) and (c) to read as follows:

§ 63.1354 Reporting requirements.

* * * * *

(b) * * *

(9) * * *

(vi) Monthly rolling average mercury, THC, PM, and HCl (if applicable) emissions levels in the units of the applicable emissions limit for each kiln, clinker cooler, and raw material dryer.

* * * * *

(c) The semiannual report required by paragraph (b)(9) of this section must include the number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.1348(d), including actions taken to correct a malfunction.

■ 24. Section 63.1355 is amended by revising paragraphs (e) and paragraph (f) and adding paragraph (g) to read as follows:

§ 63.1355 Recordkeeping requirements.

* * * * *

(e) You must keep records of the daily clinker production rates and kiln feed rates.

(f) You must keep records of the occurrence and duration of each startup or shutdown.

(g)(1) You must keep records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control and monitoring equipment.

(2) You must keep records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.1348(d) including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

■ 25. Section 63.1356 is revised to read as follows:

§ 63.1356 Sources with multiple emission limits or monitoring requirements.

If an affected facility subject to this subpart has a different emission limit or requirement for the same pollutant under another regulation in title 40 of this chapter, the owner or operator of the affected facility must comply with the most stringent emission limit or requirement and is exempt from the less stringent requirement.

■ 26. Table 1 to Subpart LLL of Part 63 is revised to read as follows:

TABLE 1 TO SUBPART LLL OF PART 63—APPLICABILITY OF GENERAL PROVISIONS

Citation	Requirement	Applies to subpart LLL	Explanation
63.1(a)(1)–(4)	Applicability	Yes.	
63.1(a)(5)		No	[Reserved].
63.1(a)(6)–(8)	Applicability	Yes.	
63.1(a)(9)		No	[Reserved].
63.1(a)(10)–(14)	Applicability	Yes.	
63.1(b)(1)	Initial Applicability Determination.	No	§ 63.1340 specifies applicability.
63.1(b)(2)–(3)	Initial Applicability Determination.	Yes.	
63.1(c)(1)	Applicability After Standard Established.	Yes.	
63.1(c)(2)	Permit Requirements	Yes	Area sources must obtain Title V permits.
63.1(c)(3)		No	[Reserved].
63.1(c)(4)–(5)	Extensions, Notifications	Yes.	
63.1(d)		No	[Reserved].
63.1(e)	Applicability of Permit Program.	Yes.	
63.2	Definitions	Yes	Additional definitions in § 63.1341.
63.3(a)–(c)	Units and Abbreviations	Yes.	
63.4(a)(1)–(3)	Prohibited Activities	Yes.	
63.4(a)(4)		No	[Reserved].
63.4(a)(5)	Compliance date	Yes.	
63.4(b)–(c)	Circumvention, Severability	Yes.	
63.5(a)(1)–(2)	Construction/Reconstruction	Yes.	
63.5(b)(1)	Compliance Dates	Yes.	
63.5(b)(2)		No	[Reserved].
63.5(b)(3)–(6)	Construction Approval, Applicability.	Yes.	
63.5(c)		No	[Reserved].
63.5(d)(1)–(4)	Approval of Construction/Reconstruction.	Yes.	
63.5(e)	Approval of Construction/Reconstruction.	Yes.	
63.5(f)(1)–(2)	Approval of Construction/Reconstruction.	Yes.	
63.6(a)	Compliance for Standards and Maintenance.	Yes.	
63.6(b)(1)–(5)	Compliance Dates	Yes.	
63.6(b)(6)		No	[Reserved].
63.6(b)(7)	Compliance Dates	Yes.	
63.6(c)(1)–(2)	Compliance Dates	Yes.	
63.6(c)(3)–(4)		No	[Reserved].
63.6(c)(5)	Compliance Dates	Yes.	
63.6(d)		No	[Reserved].

TABLE 1 TO SUBPART LLL OF PART 63—APPLICABILITY OF GENERAL PROVISIONS—Continued

Citation	Requirement	Applies to subpart LLL	Explanation
63.6(e)(1)–(2)	Operation & Maintenance	No	*See* § 63.1348(d) for general duty requirement. Any reference to § 63.6(e)(1)(i) in other General Provisions or in this subpart is to be treated as a cross-reference to § 63.1348(d).
63.6(e)(3)	Startup, Shutdown Malfunction Plan.	No.	
63.6(f)(1)	Compliance with Emission Standards.	No	Compliance obligations specified in subpart LLL.
63.6(f)(2)–(3)	Compliance with Emission Standards.	Yes.	
63.6(g)(1)–(3)	Alternative Standard	Yes.	
63.6(h)(1)	Opacity/VE Standards	No	Compliance obligations specified in subpart LLL.
63.6(h)(2)	Opacity/VE Standards	Yes.	
63.6(h)(3)		No	[Reserved].
63.6(h)(4)–(h)(5)(i)	Opacity/VE Standards	Yes.	
63.6(h)(5)(ii)–(iv)	Opacity/VE Standards	No	Test duration specified in subpart LLL.
63.6(h)(6)	Opacity/VE Standards	Yes.	
63.6(h)(7)	Opacity/VE Standards	Yes.	
63.6(i)(1)–(14)	Extension of Compliance	Yes.	
63.6(i)(15)		No	[Reserved].
63.6(i)(16)	Extension of Compliance	Yes.	
63.6(j)	Exemption from Compliance	Yes.	
63.7(a)(1)–(3)	Performance Testing Requirements.	Yes	§ 63.1349 has specific requirements.
63.7(b)	Notification	Yes.	
63.7(c)	Quality Assurance/Test Plan	Yes.	
63.7(d)	Testing Facilities	Yes.	
63.7(e)(1)	Conduct of Tests	No	*See* § 63.1349(e). Any reference to 63.7(e)(1) in other General Provisions or in this subpart is to be treated as a cross-reference to § 63.1349(e).
63.7(e)(2)–(4)	Conduct of tests	Yes.	
63.7(f)	Alternative Test Method	Yes.	
63.7(g)	Data Analysis	Yes.	
63.7(h)	Waiver of Tests	Yes.	
63.8(a)(1)	Monitoring Requirements	Yes.	
63.8(a)(2)	Monitoring	No	§ 63.1350 includes CEMS requirements.
63.8(a)(3)		No	[Reserved].
63.8(a)(4)	Monitoring	No	Flares not applicable.
63.8(b)(1)–(3)	Conduct of Monitoring	Yes.	
63.8(c)(1)–(8)	CMS Operation/Maintenance	Yes	Temperature and activated carbon injection monitoring data reduction requirements given in subpart LLL.
63.8(d)	Quality Control	Yes, except for the reference to the SSM Plan in the last sentence.	
63.8(e)	Performance Evaluation for CMS.	Yes.	
63.8(f)(1)–(5)	Alternative Monitoring Method	Yes	Additional requirements in § 63.1350(l).
63.8(f)(6)	Alternative to RATA Test	Yes.	
63.8(g)	Data Reduction	Yes.	
63.9(a)	Notification Requirements	Yes.	
63.9(b)(1)–(5)	Initial Notifications	Yes.	
63.9(c)	Request for Compliance Extension.	Yes.	
63.9(d)	New Source Notification for Special Compliance Requirements.	Yes.	
63.9(e)	Notification of Performance Test.	Yes.	
63.9(f)	Notification of VE/Opacity Test.	Yes	Notification not required for VE/opacity test under § 63.1350(e) and (j).
63.9(g)	Additional CMS Notifications	Yes.	
63.9(h)(1)–(3)	Notification of Compliance Status.	Yes.	
63.9(h)(4)		No	[Reserved].
63.9(h)(5)–(6)	Notification of Compliance Status.	Yes.	
63.9(i)	Adjustment of Deadlines	Yes.	
63.9(j)	Change in Previous Information.	Yes.	

TABLE 1 TO SUBPART LLL OF PART 63—APPLICABILITY OF GENERAL PROVISIONS—Continued

Citation	Requirement	Applies to subpart LLL	Explanation
63.10(a)	Recordkeeping/Reporting	Yes.	
63.10(b)(1)	General Recordkeeping Requirements.	Yes.	
63.10(b)(2)(i)–(ii)	General Recordkeeping Requirements.	No	*See* § 63.1355(g) and (h).
63.10(b)(2)(iii)	General Recordkeeping Requirements.	Yes.	
63.10(b)(2)(iv)–(v)	General Recordkeeping Requirements.	No.	
63.10(b)(2)(vi)–(ix)	General Recordkeeping Requirements.	Yes.	
63.10(c)(1)	Additional CMS Recordkeeping.	Yes	PS–8A supersedes requirements for THC CEMS.
63.10(c)(1)	Additional CMS Recordkeeping.	Yes	PS–8A supersedes requirements for THC CEMS.
63.10(c)(2)–(4)		No	[Reserved].
63.10(c)(5)–(8)	Additional CMS Recordkeeping.	Yes	PS–8A supersedes requirements for THC CEMS.
63.10(c)(9)		No	[Reserved].
63.10(c)(10)–(15)	Additional CMS Recordkeeping.	Yes	PS–8A supersedes requirements for THC CEMS.
63.10(d)(1)	General Reporting Requirements.	Yes.	
63.10(d)(2)	Performance Test Results	Yes.	
63.10(d)(3)	Opacity or VE Observations	Yes.	
63.10(d)(4)	Progress Reports	Yes.	
63.10(d)(5)	Startup, Shutdown, Malfunction Reports.	No	*See* § 63.1354(c) for reporting requirements. Any reference to § 63.10(d)(5) in other General Provisions or in this subpart is to be treated as a cross-reference to § 63.1354(c).
63.10(e)(1)–(2)	Additional CMS Reports	Yes.	
63.10(e)(3)	Excess Emissions and CMS Performance Reports.	Yes	Exceedances are defined in subpart LLL.
63.10(f)	Waiver for Recordkeeping/Reporting.	Yes.	
63.11(a)–(b)	Control Device Requirements	No	Flares not applicable.
63.12(a)–(c)	State Authority and Delegations.	Yes.	
63.13(a)–(c)	State/Regional Addresses	Yes.	
63.14(a)–(b)	Incorporation by Reference	Yes.	
63.15(a)–(b)	Availability of Information	Yes.	

Appendix A to Part 63—[Amended]

■ 27. Section 1.3.2 of Method 321 of Appendix A to Part 63—Test Methods is revised to read as follows:

Appendix A to Part 63—Test Methods

* * * * *

Test Method 321—Measurement of Gaseous Hydrogen Chloride Emissions at Portland Cement Kilns by Fourier Transform Infrared (FTIR) Spectroscopy

* * * * *

1.3.2 The practical lower quantification range is usually higher than that indicated by the instrument performance in the laboratory, and is dependent upon (1) the presence of interfering species in the exhaust gas (notably H_2O), (2) the optical alignment of the gas cell and transfer optics, and (3) the quality of the reflective surfaces in the cell (cell throughput). Under typical test conditions (moisture content of up to 30 percent, 10 meter absorption path length, liquid nitrogen-cooled IR detector, 0.5 cm^{-1} resolution, and an interferometer sampling time of 60 seconds) a typical lower quantification range for HCl is 0.1 to 1.0 ppm.

* * * * *

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Part III

Department of Energy

10 CFR Part 431

Energy Conservation Program: Test Procedures for Walk-In Coolers and Walk-In Freezers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2008–BT–TP–0014]

RIN 1904–AB85

Energy Conservation Program: Test Procedures for Walk-In Coolers and Walk-In Freezers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) previously published a notice of proposed rulemaking to adopt test procedures for measuring the energy consumption of walk-in coolers and walk-in freezers, pursuant to the Energy Policy and Conservation Act (EPCA), as amended. DOE is continuing to consider those proposals, but is now soliciting comments on several alternative proposed options. Once any final test procedure is effective, any representation as to the energy use of walk-in equipment must reflect the results of testing that equipment using the test procedure. Concurrently, DOE is undertaking an energy conservation standards rulemaking for this equipment. If DOE receives data in this test procedure rulemaking that are pertinent to the development of standards, it will use that data in evaluating potential standards for this equipment. Once these standards are promulgated, the adopted test procedures will be used to determine compliance with the standards.

DATES: DOE will accept comments, data, and information regarding this supplemental notice of proposed rulemaking (SNOPR) no later than October 12, 2010. See section V of this SNOPR for details.

ADDRESSES: Any comments submitted must identify the SNOPR for Test Procedures for Walk-In Coolers and Walk-In Freezers and provide docket number EERE–2008–BT–TP–0014 and/or Regulation Identifier Number (RIN) 1904–AB85. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *E-mail: WICF–2008–TP–0014@hq.doe.gov*. Include the docket number EERE–2008–BT–TP–0014 and/or RIN 1904–AB85 in the subject line of the message.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, 6th Floor, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Llenza, U.S. Department of Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–2192, *Charles.Llenza@ee.doe.gov*; Mr. Michael Kido, U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8145, *Michael.Kido@hq.doe.gov*; or Ms. Elizabeth Kohl, U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7796. E-mail: *Elizabeth.Kohl@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

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11. Envelope Infiltration
12. Relative Humidity Assumptions
13. Definition of Refrigeration System
14. Annual Walk-In Energy Factor
15. Impacts on Small Businesses
VI. Approval of the Office of the Secretary

I. Authority and Background

Title III of the Energy Policy and Conservation Act of 1975, as amended ("EPCA" or, in context, "the Act") sets forth a variety of provisions designed to improve energy efficiency. Part B of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. The National Energy Conservation Policy Act (NECPA),

Public Law 95–619, amended EPCA to add Part C of Title III, which established an energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317) (These parts were subsequently redesignated as Parts A and A–1, respectively, for editorial reasons.) Section 312 of the Energy Independence and Security Act of 2007 ("EISA 2007") further amended EPCA by adding certain equipment to this energy conservation program, including walk-in coolers and walk-in freezers (collectively "walk-in equipment," "walk-ins," or "WICF"), the subject of this rulemaking. (42 U.S.C 6311(1), (20), 6313(f), and 6314(a)(9))

At its most basic level, the term "walk-in equipment" encompasses enclosed storage spaces of under 3,000 square feet that can be walked into and are refrigerated to specified temperatures—above 32 degrees Fahrenheit (°F) for coolers and at or below 32 °F for freezers. (42 U.S.C. 6311(20)(A)) The term does not include equipment designed and marketed exclusively for medical, scientific or research purposes. (42 U.S.C. 6311(20)(B))

Walk-ins that meet this definition may be located indoors or outdoors. They may be used exclusively for storage, but they may also have transparent doors or panels for the purpose of displaying stored items. Examples of items that may be stored in walk-ins include, but are not limited to, food, beverages, and flowers.

Under the Act, the overall program consists of three parts: testing, labeling, and Federal energy conservation standards. The testing requirements consist of test procedures prescribed under the authority of EPCA. These test procedures are used in several different ways: (1) DOE uses them to aid in the development of standards for covered products or equipment; (2) manufacturers of covered equipment must use them to establish that their equipment complies with standards promulgated under EPCA and when making representations about equipment efficiency; and (3) DOE must use them to determine whether equipment complies with applicable standards.

Section 343 of EPCA (42 U.S.C. 6314) sets forth generally applicable criteria and procedures for DOE's adoption and amendment of such test procedures. That provision requires that the test procedures promulgated by DOE be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of the covered equipment during a representative average use cycle. It also requires that the test procedure not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) As part of the process for promulgating a test procedure, DOE must publish a proposed procedure and offer the public an opportunity to present oral and written comments in response to that procedure. DOE solicited comments on the notice of proposed rulemaking ("NOPR") setting forth proposed test procedures, published on January 4, 2010 ("the January NOPR"). 75 FR 186. DOE also held a public meeting to discuss the January 2010 NOPR on March 24, 2010. DOE is now soliciting further comment through this SNOPR.

The January NOPR and the March 2010 meeting provided interested parties an opportunity to submit comments on the proposals. Interested parties raised significant issues and suggested changes to the proposed test procedures. DOE determined that some of these comments warrant further consideration. In today's notice, DOE addresses those comments and proposes adjustments to the initial test procedures proposed for walk-in equipment in the January 2010 NOPR.

II. Summary of the Proposal

DOE is proposing several changes to the proposal presented in the January NOPR. These changes involve:

(1) Definition of walk-in cooler and walk-in freezer.

(2) Testing and compliance responsibility.

(3) Versions of standards incorporated by reference.

(4) Basic model for envelope.

(5) Basic model for refrigeration system.

(6) Conduction through structural members.

(7) Alternatives to ASTM C1303.

(8) Heat transfer through concrete.

(9) U-factor of glass and non-glass doors.

(10) Steady-state infiltration through panel interfaces and doors.

(11) Door opening infiltration assumptions.

(12) Infiltration reduction device effectiveness.

(13) Relative humidity assumptions.

(14) Definition of refrigeration system.

(15) Annual walk-in energy factor.

Concurrently, DOE is undertaking an energy conservation standards rulemaking to address the statutory requirement to establish performance standards for walk-in equipment no later than January 1, 2012. (42 U.S.C. 6313(f)(4)(A)) DOE will use the test procedure in the concurrent process of evaluating potential performance standards for the equipment. After performance standards become applicable, manufacturers must use the test procedures to determine compliance with the standards, and DOE must use the test procedure to ascertain compliance with the standards in any enforcement action. Moreover, once any final test procedure is effective, any representation as to the energy use of walk-in equipment must reflect the results of testing that equipment using the test procedure.

III. Discussion

This section addresses issues raised by interested parties in response to the January NOPR and provides detail regarding DOE's proposed changes to the test procedure. Interested parties include trade associations (American Chemistry Council/Center for the Polyurethanes Industry (ACC/CPI), AHRI); manufacturers of the covered equipment (Craig Industries, Metl-Span, Nor-Lake, Carpenter, Master-Bilt, American Panel Corporation, Arctic Industries, Amerikooler, Kason, Hill Phoenix, TAFCO/TMP (TAFCO), International Cold Storage (ICS), ThermalRite, Manitowoc, Kysor Panel, HeatCraft, and Crown Tonka); suppliers of components used in the covered equipment (Honeywell, BASF, Dyplast, ITW Insulation, Owens Corning, HH Technologies (Hired Hand), Dow Chemical, and Schott Gemtron); utilities (Southern California Edison (SCE), San Diego Gas and Electric (SDGE), and the Sacramento Municipal Utility District (SMUD)); and energy efficiency advocates (American Council for an Energy-Efficient Economy (ACEEE)).

A. Overall Issues

1. Definition of Walk-In Cooler or Freezer: Temperature Limit

EPCA defines walk-in equipment as follows:

> (A) In general.—
> The terms "walk-in cooler" and "walk-in freezer" mean an enclosed storage space refrigerated to temperatures, respectively, above, and at or below 32 degrees Fahrenheit that can be walked into, and has a total chilled storage area of less than 3,000 square feet.
> (B) Exclusion.—
> The terms "walk-in cooler" and "walk-in freezer" do not include products designed and marketed exclusively for medical, scientific, or research purposes. (42 U.S.C. 6311(20))

During the public meeting on the January NOPR and in written comments, several interested parties stated that DOE should clarify this definition with respect to temperature limits and exclusions. Multiple interested parties commented that DOE

should set an upper temperature limit for walk-ins. Three temperature limits were proposed: (1) 40 or 41 °F; (2) 45 °F; and (3) between 31 °F and 55 °F. Kysor stated that DOE should align with the National Sanitation Foundation (NSF) definition of 41 °F as the maximum high temperature for food storage. (Kysor, Public Meeting Transcript, No. 1.2.010 at p. 85) ICS agreed with Kysor but cautioned that this temperature could be different from the temperature set by the customer. (ICS, Public Meeting Transcript, No. 1.2.010 at p. 86)

In written comments, Kysor also suggested 40 °F as the upper limit because NSF/ANSI Standard 7, "Commercial Refrigerators and Freezers" uses such a requirement. See NSF/ANSI Standard 7, "Commercial Refrigerators and Freezers," Section 6.10.1, "Performance ("Storage refrigerators and refrigerated food transport cabinets shall be capable of maintaining an air temperature of 40 °F (4 °C) or lower in the interior.") (Kysor, No. 1.3.035 at p. 1) Craig and Hired Hand both indicated that 45 °F or 41 °F would be an acceptable upper limit. (Craig, Public Meeting Transcript, No. 1.2.010 at p. 86; Craig, No. 1.3.017 at p. 1 and Public Meeting Transcript, No. 1.2.010 at p. 19; Hired Hand, Public Meeting Transcript, No. 1.2.010 at p. 88) A comment submitted jointly by SCE, SDGE, and SMUD, hereafter referred to collectively as "the Joint Comment," recommended that DOE develop a definition to clarify that walk-in coolers operate at temperatures between 55 °F and 32 °F. (Joint Comment, No. 1.3.019 at p. 17) SCE pointed out that California's building energy standards consider 55 °F and below to be refrigerated. (SCE, Public Meeting Transcript, No. 1.2.010 at p. 85) TAFCO agreed that DOE should impose an upper limit of 55 °F because this is the highest temperature at which most refrigeration systems will operate. (TAFCO, No. 1.3.022 at p. 1) Craig disagreed with a 55 °F limit because this temperature is the typical holding temperature for wine coolers, but the walk-in wine cooler might be rated at a lower temperature. (Craig, Public Meeting Transcript, No. 1.2.010 at p. 86) DOE infers from the comment that Craig was concerned that the energy consumption of a wine cooler at the test procedure rating temperature might not represent the energy consumption at the actual holding temperature. Hired Hand stated that air conditioning is the first stage of cooling for walk-ins inside air-conditioned warehouses, which echoed the concerns of other commenters that the complete absence of an upper temperature limit might inadvertently include a wider variety of conditioned spaces than contemplated. (Hired Hand, Public Meeting Transcript, No. 1.2.010 at p. 87)

EPCA defines walk-in equipment, in part, as meaning a space that is "refrigerated," and as having a "chilled storage area." (42 U.S.C. 6311(20)) DOE proposes clarifying the term "refrigerated" within the statutory definition to distinguish walk-in equipment from air-conditioned storage spaces. DOE could not find a consensus among the industry for the definition of "refrigerated" or "chilled storage." However, the Joint Comment, SCE, and TAFCO suggested that 55 °F represented a boundary between "refrigerated space" and "conditioned space" as refrigeration systems typically do not operate above 55 °F, and air-conditioning systems typically do not operate below this limit. DOE found that preparation rooms, wine coolers, and storage coolers for most fruits and vegetables are considered refrigerated spaces and are typically cooled to temperatures between 45 °F and 55 °F. DOE proposes adopting a clarifying definition that would set an upper limit of 55 °F for walk-in equipment. DOE believes that using the upper limit of food storage temperatures (*i.e.,* 40 °F or 45 °F) to define walk-in equipment, as suggested by some commenters, would exclude some equipment that is "refrigerated" and has a "chilled storage area." Such an approach would, in DOE's view, exclude from coverage equipment that falls within the statutorily-prescribed scope of EPCA's walk-in definition. The space in which a walk-in is located (*e.g.,* a grocery store, warehouse, or other conditioned space) would not itself be considered a walk-in unless it meets the statutory definition of a walk-in and DOE's proposed clarifying definition that would set an upper limit on the temperature range. DOE requests comment on its proposal of clarifying "refrigerated" to mean at or below 55 °F.

2. Testing and Compliance Responsibility

In responding to comments received on the framework document, the January NOPR detailed DOE's proposal to create separate test procedures for the envelope and the refrigeration system, the two discrete systems that comprise a walk-in. 75 FR 191. These two systems may or may not each be manufactured by a separate manufacturing entity. Additionally, other manufacturers may be involved in producing secondary components—such as fan assemblies or lighting—that are then incorporated as parts of the refrigeration system or envelope.

In the January NOPR, DOE proposed that the envelope manufacturer would be responsible for testing the envelope according to the envelope test procedure, and the refrigeration system manufacturer would be responsible for testing the refrigeration system according to the refrigeration system test procedure. 75 FR 191. DOE believed that the manufacturers of the envelope and refrigeration systems—as parties most likely to be intimately familiar with the design and operation of their own equipment—would be more likely than installers to have the resources, equipment, and trained personnel needed to conduct the tests necessary to certify WICF equipment as compliant with any energy conservation standards that DOE develops. 75 FR 191.

However, interested parties commented that DOE's concept of a single envelope manufacturer may not align with the actual market. Commenters suggested that the panel manufacturers, whom DOE assumed would serve as the envelope manufacturers for purposes of testing compliance, did not necessarily control the design of the walk-in envelopes for which their panels were used. Many of the comments from interested parties suggested that DOE should assign compliance testing responsibility to parties involved in the physical assembly (*e.g.,* installers) and/or design-level specification (*e.g.,* general contractors) of the walk-in envelope because actions taken by these parties could have a significant effect on walk-in performance over its lifetime. Some commenters suggested various forms of joint responsibility between the manufacturer(s) of the envelope components and the parties responsible for the physical assembly and/or design-level specification of the envelope. Other interested parties commented that these options would not constitute a viable approach and that DOE should focus on the panel manufacturers for compliance testing because they would be more likely to have the proper equipment and expertise to test the panels.

Likewise, interested parties commented that DOE's concept of a single refrigeration system manufacturer may be inaccurate because the condensing unit and unit cooler of a single refrigeration system may be manufactured by separate entities and the whole system may be manufactured from these separate parts by a third manufacturer. Commenters generally suggested assigning joint responsibility between the manufacturer(s) of the unit

cooler and condensing unit and the manufacturer of the system as a whole. Others suggested that DOE break a refrigeration system down into its individual components (*e.g.,* compressor, coils) and regulate each component separately.

DOE believes that many of the comments concerning compliance testing responsibility stem from the definition of the term "manufacture," which EPCA defines as "to manufacture, produce, assemble or import." (42 U.S.C. 6291(10)) Several interested parties requested clarification of the definition of "manufacture" and the implications of that role. DOE generally requires a single party, whose role falls under the term "manufacture," to assume compliance responsibility for a given appliance or equipment; typically, the party responsible for demonstrating compliance would conduct the necessary testing or arrange for testing to be conducted by a third party (e.g., a testing lab). DOE recognizes that the walk-in envelope and refrigeration system markets rely on multiple supply chain scenarios in which several distinct parties could serve different roles that may fall under the term "manufacture." In the case of both walk-in envelopes and refrigeration systems, DOE recognizes that assigning compliance responsibility to a single entity that may not be involved in all aspects of the design and construction of these systems may present certain logistical issues. Accordingly, DOE plans to further address these issues during the standards rulemaking when developing the required efficiency levels and when developing certification and compliance responsibilities.

3. Basic Model of Envelope

Although often manufactured according to the same basic design, many walk-in envelopes can be highly customized. To address this possibility, DOE proposed the following approach in the January NOPR: (1) Grouping walk-in envelopes with essentially identical construction methods, materials, and components into a single basic model; and (2) adopting a calculation methodology for determining the energy consumption of units within the basic model. For walk-in envelopes, DOE proposed to define a "basic model" as "all units of a given type of walk-in equipment manufactured by a single manufacturer, and—(1) With respect to envelopes, which do not have any differing construction methods, materials, components, or other characteristics that significantly affect the energy consumption characteristics." 75 FR 189.

Master-Bilt, BASF, ACC/CPI, Craig, Kason, and ThermalRite supported the concept of the basic model for WICF envelopes. (Master-Bilt, No. 1.3.009 at p. 1; BASF, No. 1.3.003 at p. 3; ACC/CPI, No. 1.3.006 at p. 2 and No. 1.3.028 at p. 1; Craig, Public Meeting Transcript, No. 1.2.010 at p. 102; Kason, No. 1.3.037 at p. 1 and Public Meeting Transcript, No. 1.2.010 at p. 124; and ThermalRite, No. 1.3.031 at p. 1) Craig supported an approach consisting of a single basic model test on a baseline model and adding component loads. (Craig, Public Meeting Transcript, No. 1.2.010 at p. 123) Kason stated that the basic model test should include provisions at the component level, where manufacturers could pick new components as long as the components were certified to exceed the performance of the old components. (Kason, Public Meeting Transcript, No. 1.2.010 at p. 124) Kysor and Nor-Lake both believed that the concept of the basic model may not be realistic if envelope components such as doors and lights were not purchased or installed by the panel manufacturers; in that case, Kysor and Nor-Lake stated that component manufacturers should be responsible for rating individual components. (Nor-Lake, No. 1.3.029 at p. 2; Kysor, No. 1.3.035 at p. 2) Arctic proposed expanding the basic model concept to eliminate testing for units using the same materials and construction methods as a previously certified model, adding that it would be impractical and infeasible for them to test every kind of equipment they manufacture because of the great variety of box dimensions. (Arctic, No. 1.3.012 at p. 1) BASF and Kason also stated that manufacturers must be able to reduce the number of models to test to ensure minimal manufacturer burden. (BASF, No. 1.3.003 at p. 3 and Kason, No. 1.3.037 at p. 1)

Other interested parties disagreed with the proposed basic model approach. Bally stated that the company produces tens of thousands of basic models, making basic model testing infeasible. (Bally, Public Meeting Transcript, No. 1.2.010 at p. 132) Hill Phoenix believed that use of a basic model for testing would not accurately represent the energy usage of most walk-ins because of equipment variability, that an energy usage calculation program would have to be created and maintained and be consistent across the industry, and that basic model testing would require costly government oversight. Instead, Hill Phoenix recommended component-level modeling. (Hill Phoenix, No. 1.3.023 at p. 2)

Several interested parties requested clarification of the proposed definition of basic model. ACC/CPI and Honeywell recommended that different types of foam and/or different blowing agents should trigger different basic models (ACC/CPI, No. 1.3.006 at p. 2 and Public Meeting Transcript, No. 1.2.010 at p. 43; Honeywell, No. 1.3.020 at p. 1) Honeywell also recommended that a different facer material should trigger a new basic model. (Honeywell, No. 1.3.020 at p. 1) Owens Corning stated that the insulation material should not trigger a new basic model because the R-value of the insulation is addressed in EISA and that panel construction (framed or frameless) should be used to differentiate between basic models. (Owens Corning, No. 1.3.030 at p. 2) ICS stated that different applications should constitute different basic models: holding storage, quick chilling or freezing, or blast freezing. (ICS, No. 1.3.027 at p. 1) TAFCO commented that the use of strip curtains or air curtains should not constitute a new basic model. (TAFCO, No. 1.3.022 at p. 2)

Other interested parties requested that DOE specify standard characteristics for a certain basic unit that every manufacturer would test. American Panel, ThermalRite, and Craig recommended that DOE specify a standardized basic model size. (American Panel, No. 1.3.024 at p. 2; ThermalRite, No. 1.3.031 at p. 1; Craig, Public Meeting Transcript, No. 1.2.010 at pp. 102, 106, and 119) Craig suggested a basic size applicable to the food industry—an 8 foot × 10 foot cooler and a 6 foot × 8 foot freezer, both with a height of 7 feet 6 inches tall—and added that size would only be applicable to the infiltration test because other characteristics could be calculated. (Craig, Public Meeting Transcript, No. 1.2.010 at p. 105 and No. 1.2.010 at pp. 102, 106, and 119) Kysor suggested that only height could be specified, arguing that walk-ins cannot be characterized by size. (Kysor, Public Meeting Transcript, No. 1.2.010 at p. 106)

Finally, interested parties commented on the proposed scaling methodology associated with the basic model concept. Manitowoc stated that a scaling methodology based on surface area would not give an accurate representation of energy use because energy scales not only with surface area but with other factors as well such as the number of installed doors and door size. In other words, individual component loads scale with individual component characteristics. (Manitowoc,

Public Meeting Transcript, No. 1.2.010 at p. 108) ThermalRite also questioned whether there is a linear relationship between energy consumption and WICF size that would allow for scaling. (ThermalRite, Public Meeting Transcript, No. 1.2.010 at p. 110)

Upon consideration of these comments, DOE believes that the basic model concept would provide manufacturers with a standardized method of categorizing their products. However, the definition of basic model proposed in the January NOPR could make the concept difficult to use as originally intended to reduce testing burden. Specifically, the phrase "* * * characteristics that significantly affect the energy consumption * * *" could be interpreted inconsistently by manufacturers. The paragraphs below describe DOE's proposed alternative approach to defining the term "basic model". Additionally, feedback from interested parties indicated a desire for DOE to specify prescriptive design characteristics for a basic model. Because EPCA requires DOE to promulgate performance-based standards for this equipment, DOE does not intend to specify design characteristics that do not affect normalized energy consumption, as suggested by ACC/CPI, Honeywell, Owens Corning, ICS and TAFCO. See 42 U.S.C. 6313(f) (instructing DOE to set performance-based standards for walk-ins).

DOE is considering adopting a revised definition of the term "basic model" that would be consistent with the definition of basic model used elsewhere in the appliance standards program, improve the clarity of the definition, and narrow the scope of the basic model concept. Most notably, this revision would not allow walk-in models to differ in terms of their normalized energy consumption. Models grouped within a basic model could still differ in terms of their non-energy characteristics (*e.g.,* color, shelving, metal skin material type, exterior finish, door kick-plate) but any change to a characteristic that affects normalized energy consumption (*e.g.*, panel systems, door systems, electrical components, and infiltration reduction devices) would constitute a new basic model.

DOE's proposed revision, while reducing the possibility of inconsistent interpretation of the term "basic model", could increase the testing burden relative to the burden under the definition of "basic model" as proposed in the January NOPR. Some of the burden may be offset, however, by burden-reducing measures proposed elsewhere in the test procedure. These measures include incorporating scaling factors for the infiltration test (section III.B.9), the panel U-factor test (section III.B.1), and representative doorway sizes for infiltration reduction device testing. With these measures, DOE attempts to minimize the number of physical tests that would need to be performed for the test procedure and instead provide a calculation methodology that would allow for rating equipment based on physical tests conducted on other equipment. DOE believes that this approach would sufficiently address the concerns of BASF, Kason, Arctic, Bally, and Hill Phoenix regarding the number of basic models to be tested and the cost of testing. A DOE-specified calculation methodology would also address Hill Phoenix's recommendation that the energy use calculation program be consistent across the industry. Regarding Arctic's view that the basic model concept should be expanded to include similar units with the same materials and construction methods that have been previously certified, DOE notes that models with the same characteristics as previously certified models would be considered the same basic model only if they met the conditions in the basic model definition. In other words, the models would need to have the same manufacturer and not have any differing characteristics that affect normalized energy consumption.

The proposed test procedure revisions considered in this SNOPR also rely more heavily on component testing, consistent with the suggestions made by Craig, Kason, Kysor, Nor-Lake, and Hill Phoenix. This approach removes the burden of testing an entire walk-in for which only one component is different from a previously rated walk-in: the test procedure revisions in this SNOPR would allow for testing the new component and then using the proposed calculation methodology to obtain the new rating of the walk-in. Additionally, the proposed component tests allow for testing one component and then applying those results to other components that meet certain similar criteria. DOE believes this method is more accurate than allowing for scaling of the entire walk-in, because each walk-in could contain many customized parts. Adopting this method would address the concerns raised by Manitowoc and ThermalRite that energy may not scale directly with walk-in external surface area or other size characteristics. For some proposed component tests, DOE specifies characteristics of the part that must be physically tested (i.e., the geometry of a panel test sample), instead of specifying characteristics of the tested walk-in unit as a whole as suggested by American Panel, ThermalRite, Craig, and Kysor, because (1) complete walk-in units may be very different from one another even if they use similar components, and (2) the scaling calculations are more accurate on the component level than on the level of the entire walk-in, which supports testing certain components as part of the compliance procedure. For additional details on these proposed component tests, see section III.B.

With respect to certification, in general, DOE requires that manufacturers of a covered basic model submit a certification report providing details, which demonstrate compliance with the applicable energy conservation standards or design standards prescribed by DOE or established by Congress. DOE estimates that approximately 50 percent of the market consists of standardized walk-ins that are produced in large quantities. For the other half of the market, walk-ins may have custom features and components that could qualify each as a different basic model. In this situation, manufacturers could produce many basic models in a year.

DOE is unsure, however, how burdensome this would be in terms of the actual number of hours or personnel required to certify additional basic models under this approach. If requiring a certification report for each basic model under the approach outlined in today's SNOPR would impose an unreasonable burden, DOE may consider a compliance certification approach similar to that taken for distribution transformers (another case in which some equipment is highly customized). 10 CFR 431.371(a)(6)(ii). Distribution transformer manufacturers are required to maintain records on all basic models sold (or built), but must submit a compliance report to DOE that certifies only the least efficient basic model within larger groupings that may encompass many basic models. 10 CFR 431.371(a)(6)(ii). The manufacturer would certify that every other transformer in the larger grouping is no less efficient than the certified basic model certified to DOE. Given the nature of the market, DOE is willing to consider variations on this approach for walk-ins, such as requiring certification for the least and most efficient basic models within a larger group. Such an approach could help address the concern of Hill Phoenix about the cost of an oversight strategy.

DOE requests comment on its proposed definition and approach regarding basic models for envelopes.

4. Basic Model of Refrigeration Systems

In the January NOPR, DOE proposed that the definition of the term "basic model" in the context of a refrigeration system would refer to all units with the same energy source and without any different electrical, physical, and functional characteristics that affect energy consumption. DOE then stated during the NOPR public meeting that it was considering a new definition that would not allow units within a basic model to differ in energy consumption. DOE also stated during the public meeting that it would consider the default of including no provision for a basic model, under which manufacturers would be required to test every model they manufacture.

AHRI and ACEEE agreed with DOE's proposed approach and definition of basic model. (AHRI, No. 1.3.032 at p. 2 and Public Meeting Transcript, No. 1.2.010 at p. 169; ACEEE, No. 1.3.034 at p. 2) Craig also agreed with the proposed approach given that improvements could be applied to existing systems. (Craig, Public Meeting Transcript, No. 1.2.010 at p. 172) ICS, Manitowoc, and HeatCraft recommended that the basic model of refrigeration be allowed to vary minimally (a 5 percent tolerance) in energy consumption, while HeatCraft also stated that in Europe, the tolerance is typically 8 percent. (ICS, No. 1.3.027 at p. 1; Manitowoc, Public Meeting Transcript, No. 1.2.010 at p. 159; and HeatCraft, Public Meeting Transcript, No. 1.2.010 at p. 162) On the other hand, Master-Bilt expressed concern that too many refrigeration system combinations may exist for the basic model concept to be applied effectively. (Master-Bilt, No. 1.3.009 at p. 1) HeatCraft stated that it was concerned about testing highly variable refrigeration systems and combinations, and whether they would be able to incorporate new technologies. (HeatCraft, Public Meeting Transcript, No. 1.2.010 at p. 42) Nor-Lake was also concerned about the potential testing burden because it has distinct energy efficiency ratio values on over 250 models. It recommended either defining basic model to account for how many basic models a manufacturer would have or to replace the basic model approach with a component-based one. (Nor-Lake, No. 1.3.005 at pp. 2 and 5 and No. 1.3.029 at p. 2) Manitowoc suggested considering a unit cooler its own basic model (not the combination of unit cooler and condensing unit), making it unnecessary to test all combinations but only individual parts of the system. (Manitowoc, Public Meeting Transcript, No. 1.2.010 at p. 158)

TAFCO identified refrigeration system components that, if changed, would significantly affect energy consumption. These components include the compressor, condensing coil, fan motors, head pressure control, and evaporator coil. (TAFCO, No. 1.3.022 at p. 2) American Panel added that headmasters (which control pressure) must be included on outdoor condensing units if the unit will be exposed to low temperatures. (American Panel, No. 24 at p. 3) Some interested parties discussed whether DOE should specify certain characteristics of the basic model. Specifically, HeatCraft stated that the basic model should include some common parts such as a filter dryer to permit a valid comparison between manufacturers, but manufacturers should be allowed to add unique features. (HeatCraft, Public Meeting Transcript, No. 1.2.010 at p. 162) ACEEE agreed that the basic model should include parts that have a reasonable probability of affecting energy consumption to encourage manufacturers to include all necessary components in their WICF equipment. (ACEEE, Public Meeting Transcript, No. 1.2.010 at p. 168) AHRI disagreed, stating that DOE should not specify design requirements in defining basic model groups, but rather agreed with DOE's proposed definition. (AHRI, Public Meeting Transcript, No. 1.2.010 at p. 169) (Although ACEEE did not elaborate further on what it considers "all necessary components," DOE is interpreting this phrase as referring to any components that would be needed to have the unit work in a manner as designed without the addition of aftermarket components that would impact the equipment's energy usage.)

As with envelopes, DOE must ensure that all refrigeration systems are accurately rated and comply with the standard. To avoid differing interpretations of what a "significant difference" in energy consumption might be, DOE believes that it is appropriate to clarify certain aspects of that definition to eliminate differences in the measured energy consumption of models belonging to the same basic model group. Accordingly, DOE proposes a revised definition of basic model of refrigeration where units cannot differ in electrical, physical, or functional characteristics that affect energy consumption. DOE recognizes that the components identified by TAFCO affect the energy consumption of the refrigeration system. Nevertheless, DOE believes that listing only certain components where changes would constitute a new basic model could overlook changes to other components that affect energy consumption. In addition, the question of significance would remain under such an approach. DOE believes that the definition proposed here is sufficient to define basic model—a basic model would necessarily have to include all components that affect energy consumption.

DOE also acknowledges the concerns of interested parties, specifically Master-Bilt, HeatCraft, and Nor-Lake, that a manufacturer could produce many condensing unit and unit cooler combinations—*i.e.,* many basic models —and that testing could be burdensome. DOE notes that the proposed refrigeration system test procedure, AHRI 1250–2009, allows for testing the condensing unit and unit cooler separately and then, using the calculation methodology in AHRI 1250–2009, determining the performance of the combined system, similar to the approach suggested by Manitowoc. Under this approach, each combination would not have to be tested, which would decrease the number of physical equipment tests, even though each different combination would be considered a different basic model and would receive a different rating.

At this time, DOE does not intend to incorporate a tolerance into the definition of basic model, as suggested by ICS, Manitowoc, and HeatCraft, in order to ensure that the rating applying to each basic model is as accurate as possible. DOE notes that one potential issue with introducing a tolerance approach may be that neither DOE nor the eventual purchaser of the equipment could expect that the rating of a particular model would be equal to that model's actual energy consumption. It is unclear to DOE how significant this issue may be if such an approach were adopted.

DOE acknowledges, however, that units within a basic model are expected to differ slightly as a result of manufacturing and materials variations. As a result, DOE may consider accounting for these variations in sampling plans used for compliance testing and developed as part of any future certification and enforcement rulemaking. DOE's existing compliance and certification regulations, developed for certain other commercial equipment, provide that when a random sample of equipment is taken for determining compliance with the standard for commercial refrigeration equipment,

represented values of estimated energy consumption of a basic model shall be no less than the higher of the mean of the test sample or the upper 95 percent confidence limit of the true mean divided by 1.10. 75 FR 652, 666–71 (Jan. 5, 2010), codified at 10 CFR 431.372. This rule also provides that, in enforcement proceedings, DOE's determination that a basic model complies with the standard is based on a confidence limit which accounts for statistical variation within a basic model. 75 FR 674, codified at 10 CFR part 431, Appendix D to Subpart T.

These sampling provisions are only intended to reduce the burden on manufacturers associated with certification and enforcement. Manufacturers would still be required to use the test procedure to rate their equipment and, once energy conservation standards take effect, to determine whether each basic model of the equipment they manufacture complies with the standard.

As discussed above for envelopes, DOE could consider a compliance certification approach similar to that taken for distribution transformers (another case in which some equipment is highly customized) to reduce the burden while ensuring that the energy conservation standards are being met. 10 CFR 431.371(a)(6)(ii). DOE describes this approach in detail in section III.A.3.

DOE requests comment on the definition of and approach to basic model of refrigeration systems.

B. Envelope

The envelope consists of the insulated box in which items are stored and refrigerated. To meet one element of the statutory requirement that the DOE test procedure "measure the energy use" of walk-ins (42 U.S.C. 6314(a)(9)(B)(i)), DOE had proposed to incorporate a metric for the energy use associated with the envelope of a walk-in cooler or walk-in freezer. Under the applicable EPCA definition of "energy use"—the amount of energy directly consumed by a piece of equipment at the point of use (42 U.S.C. 6311(4))—DOE has tentatively determined that the energy use of a walk-in envelope is the sum of (1) the electrical energy consumption of envelope components and (2) other energy consumption of the walk-in equipment resulting from the heat transfer performance of the envelope.

The proposed envelope test procedure contains methods for evaluating the performance characteristics of insulation, testing thermal energy gains related to air infiltration and determining direct electricity use and heat gain due to internal electrical components. The proposed procedure uses data obtained from these methods to calculate a measure of energy use associated with the envelope by calculating the effect of the envelope's characteristics and components on the energy consumption of the walk-in as a whole. These characteristics and components would include the energy consumption of electrical components present in the envelope (such as lights) and variation in the energy consumption of the refrigeration system due to heat loads introduced as a function of envelope performance, such as conduction of heat through the walls of the envelope. The effect on the refrigeration system would be determined by calculating the energy consumption of a theoretical or "nominal" refrigeration system if it were paired with the tested envelope. The test procedure uses the same nominal refrigeration system efficiency for all tested envelopes to allow for direct comparison of the performance of walk-in envelopes across a range of sizes, product classes, and levels of feature implementation.

1. Heat Conduction Through Structural Members

In the January NOPR, DOE proposed that the long-term thermal resistance (LTTR) value of the insulating foam after 5 years of equivalent aging be determined using ASTM C1303–08, "Standard Test Method for Predicting Long-Term Thermal Resistance of Closed-Cell Foam Insulation." This value would be used as the R-value for all non-glass envelope sections constructed with foam insulation, for purposes of calculating the energy consumption of the walk-in. Other components of the panel, such as structural members, were not included in the conduction calculations of the test procedure.

Craig, Owens Corning, and American Panel pointed out that conduction through structural members must be considered when determining the R-value of a composite walk-in insulation panel. (Craig, No. 1.3.036 at p. 3 and Public Meeting Transcript, No. 1.2.010 at pp. 20 and 61; Owens Corning, Public Meeting Transcript, No. 1.2.010 at p. 56; and American Panel, No. 1.3.024 at p. 3) The Joint Comment recommended that the current R-value requirement for the foam be converted to an overall U-factor requirement for the assembled panel. (Joint Comment, No. 1.3.019 at p. 11) (U-factor is a measure of heat transmission, including conduction and radiation. A lower U-factor indicates a lower rate of heat transmission.) Metl-Span, BASF, Kysor, and ACC/CPI agreed with the approach of determining the performance of the panel as a whole and recommended that DOE use ASTM C1363–05, "Standard Test Method for Thermal Performance of Building Materials and Envelope Assemblies by Means of a Hot Box Apparatus," for evaluating the fully assembled panel. (Metl-Span, No. 1.3.004 at p. 1; BASF, No. 1.3.003 at p. 2; Kysor, No. 1.3.035 at p. 2; ACC/CPI, No. 1.3.006 at p. 2)

In view of these comments, DOE proposes to account for conduction through structural members, as urged by Craig and American Panel, by measuring the overall U-factor of fully assembled panels as recommended by the Joint Comment. All panels (walls, ceiling, and floor) would be tested using ASTM C1363–05 for measuring the overall U-factor of fully assembled panels, as stated by Metl-Span, BASF, Kysor, and ACC/CPI. The resulting composite panel U-factor from ASTM C1363–05 would then be corrected using the LTTR results from ASTM C1303–10, if foam is used as the primary insulating material. See section 3.1.6 of Appendix A for details. DOE believes using the results from ASTM C1363–05 modified by ASTM C1303–10 best captures the effect of structural members and long-term R-value of foam products.

DOE recognizes the burden involved when testing an entire representative walk-in using ASTM C1363–05; *i.e.,* requiring a representative walk-in composed of 18 panels to be tested 18 times. DOE also notes that testing a single representative panel would be less burdensome but very inaccurate. Panels are often manufactured in dimensions close to 8 feet long by 4 feet wide, but panel geometry frequently deviates from this size as walk-ins are made larger. In addition, structural members are normally placed in the perimeter of panels (if used at all). Therefore, the heat transfer of a given panel is most closely related to the ratio of perimeter structural materials to non-perimeter core panel materials.

If DOE were to require an ASTM C1363–05 test using only one panel size, the test would be representative of only this single perimeter-to-core ratio. If a walk-in were constructed of panels that deviated from this representative size in either extreme (*i.e.,* much smaller or larger), the resulting energy calculations could be inaccurate. To balance the competing interests of minimizing burden while ensuring measurement accuracy, DOE is proposing to specify two test regions of a pair of representative panels. At one test region, the tester would measure the U-

factor of the perimeter and panel-to-panel interface area ("Panel Edge"), while at the other region the tester would measure the U-factor of the core area of the panel ("Panel Core"). The details of this procedure are described in section 4.1.1 of Appendix A.

DOE seeks comment on the use of ASTM C1363–05 for this portion of the test procedure.

2. Use of ASTM C1303 or EN 13165:2009–02

In the January NOPR, DOE proposed using ASTM C1303–08, "Standard Test Method of Predicting Long Term Thermal Resistance of Closed-Cell Foam Insulation," to determine the long-term R-value of foam insulations used in walk-ins. 75 FR 194. (That test method has since been updated to ASTM C1303–10, which, as discussed in section III.B.4, DOE is now proposing to adopt as part of this test procedure. All references to ASTM C1303 in today's notice refer to the ASTM C1303–10 version of the protocol.) As discussed later in section III.B.3, DOE also proposes, in the alternative, the use of EN 13165:2009–02 (a European-developed material standard), and seeks comment on the use of these procedures.

DOE recognizes that R-value decline occurs over time in unfaced and permeably faced foams. In the published January NOPR, DOE cited a body of research indicating that R-value decline also occurs in foams with impermeable facers because the metal skins delay, but do not prevent, R-value decline because the panel edges are unprotected. DOE recognized that using ASTM C1303–10 would require testing foams without their metal facers because the test procedure was designed for unfaced or permeably faced foams. In the published NOPR and at the NOPR public meeting, DOE requested that interested parties submit data related to using ASTM C1303–10 for walk-ins.

DOE received many comments related to ASTM C1303–10. Supporting documents submitted during the comment period are listed in the table below and identified with reference numbers. DOE conducted further research and identified additional documents that provide information on the use of ASTM C1303–10. These are also listed in the table below with reference numbers preceded by "DOE."

TABLE III.1—RESEARCH CITED BY INTERESTED PARTIES AND BY DOE

Commenter	Paper Citation	Ref. No.
ACC/CPI	SPI Polyurethane Division k Factor Task Force, "Rigid Polyurethane and Polyisocyanurate Foams: An Assessment of Their Insulating Properties," Proceedings of the SPI 31st Annual Technical/Marketing Conference, Oct. 18–21, 1988 Philadelphia, PA. pp. 323–327.	1
ACC/CPI, Carpenter, Honeywell	Wilkes, K. E., Yarbrough, D.W., Nelson, G. E., Booth, J. R., "Aging of Polyurethane Foam Insulation in Simulated Refrigerator Panels—Four-Year Results with Third-Generation Blowing Agents", The Earth Technologies Forum, Washington, DC, April 22–24, 2003.	2
ACC/CPI, Honeywell	Norton, F.J., "Thermal Conductivity and Life of Polymer Foams", Journal of Cellular Plastics, 1967, pp. 23–37.	3
ACC/CPI, Honeywell	Shankland, I. R. "Blowing Agent Emissions from Insulation Foam", Polyurethanes World Congress 1991 pp. 91–98.	4
Dow	Oertel, Dr. Gunter, *Polyurethane Handbook,* p. 256	5
Dow	Ottens *et al.,* "Industrial Experiences with CO_2 Blown Polyurethane Foams in the Manufacture of Metal Faced Sandwich Panels," Polyurethane World. Congress '97'	6
Dow	Bertucelli *et al.,* "Phase-Out of Ozone Depleting Substances in the Manufacture of Metal Faced Sandwich Panels with Polyurethane Foam Core," Utech Asia '99'.	7
Owens Corning	The Role of Barriers in Reducing the Aging of Foam Panels by Leon R. Glicksman	8
Dow	European standard EN 13165	9
DOE	Wilkes, K. E., Yarbrough, D. W., Nelson, G. E., Booth, J. R., "Aging of Polyurethane Foam Insulation in Simulated Refrigerator Panels—Four-Year Results with Third-Generation Blowing Agents," The Earth Technologies Forum Conference Proceedings, 2003.	DOE 1
DOE	Paquet, A., Vo C., "An Evaluation of the Thermal Conductivity of Extruded Polystyrene Foam Blown with HFC–134a and HCFC–142b," Journal of Cellular Plastics, Volume 40, May 2004.	DOE 2
DOE	Federal Trade Commission, "Labeling and Advertising of Home Insulation: Trade Regulation Rule; Final Rule,16 CFR Part 460," Federal Register/Vol. 70, No. 103/Tuesday, May 31, 2005.	DOE 3
DOE	Roe, Richard, "Long-Term Thermal Resistance (LTTR): 5 Years Later" RCI–057–Interface, March 2007.	DOE 4
DOE	Stovall, Therese, "Measuring the Impact of Experimental Parameters upon the Estimated Thermal Conductivity of Closed-Cell Foam Insulation Subjected to an Accelerated Aging Protocol: Two-Year Results, Journal of ASTM International, Vol. 6, No. 5 Paper ID JAI102025, April 2009.	DOE 5
DOE	Kalinger, P., and Drouin, M. (Johns Manville), "Closed Cell Foam Insulation: Resolving the issue of thermal performance," October/November 2001.	DOE 6
DOE	Mukhopadhyaya, P., Bomberg, M. T., Kumaran, M. K., Drouin, M., Lackey, J., van Reenen, D., and Normandin, N., "Long-Term Thermal Resistance of Polyisocyanurate Foam Insulation with Impermeable Facers ," Insulation Materials: Testing and Applications: 4th Volume, ASTM STP 1426, A. O. Desjarlais, Ed., American Society for Testing and Materials, West Conshohocken, PA, 2002.	DOE 7

TABLE III.1—RESEARCH CITED BY INTERESTED PARTIES AND BY DOE—Continued

Commenter	Paper Citation	Ref. No.
DOE	Mukhopadhyaya, P., Bomberg, M. T., Kumaran, M. K., Drouin, M., Lackey, J., van Reenen, D., and Normandin, N., "Long-term Thermal Resistance of Polyisocyanurate Foam Insulation with Gas Barrier," IX International Conference on Performance of Exterior Envelopes of Whole Buildings, Clearwater Beach, Florida, Dec. 5–10, 2004, pp. 1–10.	DOE 8
DOE	Mukhopadhyaya, P.; Kumaran, M.K., "Long-Term Thermal Resistance of Closed-Cell Foam Insulation: Research Update From Canada," 3rd Global Insulation Conference and Exhibition, Oct. 16–17, 2008, Barcelona, Spain, pp. 1–12, NRCC–50839.	DOE 9
DOE	Bomberg, M., Branreth, D., "Evaluation of Long-Term Thermal Resistance of Gas-Filled Foams: State of the Art," Insulation Materials, Testing and Applications, ASTM STP 1030, ASTM, Philadelphia, 1990, p. 156–173.	DOE 10
DOE	H. Macchi-Tejeda, H. Opatova, D. Leducq, Contribution to the gas chromatographic analysis for both refrigerants composition and cell gas in insulating foams—Part I: Method, International Journal of Refrigeration, Volume 30, Issue 2, March 2007, Pages 329–337.	DOE 11
DOE	H. Macchi-Tejeda, H. Opatova, J. Guilpart, Contribution to the gas chromatographic analysis for both refrigerants composition and cell gas in insulating foams—Part II: Aging of insulating foams, International Journal of Refrigeration, Volume 30, Issue 2, March 2007, Pages 338–344.	DOE 12

ACC/CPI, in reference to paper [1], stated that the Task Force found that polyurethane foam encased in and adhered to impermeable facers does not age significantly. (ACC/CPI, No. 1.3.006 at p. 3) In reference to [2], Honeywell stated that Wilkes et al. concluded that "the increment of thermal conductivity of foams with facers is less than those of enclosed foams", and regarding that, ASTM C1303–08 is likely to underestimate the aged thermal insulation value of panel foams with facers. (Honeywell, No. 1.3.020 at p. 3) Honeywell suggested that "DOE consider adapting the aging prediction methodology presented" in either [3] or [4]. (Honeywell, No. 1.3.020 at p. 2) Dow stated that [5], [6], and [7] indicated that change in thermal conductivity due to aging is limited in blown polyurethane foams. (Dow, No. 1.3.026 at p. 2) In reference to [8], Owens Corning stated that the study showed that blowing agent can diffuse under metal skins, that it migrates to the surface and that it can permeate out even underneath an air-impermeable surface. (Owens Corning, No. 1.2.010 at p. 256) Dow noted that [9] "provides methods for evaluating the aged lambda (λ) or R-values for both exposed foam and faced foam using an accelerated procedure. The standard uses safety factors depending on thickness and blowing agent used in the foam and also uses incremental factors for exposed foams versus foams with facings." However, Dow also noted that "even though the standard and the procedure apply to foams with and without impermeable facings," the aging factor is four times higher for exposed foam than it is for impermeably faced foam. (Dow, No. 1.3.026 at p. 1)

With regard to papers cited by interested parties, DOE makes the following observations (the numbering refers to the paper reference number in Table III.1).

1. On p. 325 of paper [1], the SPI Polyurethane Division k Factor Task Force states "* * * thermal performance changes little with time if the foam is protected against gas diffusion by a non-permeable facer that adheres well to the foam." However, immediately following this statement SPI says, "The literature emphasizes that not only the foam but the entire package or composite must resist gas diffusion." This statement supports DOE's position that it is critical to ensure that all of the foam is encapsulated by an impermeable barrier to prevent diffusion of gases, not just the face of the material. However, the study also provides a number of studies that suggest that aging is delayed on the order of three to nine years rather than two to three years as DOE previously suggested.

2. In paper [2], Wilkes *et al.* measured the LTTR of 2-inch-thick foam samples faced with either Acrylonitrile Butadiene Styrene (ABS) or High Impact Polystyrene (HIPS) plastic. The edges of the samples were covered with aluminum foil tape to reduce lateral diffusion through the panel edges. The samples were aged for 4 years in 90 °F, 40 °F, and −10 °F environments. In conclusion, Wilkes *et al.* found that for "both ABS and HIPS plastics, the conductivity increases after four years were less than those predicted for unenclosed full-thickness core-foam, showing that the plastic liners reduce the rate of aging. The panels with HIPS sheets showed average increases of [thermal conductivity] of 19 percent to 28 percent with aging at 90 °F, 12 percent to 23 percent at 40 °F, and 3 percent to 8 percent at −10 °F. The panels with ABS sheets showed smaller increases of 14 percent to 21 percent at 90 °F, 10 percent to 17 percent at 40 °F, and 2 percent to 5 percent at −10 °F." (p. 10). The results demonstrate that facers reduce the rate of aging. However, the plastic facers used, with the exception of the foil around the edges, are gas permeable. In addition, Wilkes *et al.* specifically attempted to eliminate lateral diffusion with the foil tape on the edges of the samples, which is not representative of actual walk-in panels.

3. Honeywell suggested that DOE adopt aging methodology presented by the Norton article [3], which was one of the key citations for the development of ASTM C1303–10. Norton completed much of the original research in the field of foam insulation aging. Therefore, DOE is proposing to adopt a test procedure, ASTM C1303–10, which already incorporates Honeywell's suggested methodology.

4. The Shankland paper [4] proposes an analytical approach to calculating lateral gas diffusion through foam panels with open edges. A similar methodology is proposed in [DOE 8] and [DOE 9], but researchers have had difficulty modeling and predicting blowing agent diffusion coefficients. [DOE 8] has found that direct analytical approach is not possible, but numerical computer simulation to predict lateral gas diffusion rates may be viable in a few years.

5. The Oertel paper [5] describes research conducted to predict the amount of blowing agent that permeates through building walls after being

released from the underlying foam insulation. The researcher notes, "if the rigid foam is faced with a diffusion barrier, the equilibration process cannot occur. The original composition of the cell gas remains unchanged and the low initial thermal conductivity is maintained. This was proven when impermeable facing materials were used. Only metallic surfaces are impermeable." This section does not cite research confirming this claim, but as previously mentioned, DOE agrees that metal facers, particularly ones used in WICF panels, are gas impermeable. However, because the metal skins used in WICF panels do not fully encapsulate the foam in a contiguous manner (*i.e.,* metal skin on the panel face and all edges), gas diffusion may still occur laterally through the panel edges.

6. DOE notes that the Ottens study [6] is one of two of which DOE is aware that has been completed on polyurethane foam-in-place panels, with open edges intended to simulate metal skinned walk-in panels. This paper summarizes studies completed by IMA (Materialforschungs- und Anwendungstechnik Dresden GmbH, translation: Materials and Applications Research) as requested by Arbeitsgemeinschaft Industrieller Forschung (translation: Association of Industrial Research) to assess the long-term insulating behavior of sandwich elements. In particular, this paper cites data on carbon dioxide (CO_2) blown foams as an alternative to other blowing agents. On page 30 of the study, Figures 4 and 5 show aging results for both core and edge regions of test panels. The areas greater than approximately 12 inches from the edge exhibit 2 to 3 percent aging after 6 months at a temperature of approximately 160 °F. Regions within 12 inches of the edge show 5 to 17 percent aging, with the highest rate of aging occurring at the panel corners. Dow noted in its reference to this paper that CO_2 "has higher diffusion speeds, [therefore] the aged thermal conductivity would be even better for the HFC blown foams used in many walk-in applications." DOE agrees with Dow that CO_2 exhibits a faster rate of diffusion than hydrofluorocarbon (HFC) blowing agents typically used in foams, which indicates that the study is likely more representative of a worst case aging scenario. This study clearly demonstrates that lateral gas diffusion occurs in metal faced panels with open edges. DOE also notes that the majority of aging has occurred at the panel perimeter, which is an expected result because the rate of diffusion should decay exponentially with increased distance (or thickness of foam) from the exposed edge as described in ASTM C1303–10. The authors did not note the aging period that their test, which was conducted over 6 months at an elevated temperature, was intended to simulate, but because elevated temperature dramatically increases gas diffusion rates, the tests are likely representative of panels aged for at least 5 years.

7. The Bertucelli paper [7], other than [5], is the only one that DOE has reviewed that directly tests aging of actual walk-in panels. Bertucelli *et al.* state that, "in practice, for metal faced sandwich panels the diffusion phenomena can only take place through the open sides of the panels. The initial thermal conductivity value remains for a long time practically unchanged for the largest part of the panel due to the long path for diffusion." (p. 2) Again, this research supports DOE's claim that significant lateral diffusion occurs through open edges of panels. This statement appears to be based on data shown on page 17 that are very similar to data shown in [6] for CO_2 blown foams. However, this test was on a 4 foot by 8 foot panel aged at room temperature for a year. Close to the geometric center of the panel, the thermal performance has aged by 2 to 5 percent from its initial value. Measurements approximately 20 inches from the edges range from 2 to 6 percent. These data are similar to data submitted by Carpenter (see Table III.2) which were also from a panel aged at room temperature but with an HFC blowing agent. The Bertucelli paper also notes that EN 13165, a European material standard that was developed in Germany but certified by the European Committee for Standardization (CEN), provides certified aging values for various blowing agents used in metal faced sandwiched foam-in-place panels. The researchers also note that the certified aging value for water-blown foams, HCFC–141b and pentane is 10 percent.

8. The Glicksman paper [8] found that the effectiveness of impermeable facers is highly dependent on adhesion of the foam to the facer. Slight separation allows gas diffusion to occur perpendicularly to the barrier and laterally between the barrier and the foam, which permits more rapid aging than if the diffusion is forced through the foam material only in the lateral direction. This research supports DOE's assertion that delamination is a major contributing factor to aging of panels.

9. EN 13165 is a material standard for "factory made rigid polyurethane foam (PUR) products." Dow noted that this standard has provisions for accelerated aging of panels. This is one of the material standards that uses the aging factor described in [7]. DOE was previously unaware that the CEN had established aging factors for insulated panels and believes that this standard may serve as an alternative to ASTM C1303–10 (see section III.B.3 for more details).

In addition to comments on specific papers submitted by stakeholders, DOE received many general comments on the use of ASTM C1303. DOE addresses these additional comments below.

BASF stated that there was insufficient evidence to support DOE's assertion that the diffusion as a result of delamination, holes drilled for shelves, and gaps at windows and doors causes a dramatic decrease in insulation performance of the panel, and that DOE should publish and make available any supporting data. (BASF, No. 1.3.003 at p. 3–4) Honeywell stated that ASTM C1303 was inappropriate because the data used to select it were based on foil-faced board stock rather than metal-faced panels. (Honeywell, No. 1.3.002 at p. 1) BASF proposes to delay a decision on modifying ASTM C1303 to apply to impermeably skinned panels due to a lack of data, and instead proposes that DOE first test and compare (1) panels from the field that are at a known age that is greater than 5 years, (2) newly manufactured panels measuring the R-value at different points in the panels, and (3) newly manufactured panels that are sliced and aged according to the methods in ASTM C1303–10. (BASF, No. 1.3.003 at p. 4)

Carpenter submitted data, shown in Table III.2, of panels that had been in the field for one year. These data suggest that R-value decreases approximately 3.1 to 4.3 percent within 1 year. (Carpenter, No. 1.3.007a at p. 3) Dow stated that ASTM C1303–10 states that it is not to be used with impermeably faced foams, and that industry literature states that metallic, impermeable surfaces will prevent blowing agent diffusion. (Dow, No. 1.3.026 at p. 1) Owens Corning submits that research has shown that an effective barrier can substantially reduce the rate of foam aging. In its view, to be effective, the barrier must have a low permeability and the foam/barrier interface must not allow lateral gas flow. However, all cellular foams have some amount of lateral gas flow. (Owens Corning, No. 1.3.030 at p. 1) In addition, Owens Corning referenced a Massachusetts Institute of Technology study on insulation with metal skins using dye to observe the diffusion of blowing agent. The study showed that blowing agent

can diffuse under metal skins, that it migrates to the surface, and that it can permeate out even underneath an air-impermeable surface. (Owens Corning, No. 1.2.010 at p. 256)

TABLE III.2—TESTED DATA SUBMITTED BY CARPENTER

Sample ID	R-value ft² hr° F/Btu in			
	20° F		55° F	
	11/2008 (initial)	01/2010 (aged)	11/2008 (initial)	01/2010 (aged)
Panel middle	7.89	7.63	7.00	6.78
Panel edge	7.89	7.54	7.00	6.70

In response to BASF's comment that DOE should publish and make available any supporting data for the use of ASTM C1303–10, DOE lists all papers in Table III.1. Most of these papers were already described in detail in January NOPR, but DOE welcomes further comment on these studies.

In response to Honeywell's comment regarding foil facers, DOE recognizes that foil faced foams may not have identical characteristics to metal skins, but believes that foils would serve as a reasonable proxy for general aging behavior.

With regard to BASF's comment that DOE should collect field data on panels older than 5 years of age, DOE believes that the data submitted by Carpenter support DOE's assertion that significant aging occurs over the 15 to 20 year life of a panel and that the diffusion is occurring laterally because aging of 3–4 percent occurred within about 1 year, with the edge samples aging more than the core. DOE welcomes additional data on this issue from panel manufacturers and other interested parties.

As to Dow's comments regarding the scope of ASTM C1303–10, although DOE agrees with Dow that ASTM C1303–10 states that the test does not apply to impermeably faced foams, DOE has not proposed the use of ASTM C1303–10 on panels themselves. Instead, DOE has proposed that the procedure be followed when testing the underlying unfaced foam as a proxy for the actual aging provisions outlined in the NOPR that describe how the unfaced foam samples are prepared for testing by ASTM C1303–10. See section 4.1.2 of Appendix A for details.

With regard to Owens Corning's comments that an effective barrier can substantially reduce the rate of foam aging, DOE agrees that impermeable facers affect the diffusion pathway of gases through foam. However, DOE believes that impermeable facers delay aging, rather than eliminate it as Dow and ACC/CPI suggest. In addition, the International Institute of Refrigeration (IIR), which serves as an international body with 61 member countries to "promote knowledge of refrigeration technology and all its applications in order to address today's major issues, including food safety and protection of the environment," states that the thermal properties of insulation can change over time: "It is well known that thermal conductivity can increase in plastic foams in which gaseous blowing agent has been used * * * with such materials, there will inevitably be a deterioration of insulation properties over time due to the diffusion of the blowing agent." (Insulation and Airtightness of Cold Rooms, 2002 Edition, IIR, p.154) Because walk-in panel perimeters are not protected by gas impermeable materials such as the metal skins, gas diffusion can still occur laterally through the panel. DOE notes that Owens Corning's second comment regarding the Massachusetts Institute of Technology study on diffusion of blowing agents points to data that suggest the lateral flow of gas occurs at the foam surface to metal skin interface due to poor adhesion of the foam to metal.

In addition to the data presented above, DOE presents aged R-values of a number of foam types in Table III.3. These results are based on CAN/ULC S–770, the Canadian thin slicing method that is based on various versions of ASTM C1303. Each data point is an average of dozens of tests at the thicknesses shown.

TABLE III.3—FOAM THIN-SLICING TEST RESULTS, SOURCE: CANADIAN LABORATORY

Product	5-Year Long Term Thermal Resistance, CAN/ULC S–770, @ 75° F mean temperature		
	Permeably Faced Polyisocyanurate Board Thermal Resistivity °F-ft²-h/Btu-in.	Extruded Polystyrene Board Thermal Resistivity °F-ft²-h/Btu-in.	Spray-in-Place Polyurethane Foam Thermal Resistivity °F-ft²-h/Btu-in.
Thickness	Thermal Resistivity	Thermal Resistivity	Thermal Resistivity
(mm)	(°F.ft².h/Btu.in)	(°F.ft².h/Btu.in)	(°F.ft².h/Btu.in)
100	6.178	5.607	6.197
75	6.127	5.490	5.958
50	6.028	5.339	5.703
25	5.880	5.019	

These data address concerns raised by various interested parties that the thin slicing method would unfairly predict that polyurethane would perform at a lower level than extruded polystyrene and, in some cases, would perform at a level as low as expanded polystyrene. Instead, these data appear to predict that polyurethane products would continue to outperform extruded polystyrene on a per inch basis. It is also important to note that if DOE were not to propose the use ASTM C1303–10, DOE would still be indirectly accounting for aging in one of two classes of foams: Board stock foams such as extruded polystyrene. Because board-stock insulation is manufactured at one location, stored for a period of time, and then shipped to WICF panel manufacturers, the foam is exposed to ambient temperatures and unprotected by metal skins for a significant period of time prior to its installation in a WICF envelope. Therefore, before board stock based foams are even laminated into WICF panels, significant aging has already occurred. DOE believes that all of the above factors tend to support the use of a test procedure that, as accurately as possible, will uniformly represent aging of all foam classes.

In light of the research and data submitted by interested parties, and the German data regarding the use of aging factors specifically for foam-in-place metal faced panels, DOE continues to maintain that (1) foam aging occurs in WICF panels, (2) the aging is possible, even with metal facers, due to the gas permeable edges of panels, and (3) R-value degradation is significant enough, over the life of a walk-in cooler or freezer, to warrant a long-term foam aging test. DOE continues to urge manufacturers and interested parties to submit R-value data for panels aged 5 or more years to support their particular claims. While DOE believes there are enough indirect and direct data to incorporate aging into the WICF test procedure, DOE is interested in ensuring, to the extent possible, that it incorporates manufacturer-submitted data as part of its analysis.

DOE requests comments from interested parties regarding the proposal to use ASTM C1303–10 to measure the long-term R-value decline in WICF foam insulation. DOE requests that interested parties consider in their comments the research and papers provided by DOE and other commenters.

3. EN 13165:2009–02 as a Proposed Alternative to ASTM C1303–10

As noted in the previous section, Germany has developed a test procedure (that was certified as a European standard by the CEN) and calculation methodology to determine the aged R-value of metal skin panels. EN 13165:2009–02, Thermal insulation products for buildings—Factory made rigid polyurethane foam (PUR) products—Specification describes two alternatives in Annex C, the fixed increment procedure and the accelerated aging procedure for determining aged R-value. An overview of the two alternatives is shown in Figure 1 below:

BILLING CODE 6450–01–P

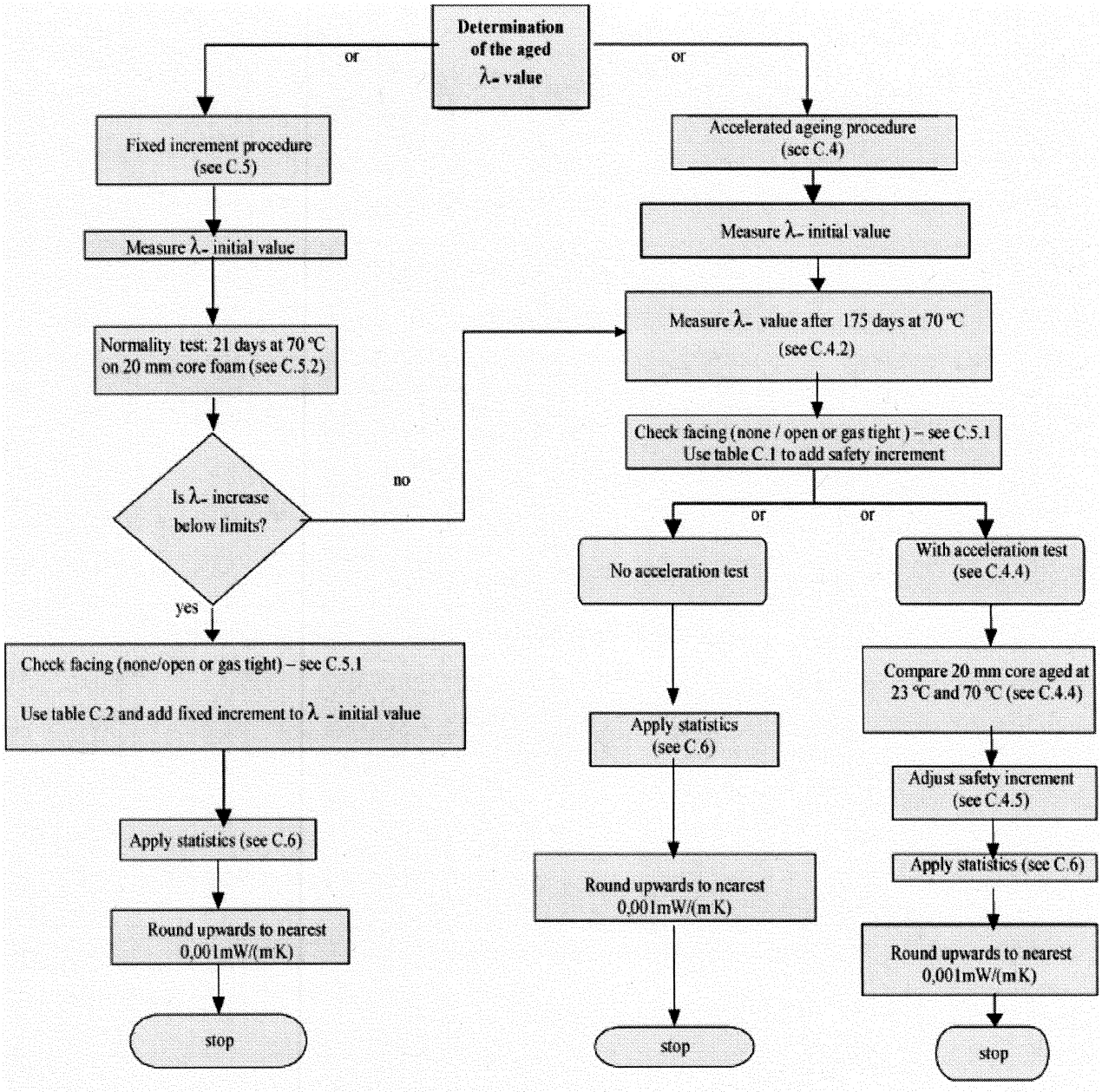


Figure 1 Flow Chart of Alternative Aging Procedures in EN 13165:2009-02

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The alternative procedures—the fixed increment procedure and the accelerated aging procedure—are selected based on certain criteria and availability of historical data as defined in EN 13165:2009–02. In summary, the fixed increment procedure determines if a facing or panel construction is "gas diffusion tight" by subjecting it to an elevated temperature for 60 days and determining whether there is any decrease in the R-value. If the panel is found to be gas tight and the test material is also made with blowing agents of known characteristics, then the LTTR of the foam is determined using assumed increments of R-value loss. The assumed aging values have been certified by Germany through testing. Otherwise, the accelerated aging procedure must be used to determine the LTTR. The accelerated aging procedure subjects the panel to an elevated temperature for 180 days and determines the decrease in the R-value.

Like EN 13165:2009–02, which is a standard for polyurethane products, a similar standard exists for extruded polystyrene: EN 13164:2009–02 Thermal insulation products for

buildings—Factory made products of extruded polystyrene foam (XPS)—Specification. Annex C of EN 13164:2009–02 also provides a methodology for determining the LTTR of impermeably faced or "gas tight" products. DOE proposes, as an alternative to ASTM C1303–10, the use of the test procedures of these respective standards for determining the LTTR of walk-in polyurethane and extruded polystyrene products. DOE proposes to directly rely on the methods described in EN 13164:2009–02 and EN 13165:2009–02 with two exceptions: (1) The initial R-value must be measured at the EPCA defined mean test temperatures (instead of the specified ~75 °F) of 55 °F for coolers and 20 °F for freezers and (2) the final R-value must also be measured using the EPCA defined mean test temperatures. Using the initial and final R-values, a calculated foam "derating" factor would be used in place of the similar calculation using results from ASTM C1303–10. DOE seeks comment on the use of EN 13164:2009–02 and EN 13165:2009–02 for determining the LTTR of walk-in panels made from extruded polystyrene or polyurethane, respectively.

DOE also seeks comment on the proposed use of CEN's certified aged values as an alternative to requiring testing using ASTM C1303–10.

4. Version of ASTM C1303

As indicated earlier, DOE initially proposed that the test procedure incorporate ASTM C1303–08. 75 FR 194. Nor-Lake pointed out that a more recent version of this testing method was published in 2009, ASTM C1303–09a. (Nor-Lake, No. 1.3.005 at p. 3) DOE then determined that an even more recent version has recently been published, ASTM C1303–10. To address these comments, DOE compared ASTM C1303–08, ASTM C1303–09a and ASTM C1303–10 and found no substantive differences between them that would appreciably affect the accuracy or manner in which to measure a given foam's R-value. In light of this finding, DOE is revising its proposal to adopt the most recent version, ASTM C1303–10.

DOE invites comment on this proposed approach.

5. Improvements to ASTM C1303 Methodology

In the January NOPR, DOE proposed several exceptions to ASTM C1303–08 related to sample preparation of foam-in-place products. 75 FR 194. Specifically, DOE proposed that, rather than requiring that foam be sprayed onto a single sheet of wood in accordance with section A2.3 of ASTM C1303–08, the sample "shall be foamed into a fully closed box of internal dimension 60 cm × 60 cm by desired product thickness (2 ft × 2 ft × desired thickness). The box shall be made of ¾ inch plywood and internal surfaces are wrapped in 4 to 6 mil polyethylene film to prevent the foam from adhering to the box material." DOE had intended for this proposed approach to minimize manufacturer burden while ensuring uniform sample preparation.

In reference to this proposal, Honeywell stated that the sample preparation method is too prescriptive for foam-in-place products and argued that DOE should not dictate materials for building the sample mold or dimensions of the mold. Rather, it recommended that foam-in-place samples be prepared in a fashion that represents the average foam properties (or bulk foam properties) of the commercial panel. (Honeywell, No. 1.3.020 at p. 3) ACC/CPI stated that the sample preparation methods of polyurethane foam are too prescriptive when describing mold materials that must be used, and instead recommended adopting a modified version of section 3.1 of ASTM C1303–10 to account for a product manufacturer's typical method of panel cavity preparation, foam injection and cure time. (ACC/CPI, No. 1.3.006 at p. 5)

DOE agrees that spatial variation during foam injection is a relevant concern. To represent foam properties more closely for various manufacturers, DOE proposes the following changes:

1. Mold/Sample Panel Geometry

a. A panel must be prepared following the manufacturer's injection, curing and assembly methods. The width and length of the panel must be 48 inches ±1 inch and 96 inches ±1 inch, respectively.

b. As proposed in the January NOPR, the panel thickness shall be equal to the desired test thickness. 75 FR 194.

2. Materials

The panel should be identical to panels sold by the manufacturer, with one key exception: The inner surfaces must be lined with a material, such as 4 to 6 mil polyethylene film, to prevent the foam from adhering to the panel internal surfaces. (This ensures that when the panel metal skin is removed for testing, the underlying foam is not damaged.)

3. Sample Preparation

a. After the foam has cured and the panel is ready to be tested, the facing and framing materials must be carefully removed to ensure that the underlying foam is not damaged or altered.

b. A 12-inch × 12-inch square (× desired thickness) cut from the exact geometric center of the panel must be used as the sample for completing ASTM C1303–08.

These additions will allow for more representative samples while maintaining consistency across manufacturers. DOE also believes, based on its analysis of the likely impacts from the adoption of this procedure, that these proposed modifications will not lead to any appreciable deviations from the measured energy use of the envelope. DOE invites comments from interested parties on the reasonableness of this prediction.

Certain interested parties raised specific concerns as to the applicability of ASTM C1303 to "bun stock" foam. "Bun stock" foam is foam formed in large cylindrical tubes or "buns." Dyplast, ACC/CPI, Honeywell, and ITW all stated that DOE should not consider ASTM C1303 because ASTM C1303 specifically states that the test method does not apply to rigid closed-cell bun stock foams. (Dyplast, No. 1.3.008 at p. 1; ACC/CPI, No. 1.3.006 at p. 3; Honeywell, No. 1.3.020 at p. 2; and ITW, No. 1.3.013 at p. 1) Dyplast mentioned that this was due to the non-homogenous nature of the bun stock foams. (Dyplast, No. 1.3.008 at p. 1) ITW further stated that ASTM C1303 would not be applicable because it is not possible to determine a consistent initial time for the test and because sheets may be cut from bun stock in different orientations, resulting in different form morphology. (ITW, No. 1.3.013 at p. 1)

DOE recognizes that bun stock foam is different from other types of foam used in WICF equipment. The foam resembles the wood grain found in trees and has cells that vary in size and density by location. When the buns are cut into board stock of various dimensions, the foam morphology varies from one board to another as the boards may be cut from the bun stock in different orientations.

DOE specified in the January NOPR that manufacturers must use the prescriptive method defined in ASTM C1303 (Part A: The Prescriptive Method), but as noted by interested parties, the prescriptive method is not applicable to bun stock foam. 75 FR 193. However, in addition to Part A of ASTM C1303, Part B: Research Method allows for testing of bun-stock or other non-

homogenous foams. DOE believes that the research method in Part B is appropriate and applicable for testing of bun-stock foams. Therefore, to address the comments from Dyplast, ACC/CPI, Honeywell, and ITW, DOE proposes that the research method of ASTM C1303–10, Part B be used for testing the LTTR for bun stock foam only.

6. Heat Transfer Through Concrete

In the January NOPR, DOE proposed the use of the following equation to calculate the heat transfer through the floor of both insulated and uninsulated WICF. 75 FR 213. That equation, along with its defined variables, is as follows:

$$Q_{cond\text{-}door\text{-}glass} = \sum_{l}^{i}\left(\Delta T_i \times \frac{A_{walls,i}}{R_{non\ glass\ wall,i}}\right) + \sum_{l}^{j}\left(\Delta T_j \times \frac{A_{floor,j}}{R_{non\ glass\ floor,j}}\right) + \sum_{l}^{k}\left(\Delta T_k \times \frac{A_{ceiling,k}}{R_{non\ glass\ ceiling,k}}\right) + \sum_{l}^{l}\left(\Delta T_l \times \frac{A_{non\ glass\ doors,l}}{R_{non\ glass\ doors,l}}\right) \quad \text{Eq. 1}$$

Where:

$R_{non\text{-}glass,wall,\ i}$ = R-value of foam used in wall panels, of type i, h-ft² − °F/Btu,

$R_{non\text{-}glass,floor,\ j}$ = R-value of foam used in floor panels, of type j, h-ft² − °F/Btu,

$R_{non\text{-}glass,ceil,\ k}$ = R-value of foam used in ceiling panels, of type k, h-ft² − °F/Btu,

$R_{non\text{-}glass,door,\ l}$ = R-value of foam used in non-glass doors, of type l, h-ft² − °F/Btu,

$A_{walls,I}$ = area of wall, of thickness and underlying materials of type i,

$A_{floor,j}$ = area of floor, of thickness and underlying materials of type j,

$A_{ceiling,k}$ = area of ceiling, of thickness and underlying materials of type k,

$A_{non\text{-}glass\ door,l}$ = area of doors, of thickness and underlying materials of type l,

ΔT_i = dry bulb temperature differential between internal and external air, of type i, °F,

ΔT_j = dry bulb temperature differential between internal and external air, of type j, °F,

ΔT_k = dry bulb temperature differential between internal and external air, of type k, °F, and

ΔT_l = dry bulb temperature differential between internal and external air, of type l, °F.

To complete the calculation, DOE proposed temperature assumptions for the internal cooled air and the surface temperature of the floor. The cooled air temperature was selected based on WICF type: 35 °F and −10 °F for coolers and freezers, respectively. DOE also assumed that the finished subfloor surface material was made of concrete. Additionally, DOE proposed a 55 °F subfloor surface temperature for all walk-ins. The temperature difference across the floor (ΔT) could be calculated using the 55 °F subfloor surface temperature and the internal cooled air assumption. With a known floor area (A_{floor}), ΔT, and floor R-value, the heat transfer through the floor could be readily calculated. However, the specific floor R-value was incorporated into the calculation based on certain conditions. These conditions are described in greater detail below.

Floorless Coolers: For the scenario of uninsulated (“floorless”) coolers, DOE proposed a concrete R-value of 0.6 ft² − °F − h/Btu, based on typical concrete density and thickness as reported in the 2009 ASHRAE Fundamentals Handbook.

Pre-Installed Freezer Floor: For the scenario where (1) a manufacturer does not provide a freezer floor; and (2) an insulated floor has been installed on-site by the end-user, DOE proposed that manufacturers use R = 28 ft² − °F − h/Btu for completing the heat transfer calculations. This R-value is the same as the EPCA-prescribed minimum requirement for freezer floors. BASF, ThermalRite, and American Panel supported using an assumption of R–28, while Nor-Lake stated that a value of R–20 would be more appropriate but did not specify why. (BASF, No. 1.3.003 at p. 4; ThermalRite, No. 1.3.031 at p. 2; American Panel, Public Meeting Transcript, No. 1.2.010 at p. 263; Nor-Lake, No. 1.3.029 at p. 4) DOE, however, continues to hold the view that its proposed approach best reflects the statutory framework set out by Congress because R–28 is the minimum freezer floor R-value required by EISA 2007. See 42 U.S.C. 6313(f)(1)(D).

Insulated Floor Shipped by Manufacturer: For both coolers and freezers, if a manufacturer provided the floor, DOE proposed in the January NOPR that the floor R-value (as measured by the test procedure) be used for the heat transfer calculations. 75 FR 198.

Between the publication of the January NOPR and the public meeting, DOE completed additional finite element model (FEM) computer simulations of floorless coolers. Based on FEM simulation results, DOE described a new equation during the public meeting for calculating heat transfer through floorless coolers:

$$Q_{cond\ non\text{-}glass} = \sum_{l}^{i}\left(\Delta T_i \times \frac{A_{walls,i}}{R_{non\ glass\ wall,i}}\right) + q_{floor} \times A_{floor} + \sum_{l}^{k}\left(\Delta T_k \times \frac{A_{ceiling,k}}{R_{non\ glass\ ceiling,k}}\right) + \sum_{l}^{l}\left(\Delta T_l \times \frac{A_{non\ glass\ doors,l}}{R_{non\ glass\ doors,l}}\right) \quad \text{Eq. 2}$$

Where:

If $A_{floor} \leq 750$ ft², $q_{floor} = 33.153 \times A_{floor}^{-0.364}$,

If $A_{floor} > 750$ ft², $q_{floor} = 0.0002 \times A_{floor} + 2.84$,

q_{floor} = heat flow correction factor,

$R_{non\text{-}glass,wall,\ i}$ = R-value of foam used in wall panels of type i, h − ft² − °F/Btu,

$R_{non\text{-}glass,floor,\ j}$ = R-value of foam used in floor panels of type j, h − ft² −°F/Btu,

$R_{non\text{-}glass,ceil,\ k}$ = R-value of foam used in ceiling panels of type k, h − ft² − °F/Btu,

$R_{non\text{-}glass,door,\ l}$ = R-value of foam used in non-glass doors of type l, h − ft² − °F/Btu,

$A_{ceiling,k}$ = area of ceiling of thickness and underlying materials of type k,

$A_{non\text{-}glass\ door,l}$ = area of doors of thickness and underlying materials of type l,

A_{floor} = area of floor, ft²,

ΔT_i = dry bulb temperature differential between internal and external air, of type i, °F,

ΔT_j = dry bulb temperature differential between internal and external air, of type j, °F,

ΔT_k = dry bulb temperature differential between internal and external air, of type k, °F, and

ΔT_l = dry bulb temperature differential between internal and external air, of type l, °F.

The FEM simulations demonstrated that using 60 °F and 65 °F would result in more accurate energy calculations. DOE indicated at the NOPR public meeting that it was considering modifying the surface temperature assumptions for freezers and coolers to 60 °F and 65 °F, respectively, and sought comment from interested parties on these revised temperatures.

Several manufacturers recommended that DOE maintain the original assumption of 55 °F for sub-floor surface temperature. ThermalRite requested that

55 °F be retained because it believed that the equations were based on solid engineering principles and data. (ThermalRite, No. 1.3.031 at p. 2) Nor-Lake agreed that 55 °F would be more appropriate. (Nor-Lake, No. 1.3.029 at p. 4) Kysor and TAFCO preferred 55 °F because it would be consistent with industry assumptions. (Kysor, Public Meeting Transcript, No. 1.2.010 at p. 270 and TAFCO, No. 1.3.022 at p. 3) ICS recommended that 55 °F be maintained as the assumption for both coolers and freezers because a walk-in with an insulated floor would not have an effect on sub-floor temperature regardless of WICF temperature. (ICS, No. 1.3.027 at p. 2) In light of this general support and the absence of any comments explaining why use of a 55 °F temperature assumption would be inappropriate, DOE proposes continuing to apply its 55 °F assumption for all WICF for three reasons: (1) 55 °F is the general industry accepted value; (2) using a single assumption simplifies calculations; and (3) using a single temperature avoids the complexity of accounting for various field installation variations (such as concrete thickness and proximity to building walls).

Regarding the heat transfer calculations for floorless coolers, Nor-Lake supported using Eq. 1 as proposed in the January NOPR. (Nor-Lake, No. 1.3.029 at p. 4) Master-Bilt and Nor-Lake recommended that DOE consider using the minimum thickness of 3.5 inches rather the 6 inches as proposed in the January NOPR for calculating the concrete R-value, because the building industry uses 3.5 inches. (Master-Bilt, No. 1.3.009 at p. 2 and Nor-Lake, No. 1.3.005 at p. 4)

In this SNOPR, DOE proposes different equations for calculating heat transfer through floor panels, non-floor panels (*i.e.*, wall and ceiling panels), and non-glass doors. Although Nor-Lake supported using Eq. 1 as proposed in the January NOPR, the equations proposed in this SNOPR allow greater flexibility in calculating heat transfer through the envelope because they are able to account for unique temperature differences across each component. See section III.B.7 for a more detailed description of the equations in the SNOPR. The equation for floor heat transfer incorporates the results of FEM simulation by using the values for the heat flow correction factor (q_{floor}) that appear in Eq. 2 above. In performing the FEM simulation, DOE assumed 6-inch-thick concrete despite Master Bilt and Nor-Lake's comments, because that is the recommended floor thickness in the ASHRAE Handbook of Fundamentals (ASHRAE Fundamentals 2005). However, DOE will continue to consider other values if they are more appropriate for the application and asks for comment on a more appropriate value.

7. Walk-In Sited Within a Walk-In: A "Hybrid" Walk-In

In the January NOPR, the calculation procedure provided a means of rating all walk-ins, including the scenario where a freezer is sited inside a cooler or where a cooler and freezer share a common wall.

Modifications described in this SNOPR ensure that the rating of these walk-in cooler/freezer hybrids is properly captured. For example, every panel or door may have a unique temperature differential across the material to reflect either a panel that divides a cooler and freezer or a door that may open from freezer temperatures to cooler temperatures. See section 3.1 of Appendix A for details. In the event an individual non-floor panel, floor panel or door spans two temperature regimes, the lower temperature must be used for the purpose of calculating the heat transfer across that component. For example, if a floor panel spans a section of the floor, where 80 percent of the panel is exposed to cooler temperatures and the other 20 percent is exposed to freezer temperatures, the heat transfer calculation through the floor panel must use only the freezer temperature.

DOE believes the equations shown in section 3.1 of Appendix A provide an accurate means of testing a given walk-in cooler, freezer or hybrid walk-in. DOE seeks comment on the equations and their accuracy, particularly for hybrid walk-ins.

8. U-Factor of Doors and Windows

Conduction heat gain through doors and windows contributes to the energy load of the envelope. To account for this fact, DOE proposes to measure heat gain through doors (with and without glass) and any other glass surfaces such as windows, as well as through the framing materials used for doors and windows. In the January NOPR, DOE proposed measuring heat gain through doors and windows using one of the following options: (1) For doors with a National Fenestration Rating Council (NFRC) rating, thermal performance would have been determined from the NFRC label; or (2) for doors without an NFRC rating, thermal performance parameters would have been determined using Window 5.2, a computer program developed by Lawrence Berkeley National Laboratory. 75 FR 198. (The NRFC is a non-profit, public-private partnership of the window, door, and skylight industry.) In either case, DOE proposed using the thermal performance parameters as inputs for calculations specified in the Test Procedure NOPR.

DOE's proposed method was supported by BASF, Master-Bilt, and Nor-Lake. (BASF, No. 1.3.003 at p. 4; Master-Bilt, No. 1.3.009 at p. 2; Nor-Lake, No. 1.3.005 at p. 4) Kason agreed that using third-party software (such as Window 5.2) to evaluate window performance is reasonable. (Kason, No. 1.3.037 at p. 4) However, NFRC recommended using a standard size door for all calculations to ensure a full rating that includes frame effects and allow for accurate reporting. (NFRC, Public Meeting Transcript, No. 1.2.010 at p. 280) Furthermore, Schott Gemtron pointed out that the standard glass door in Window 5.2 is not the same as a typical glass door used in walk-ins. (Schott Gemtron, Public Meeting Transcript, No. 1.2.010 at p. 284) ACEEE stated that the manufacturers of doors with glass surfaces should use NFRC rating methods to certify performance. (ACEEE, No. 1.3.034 at p. 2)

In response to the comment from Schott Gemtron, the Window 5.2 program does not incorporate WICF-specific doors at this time because NFRC, the primary user of Window 5.2, has never rated WICF doors. To remedy this situation, the typical WICF door geometries would simply need to be added to the Window 5.2 database. Because use of the NFRC ratings would avoid the need for DOE to prescribe specific geometries or testing scenarios, however, DOE proposes in this SNOPR that instead of using Window 5.2, manufacturers shall rate the total thermal transmittance (known as U-factor) of doors and windows, including their framing materials, using the test procedure NFRC 100–2010–E0A1, "Procedure for Determining Fenestration Product U-Factors." NFRC 100–2010–E0A1 specifies a test procedure but does not specify test conditions, which depend on the product. Details of proposed test conditions may be found in section 4.1.3 of Appendix A. DOE welcomes comments on improvements that could be made to Window 5.2, however, and would consider allowing use of Window 5.2 provided that such improvements led to results as consistent as those achieved with the NFRC rating.

In addition, DOE proposes applying the provisions in section 5.2 of NFRC 100–2010–E0A1, which would provide a uniform and reasonably accurate method of measuring the thermal transmittance of the door and window components installed in a walk-in. The section contains reference methods for

determining heat transfer properties for specific side-hinged exterior door systems, to all doors (*i.e.* doors without any glass, doors with glass windows, glass display doors, etc.) and glass walls. Doors, as defined in Appendix A 2.1(b) of these proposed regulations, includes the user movable components and the framing components that support the door hinges such as the center mullions in display doors or door plugs found commonly in passage doors. The complete assembly must be tested to find the door U-factor.

NFRC 100–2010–E0A1 provides a means of testing representative door geometry that can then be extrapolated to other doors of similar materials and geometry. This approach is less costly but generally results in more conservative test results. However, if a door manufacturer or other party responsible for testing would prefer to perform the complete physical test described in NFRC 100–2010–E0A1 for all doors (*i.e.* not rely on NFRC's extrapolation methodology), the testing entity may do so.

DOE seeks comment on the proposal requiring windows and doors, including their framing materials, to be rated using NFRC 100–2010–E0A1. As stated above, DOE also seeks comment on improvements to the Window 5.2 program that would make its use in the test procedure appropriate.

9. Walk-In Envelope Steady-State Infiltration Test

In the January NOPR, DOE noted two air exchange pathways for walk-in envelopes: (1) Air exchange ("infiltration") occurring during door opening events, the extent of which depended on door opening area and the frequency of door opening, and (2) infiltration during "steady-state" conditions. DOE defined steady-state as the period of time when all access methods, such as doors, were in the closed position. During steady-state conditions, infiltration could occur via cracks in door sweeps, bi-directional pressure relief valves, and panel-to-panel interfaces. Infiltration during door opening events accounts for the majority of infiltration into the envelope, but steady-state infiltration could be significant as well. Because air infiltration plays a role in determining the overall efficiency of a given WICF and the likely energy consumption in keeping its refrigerated areas cool, DOE proposed using ASTM E741–06, "Standard Test Method for Determining Air Change in a Single Zone by Means of a Tracer Gas Dilution," for testing the steady-state air infiltration of walk-in coolers and walk-in freezers. DOE detailed a number of requirements, such as internal and external temperatures during testing, sampling methods, and gas tracer calculation type.

In comments on the January NOPR, interested parties noted the role that pressure relief valves play with respect to infiltration testing. These valves are standard equipment with walk-in envelopes and are designed to ensure the proper operation of a WICF unit by relieving pressure changes that accompany rapid cooling of warm air after door opening events. Craig stated that the standard pressure relief valve on walk-ins could interfere with infiltration testing, and Kason added that WICF manufacturers use pressure relief ports that allow gas to move through the envelope and further suggested that these ports would need to be blocked to test infiltration. (Craig, No. 1.3.017 at p. 2 and Kason, No. at p. 3)

Because bi-directional pressure relief valves are considered standard equipment for all walk-in freezers, today's notice clarifies that they should be included in the general steady-state infiltration test if they are part of the walk-in being tested. In addition, because valves contribute to steady-state infiltration, it is necessary to measure their contribution. The duration of the steady-state test is long enough to ensure that the average valve operation time is accurately represented. In addition, properly sited and designed valves should not be opening and closing frequently, if at all, during steady-state conditions. Because these valves are intended to relieve large pressure swings caused by rapid cooling of warm air that has entered during door opening events, the pressure differential across the valve should be low enough that it remains closed during steady state operation.

In the January NOPR, DOE also proposed to reduce testing burden by allowing manufacturers to test the infiltration of a limited number of envelopes and then scale those results to all other envelopes manufactured. Interested parties agreed with DOE's approach to reduce the testing burden but suggested that it was necessary for DOE to provide detailed requirements of how the test units should be constructed. Craig, American Panel, and ThermalRite stated that DOE must specify the basic unit to be tested in terms of size and certain components, which would be standardized across all manufacturers. (Craig, No. 1.2.010 at pp. 102–103; American Panel, No. 1.3.024 at p. 2; ThermalRite, No. 1.3.031 at p. 1)

DOE agrees with this approach and proposes that with respect to the steady-state infiltration test, the techniques, materials, and final assembly must be identical to units that are shipped to customers. The unit must be assembled following the instruction manual supplied by the manufacturer. Details may be found in section 4.2 of Appendix A.

DOE seeks comment on the modifications to the steady-state infiltration testing.

10. Door Steady-State Infiltration Test

In the January NOPR, DOE proposed testing steady-state infiltration on fully assembled envelopes using the gas tracer method described in ASTM E741–06, "Standard Test Method for Determining Air Change in a Single Zone by Means of a Tracer Gas Dilution." The NOPR proposed an additional series of tests, using ASTM E741–06, under certain conditions, and would have required testing of all possible combinations of panels and doors.

Interested parties recommended several alternatives for DOE to consider. The Joint Utilities recommended the NFRC rating method for determining infiltration related to doors, in part because this method, in their collective view, provides a means to test and sample products that would assure that the sold product matches the quality of the tested sample. (Joint Utilities, No. 1.3.019 at p. 12–13) Hired Hand recommended ASTM E330–97, "Standard Test Method for Structural Performance of Exterior Windows, Doors, Skylights and Curtain Walls by Uniform Static Air Pressure Difference," or ASTM E283–92, "Standard Test Method for Determining Rate of Air Leakage Through Exterior Windows, Curtain Walls, and Doors Under Specified Pressure Differences Across the Specimen." (Hired Hand, No. 1.3.033 at p. 5)

In this SNOPR, DOE is proposing measuring steady-state infiltration through panels and doors using separate tests for each rather than using a single test for both as proposed in the January NOPR. DOE is considering this modification to reduce testing burden; the January NOPR proposed to require a new test for each unique panel and door configuration, which could be overly burdensome to test because of the many possible configurations. For all doors, DOE is considering NFRC 400–2010–E0A1, "Procedure Determining Fenestration Product Air Leakage." NFRC 400–2010–E0A1 is based on ASTM E283–04, the most recent version of ASTM E283–92, one of the test methods recommended by Hired Hand. This test method is appropriate for this

application because it was specifically designed to measure the air leakage through doors and fenestration products. DOE adapted NFRC 400–2010–E0A1 for use with doors on walk-in envelopes by establishing standard assumptions for the pressure differences, in Pascals (Pa), across cooler and freezer doors and requiring the infiltration at these pressures to be determined using a pressure-infiltration relationship determined through testing. Section 4.4.2 of proposed Appendix A contains the assumptions and the method for finding the pressure-infiltration relationship. DOE does not intend to incorporate ASTM E330–97, "Standard Test Method for Structural Performance of Exterior Windows, Doors, Skylights and Curtain Walls by Uniform Static Air Pressure Difference," as suggested by Hired Hand because this procedure measures structural performance, which does not impact efficiency; but DOE invites Hired Hand to submit further justification in support of this standard. DOE seeks comment on the proposal to test steady-state infiltration through doors separately from steady-state infiltration through panels and using NFRC 400–2010–E0A1 for both tests. DOE seeks comment on the proposed assumptions for the pressure differential across cooler doors (1.5 Pa) and freezer doors (3.5 Pa). DOE seeks comment on the proposal to determine infiltration across cooler and freezer doors using tests of infiltration and exfiltration at 10 Pa to 60 Pa to establish a pressure-infiltration relationship with which to extrapolate the infiltration occurring across cooler and freezer doors.

11. Door Opening Infiltration Assumptions

In the January NOPR, DOE proposed to incorporate several assumptions from the ASHRAE Handbook of Fundamentals 2009 related to door opening infiltration that would be used to calculate the portion of time each doorway is open, D_t:

$$D_t = \frac{\left[\left(P \times \theta_p\right) + \left(60 \times \theta_o\right)\right]}{\left[3600 \times \theta_d\right]} \qquad \text{Eq. 3}$$

Where:

P = number of doorway passages (*i.e.,* number of doors opening events),
θ_p = door open-close time (seconds/P),
θ_o = time door stands open (minutes), and
θ_d = daily time period (h). 75 FR 197.

For glass display doors and all other doors, DOE specified P = 72 and 60, respectively. Required values for θ_p: (1) reach-in glass doors, θ_p = 8 seconds; (2) all other doors, θ_p = 15 seconds; and (3) if an automatic door opener/closer is used, θ_p = 10 seconds. DOE required glass display doors θ_o = 0 minutes and all other doors, θ_o= 15 minutes.

Hired Hand proposed revised parameters for the number of door openings (P), steady-state time, and all other parameters in the equation for infiltration due to door openings both for doors with automatic door closures and manually closed larger doors, because, in its view, the proposed parameters are adequate for display cases and small walk-ins but insufficient for evaluating large retail supermarket applications (storage warehouse coolers and freezers where door entry width is greater than 4 feet and serviced by employees only). (Hired Hand, No. 1.3.033 at p. 3) Schott Gemtron stated that DOE needs to distinguish between glass display doors and service doors because service doors are not opened as often. (Schott Gemtron, Public Meeting Transcript, No. 1.2.010 at p. 314) Hired Hand also stated that DOE should clarify the coverage of doors because they believe the intent of EISA 2007 was targeted mainly at retail applications with doors smaller than 45 inches in width. (Hired Hand, No. 1.3.033 at p. 1)

DOE agrees with Hired Hand and Schott Gemtron that additional refinement to assumptions can be made to differentiate between glass display, passage (or service), and freight doors. In addition, to reflect the benefit from the use of automated doors, DOE proposes to modify the value of θ_o when a sensor and automated open/close system is included. Therefore, DOE proposes to define "glass display door" as a door designed for the movement and/or display of product rather than the passage of persons, "passage door" (or "service door") as an opaque door that is less than or equal to a 45-inch width and designed for the passage of persons, and "freight door" as an opaque door that is greater than 45-inch width. DOE cannot specifically exclude doors wider than 45 inches if they are used on a walk-in cooler or walk-in freezer that is not excluded from coverage by EISA 2007, as suggested by Hired Hand.

The new assumptions regarding doors are reflected in Table III.4.

TABLE III.4—ASSUMPTIONS TO DIFFERENTIATE DOOR TYPES

Door type	P	θ_p *sec*	θ_p,w sensor *sec*	θ_o *min*	θ_o,w/sensor *min*	θ_d *hrs*	Note
Glass Display	72	8	—	0	—	24	Proposed in NOPR.
Passage	60	15	10	15	—	24	
Freight	60	15	10	15	—	24	
Glass Display	72	8	—	0	—	24	SNOPR.
Passage	60	15	10	30	10	24	
Freight	120	60	30	60	20	24	

DOE seeks comment on this alternative approach and modified assumptions.

12. Infiltration Reduction Device Effectiveness

DOE discovered an error in Eq. 3–25 after the January NOPR was published. DOE notified stakeholders of the error and correction at the public meeting.

DOE proposes to use the corrected Eq. 3–25 in the final rule.

ThermalRite supported the infiltration reduction device (IRD) effectiveness test methodology, but stated that manufacturers of IRDs should perform the testing. (ThermalRite, No. 1.3.031 at p. 2) DOE acknowledges that it may be more appropriate for a third party to test an IRD by itself, whether that third party is the IRD manufacturer or a different entity, because IRD effectiveness is largely independent of other envelope characteristics. Therefore, DOE proposes several modifications to the IRD effectiveness test that it initially proposed. These modifications would permit testing to be done by the IRD manufacturer, the envelope manufacturer, or another entity. The modifications that DOE is considering as alternatives to its initially proposed approach may be found in section 4.3 of Appendix A.

Hired Hand stated that DOE should include an assumed performance value for IRDs that are subject to degradation and do not perform consistently over time. (Hired Hand, No. 1.3.033 at p. 5 and Public Meeting Transcript, No. 1.2.010 at p. 310) DOE believes it is reasonable to incorporate assumed performance values because an established body of research supports these values. While the assumptions do not reflect all real-world WICF door use scenarios or applications, it is necessary for DOE to assume values to ensure a uniform testing method to rate walk-ins. These assumptions are stated in section 4.3 of proposed Appendix A to this SNOPR.

DOE seeks comment on this alternative approach.

13. Relative Humidity Assumptions

In the January NOPR, DOE proposed the assumption of an internal walk-in relative humidity of 45 percent. This value was selected to match AHRI–1250 test dry-coil conditions. However, these conditions do not necessarily reflect general walk-in humidity conditions; rather, the conditions were chosen to test refrigeration systems when there is little or no frost load on the evaporator coil. DOE recognizes that, in practice, the relative humidity (RH) varies significantly depending on the product stored within a walk-in.

In order to reflect higher RH values experienced in practice, DOE proposes a new assumption of 75 percent RH for both freezer and cooler internal conditions. This RH level is within the 65–85 percent range of humidity levels used in practice for products from canned beverages such as beer to packaged fruits and vegetables. DOE seeks comment on this assumption in addition to assumptions found in proposed Appendix A, section 2.1(e).

C. Refrigeration System

As previously discussed, DOE is proposing for the purposes of this test procedure to draw a distinction between the envelope or structure of the walk-in cooler or walk-in freezer and the mechanical refrigeration system performing the physical work necessary to cool the interior space. The refrigeration system itself could be one of three types: (1) Single-package systems containing the condensing and evaporator units; (2) split systems with the condensing unit and unit cooler physically separated and connected via refrigerant piping; or (3) rack systems utilizing unit coolers, which receive refrigerant from a shared loop. The following section addresses issues raised by interested parties that prompted DOE to consider other options in addition to those proposed in the January NOPR.

1. Definition of Refrigeration System

During the NOPR public meeting, DOE stated that it was considering the following changes to the definition of refrigeration system: substituting "integrated single package refrigeration unit" with "a packaged system where the unit cooler and condensing unit are integrated into a single piece of equipment" in order to clarify the term and substituting "central rack system" with "multiplex condensing system" because the latter is a more inclusive term and may be more technically accurate.

Thermal-Rite and Nor-Lake expressed support for the revised definition of refrigeration system. (Thermal-Rite, No. 1.3.031 at p. 1; Nor-Lake, No. 1.3.029 at p. 2) ACEEE stated that the definition proposed in the January NOPR seemed appropriate and seems to recognize the varieties serving the marketplace. (ACEEE, No. 1.3.034 at p. 2) Master-Bilt, BASF, and Kason all stated that they agreed with the definition but did not specify which version they supported. (Master-Bilt, No. 1.3.009 at p. 2; BASF, No. 1.3.003 at p. 5; Kason, No. 1.3.037 at p. 4) On the other hand, Craig stated that the definition of refrigeration system should include a temperature limit and suggested 45 °F as the upper limit. (Craig, No. 1.3.036 at p. 84) A person affiliated with Gonzaga Law also viewed the proposed definition of refrigeration equipment as too inclusive but did not specify how DOE could improve it. (William Gray, Gonzaga Law, No. FDMS 0003 at p. 1) HeatCraft stated that DOE should have an exemption for refrigeration equipment that serves loads other than walk-ins. (HeatCraft, Public Meeting Transcript, No. 1.2.010 at p. 92)

Regarding the above comments, DOE believes that adding a temperature limit to the definition of refrigeration system, as suggested by Craig, is unnecessary because DOE is already proposing to add a temperature limit to the definition of walk-ins that will cover both envelopes and refrigeration systems. To address HeatCraft's concern, DOE has included the term "multiplex equipment" in the definition to refer to refrigeration equipment serving loads other than walk-ins. DOE's revised definition includes unit coolers connected to multiplex systems, meaning that only the unit cooler is covered in any refrigeration system that incorporates a multiplex system. The multiplex systems themselves would not be covered.

Consistent with its discussions at the public meeting, DOE is also proposing to revise its proposed definition of the term "refrigeration system" with respect to WICF equipment. DOE requests comment on the proposed alternative definition.

2. Version of AHRI 1250

In the January NOPR, DOE proposed to incorporate the industry standard AHRI 1250P–2009, "Standard for Performance Rating of Walk-In Coolers and Freezers," into the test procedure. The January NOPR inadvertently referred to the preliminary version of this standard, while the final published version is AHRI 1250–2009, which was published in September 2009. DOE found no significant differences between the preliminary version and the final version; nevertheless, DOE proposes to incorporate the most recent version, AHRI 1250–2009, into the final test procedure.

3. Annual Walk-In Energy Factor

DOE is required by EPCA to establish a test procedure to measure the energy use of walk-in coolers and walk-in freezers. (42 U.S.C. 6314(a)(9)(B)(i)) AHRI 1250–2009 determines the annual walk-in energy factor (AWEF) as its final metric, the ratio of the annual net heat removed from the box, which includes the internal heat gains from non-refrigeration components but excludes the heat gains from the refrigeration components in the box to the annual energy consumption. Because AWEF is essentially a measure of efficiency, DOE proposed in the January NOPR to develop equations to derive energy consumption from AWEF. 75 FR 202–203. DOE also proposed to require manufacturers to report both AWEF and energy consumption and asked for comment on this approach. 75 FR 202–203.

Nor-Lake agreed with the proposed method of measuring and calculating the energy use of refrigeration systems (Nor-Lake, No. 1.3.005 at p. 4) but also cautioned that both the methodology for deriving annual energy consumption from AWEF and the reporting requirements should be consistent across all manufacturers. (Nor-Lake, No. 1.3.029 at p. 5) Manitowoc, on the other hand, stated that AWEF is a more useful metric than energy consumption because the calculated energy consumption may not be an accurate representation of actual energy consumption in the field as the load profile in the test procedure is arbitrary. Rather, AWEF can be used to easily estimate actual energy consumption if the actual load is known, and AWEF

also allows for comparisons between higher and lower efficiency systems. (Manitowoc, Public Meeting Transcript, No. 1.2.010 at p. 375) Arctic suggested that DOE could develop software to assist businesses with calculating energy consumption. (Arctic, Public Meeting Transcript, No. 1.2.010 at p. 392)

Because EISA requires that the test procedure measure energy use, as explained above, DOE continues to propose that manufacturers measure and report both AWEF and the measure of energy use derived from AWEF as determined by the test procedure. The calculation methodology and reporting requirements will be consistent across manufacturers as suggested by Nor-Lake.

DOE notes that in the course of performing the test procedure and determining AWEF, the annual energy use of a walk-in refrigeration system may be found as an intermediate result or easily derived from AWEF or other intermediate results. Thus, DOE proposes to simplify the method by which energy use is determined by introducing revised calculations in the rule language. DOE requests comment on the simplified calculations.

DOE does not intend to develop software for calculating energy use, as suggested by Arctic, because this is outside the scope of the rulemaking. The proposed test procedure contains all the necessary calculations for determining AWEF and energy use, and manufacturers may develop or use their own software that assists them in performing these calculations if they choose.

IV. Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute "significant regulatory actions" under Executive Order (E.O.) 12866, "Regulatory Planning and Review." 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the OMB.

B. Review Under the National Environmental Policy Act

In this proposed rule, DOE proposes to adopt test procedures and related provisions for walk-in equipment. The test procedures would be used initially for considering the adoption of energy conservation standards for walk-ins, and DOE would require their use only if standards were subsequently adopted. The proposed test procedures will not affect the quality or distribution of energy and therefore will not result in environmental impacts. Therefore, DOE determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. More specifically, today's proposed rule is covered by the categorical exclusion in paragraph A5 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, "Proper Consideration of Small Entities in Agency Rulemaking", 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of General Counsel's Web site, *http://www.gc.doe.gov*.

DOE reviewed the test procedures considered in today's supplemental notice of proposed rulemaking under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

As discussed in more detail below, DOE found that because the proposed test procedures have not previously been required of manufacturers, all manufacturers, including small manufacturers, could experience a financial burden associated with new testing requirements. While examining this issue, DOE determined that it could not certify that the proposed rule, if promulgated, would not have a significant effect on a substantial number of small entities. Therefore, DOE prepared an IRFA for this rulemaking. The IRFA describes potential impacts on small businesses associated with walk-in cooler and freezer testing requirements. DOE has transmitted a copy of this IRFA to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for review. This SNOPR includes changes made to the IRFA in light of comments from interested parties on the January NOPR, specifically regarding the number of small entities regulated and the potential testing burden. The revised IRFA also considers the burden of new tests that DOE is proposing in this SNOPR.

1. Reasons for the Proposed Rule

The reasons for this proposed rule are discussed elsewhere in the preamble and not repeated here.

2. Objectives of and Legal Basis for the Proposed Rule

The objectives of and legal basis for the proposed rule are discussed elsewhere in the preamble and not repeated here.

3. Description and Estimated Number of Small Entities Regulated

DOE uses the SBA small business size standards published on January 31, 1996, as amended, to determine whether any small entities would be required to comply with the rule. 61 FR 3286; see also 65 FR 30836, 30850 (May 15, 2000), as amended. 65 FR 53533, 53545 (September 5, 2000). The size standards are codified at 13 CFR part 121. The standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

In the January NOPR, DOE classified walk-in cooler and freezer equipment manufacturing under NAICS 333415, "Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing," which has a size standard of 750 employees. 75 FR 204. After reviewing industry sources and publicly available data, DOE identified at least 37 small manufacturers of walk-in cooler and freezer envelopes and at least 5 small manufacturers of walk-in cooler and freezer refrigeration systems that met this criterion.

In comments on the January NOPR, both American Panel and Kysor said that virtually all panel and walk-in manufacturers are small businesses under this standard. (American Panel, Public Meeting Transcript, No. 1.2.010 at p. 379; Kysor, No. 1.3.035 at p. 3) Craig said that it was a small business under this standard. (Craig, Public Meeting Transcript, No. 1.2.010 at p. 17) Schott Gemtron stated that over 90 percent of the membership of the trade association of North American Food Equipment Manufacturers (NAFEM)

was under $12 million in sales. (Schott Gemtron, Public Meeting Transcript, No. 1.2.010 at p. 389) Several commenters listed sources DOE could use to identify small businesses: Nor-Lake recommended the NSF Standard 7 listings, Arctic recommended the NAFEM database, and ICS recommended the central contractor registry. (Nor-Lake, No. 1.3.029 at p. 5; Arctic, Public Meeting Transcript, No. 1.2.010 at p. 388; and ICS, Public Meeting Transcript, No. 1.2.010 at p. 390)

In light of these comments and additional research conducted by DOE, the industry can be characterized by a few manufacturers that are subsidiaries of much larger companies (who would not be considered small businesses) and a large number of small companies as categorized by NAICS code 333415. Furthermore, more than half of small walk-in manufacturers have 100 or fewer employees. DOE acknowledges the sources provided by Nor-Lake, Arctic, and ICS and will consider these sources in its characterization of the industry in the final regulatory flexibility analysis (FRFA).

4. Description and Estimate of Compliance Requirements

In the NOPR, DOE described potential impacts of the proposed test procedures. DOE received comments from manufacturers regarding the estimated impacts. Arctic stated that potential impacts of the proposed test procedures on manufacturers, including small businesses, come from impacts associated with the cost of testing. (Arctic, No. 1.3.012 at p. 1) ICS commented that burden would come both from testing cost and length of time required to perform the tests. (ICS, No. 1.3.027 at p. 2) BASF commented on specific tests, stating that ASTM C1303–08 is more expensive than ASTM C518–04 and that ASTM E741–06 and AHRI 1250–2009 were even more expensive. (BASF, No. 1.3.003 at p. 5) Master-Bilt, American Panel, and Hill Phoenix all commented that the test procedure would be particularly burdensome to small businesses. (Master-Bilt, No. 1.3.009 at p. 3; American Panel, No. 1.3.024 at p. 4; Hill Phoenix, No. 1.2.023 at p. 3) Craig asserted that the cost of testing could be up to $1 million and would be likely to put small companies out of business or force them to sell noncompliant products. (Craig, No. 1.3.017 at p. 1; No. 1.3.036 at p. 4; and Public Meeting Transcript, No. 1.2.010 at p. 18)

Envelope Manufacturer Testing Impacts

In the January NOPR, DOE proposed to require envelope manufacturers to test their equipment in accordance with two industry test standards: ASTM C1303–08, "Standard Test Method of Predicting Long Term Thermal Resistance of Closed-Cell Foam Insulation," and ASTM E741–06, "Standard Test Method for Determining Air Change in a Single Zone by Means of a Tracer Gas Dilution" (ASTM C1303–08 has since been updated to ASTM C1303–10, but the updated version contains no substantive changes that would affect the testing cost). DOE spoke with industry experts to determine the approximate cost of each test and determined that a test using ASTM C1303–08 costs between approximately $5,000 and $10,000, and a test using ASTM E741–06 costs between $1,000 and $5,000. Therefore, in the January NOPR, DOE estimated that the cost of testing for one walk-in would range from $6,000 to $15,000. Also, DOE estimated that a typical manufacturer would have approximately 8 basic envelope configurations that would need to be tested, so the total cost of compliance due to testing would be approximately $84,000 (ranging from $48,000 to $120,000). This estimated total cost only includes the cost of one test on each basic configuration, and does not include additional testing on the same basic model that may be required as part of a sampling plan. DOE may consider development of a sampling plan in a future rulemaking.

The revisions to the proposed test procedure that are proposed in this SNOPR for envelope manufacturers would require testing in accordance with the two tests mentioned above as well as an additional test: ASTM C1363–05, "Standard Test Method for Thermal Performance of Building Materials and Envelope Assemblies by Means of a Hot Box Apparatus." The SNOPR would also require the measurement of heat gain through doors (with and without IRD and including glass doors) to be tested using NFRC procedures, rather than allowing for use of either the NFRC procedures or the Window 5.2 program. DOE determined that a test using ASTM C1363–05 costs between $1,000 and $3,000, and NFRC testing cost varies between $1,000 and $10,000 for all doors and IRDs depending on product lines. However, NFRC has reduced fees for small businesses, which it defines as companies with less than $1 million in sales.[1] These reduced fees are 50 percent of members' annual fees and product line fees (33 percent of non-members' annual fees and product line fees), and a waiver of label fees. DOE realizes that this definition differs from the SBA size threshold set out for walk-in envelope manufacturers but believes that some entities that are small businesses pursuant to SBA's size threshold could also qualify for these reduced fees.

To address the comments from Arctic, ICS, BASF, Master-Bilt, American Panel, Hill Phoenix, and Craig regarding testing costs, DOE notes that provisions in the January NOPR and revisions to the proposed test procedure that are considered in this SNOPR allow manufacturers to test a limited number of models and model components and then calculate the performance of other models from the test results. Measurements incorporating these revisions include heat transfer through panels (see section III.B.1), steady state infiltration through the envelope (see section III.B.9), and door and IRD performance (see section III.B.12). DOE estimates that a typical envelope manufacturer could be required to perform ASTM C1303–10 on between 1 and 2 types of foam; ASTM C1363–05 on 1 to 2 types of panel pairs; ASTM E741–06 on 1 to 2 envelopes; and NFRC testing on 1 to 3 types of doors and 1 to 3 types of IRD. The total cost of one test on each type of walk-in or component listed could range from $8,000 to $46,000. This estimated cost could vary significantly depending on the number of unique components incorporated into a particular manufacturer's walk-ins. Furthermore, the estimated total cost only includes the cost of one test on each item listed. DOE may consider developing a sampling plan in a future rulemaking to determine how many tests need to be performed on the same type of envelope or component, to ensure the test results are repeatable and statistically valid. Therefore, DOE welcomes comment on this estimate.

Refrigeration System Manufacturer Testing Impacts

The proposed test procedure for refrigeration systems would require manufacturers to perform testing in accordance with a single industry test standard: AHRI Standard 1250–2009, "2009 Standard for Performance Rating of Walk-In Coolers and Freezers." Because this test was recently developed by the industry and has not

[1] *http://www.nfrc.org/documents/ProgramCostsFactsheet.pdf.*

yet been widely used to test refrigeration systems, DOE could not determine how much the test currently costs. However, DOE researched the cost of other, similar standards and estimated in the January NOPR that a test using AHRI Standard 1250–2009 would likely cost approximately $5,000. DOE has not received evidence to the contrary and thus maintains this estimate for the SNOPR for a single test. In the January NOPR, DOE estimated that the total testing cost for a typical refrigeration manufacturer could be approximately $250,000, based on an estimate of 50 basic models, but it could be higher for manufacturers of more customized equipment. For instance, a manufacturer with 200 basic models would incur a testing cost of approximately $1 million. Master-Bilt stated that they sell over 160 models of condensing units and 130 models of evaporators, with over 1500 combinations. (Master-Bilt, No. 1.3.009 at p. 3) (DOE notes that Master-Bilt is not considered a small business because it has more than 750 employees including its parent company.) In comments on the January NOPR, Craig stated that under DOE's estimated cost of $250,000, small manufacturers would be forced to discontinue assembling their own refrigeration systems and instead purchase units from large manufacturers, making them less competitive. (Craig, No. 1.3.017 at p. 2) DOE further notes that the estimated testing cost does not include cost of the tested equipment and asks whether manufacturers could sell equipment that had been tested, thus reducing this cost.

To address these concerns, DOE is proposing burden-reducing measures for refrigeration system manufacturers similar to those for envelope manufacturers. The test procedure proposed in the January NOPR, AHRI 1250–2009, which DOE continues to propose in this SNOPR, allows for rating the condensing unit and the unit cooler separately and then calculating their combined efficiency; this would reduce testing burden by not requiring every combination to be tested. Allowing for the use of such a calculation would significantly decrease the number of tests.

DOE recognizes the particular burden of the envelope and refrigeration tests on small manufacturers. Because the cost of running each test is the same for all manufacturers, both small and large, and because DOE has proposed measures to reduce burden on all such manufacturers, manufacturers would likely incur comparable absolute costs as a result of the proposed test procedures. However, Kason stated that the burden of testing will be greater on small manufacturers because they will sell fewer units per type of basic model. (Kason, No. 1.3.037 at p. 4) Indeed, DOE does not expect that small manufacturers would have fewer basic models than large manufacturers, because the equipment is highly customized throughout the industry. A small manufacturer could have the same total cost of testing as a large manufacturer, but this cost would be a higher percentage of a small manufacturer's annual revenues. Thus, the differential impact associated with walk-in cooler and walk-in freezer test procedures on small businesses may be significant even if the overall testing burden is reduced as described above. DOE requests comment on quantitative differential impacts and will consider presenting such impacts in the FRFA.

To further address concerns about costs, DOE notes that for both envelopes and refrigeration systems, DOE may consider development of a sampling plan to determine how many units must be tested to establish compliance and enforcement requirements. In such a rulemaking, however, DOE could also consider additional methods to reduce the testing burden on manufacturers. For example, DOE could consider allowing manufacturers to rely on component suppliers for test results, and manufacturers could then use these values in their calculations of energy consumption of the walk-in. DOE could also allow manufacturers to group basic models into a "family" of models and only require the lowest-efficiency basic model in the family to be certified. DOE could also consider allowing manufacturers to use validated alternative efficiency determination methods, or AEDMs, which could consist of a calculation or computer program, to rate their equipment. DOE will consider the impacts to small businesses of future certification, compliance, and enforcement provisions for walk-in coolers and freezers in a later rulemaking.

5. Duplication, Overlap, and Conflict with Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being considered today.

6. Significant Alternatives to the Rule

DOE considered a number of alternatives to the proposed test procedure, including test procedures that incorporate industry test standards other than the three proposed standards, ASTM C1303–08, ASTM E741–06, and AHRI Standard 1250P–2009, described above. Instead of requiring ASTM C1303–08 for testing the long-term thermal properties of insulation, DOE could require only ASTM C518–04, "Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus," which tests the thermal properties of insulation at a certain point in time (*i.e.,* the point of manufacture). (Because ASTM C1303–08 incorporates ASTM C518–04, requiring ASTM C1303–08 is consistent with the statutory requirement for basing measurement of the thermal conductivity of the insulation on ASTM C518–04.) (42 U.S.C. 6314(a)(9)(A)) A test of ASTM C518–04 alone costs approximately $500 to $1,000. However, DOE is considering ASTM C1303 for other reasons; namely, the concern that ASTM C518–04 alone does not capture the performance characteristics of a walk-in over the period of its use, because it does not account for significant changes in the thermal properties of insulation over time.

DOE also considered ASTM E1827–96(2007), "Standard Test Methods for Determining Airtightness of Buildings Using an Orifice Blower Door," instead of ASTM E741–06, for testing infiltration. ASTM E1827–96(2007) costs about $300–$ to 500 for a single test. However, DOE believes that ASTM E1827–96(2007) is not appropriate for walk-ins because it is conducted by placing test equipment in the door and thus does not account for infiltration through the door, which is a major component of infiltration in walk-ins. In addition, it is not intended for testing envelope systems, such as a walk-in, that have a large temperature difference between the internal and external air. Therefore, to complete a blower-door test, the walk-in could not be tested at or close to operational temperatures, resulting in a test that does not accurately reflect its performance.

In the framework document, DOE considered adapting an existing test procedure for commercial refrigeration equipment, such as ARI Standard 1200–2006, "Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets," as an alternative to AHRI Standard 1250–2009. The two tests are based on a similar methodology for rating refrigeration equipment in general, but ARI Standard 1200–2006 requires testing at only one set of ambient conditions, whereas AHRI Standard 1250–2009 requires testing at three sets of ambient conditions for refrigeration systems with the condensing units located outdoors. The additional time required to test the system at three sets

of conditions would incur additional cost and could make AHRI Standard 1250–2009 more burdensome than ARI Standard 1200–2006. However, DOE believes that AHRI Standard 1250–2009 is more appropriate for testing walk-ins than ARI Standard 1200–2006. A test procedure based on ARI Standard 1200–2006 would require the entire walk-in to be tested as a whole, but manufacturers might not have a large enough test facility to make the measurements necessary for the ARI 1200–2006 test procedure in a controlled environment. Also, the refrigeration system is often manufactured separately from the insulated envelope. In this case, whoever assembled the two components would bear the burden of conducting ARI 1200–2006; this party might not be the manufacturer of the refrigeration system. In contrast, AHRI 1250–2009 tests only the refrigeration system. It does not require a larger test chamber than other, similar tests and can be conducted by the manufacturer of the refrigeration system. Because AHRI 1250–2009 requires the system to be tested at three ambient temperatures, it captures energy savings from features (*e.g.,* floating head pressure) that allow the system to use less energy at lower ambient temperatures.

DOE requests comment on the impacts to small business manufacturers for these and any other possible alternatives to the proposed rule.

D. Review Under the Paperwork Reduction Act

DOE recognizes that if it adopts standards for walk-in coolers and walk-in freezers, once the standards become operative, manufacturers would become subject to record-keeping requirements associated with compliance with the standards. Such record-keeping requirements would require OMB approval pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* DOE will comply with the requirements of the Paperwork Reduction Act if and when energy conservation standards are adopted.

E. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. With respect to a proposed regulatory action that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate" and requires an agency plan for giving notice and opportunity for timely input before establishing any requirements that might significantly or uniquely potentially affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR12820. (also available at *http://www.gc.doe.gov*). The proposed rule published today does not provide for any Federal mandate likely to result in an aggregate expenditure of $100 million or more. Therefore, the UMRA does not require a cost benefit analysis of today's proposal.

F. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined today's proposed rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by E.O. 13132.

H. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, "Civil Justice Reform", 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of E.O. 12988.

I. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. Both OMB's and DOE's guidelines were published. 67 FR 8452 (February

22, 2002) and 67 FR 62446 (October 7, 2002), respectively. DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use", 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that is (1) a significant regulatory action under E.O. 12866, or any successor order; and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant regulatory action under E.O. 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of OIRA also did not designate today's action as a significant energy action. Therefore, it is not a significant energy action, and DOE has not prepared a Statement of Energy Effects.

K. Review Under Executive Order 12630

DOE has determined pursuant to E.O. 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights", 53 FR 8859 (March 18, 1988), that this proposed rule would not result in any takings which might require compensation under the Fifth Amendment to the U.S. Constitution.

L. Review Under Section 32 of the Federal Energy Administration (FEA) Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788) Section 32 provides in part that where a proposed rule contains or involves use of commercial standards, the rulemaking must inform the public of the use and background of such standards. The rule proposed in this notice incorporates testing methods contained in the following commercial standards: ASTM C1303–08, "Standard Test Method of Predicting Long Term Thermal Resistance of Closed-Cell Foam Insulation;" ASTM E741–06, "Standard Test Method for Determining Air Change in a Single Zone by Means of a Tracer Gas Dilution;" and AHRI Standard 1250P, "2009 Standard for Performance Rating of Walk in Coolers and Freezers." DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the Federal Energy Administration Act, *i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review. As required by section 32(c) of the Federal Energy Administration Act of 1974, as amended, DOE will consult with the Attorney General and the Chairman of the Federal Trade Commission before prescribing a final rule concerning the impact on competition of requiring manufacturers to use the methods contained in these standards to test walk-in equipment.

V. Public Participation

A. Submitting Public Comment

DOE will accept comments, data, and information regarding the supplement to the proposed rule no later than the date provided at the beginning of this notice. Comments, data, and information submitted to DOE's e-mail address for this rulemaking should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Interested parties should avoid the use of special characters or any form of encryption, and wherever possible, comments should include the electronic signature of the author. Comments, data, and information submitted to DOE via mail or hand delivery/courier should include one signed original paper copy. No telefacsimiles (faxes) will be accepted.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) a date upon which such information might lose its confidential nature due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

B. Issues on Which DOE Seeks Comment

DOE is particularly interested in receiving comments on the following issues:

1. Upper Limit of Walk-In Cooler

EPCA defines walk-in cooler or walk-in freezer as "an enclosed storage space refrigerated to temperatures, respectively, above, and at or below 32 degrees Fahrenheit that can be walked into, and has a total chilled storage area of less than 3,000 square feet." (42 U.S.C. 6311(20)(A)) DOE proposes clarifying the term "refrigerated" within the definition of walk-in cooler or walk-in freezer to distinguish walk-ins from conditioned storage spaces. DOE proposes an upper limit of 55 °F because this is a generally accepted boundary between "refrigerated space" and "conditioned space." DOE requests comment on this proposal. For details, see section III.A.1.

2. Basic Model of Envelope

Although often manufactured according to the same basic design, walk-in envelopes are so highly customized that each walk-in a manufacturer builds may be unique. To address this possibility, DOE proposed the following in the January NOPR: (1) Grouping walk-in envelopes with essentially identical construction methods, materials, and components into a single basic model; and (2) adopting a calculation methodology for determining the energy consumption of units within the basic model. 75 FR 189.

Upon further consideration, DOE proposes in this SNOPR that a basic model of walk-in envelope should include equipment with the same design features, components, manufacturing method, etc., such that

units within the basic model are the same with respect to the normalized energy consumption as determined by the test procedure (*i.e.,* the energy consumption divided by square feet of surface area.) DOE believes that this definition of basic model will ensure that all equipment is accurately rated and complies with the standard.

DOE recognizes this revised definition of "basic model" is narrower than the definition proposed in the January NOPR. However, the increase in test burden resulting from the narrower definition could be offset by the burden-reducing measures proposed elsewhere in the test procedure. Additionally, this definition would be consistent with the definition of basic model elsewhere in the appliance standards program. The proposed definition would provide a way of distinguishing walk-ins that differ in energy consumption from walk-ins that differ only in cosmetic or non-energy-related features. DOE requests comment on the proposed definition. For details, see section III.A.3.

3. Basic Model of Refrigeration

Interested parties commented that the definition proposed in the January NOPR was ambiguous; thus, DOE proposes to clarify the definition.

As with envelopes, DOE must ensure that all refrigeration systems are accurately rated and comply with the standard. Therefore, DOE proposes a definition for basic model of walk-in refrigeration such that units within the basic model must be the same with respect to energy consumption as determined by the test procedure. To relieve potential testing burden of many combinations of equipment, the proposed test procedure provides for rating a refrigeration system's condenser and evaporator separately and then calculating the system energy consumption. DOE requests comment on the revised approach and definition of basic model of refrigeration. For details, see section III.A.4.

4. Updates to Standards

After the NOPR was published, DOE learned that two of the standards incorporated by reference had been updated. DOE proposes to incorporate the updated versions in the final rule. For details, see sections III.B.4 and III.C.2.

5. Heat Conduction Through Structural Members

Interested parties commented that DOE's proposed test procedure did not account for heat conduction through structural members of the envelope such as a wood frame. Therefore, in this SNOPR, DOE proposes that panels (walls, ceilings, and floors) made with foam insulation are tested using ASTM C1363–05, "Standard Test Method for Thermal Performance of Building Materials and Envelope Assemblies by Means of a Hot Box Apparatus," for measuring the overall U-factor of fully-assembled panels. The resulting composite panel U-factor found by ASTM C1363–05 will then be corrected using the LTTR results from ASTM C1303–10. DOE believes that using the results from ASTM C1363–05 modified by ASTM C1303–10 best captures the impact of structural members and long-term R-value of foam products. DOE requests comment on this approach. For details, see section III.B.1.

6. Alternatives to ASTM C1303–10

DOE proposes the use of alternative test methods found in Annex C of EN 13165:2009–02 and EN 13164:2009–02 for determining the long term thermal resistance (LTTR) of walk-in panels made using foam insulation. For details, see section III.B.3.

7. Improvements to ASTM C1303 Methodology

DOE proposes several modifications to the ASTM C1303 methodology to address sample preparation and applicability to certain types of foam used in walk-ins and requests comment on these modifications. For details, see section III.B.5.

8. Conduction Through Floors

In the January NOPR, DOE proposed an equation to calculate the heat transfer through the floor of both insulated and uninsulated WICF, and proposed assumptions for subfloor temperature and floor R-value (where the floor is provided separately from the panels). Between the publication of the January NOPR and the public meeting, DOE completed additional finite element model (FEM) computer simulations of floorless coolers. Based on FEM simulation results, DOE described a new equation during the public meeting for calculating heat transfer through floorless coolers. In light of this modeling and additional comments from interested parties, DOE is proposing a new method for calculating the heat transfer through certain floors. See section III.B.6 for more details.

9. "Hybrid" Walk-ins

In the January NOPR, the calculation procedure provided a means of rating all walk-ins including the scenario when a freezer is sited inside a cooler or a cooler and freezer share a wall. Modifications described in this SNOPR ensure that the rating of these walk-in cooler/freezer hybrids is properly captured. DOE seeks comment on these modifications and the accuracy of the new equations. See section III.B.7 for details.

10. U–Factor of Doors and Windows

DOE proposes to base the calculation of U-factor of doors and glass windows on NFRC 100–2010–E0A1, "Procedure for Determining Fenestration Product U–Factors" and requests comment on this proposal. For details, see section III.B.7.

11. Envelope Infiltration

DOE proposes modifications to its calculations and methodology for determining steady state infiltration rate through panel-to-panel and door-to-panel interfaces. DOE also modified its proposed assumptions for door opening infiltration and effectiveness of infiltration reduction devices. DOE requests comment on its approach and assumptions related to infiltration. For details, see sections III.B.9, III.B.10, III.B.11, and III.B.12.

12. Relative Humidity Assumptions

In the January NOPR, DOE proposed the assumption of an internal walk-in relative humidity of 45 percent to be consistent with dry-coil conditions in the proposed refrigeration system test. DOE recognizes that in practice the relative humidity (RH) varies significantly depending on the product stored within a walk-in. Therefore, in order to reflect higher RH values experienced in practice, DOE proposes a new assumption of 75 percent RH for both freezer and cooler internal conditions. DOE seeks comment on this assumption. See section III.B.7 for details.

13. Definition of Refrigeration System

In the January NOPR, DOE proposed a definition of refrigeration system and then presented a revised definition at the NOPR public meeting. In light of comments from interested parties, DOE is proposing to incorporate its revised definition with some modification. DOE requests comment on the revised definition and whether any previously proposed versions of the definition are preferable. See section III.C.1 for details.

14. Annual Walk-In Energy Factor

DOE is required by EPCA to establish a test procedure to measure the energy use of walk-in coolers and walk-in freezers. (42 U.S.C. 6314(a)(9)(B)(i)) AHRI 1250–2009 determines the annual walk-in energy factor (AWEF) as its final metric, which is the ratio of the annual

net heat removed from the box, which includes the internal heat gains from non-refrigeration components but excludes the heat gains from the refrigeration components in the box, to the annual energy consumption. In the course of performing the test procedure and determining AWEF, the annual energy use of a walk-in refrigeration system may be found as an intermediate result or easily derived from AWEF or other intermediate results. Thus, DOE proposes to simplify the method by which energy use is determined and require manufacturers to determine both energy use and AWEF. DOE requests comment on the simplified calculations in the rule language. For details, see section III.C.3.

15. Impacts on Small Businesses

In the January NOPR, DOE prepared an initial regulatory flexibility analysis (IRFA) as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it could not certify that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. DOE received comment from interested parties on the number of small entities and the expected economic impact of the proposed test procedure on small entities and has revised the IRFA accordingly. DOE continues to request comment on impacts to small business manufacturers, particularly differential impacts to small and large businesses. More information, along with revisions to the IRFA, can be found in section IV.C.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this supplement to the proposed rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Incorporation by reference, Reporting and recordkeeping requirements.

Issued in Washington, DC, on August 23, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to revise part 431 of chapter II of title 10, of the Code of Federal Regulations, to read as set forth below.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

2. Section 431.302 is amended by adding the definitions for "Basic Model," "Envelope," "Refrigerated," "Refrigeration system," and "Walk-in equipment" in alphabetical order to read as follows:

§ 431.302 Definitions concerning walk-in coolers and walk-in freezers.

Basic model means—

(1) With respect to envelopes, all units manufactured by a single entity, which do not have any differing features or characteristics that affect normalized energy consumption.

(2) With respect to refrigeration systems, all units manufactured by a single entity, which do not have any differing electrical, physical, or functional characteristics that affect energy consumption.

Envelope means—

(1) The portion of a walk-in cooler or walk-in freezer that isolates the interior, refrigerated environment from the ambient, external environment; and

(2) All energy-consuming components of the walk-in cooler or walk-in freezer that are not part of its refrigeration system.

Refrigerated means held at a temperature at or below 55 degrees Fahrenheit using a refrigeration system.

Refrigeration system means the mechanism (including all controls and other components integral to the system's operation) used to create the refrigerated environment in the interior of a walk-in cooler or freezer, consisting of:

(1) A packaged system where the unit cooler and condensing unit are integrated into a single piece of equipment,

(2) A split system with separate unit cooler and condensing unit sections, or

(3) A unit cooler that is connected to a multiplex condensing system.

* * * * *

Walk-in equipment means either the envelope or the refrigeration system of a walk-in cooler or freezer.

3. In § 431.303, add new paragraphs (b)(2), (b)(3), (b)(4), (b)(5), (c), (d), and (e) to read as follows:

§ 431.303 Materials incorporated by reference.

* * * * *

(b) * * *

(2) ASTM C1303–10, Standard Test Method of Predicting Long Term Thermal Resistance of Closed-Cell Foam Insulation, approved 2010, IBR approved for § 431.304.

(3) ASTM C1363–05, Standard Test Method for Thermal Performance of Building Materials and Envelope Assemblies by Means of a Hot Box Apparatus, approved 2005, IBR approved for § 431.304.

(4) ASTM E283–04, Standard Test Method for Determining Rate of Air Leakage Through Exterior Windows, Curtain Walls, and Doors Under Specified Pressure Differences Across the Specimen, approved 2004, IBR approved for § 431.304.

(5) ASTM E741–06 Standard Test Method for Determining Air Change in a Single Zone by Means of a Tracer Gas Dilution, approved October 1, 2006, IBR approved for Sec. 431.304.

(c) *AHRI.* Air-Conditioning, Heating, and Refrigeration Institute, 2111 Wilson Boulevard, Suite 500, Arlington, VA 22201, (703) 600–0366, or *http://www.ahrinet.org.*

(1) AHRI Standard 1250–2009, 2009 Standard for Performance Rating of Walk-In Coolers and Freezers, approved September 2009, IBR approved for § 431.304.

(2) [Reserved].

(d) *CEN.* European Committee for Standardization (French: Norme or German: Norm), Avenue Marnix 17, B–1000 Brussels, Belgium, Tel: + 32 2 550 08 11, Fax: + 32 2 550 08 19 or *http://www.cen.eu/.*

(1) EN 13164:2009–02, Thermal insulation products for buildings—Factory made products of extruded polystyrene foam (XPS)—Specification, approved February 2009, IBR approved for § 431.304.

(2) EN 13165:2009–02, Thermal insulation products for buildings—Factory made rigid polyurehane foam (PUR) products—Specification, approved February 2009, IBR approved for § 431.304.

(e) *NFRC.* National Fenestration Rating Council, 6305 Ivy Lane, Ste. 140, Greenbelt, MD 20770, (301) 589–1776, or *http://www.nfrc.org.*

(1) NFRC 100–2010–E0A1, Procedure for Determining Fenestration Product U-factors, approved June 2010, IBR approved for § 431.304.

(2) NFRC 400–2010–E0A1, Procedure for Determining Fenestration Product Air Leakage, approved June 2010, IBR approved for § 431.304.

4. Section 431.304 is revised to read as follows:

§ 431.304 Uniform test method for the measurement of energy consumption of walk-in coolers and walk-in freezers.

(a) *Scope.* This section provides test procedures for measuring, pursuant to

EPCA, the energy consumption of walk-in coolers and walk-in freezers.

(b) *Testing and Calculations*

(1) Determine the energy consumption of walk-in cooler and walk-in freezer envelopes by conducting the test procedure specified in Appendix A to this subpart.

(i) Determine the Annual Walk-in Energy Factor of walk-in cooler and walk-in freezer refrigeration systems by conducting the test procedure set forth in AHRI Standard 1250–2009 (incorporated by reference, see § 431.303).

(ii) Determine the annual energy consumption of walk-in cooler and walk-in freezer refrigeration systems:

(A) For systems consisting of an integrated single-package refrigeration unit or a split system with separate unit cooler and condensing unit sections, where the condensing unit is located outdoors, by conducting the test procedure set forth in AHRI Standard 1250–2009 (incorporated by reference, see § 431.303) and recording the annual energy consumption term in the equation for annual walk-in energy factor in section 7:

$$\text{Annual Energy Consumption} = \sum_{j=1}^{n} E\left(t_j\right)$$

where t_j and n represent the outdoor temperature at each bin j and the number of hours in each bin j, respectively, for the temperature bins listed in Table D1 of AHRI Standard 1250–2009 (incorporated by reference, see § 431.303).

(B) For systems consisting of an integrated single-package refrigeration unit or a split system with separate unit cooler and condensing unit sections, where the condensing unit is located in a conditioned space, by performing the following calculation:

$$\text{Annual Energy Consumption} = \frac{0.33 \times \dot{BLH} + 0.67 \times \dot{BLL}}{\text{Annual Walk-in Energy Factor}}$$

where $\dot{BLH}$ and $\dot{BLL}$ for refrigerator and freezer systems are defined in section 6.2.1 and 6.2.2, respectively, of AHRI Standard 1250–2009 (incorporated by reference, see § 431.303) and the annual walk-in energy factor is calculated from the results of the test procedures set forth in AHRI Standard 1250–2009 (incorporated by reference, see § 431.303).

(C) For systems consisting of a unit cooler connected to a rack system, by performing the following calculation:

$$\text{Annual Energy Consumption} = \frac{0.33 \times \dot{BLH} + 0.67 \times \dot{BLL}}{\text{Annual Walk-in Energy Factor}}$$

where $\dot{BLH}$ and $\dot{BLL}$ refrigerator and freezer systems are defined in section 7.9.2.2 and 7.9.2.3, respectively, of AHRI Standard 1250–2009 (incorporated by reference, see § 431.303) and the annual walk-in energy factor is calculated from the results of the test procedures set forth in AHRI Standard 1250–2009 (incorporated by reference, see § 431.303).

5. Appendix A is added to subpart R of part 431 to read as follows:

Appendix A to Subpart R of Part 431—Uniform Test Method for the Measurement of Energy Consumption of the Envelopes of Walk-In Coolers and Walk-In Freezers

1.0 SCOPE

This appendix covers the test requirements used to measure the energy consumption of the envelopes of walk-in coolers and walk-in freezers.

2.0 DEFINITIONS

The definitions contained in § 431.302 are applicable to this appendix.

2.1 Additional Definitions

(a) Steady-state: The condition where the average internal temperature changes less than 1°C (2 °F) from one hour period to the next.

(b) Door: An assembly installed in or on an interior or exterior wall; that is movable in a sliding, pivoting, hinged, or revolving manner of movement; and that is used to produce or close off an opening in the walk-in. For walk-ins, a door includes the door panel, glass, framing materials, door plug, mullion, and any other elements that form the door or part of its connection to the wall.

(1) Passage door: A door designed for human passage or movement of product through the walk-in. A passage door may accommodate a hand cart or equivalent.

(2) Freight door: A door designed for human passage or movement of product through the walk-in. A freight door may accommodate a forklift or equivalent.

(3) Display door: A door designed for the movement and/or display of product rather than the passage of persons

(4) Glass door: A door comprised of 50 percent or more glass, irrespective of intended use.

(c) Surface area: Unless explicitly stated otherwise, the surface area for all measurements is the area as measured on the external surface of the walk-in.

(d) Automatic door opener/closer: A device or control system that "automatically" opens and closes doors without direct user contact (*e.g.,* a motion sensor that senses when a forklift is approaching the entrance to a door, opens, and then closes after the forklift has passed).

(e) Rating conditions: Unless explicitly stated otherwise, all calculations and test procedure measurements shall use the temperature and relative humidity data shown in Table A.VI.1. For installations where two or more walk-in envelopes share any surface(s), the "external conditions" of the shared surface(s) should reflect the internal conditions of the neighboring walk-in.

TABLE A.VI.1—TEMPERATURE AND RELATIVE HUMIDITY CONDITIONS

	Value	Units
Internal Conditions (cooled space within envelope)		
Cooler:		
Dry Bulb Temperature ..	35	°F
Relative Humidity	75	%
Freezer:		
Dry Bulb Temperature ..	−10	°F
Relative Humidity	75	%
External Conditions (space external to the envelope)		
Freezer and Cooler:		
Dry Bulb Temperature ..	75	°F
Relative Humidity	52	%
Subfloor Temperature		
Freezers & Coolers:		
Temperature	55	°F

3.0 TEST APPARATUS AND GENERAL INSTRUCTIONS

3.1 Conduction Heat Gain

3.1.1 Glass Area

(a) All dimensional measurements for glass doors include the door frame and glass.

(b) Calculate the individual and total glass door surface area, $A_{glass\ door}$, as follows, ft²:

$$A_{glass\ door,i} = \left(W_{glass\ door,i} \times H_{glass\ door,i}\right) \times n_i \qquad (3\text{-}1)$$

$$A_{glass\ door,tot} = \sum_{1}^{i}\left[\left(W_{glass\ door,i} \times H_{glass\ door,i}\right) \times n_i\right] \qquad (3\text{-}2)$$

Where:

i = index for each type of unique glass door used in cooler or freezer being tested;

n_i = number of identical glass doors of type i;

$W_{glass\ door,i}$ = width of glass door (including door frame), ft; and

$H_{glass\ door,i}$= height of glass door (including door frame), ft.

(c) Calculate the glass wall individual and total glass surface area, $A_{glass,wall}$, as follows, ft²:

$$A_{glass\ wall,i} = \left(W_{glass\ wall,i} \times H_{glass\ wall,i}\right) \times n_i \qquad (3\text{-}3)$$

$$A_{glass\ wall,tot} = \sum_{1}^{i}\left[\left(W_{glass\ wall,i} \times H_{glass\ wall,i}\right) \times n_i\right] \qquad (3\text{-}4)$$

Where:

i = index for each type of unique glass wall used in cooler or freezer being tested;

n_i = number of identical glass walls of type i;

$W_{glass,wall,i}$ = width of glass wall (including glass framing), ft; and

$H_{glass,wall,i}$= height of glass wall (including glass framing), ft.

(d) Calculate the total combined glass door and glass wall area, $A_{glass,tot}$, as follows, ft²:

$$A_{glass,tot} = A_{glass\ door,tot} + A_{glass\ wall,tot} \qquad (3\text{-}5)$$

Where:

$A_{glass\ door,\ tot}$= total glass door area, ft²; and

$A_{glass\ wall,\ tot}$= total glass wall area, ft².

3.1.2 Temperature Difference Across Glass Areas

(a) Calculate the temperature differential(s) $\Delta T_{glass\ door,j}$ for each unique glass door as follows, °F:

$$\Delta T_{glass\ door,j} = T_{DB,int,glass\ door,j} - T_{DB,ext,glass\ door,j} \qquad (3\text{-}6)$$

Where:

j= index for each type of unique glass door temperature differential used—for example if a freezer glass door opens into a cooler internal conditioned temperature and a freezer glass door opens into external temperature, j=2;

$T_{DB,int,glass\ door,j}$ = dry-bulb air temperature inside the cooler or freezer where the door is located, °F;

$T_{DB,ext,glass\ door,j}$ = dry-bulb air temperature external to the door of type j, °F.

(b) Calculate the temperature differential(s) $\Delta T_{glass,wall,j}$ for each unique glass wall, as follows (°F):

$$\Delta T_{glass\ wall,j} = T_{DB,int,glass\ wall,j} - T_{DB,ext,glass\ wall,j} \qquad (3\text{-}7)$$

Where:

j = index for each type of unique glass wall temperature differential used;

$T_{DB,int,glass,wall,j}$ = dry-bulb air temperature inside the cooler or freezer, °F; and

$T_{DB,ext,glass,wall,j}$ = dry-bulb air temperature external to cooler or freezer, °F.

3.1.3 Non-Glass Area

Calculate the individual and total surface area of the walk-in non-glass envelope components $A_{non\text{-}floor\ panel\ edge,i}$, $A_{non\text{-}floor\ panel\ edge,tot}$, $A_{non\text{-}floor\ panel\ core,i}$, $A_{non\text{-}floor\ panel\ core,tot}$, $A_{floor\ panel\ edge,i}$, $A_{floor\ panel\ edge,tot}$, $A_{floor\ panel\ core,i}$, $A_{floor\ panel\ core,tot}$, $A_{non\text{-}glass\ door,i}$, and $A_{non\text{-}glass\ door,tot}$, as follows (ft²):

(a) $A_{non\text{-}floor\ panel\ edge,i}$, ft^2, (see Figure 2 to help visualize the area calculations)

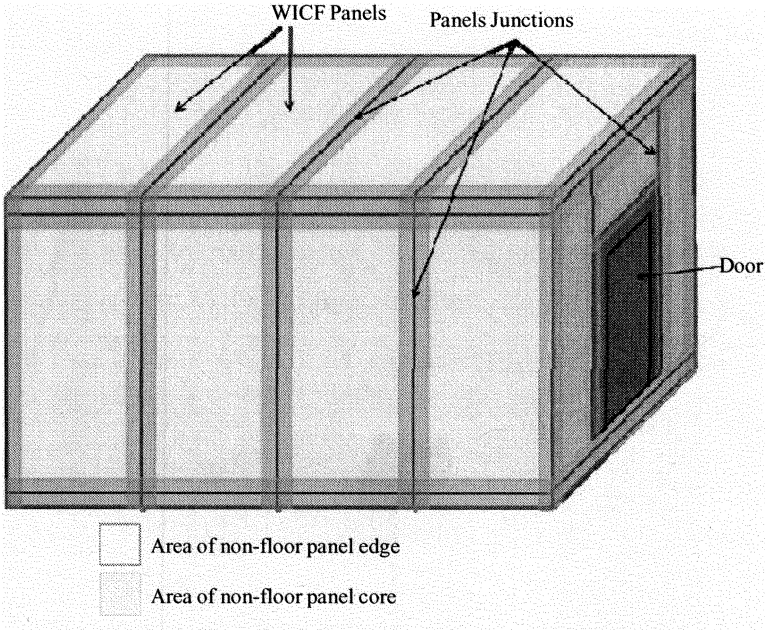


Figure 2 Diagram of Area Calculation Methodology

$$A_{non\text{-}floor\ panel\ edge,i} = \sum_{1}^{i}\left[X_{edge\ test\ region} \times \left[W_{non\text{-}floor\ panel,i} + L_{non\text{-}floor\ panel,i} - X_{edge\ test\ region} \right] \times n_i \right] \qquad (3\text{-}8)$$

Where:

i = index for each type of unique non-floor panel—for example, if a walk-in is constructed of non-floor panels that are of two different thicknesses or manufactured using two different foam insulation products but panel dimensions are all identical, i=2 or, if a walk-in is constructed of non-floor panels that are all of identical thicknesses and identical materials but of non-floor panels of 15 different dimensions, i=15;

n_i = number of identical panels of type i;

$X_{edge\ test\ region}$ = Panel Edge Test Region width, as shown in Figure 3, ft;

$W_{non\text{-}floor\ panel,i}$ = non-floor panel width, of thickness and underlying materials of type i, ft; and

$L_{non\text{-}floor\ panel,i}$ = non-floor panel length, of thickness and underlying materials of type i, ft;

(b) $A_{non\text{-}floor\ panel\ edge,tot}$, ft^2

$$A_{non\text{-}floor\ panel\ edge,tot} = \sum_{1}^{i} A_{non\text{-}floor\ panel\ edge,i} \qquad (3\text{-}9)$$

Where:

i = index for each type of unique non-floor panel; and

$A_{non\text{-}floor\ panel\ edge,\ i}$= non-floor panel edge area, of thickness and underlying materials of type i, ft^2.

(c) $A_{non\text{-}floor\ panel\ core,i}$, ft^2

$$A_{non\text{-}floor\ panel\ core,i} = \sum_{1}^{i}\left[W_{non\text{-}floor\ panel,i} \times L_{non\text{-}floor\ panel,i} \times n_i \right] - A_{non\text{-}floor\ panel\ edge,i} \qquad (3\text{-}10)$$

Where:

i = index for each type of unique non-floor panel;

n_i = number of identical panels, of thickness and underlying materials of type i;

$A_{non\text{-}floor\ panel\ edge,i}$= panel non-floor edge area, of thickness and underlying materials of type i, ft^2;

$W_{non\text{-}floor\ panel,i}$ = non-floor panel width, of thickness and underlying materials of type i, ft; and

$L_{non\text{-}floor\ panel,i}$ = non-floor panel length, of thickness and underlying materials of type i, ft;

(d) $A_{non\text{-}floor\ panel\ core,tot}$, ft^2

$$A_{\text{non-floor panel core,tot}} = \sum_{1}^{i} A_{\text{non-floor panel core,i}} \qquad (3-11)$$

Where:

i = index for each type of unique non-floor panel; and

$A_{\text{non-floor panel core, i}}$ = non-floor panel core area, of thickness and underlying materials of type i, ft²;

(e) $A_{\text{floor panel edge,i}}$, ft²

$$A_{\text{floor panel edge,i}} = \sum_{1}^{i}\left[X_{\text{edge test region}} \times \left[W_{\text{floor panel,i}} + L_{\text{floor panel,i}} - X_{\text{edge test region}} \right] \times n_1 \right] \qquad (3\text{-}12)$$

Where:

i = index for each type of unique floor panel;

n_i = number of identical panels, of thickness and underlying materials of type i;

$X_{\text{edge test region}}$ = Panel Edge Test Region width, as shown in Figure 3, ft;

$W_{\text{floor panel,i}}$ = floor panel width, of thickness and underlying materials of type i, ft; and

$L_{\text{floor panel,i}}$ = floor panel length, of thickness and underlying materials of type i, ft;

(f) $A_{\text{floor panel edge,tot}}$, ft²;

$$A_{\text{floor panel edge,tot}} = \sum_{1}^{i} A_{\text{floor panel edge,i}} \qquad (3\text{-}13)$$

Where:

i = index for each type of unique floor panel; and

$A_{\text{floor panel edge, i}}$ = floor panel edge area, of thickness and underlying materials of type i, ft².

(g) $A_{\text{floor panel core,i}}$, ft²

$$A_{\text{floor panel core,i}} = \sum_{1}^{i}\left[W_{\text{floor panel,i}} \times L_{\text{floor panel,i}} \times n_i \right] - A_{\text{floor panel edge,i}} \qquad (3\text{-}14)$$

Where:

i = index for each type of unique floor panel;

n_i = number of identical panels, of thickness and underlying materials of type i;

$A_{\text{floor panel edge,i}}$ = floor panel edge area, of thickness and underlying materials of type i, ft²;

$W_{\text{non-floor panel,i}}$ = floor panel width, of thickness and underlying materials of type i, ft; and

$L_{\text{non-floor panel,i}}$ = floor panel length, of thickness and underlying materials of type i, ft;

(h) $A_{\text{floor panel core,tot}}$, ft²

$$A_{\text{floor panel core,tot}} = \sum_{1}^{i} A_{\text{floor panel core,i}} \qquad (3\text{-}15)$$

Where:

i = index for each type of unique floor panel; and

$A_{\text{floor panel core, i}}$ = floor panel core area, of thickness and underlying materials of type i, ft².

(i) $A_{\text{non-glass door,i}}$, ft²

$$A_{\text{non-glass door,i}} = \sum_{1}^{i}\left[W_{\text{non-glass door,i}} \times H_{\text{non-glass door,i}} \right] \times n_i \qquad (3\text{-}16)$$

Where:

i = index for each type of unique non-glass door;

n_i = number of identical glass doors, of thickness and underlying materials of type i;

$W_{\text{non-glass door,i}}$ = non-glass door width, of thickness and underlying materials of type i, ft; and

$H_{\text{non-glass door,i}}$ = non-glass door height, of thickness and underlying materials of type i, ft.

(j) $A_{\text{non-glass door,tot}}$, ft²

$$A_{\text{non-glass door,tot}} = \sum_{1}^{i} A_{\text{non-glass door,i}} \qquad (3\text{-}17)$$

Where:

i = index for each type of unique non-glass door; and

$A_{\text{non-glass door,i}}$= non-glass door area, of thickness and underlying materials of type i, ft².

(k) $A_{\text{non-glass tot}}$, ft²

$$A_{\text{non-glass tot}} = A_{\text{non-floor panel edge,tot}} + A_{\text{non-floor panel core,tot}} + A_{\text{floor panel edge,tot}} + A_{\text{floor panel core,tot}} + A_{\text{non-glass door,tot}} \qquad (3\text{-}18)$$

Where:

$A_{\text{non-floor panel edge, tot}}$= non-floor panel edge total area, ft²;

$A_{\text{non-floor panel core, tot}}$= non-floor panel core total area, ft²;

$A_{\text{floor panel edge, tot}}$= floor panel edge total area, ft²;

$A_{\text{floor panel core, tot}}$= floor panel core total area, ft²; and

$A_{\text{non-glass door,tot}}$= non-glass door total area, ft².

3.1.4 *Temperature Difference Across Non-Glass Areas*

Calculate the temperature differential(s) $\Delta T_{\text{non-floor panel,j}}$, $\Delta T_{\text{floor panel,j}}$, and $\Delta T_{\text{non-glass door,j}}$, °F, as follows:

(a) $\Delta T_{\text{non-floor panel, j}}$, °F

$$\Delta T_{\text{non-floor panel, j}} = T_{\text{DB,int,non-floor panel, j}} - T_{\text{DB,ext,non-floor panel, j}} \qquad (3\text{-}19)$$

Where:

j = index for each type of non-floor panel temperature differential;

$T_{\text{DB,int, non-floor panel,j}}$ = dry-bulb air internal temperature, °F. If the panel spans both cooler and freezer temperatures, the freezer temperature must be used; and

$T_{\text{DB, ext, non-floor panel, j}}$ = dry-bulb air external temperature, °F.

(b) $\Delta T_{\text{floor, j}}$, °F

$$\Delta T_{\text{floor panel, j}} = T_{\text{DB,int,floor panel, j}} - T_{\text{DB,ext,floor panel, j}} \qquad (3\text{-}20)$$

Where:

j = index for each type of floor panel temperature differential;

$T_{\text{DB, int, floor panel, j}}$ = dry-bulb air internal temperature, °F. If the panel spans both cooler and freezer temperatures, the freezer temperature must be used; and

$T_{\text{DB, ext, floor panel, j}}$ = 55° F, as defined in Table A.VI.1.

(c) $\Delta T_{\text{non-glass door, j}}$, °F

$$\Delta T_{\text{non-glass door, j}} = T_{\text{DB,int,non-glass door, j}} - T_{\text{DB,ext,non-glass door, j}} \qquad (3\text{-}21)$$

Where:

j = index for each type of non-glass door temperature differential;

$T_{\text{DB, int, non-glass door, j}}$ = dry-bulb air internal temperature, °F. If the panel spans both cooler and freezer temperatures, the freezer temperature must be used; and

$T_{\text{DB, ext, non-glass door, j}}$ = dry-bulb air external temperature, °F.

3.1.5 Conduction Heat Load Across Glass Areas

(a) Calculate the conduction load through the glass doors, $Q_{\text{cond-glass, door}}$, as follows btu/h:

$$Q_{\text{cond,glass door}} = \sum_{1}^{i}\sum_{1}^{j}\left[A_{\text{glass door,i}} \times \Delta T_{\text{glass door, j}} \times U_{\text{glass door,i}} \times n_{i,j}\right] \qquad (3\text{-}22)$$

Where:

i = index for each type of unique glass door;

j = index for each type of glass door temperature differential;

$n_{i, j}$ = number of identical glass doors of type i with temperature differential j;

$U_{\text{glass door, i}}$ = thermal transmittance, U-factor of the door, of type i, as rated by NFRC see section 4.4.1, Btu/h-ft²-°F;

$A_{\text{glass door, i}}$ = total surface area of all walk-in glass doors of type i, ft²; and

$\Delta T_{\text{glass door, j}}$ = temperature differential between refrigerated and adjacent zones of type j, °F.

(b) Calculate the conduction load through the glass walls, ($Q_{\text{cond-glass, wall}}$), btu/h, as follows:

$$Q_{\text{cond,glass wall}} = \sum_{1}^{i}\sum_{1}^{j}\left[A_{\text{glass wall,i}} \times \Delta T_{\text{glass wall,j}} \times U_{\text{glass wall,i}} \times n_{i,j}\right] \qquad (3\text{-}23)$$

Where:

i = index for each type of unique glass wall;

j = index for each type of glass wall temperature differential;

$n_{i,j}$ = number of identical glass walls of type i with temperature differential j;
$U_{glass,\ wall,\ i}$ = thermal transmittance, U-factor of the glass wall, of type i, as rated by NFRC see section 4.4.1 Btu/h-ft²-°F;
$A_{glass,\ wall,\ i}$ = total surface area of all walk-in glass walls of type i, ft²; and
$\Delta T_{glass,\ wall,\ j}$= temperature differential between refrigerated and adjacent zones of type j, °F.

3.1.6 Panel Long Term Thermal Transmittance

(a) Calculate the foam degradation factor, (DF_i), unitless, as follows:

$$DF_i = \frac{R_{LTTR,i}}{R_{0,i}} \qquad (3\text{-}24)$$

Where:
i= index each type of unique foam used in the walk-in envelope—for example if a walk-in uses one foam type for non-floor panels and another foam type for floor panels, i=2;
$R_{LTTR,\ i}$ = the R-value, from ASTM C1303–10, per 4.1.2 of foam type i, h-ft²-°F/Btu; and
$R_{0,\ i}$ = the R-value of foam used for determining EPCA compliance of foam type i, h-ft²-°F/Btu.

(b) Calculate the long term thermal transmittance, ($U_{LT,\ non\text{-}floor\ panel\ core,\ i}$), Btu/h-ft²-°F, as follows:

$$U_{LT,non\text{-}floor\ panel\ core,i} = \frac{U_{non\text{-}floor\ panel\ core,i}}{DF_i} \qquad (3\text{-}25)$$

Where:
i= index each type of unique foam used in the walk-in envelope;
$U_{non\text{-}floor\ panel\ core,\ i}$ = the U-factor, per 4.1.1 of foam type i, Btu/h-ft²-°F; and
DF_i = the degradation of foam type i, unitless.

(c) Calculate the long term thermal transmittance, ($U_{LT,\ floor\ panel\ core,\ i}$), Btu/h-ft²-°F, as follows:

$$U_{LT,floor\ panel\ core,i} = \frac{U_{floor\ panel\ core,i}}{DF_i} \qquad (3\text{-}26)$$

Where:
i= index each type of unique foam used in the walk-in envelope;
$U_{floor\ panel\ core,\ i}$ = the U-factor, per 4.1.1 of foam type i, Btu/h-ft²-°F; and
DF_i = the degradation of foam type i, unitless.

3.1.7 Conduction Heat Load Across Non-Glass Areas

Calculate the conduction heat load through all non-glass components: $Q_{cond\text{-}non\text{-}floor\ panel}$, $Q_{cond\text{-}floor\ panel}$, $Q_{cond\text{-}non\text{-}glass\ door}$ and $Q_{cond\text{-}non\text{-}glass}$, as follows btu/h:

(a) $Q_{cond\text{-}non\text{-}floor\ panel}$, btu/h,

$$Q_{cond\text{-}non\text{-}floor\ panel} = \sum_{1}^{i}\sum_{1}^{j}\left[\Delta T_{non\text{-}floor\ panel,\ j} \times \left[\left(A_{non\text{-}floor\ panel\ edge,i} \times U_{non\text{-}floor\ panel\ edge,i}\right) \times n_{i,j} + \left(A_{non\text{-}floor\ panel\ core,i} \times U_{LT,non\text{-}floor\ panel,\ core,i}\right) \times n_{i,j}\right]\right] \qquad (3\text{-}27)$$

Where:
i = index for each type of unique component of type i;
j = index for each unique temperature differential of type j;
$n_{i,j}$ = number of identical non-floor panels of type i with temperature differential;
$\Delta T_{non\text{-}floor\ panel,j}$ = temperature differential across the non-floor panels of type i, °F;
$U_{non\text{-}floor\ panel\ edge,i}$ = U-factor for panel edge area type i, per 4.1.1, Btu/h-ft²-°F;
$U_{LT,non\text{-}floor\ panel\ core,i}$ = Long term thermal transmittance of foam type i, per section 4.1.1, Btu/h-ft²-°F;
$A_{non\text{-}floor\ panel\ edge,i}$ = area of non-floor panel edge of type i, ft²; and
$A_{non\text{-}floor\ panel\ core,i}$ = area of non-floor panel core of type i, ft².

(b) $Q_{cond\text{-}floor\ panel}$, btu/h,

$$Q_{cond\text{-}floor\ panel\ i,\ j} = \sum_{1}^{i}\sum_{1}^{j}\left[\Delta T_{floor\ panel,\ j} \times \left[\left(A_{floor\ panel\ edge,i} \times U_{floor\ panel\ edge,i}\right) \times n_{i,j} + \left(A_{floor\ panel\ core,i} \times U_{LT,floor\ panel\ core,i}\right) \times n_{i,j}\right]\right] \qquad (3\text{-}28)$$

Where:
i = index for each type of unique component of type i;
j = index for each unique temperature differential of type j;
$n_{i,j}$ = number of identical floor panels of type i with temperature differential j;
$\Delta T_{non\text{-}floor\ panel,j}$ = temperature differential across the floor panels of type i, °F;
$U_{floor\ panel\ edge,i}$ = U-factor for panel edge area type i, per 4.1.1, Btu/h-ft²-°F;
$U_{LT,floor\ panel\ core,i}$ = Long term thermal transmittance of foam type i, per 4.1.1, Btu/h-ft²-°F;
$A_{floor\ panel\ edge,i}$ = area of floor panel edge of type i, ft²; and
$A_{floor\ panel\ core,i}$ = area of floor panel core of type i, ft².

(1) Exception to $Q_{cond\text{-}floor\ panel}$: If the walk-in is at cooler temperature and has an uninsulated floor, then $Q_{cond\text{-}floor\ panel}$, btu/h, is as follows:

(i) If $A_{floor} \leq 750$ ft², then

$$Q_{cond\text{-}floor\ panel} = 33.153 \times A_{floor}^{-0.364} \times A_{floor} \qquad (3\text{-}28)$$

(ii) If $A_{floor} > 750$ ft², then

$$Q_{\text{cond-floor panel}} = [0.0002 \times A_{\text{floor}} + 2.84] \times A_{\text{floor}} \qquad (3\text{-}29)$$

Where:

A_{floor} = total area of the floor, as measured from the walk-in architectural drawing, ft².

(2) Exception to $Q_{cond\text{-}floor\ panel}$: If the walk-in is at freezer temperature and an insulated floor has not being shipped with the walk-in, then $Q_{cond\text{-}floor\ panel}$, is as follows btu/h:

$$Q_{\text{cond-floor panel}} = \Delta T_{\text{floor}} \times A_{\text{floor}} \times \frac{1}{R_{\text{Freezer floor}}} \qquad (3\text{-}30)$$

Where:

A_{floor} = total area of the floor, as measured from the walk-in architectural drawing, ft².

ΔT_{floor} = temperature differential across the freezer floor as defined in 3.1.4(b), °F

$R_{freezer\ floor}$ = 28 ft²-°F-h/Btu, as required by EPCA.

(c) $Q_{cond\text{-}non\text{-}glass\ door}$, btu/h,

$$Q_{\text{cond-non-glass door}} = \sum_{1}^{i} \sum_{1}^{j} \left[\Delta T_{\text{non-glass door, j}} \times \left[A_{\text{non-glass door,i}} \times U_{\text{non-glass door,i}} \right] \times n_{i,j} \right] \qquad (3\text{-}31)$$

Where:

i = index for each type of unique component of type i;

j = index for each unique temperature differential of type j;

$n_{i,j}$ = number of identical non-glass doors of type i with temperature differential j;

$\Delta T_{non\text{-}non\ glass\ door,j}$ = temperature differential across the floor panels of type i, °F;

$U_{non\text{-}glass\ door,i}$ = U-factor for panel edge area type i, per 4.4.1, Btu/h-ft²-°F; and

$A_{non\text{-}glass\ door,i}$ = area of floor panel edge of type i, ft².

(d) Total conduction load for non-glass areas, $Q_{cond\text{-}non\text{-}glass}$, as follows btu/h:

$$Q_{\text{cond-non-glass}} = Q_{\text{cond-non-floor panel}} + Q_{\text{cond-floor panel}} + Q_{\text{cond-non-glass door}} \qquad (3\text{-}32)$$

Where:

$Q_{cond\text{-}non\text{-}floor\ panel}$ = conduction through non-floor panels, btu/h;

$Q_{cond\text{-}floor\ panel}$ = conduction through floor panels, btu/h; and

$Q_{cond\text{-}non\text{-}glass\ door}$ = conduction through non-glass doors, btu/h.

(1) Exception: If calculating $Q_{cond\text{-}non\text{-}glass}$ for an uninsulated cooler or for a freezer where an insulated floor is not part of walk-in, calculate as follows:

$$Q_{\text{cond-non-glass}} = Q_{\text{cond-floor panel}} + Q_{\text{cond-non-floor panel}} + Q_{\text{cond-non-glass door}} \qquad (3\text{-}33)$$

Where:

$Q_{cond\text{-}non\text{-}floor\ panel}$ = conduction through non-floor panels, btu/h;

$Q_{cond\text{-}floor\ panel}$ = conduction through floor, as found in 3.1.7(b)(1) or (2) btu/h; and

$Q_{cond\text{-}non\text{-}glass\ door}$ = conduction through non-glass doors, btu/h.

3.1.8 Total Conduction Load

(a) Calculate total conduction load, Q_{cond}, as follows btu/h:

$$Q_{\text{cond}} = Q_{\text{cond-non-glass}} + Q_{\text{cond,glass wall}} + Q_{\text{cond,glass door}} \qquad (3\text{-}34)$$

Where:

$Q_{cond\text{-}non\text{-}glass}$ = total conduction load through non-glass components of walk-in, Btu/h;

$Q_{cond\text{-}glass,wall}$ = total conduction load through walk-in glass walls, Btu/h; and

$Q_{cond\text{-}glass,door}$ = total conduction load through walk-in glass doors, Btu/h.

3.2 Infiltration Heat Gain

3.2.1 Steady State Infiltration Calculations

(a) Convert dry-bulb internal and external air temperatures from °F to Rankine (°R), as follows:

$$T_{DB\text{-}int,R} = T_{DB\text{-}int} + 459.67 \qquad (3\text{-}35)$$

$$T_{DB\text{-}ext,R} = T_{DB\text{-}ext} + 459.67 \qquad (3\text{-}36)$$

Where:

$T_{DB\text{-}int,R}$ = the dry-bulb temperature of internal walk-in air, °R; and

$T_{DB\text{-}ext,R}$ = the average dry-bulb temperature of air surrounding the walk-in, °R.

(b) Calculate the water vapor saturation pressure for the external air and the internal refrigerated air, as follows:

(1) If $T_{DB,R} < 491.67$ °R (32 °F), use the following equation to calculate water vapor saturation pressure (P_{ws} in psia):

$$P_{ws} = \exp\left[\left(\frac{C_1}{T_{DB,R}}\right) + C_2 + \left(C_3 \times T_{DB,R}\right) + \left(C_4 \times T_{DB,R}{}^2\right) + \left(C_5 \times T_{DB,R}{}^3\right) + \left(C_6 \times T_{DB,R}{}^4\right) + \left(C_7 \times 1n\left(T_{DB,R}\right)\right)\right] \quad (3\text{-}37)$$

Where:

$T_{DB,R}$ = dry-bulb temperature in Rankine (for the internal or external air),

C_1 = −1.0214165 E+04,

C_2 = −4.8932428 E+00,

C_3 = −5.3765794 E–03,

C_4 = 1.9202377 E–07,

C_5 = 3.5575832 E–10,

C_6 = −9.0344688 E–14, and

C_7 = 4.1635019 E+00.

(2) If $T_{DB,R} > 491.67$ °R (32 °F), use the following equation to calculate water vapor saturation pressure, P_{ws}, psia:

$$p_{ws} = \exp\left[\left(\frac{C_8}{T_{DB,R}}\right) + C_9 + \left(C_{10} \times T_{DB,R}\right) + \left(C_{11} \times T_{DB,R}{}^2\right) + \left(C_{12} \times T_{DB,R}{}^3\right) + \left(C_{13} \times 1n\left(T_{DB,R}\right)\right)\right] \quad (3\text{-}38)$$

Where:

$T_{DB,R}$ = dry-bulb temperature (for the internal and external air), °R;

C_8 = −1.0440397 E+04;

C_9 = −1.1294650 E+01;

C_{10} = −2.7022355 E–02;

C_{11} = 1.2890360 E–05;

C_{12} = −2.4780681 E–09; and

C_{13} = 6.5459673 E+00.

(c) Calculate the absolute humidity ratio, w, as follows:

$$\omega = \left[\frac{0.621945 \times (RH \times P_{ws})}{14.696 - (RH \times P_{ws})}\right] \quad (3\text{-}39)$$

Where:

RH = relative humidity in (for the internal or external air), and

P_{ws} = water vapor saturation pressure, psia.

(d) Calculate air specific volume, v, (ft³/lb), as follows:

$$v = \left\lfloor (0.025209989) \times T_{DB,R} \times (1 + (1.6078 \times \omega)) \right\rfloor \quad (3\text{-}40)$$

Where:

$T_{DB,R}$ = dry-bulb temperature (for the internal or external air), °R; and

v = specific volume of air, ft³/lb.

(e) Calculate air density, air density, lb/ft³, as follows:

$$\rho = \frac{1}{v} \quad (3\text{-}41)$$

Where:

v = specific volume of air, ft³/lb.

(f) Calculate the enthalpy for the internal and external air, h, as follows btu/lb:

$$h = \left(0.240 \times T_{DB,F}\right) + \omega \times \left(1061 + \left(0.444 \times T_{DB,F}\right)\right) \quad (3\text{-}42)$$

Where:

$T_{DB,F}$ = dry-bulb temperature (for the internal or external air), °F; and

w = absolute humidity ratio, unitless.

(g) Calculate the total crack length, C_L,(ft), using the architectural drawing of the walk-in,

(h) Calculate the steady state infiltration rate of the walk-in,$\dot{V}_j$, ft³/h:

$$\dot{V}_j = \dot{V}_L \times C_L \quad (3\text{-}43)$$

Where:

j = index of type cooler or freezer;

$\dot{V}_L$ = the normalized infiltration rate per section 4.2 of this document using the architectural drawing of the walk-in, ft³/h-ft; and

C_L = total crack length, ft.

(i) Calculate the total infiltration load due to steady-state infiltration, ($Q_{infilt\ panel}$), Btu/h, as follows:

$$Q_{infilt\ panel} = \left(\rho_{ext,j} \times h_{ext,j} - \rho_{int,j} \times h_{int,j}\right) \times \dot{V}_1 \quad (3\text{-}44)$$

Where:

j = index of cooler or freezer temperature;

$\dot{V}_j$ = the infiltration rate measured at test temperature j, per section 4.2, ft³/h;

$\rho_{int,j}$ = internal air density, lb/ft³;

$\rho_{ext,j}$ = external air density, lb/ft³;

$h_{int,j}$ = internal air enthalpy, Btu/lb; and

$h_{ext,j}$ = external air enthalpy, Btu/lb.

3.2.2 Door Steady-State Infiltration Calculations

(a) Calculate the steady-state infiltration associated with doors as follows, $\dot{V}_{door\ steady,i}$³/h:

$$\dot{V}_{door\ steady,i} = \sum_{1}^{i} \dot{V}_{door_i} \times n_i \quad (3\text{-}45)$$

Where:

i = index of each unique door geometry and temperature differential combination;

n_i = number of identical doors of type i, unitless; and

$\dot{V}_{door_i}Q$ = door steady state infiltration as found following section 4.4.2, ft³/h.

(b) Calculate the total infiltration load due to steady-state infiltration through doors, $Q_{door\ steady}$, btu/h, as follows:

$$Q_{door\ steady} = \sum_{1}^{i} \left(\rho_{ext,i} \times h_{ext,i} - \rho_{int,i} \times h_{int,i}\right) \times \dot{V}_{door\ steady,i} \qquad (3\text{-}46)$$

Where:

i = index of type cooler or freezer temperature;

$\dot{V}_{door\ steady,i}$ = total door steady-state infiltration, ft³/h;

$\rho_{int,i}$ = internal air density, as found in 3.2.1 above, lb/ft³;

$\rho_{ext,i}$ = external air density, as found in 3.2.1 above, lb/ft³;

$h_{int,i}$ = internal air enthalpy, as found in 3.2.1 above, Btu/lb; and

$h_{ext,i}$ = external air enthalpy, as found in 3.2.1 above, Btu/lb.

3.2.3 Door Opening Infiltration Calculations

(a) Calculate the portion of time each doorway is open, D_t, unitless, as follows:

$$D_{t,i} = \frac{\left[\left(P \times \theta_p\right) + \left(60 \times \theta_\theta\right)\right]}{\left[3600 \times \theta_d\right]} \qquad (3\text{-}47)$$

Where:

i = index for each unique door—for example a unique door must be of the same geometry, underlying materials, function, and have the same temperature difference across the door;

P = number of doorway passages (i.e., number of door opening events);

θ_p = door open-close time, seconds per opening P;

θ_θ = time door stands open, minutes; and

θ_d = daily time period, h.

(1) Number of doorway passages: For display glass doors, P = 72, for passage doors, P = 60 and for freight doors, P = 120.

(2) Door open-close time: For display glass doors, θ_p = 8 seconds, for passage doors, θ_p = 15 and for freight doors, θ_p = 60.

(3) Door open-close time if an automatic door opener/closer is used: For passage doors, θ_p = 10 and for freight doors, θ_p = 30.

(4) Time door stands open: Display glass doors, θ_o = 0 minutes, for passage doors θ_o = 30 minutes and for freight doors θ_o = 60 minutes.

(5) Time door stands open if an automatic door opener/closer is used: For passage doors θ_o = 10 minutes and for freight doors θ_o = 20 minutes.

(6) Daily time period: All walk-ins, θ_d = 24 hours

(b) Calculate the density factor, F_m, for each door, as follows:

$$F_{m,i} = \left[\frac{2}{1 + \left(\frac{\rho_{int,i}}{\rho_{ext,i}}\right)^{1/3}}\right]^{3/2} \qquad (3\text{-}48)$$

Where:

i = index for each unique door

$\rho_{int,i}$ = internal air density, of door type i, lb/ft³; and

$\rho_{ext,i}$ = external air density, of door type i, lb/ft³.

(c) Calculate the infiltration load for fully established flow through each door, q_i (Btu/h), as follows:

$$q_i = 795.6 \times A_i \times \left(h_{ext,i} - h_{int,i}\right) \times \rho_{int,i} \times \left(1 - \frac{\rho_{ext,i}}{\rho_{int,i}}\right)^{1/2} \times \left(g \times H_i\right)^{1/2} \times F_{m,i} \qquad (3\text{-}49)$$

Where:

i = index for each unique door;

A_i = doorway area, of door type i, ft²;

$h_{int,i}$ = internal air enthalpy, of door type i, Btu/lb;

$h_{ext,i}$ = external air enthalpy, of door type i, Btu/lb;

$\rho_{int,i}$ = internal air density, of door type i, lb/ft³;

$\rho_{ext,i}$ = external air density, of door type i, lb/ft³;

H_i = doorway height, of door type i, ft;

$F_{m,i}$ = density factor, of door type i, and

g = acceleration of gravity, 32.174 ft/sec.².

(d) Calculate the doorway infiltration reduction device effectiveness, E (%), at the same test conditions as described in steady-state infiltration section, as follows:

(1) Calculate the infiltration reduction effectiveness:

$$E_{i,j} = 1 - \frac{V_{rate,with\text{-}device\ i,j}}{V_{rate,without\text{-}device\ i,j}} \qquad (3\text{-}50)$$

Where:

i = index for each unique doorway size of type small, medium or large;

j = index for each unique infiltration reduction device (IRD) of type i;

$V_{rate,with\text{-}device\ i,j}$ = air infiltration rate, with door open and reduction device active, 4.3, 1/h, if a device j is not used with the doorway i, $V_{rate,with\text{-}device\ i,j}$ = $V_{rate,without\text{-}device\ i,j}$; and

$V_{rate,without\text{-}device\ i,j}$ = air infiltration rate, with door open and reduction device disabled or removed, using 4.3, 1/h.

(e) Calculate the total door opening infiltration load for all door-IRD combinations, $Q_{door\ open,}$ (Btu/h), as follows:

$$Q_{door\ open} = \sum_{1}^{i} \sum_{1}^{j} q_i \times D_{t,i} \times D_f \times \left(1 - E_{i,j}\right) \times n_i \qquad (3\text{-}51)$$

Where:

i = index for each unique combination of doorway size, temperature difference and D_t, of type i—for example, if the walk-in has a small, medium and large door, i = 3, or if the walk-in has ten identical dimensioned display doors and one passage door all with the same temperature differential, i = 2;

j = index for the effectiveness of IRD type j;

n_i = number of doorways of type i being considered in the calculation;

q_i = infiltration load for fully established flow, Btu/h;

$D_{t,i}$ = doorway open-time factor as calculated for each unique door way, unitless;

D_f = doorway flow factor, 0.8 for freezers and coolers (from ASHRAE Fundamentals), unitless;

$E_{i,j}$ = effectiveness of doorway type i with IRD type j, as measured by gas tracer test, %.

3.3 Energy Consumption Due to Total Heat Gain

(a) Calculate the total thermal load, Q_{tot}, (Btu/h), as follows:

$$Q_{tot} = Q_{infilt\ panel} + Q_{door\ steady} + Q_{door\ open} + Q_{cond} \qquad (3\text{-}52)$$

Where:

$Q_{infilt\ panel}$ = total load due to steady-state infiltration, Btu/h;
Q_{cond} = total load due to conduction, Btu/h;
$Q_{door\ steady}$ = total load due to door steady-state infiltration, Btu/h; and
$Q_{door\ open}$ = total load due to door opening infiltration, Btu/h.

(b) Select Energy Efficiency Ratio (EER), as follows:

(1) For coolers, use EER = 12.4 Btu/Wh.

(2) For freezers, use EER = 6.3 Btu/Wh.

(c) Calculate the total daily energy consumption due to thermal load, $Q_{tot,EER}$, (kWh/day), as follows:

$$Q_{tot,EER} = \frac{Q_{tot}}{EER} \times \frac{24\ h \times 1\ kW}{1\ day \times 1000\ W} \qquad (3\text{-}53)$$

Where:

Q_{tot} = total thermal load, Btu/h; and
EER= EER of walk-in (cooler or freezer), Btu/Wh.

3.4 Energy Consumption Related to Electrical Components

Electrical components contained within a walk-in could include, but are not limited to: Heater wire (for anti-sweat or anti-freeze application); lights (including display door lighting systems); control system units; and sensors.

3.4.1 Direct Energy Consumption of Electrical Components

(a) Select the required value for percent time off for each type of electricity consuming device, PTO_t (%):

(1) For lights without timers, control system or other demand-based control, PTO=25 percent. For lighting with timers, control system or other demand-based control, PTO=50 percent.

(2) For anti-sweat heaters on coolers (if required): Without timers, control system or other demand-based control, PTO=0 percent. With timers, control system or other demand-based control, PTO=75 percent. For anti-sweat heaters on freezers (if required): Without timers, control system or other auto-shut-off systems, PTO=0 percent. With timers, control system or other demand-based control, PTO=50 percent.

(3) For active infiltration reduction devices: Without control by door open or closed position, PTO=25 percent. With control by door open or closed position for display doors, PTO=99.33 percent. With control by door open or closed position for other doors, PTO=99.17 percent.

(4) For all other electricity consuming devices: Without timers, control system, or other auto-shut-off systems, PTO=0 percent. If it can be demonstrated that the device is controlled by preinstalled timers, control system or other auto-shut-off systems, PTO=25 percent.

(b) Calculate the power usage for each type of electricity consuming device, $P_{comp,t}$, (kWh/day), as follows:

$$P_{comp,u,t} = P_{r\,ated,u,t} \times \left(1 - PTO_{u,t}\right) \times n_{u,t} \times \frac{24h}{day} \qquad (3\text{-}54)$$

Where:

u = index for each type of electricity consuming device sited inside the walk-in envelope and/or sited external the walk-in envelope, inside, u=int, external, u=ext;
t = index for each type of electricity consuming device with identical rated power;
$P_{rated,u,t}$ = rated power of each component, of type t, kW;
$PTO_{u,t}$ = percent time off, for device of type t, %; and
$n_{u,t}$ = number of devices at the rated power of type t, unitless.

(c) Calculate the total electrical energy consumption, P_{tot}, (kWh/day), as follows:

$$P_{tot,int} = \sum_{1}^{t} P_{comp,int,t} \qquad (3\text{-}55)$$

$$P_{tot,ext} = \sum_{1}^{t} P_{comp,ext,t} \qquad (3\text{-}56)$$

Where:

t = index for each type of electricity consuming device with identical rated power;
$P_{comp,int,\ t}$ = the energy usage for an electricity consuming device sited inside the walk-in envelope, of type t, kWh/day; and
$P_{comp,ext,\ t}$ = the energy usage for an electricity consuming device sited outside the walk-in envelope, of type t, kWh/day.

3.4.2 Total Indirect Electricity Consumption Due to Electrical Devices

(a) Calculate the additional compressor load due to thermal output from electrical components sited inside the envelope, C_{load}, (kWh/day), as follows:

$$C_{load} = P_{tot,int} \times 3.\frac{412}{EER}\frac{Btu}{Wh} \qquad (3\text{-}57)$$

Where:

EER = EER of walk-in (cooler=12.4 or freezer=6.3), Btu/Wh; and
$P_{tot,int}$ = The total electrical load due to components sited inside the walk-in envelope, kWh/day

3.5 Total Energy Consumption and Normalized Energy Consumption

3.5.1 Total Energy Consumption

Calculate the total energy load of the walk-in envelope per unit of surface area and non-normalized total energy consumption, $E_{tot,non\text{-}glass,norm}$, $E_{tot,glass,norm}$, $E_{tot,electrical,norm}$, and E_{tot},(kWh/ft²/day), as follows:

(a) $E_{tot,non\text{-}glass,norm}$, kWh/ft²/day,

$$E_{tot,non\text{-}glass} = \left[\frac{A_{non\text{-}glass,tot}}{A_{non\text{-}glass,tot} + A_{glass,tot}}\right] \times \left[\frac{Q_{tot,EER}}{A_{non\text{-}glass,tot} + A_{glass,tot}}\right] \qquad (3\text{-}58)$$

(b) $E_{tot,glass,norm}$, kWh/ft²/day,

$$E_{tot,glass} = \left[\frac{A_{glass,tot}}{A_{non\text{-}glass,tot} + A_{glass,tot}}\right] \times \left[\frac{Q_{tot,EER}}{A_{non\text{-}glass,tot} + A_{glass,tot}}\right] \quad (3\text{-}59)$$

(c) $E_{tot,electrical,norm}$, kWh/ft²/day,

$$E_{tot,electric\ device} = \frac{P_{tot} + C_{load}}{A_{non\text{-}glass,tot} + A_{glass,tot}} \quad (3\text{-}60)$$

(d) E_{tot}, kWh/day,

$$E_{tot} = Q_{tot,EER} + P_{tot} + C_{load} \quad (3\text{-}61)$$

Where:

$Q_{tot,EER}$ = the total thermal load, kWh/day;

P_{tot} = the total electrical load, kWh/day;

$A_{non\text{-}glass,tot}$ = total surface area of the non-glass envelope, ft²;

$A_{glass,tot}$ = total surface area glass envelope, ft²; and

C_{load} = additional compressor load due to thermal output from electrical components contained within the envelope, kWh/day.

4.0 TEST METHODS AND MEASUREMENTS

4.1 Conduction Performance Testing and Measurements

4.1.1 Measuring Panel and Floor U-factors using ASTM C1363–05

(a) Test Sample Geometry Requirements

(1) Two (2) panels, 8' ± 1" long and 4' wide ± 1" must be prepared.

(2) The panel edges must be joined using a given manufacturer's panel interface joining system (i.e. camlocks).

(3) Panel Edge Test Region must be cut from the joined panels such that X = 2' ± 0.25" and Z = 7' ± 0.5". (See Figure 3)

(i) Exception: Walk-in panels that utilize vacuum insulated panels (VIP) for insulation, X = 2'± 2". The wider tolerance is meant to allow the cutting line, when preparing the Panel Edge Test Region, to match the VIP junctions such that VIP will not lose vacuum by being pierced by the cutting device.

(4) Panel Core Test Region must also be cut from one of the two panels such that Y = 2' ± 0.25" and Z = 7' ± 0.5". (See Figure 3)

(i) Exception: As above, walk-in panels that use VIP for insulation, Y = 2'± 2".

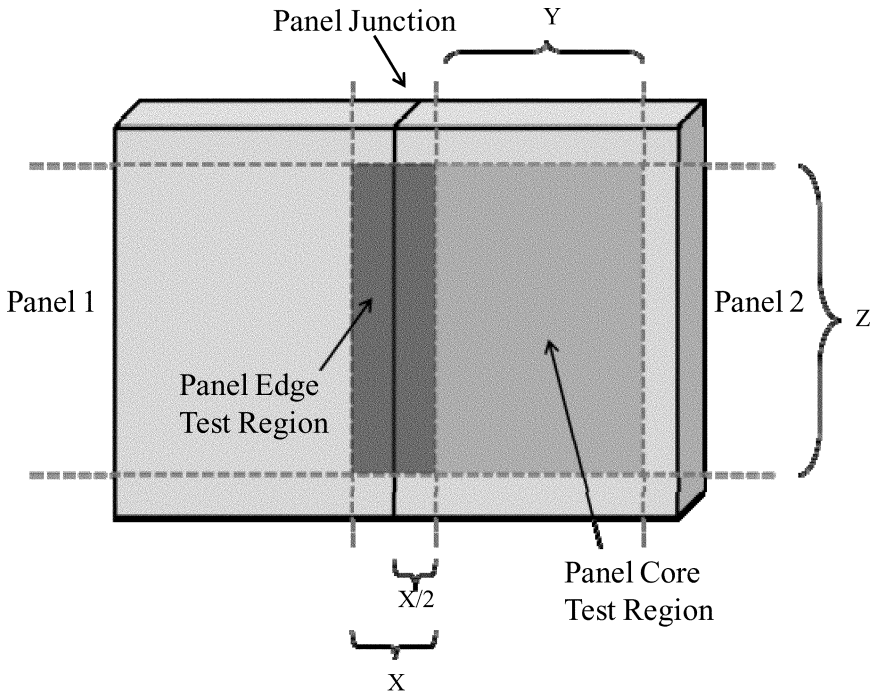


Figure 3 ASTM C1363-05 Test Regions

(b) Testing Conditions

(1) The air temperature on the "hot side" of the box should be maintained at 75 °F ± 1 °F.

(i) Exception: When testing floors, the air temperature should be maintained at 55 °F ± 1 °F.

(2) The temperature in the "cold side" of the envelope should be maintained at 35 °F ± 1 °F for the panels used for walk-in coolers and −10 °F ± 1 °F for panels used for walk-in freezers.

(3) The air velocity should be maintained as natural convection conditions as described in ASTM C1363–05 (incorporated by reference, see § 431.303). The test must be completed using the masked method and with surround panel in place as described in ASTM C1363–05.

(c) Required Test Samples

(1) Wall and Ceiling Panels

(i) Cooler conditions, Panel Edge Region U-factor: $U_{non\text{-}floor\ panel\ edge,cooler}$

(ii) Cooler conditions, Panel Core Region U-factor: $U_{non\text{-}floor\ panel\ core,cooler}$

(iii) Freezer conditions, Panel Edge Region U-factor: $U_{non\text{-}floor\ panel\ edge,freezer}$

(iv) Freezer conditions, Panel Core Region U-factor: $U_{non\text{-}floor\ panel\ core,freezer}$

(2) Floor Panels

(i) Cooler conditions, Floor Panel Edge Region U-factor: $U_{floor\ panel\ edge,cooler}$

(ii) Cooler conditions, Floor Panel Core Region U-factor: $U_{non\text{-}floor\ panel\ core,cooler}$

(iii) Freezer conditions, Floor Panel Edge Region U-factor: $U_{floor\ panel\ edge,freezer}$

(iv) Freezer conditions, Floor Panel Core Region U-factor: $U_{floor\ panel\ core,freezer}$

4.1.2 Measuring R–Value of Insulating Foam

(a) Follow the test procedure in ASTM C1303–10 exactly, with these exceptions (incorporated by reference, see § 431.303):

(1) Mold/Sample Panel Geometry

(i) A panel must be prepared following typical manufacturer injection, curing and assembly methods. The width and length of the panel must be 48 inches ± 1 inch and 96 inches ± 1 inch, respectively.

(ii) The panel thickness shall be equal to the desired test thickness.

(2) Materials

(i) The panel materials should exactly mimic a commercially viable panel; that is, the panel should be exactly identical to panels sold by the manufacturer, with one key exception: The inner surfaces must be lined with a material, such as 4 to 6 mil polyethylene film, to prevent the foam from adhering to the panel internal surfaces. (This ensures that when the panel metal skin is removed for testing, the underlying foam is not damaged).

(3) Sample Preparation

(i) After the foam has cured and the panel is ready to be tested, the facing and framing materials must be carefully removed to ensure that the underlying foam is not damaged or altered.

(ii) A 12-inch × 12-inch square (× desired thickness) cut from the exact geometric center of the panel must be used as the sample for completing ASTM C1303–10.

(4) Section 6.6.2, where several types of hot plate methods are recommended, use ASTM C518–04 (incorporated by reference, see § 431.303), for measuring the R-value. In section 6.6.2.1 of ASTM C1303–10, in reference to ASTM C518–04, the mean test temperature of the foam during R-value measurement must be 20 +/− 4 °F (−6.7 +/− 2 °C) with a temperature difference of 40 +/− 4 °F (22 +/− 2 °C) for freezers and 55 +/− 4 °F (12.8 +/− 2 °C) with a temperature difference of 40 +/− 4 °F (22 +/− 2 °C) for coolers.

(5) Section 6.6.2.1, in reference to ASTM C518–04, the mean test temperature of the foam during R-value measurement must be:

(i) For freezers: −6.7 +/− 2 °C (20 +/− 4 °F) with a temperature difference of 22 +/− 2 °C (40 +/− 4 °F)

(ii) For coolers: 12.8 +/− 2 °C (55 +/− 4 °F) with a temperature difference of 22 +/− 2 °C (40 +/− 4 °F)

(b) At least one sample set must be prepared, comprised of three stacks, while adhering to all preparation methods and uniformity specifications described in ASTM C1303–10 (incorporated by reference, see § 431.303).

(c) The value resulting LTTR for the foam shall be reported as R_{foam}, but for the purposes of calculations in this test procedure calculations it will be converted to R_{LTTR}, as follows:

$$R_{LTTR} = R_{foam} \qquad (4\text{-}1)$$

Where:

R_{foam} = R-value of foam as measured by ASTM C1303–10, h-ft² − °F/Btu.

4.1.3 U-Factor of Doors

(a) All doors must be tested using NFRC 100–2010–E0A1.

(b) Internal conditions:

(1) Air temperature of 35 °F (1.7 °C) for cooler doors and −10 °F (−23.3 °C) for freezer doors.

(2) Mean inside radiant temperature same as shown in (b)(1) above.

(c) External conditions

(1) Air temperature of 75 °F (23.9 °C).

(2) Mean outside radiant temperature same as shown in (c)(1) above.

(d) Direct solar irradiance = 0 W/m2 (0 Btu/h-ft2).

(e) The average convective heat transfer coefficient on both interior and exterior surfaces of the door should be based on "natural convection" as described in section 4.3 of NFRC 100–2010–E0A1 (incorporated by reference, see § 431.303).

4.2 Steady State Infiltration Testing

(a) Follow the test procedure in ASTM E741–06 exactly, except for these changes and exceptions to the procedure. (incorporated by reference, see § 431.303):

(1) *Concentration decay method:* The "concentration decay method" must be used instead of other available options described in ASTM E741–06.

(2) *Gas Tracer:* CO_2 or SF_6 must be used as the gas tracer for all testing.

(3) *Air change rate:* Measure the air change rate in 1/h, rather than the air change flow described in ASTM E741–06 (incorporated by reference, see § 431.303).

(4) *Spatial measurements:* Spatial measurements must be taken in a minimum of six locations or one location/20 ft² of floor area (whichever results in a greater number of measurements) at a height of 3 ft +/− 0.5 ft, at a minimum distance of 2 ft +/− 0.5 ft from the walk-in walls or doors.

(b) The internal air temperature for freezers and for coolers shall be +/− 4 °F (2 °C) of the values shown in Table A.VI.1.

(c) The external air temperature must be 75 °F (24 °C) +/− 5 °F (2.5 °C) surrounding the walk-in.

(d) The test must be completed with the walk-in door closed.

(e) Number of tests:

(1) One unit must be tested at freezer conditions with an insulated floor in place.

(2) One unit must be tested at cooler conditions.

(f) Geometry of standard walk-in test unit:

(1) External dimensions:

(i) Width = 12 ft ± 6"

(ii) Length = 18 ft ± 6"

(iii) Height = 8 ft ± 6"

(2) Rectangular Shape (see Figure 4)

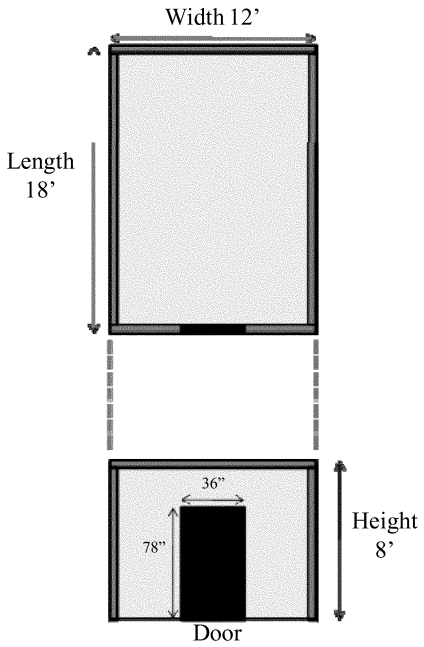


Figure 4 Geometry of Infiltration Test Unit

(g) Equipment Specifications

(1) One Passage Door (see Figure 4)

(i) Width = 36 inches ± 2 inches

(ii) Height = 78 inches ± 4 inches

(2) At freezer temperature, a pressure relief valve must be in-place and operational during testing.

(i) Valve flow rate > 8 cubic ft per minute @ 1 inch of H_2O (250 Pa))

(3) Prescribed wall and ceiling panel geometry

(i) Wall panels

1. Width < 4 ft ± 1 inch
2. Height < 8 ft ± 1 inch

(ii) Ceiling panels

1. Width < 4 ft ± 1 inch

(h) Test Procedure Requirements

(1) The unit must be assemble following instructions provided in the standard panel manufacturer installation instructions that are normally provided with a shipped walk-in.

(2) The unit may be tested only after it has reached a steady-state condition, normally greater than 24 hours after the refrigeration system has been activated.

(3) The infiltration measurement period must be over a duration greater than one hour

(4) The standard unit internal volume must be empty and unoccupied except for items necessary for testing or for cooling the test unit (such as test equipment or evaporator fans).

(i) Test Results

(1) At cooler conditions, the result following ASTM E741–06, is:

(i) First, correct the result to standard test conditions per ASTM E 283.

(ii) The final and corrected infiltration rate, $V_{rate,cooler}$, (1/h)

(2) At freezer conditions,

(i) First, correct the result to standard test conditions per ASTM E 283.

(ii) The final and corrected infiltration rate, $V_{rate,freezer}$, (1/h)

(j) Calculations

(1) Convert $V_{rate,freezer}$ and $V_{rate,cooler}$ to $\dot{V}_{freezer}$ and, $\dot{V}_{cooler}$, (ft^3/h), as follows:

$$\dot{V}_{freezer} = V_{rate,freezer} \times V_{ref\text{-}space} \qquad (4\text{-}2)$$

and

$$\dot{V}_{cooler} = V_{rate,cooler} \times V_{ref\text{-}space} \qquad (4\text{-}3)$$

Where:

$V_{ref\text{-}space}$ = the total enclosed volume of the walk-in, of the test unit shown in Figure 4, ft^3; and

$V_{rate,cooler}$= the infiltration rate from the cooler test, 1/h

$V_{rate,freezer}$= the infiltration rate from the cooler test, 1/h

(2) Using the architectural drawing of the test unit, calculate total effective crack length, $C_{L,wall}$, $C_{L,door\text{-}wall}$, $C_{L,ceiling\text{-}floor}$ and C_L,(ft), as follows:

(i) $C_{L,wall}$, ft:

$$C_{L,wall} = \sum_{1}^{i}\left[\left(H \times N_{panels,i}\right]\right) \qquad (4\text{-}4)$$

Where:

i = index for walls from 1 to 3, i = 1: wall of length 18′ and height 8′, i = 2: other wall of length 18′ and height 8′ and i = 3: wall opposite of the door of width 12′ and height 8′;

H = height of the walk-in unit per Figure 4, ft; and

$N_{panels,i}$ = number of panels used to build wall of type i.

(ii) $C_{L,door\text{-}wall}$, ft:

$$C_{L,door\text{-}wall} = H \times \left[N_{panels,door\text{-}wall} - 2\right] \qquad (4\text{-}5)$$

Where:

H = height of the walk-in unit per Figure 4, ft; and

$N_{panels,door\text{-}wall}$ = number of panels used to build the door wall

(iii) $C_{L,ceiling\text{-}floor}$, ft:

$$C_{L,ceiling\text{-}floor} = W \times \left[N_{panels,ceiling} - 1\right] + P_{floor} + L \times 2 \qquad (4\text{-}6)$$

Where:

W = width of the walk-in unit per Figure 4, ft;

$N_{panels,ceiling}$ = number of panels used to build the door wall, ft;

P_{floor} = external perimeter of the floor, ft; and

L = length of the walk-in unit per Figure 4, ft.

(iv) C_L, ft:

$$C_L = C_{L,wall} + C_{L,door\text{-}wall} + C_{L,ceiling\text{-}floor} \qquad (4\text{-}7)$$

Where:

$C_{L,wall}$ = the total crack length of the non-door walls, ft;

$C_{L,door\text{-}wall}$ = the total crack length of the door wall, ft; and

$C_{L,ceiling\text{-}floor}$ = the total crack length of the ceiling and floor, ft;

(3) Calculate the infiltration per unit crack length for the freezer, $\dot{V}_{freezer\text{-}ft}$ and cooler, $\dot{V}_{cooler\text{-}ft}$, tests, ($ft^3$/h-ft), respectively as follows:

(i) $\dot{V}_{freezer\text{-}ft}$, ft^3/h-ft:

$$\dot{V}_{freezer\text{-}ft} = \frac{\dot{V}_{freezer}}{C_L} \qquad (4\text{-}8)$$

Where:

C_L = the total crack length of the test unit as shown in Figure 4, ft; and

$\dot{V}_{freezer\text{-}ft}$ = infiltration rate from the freezer test, ft^3/h.

(ii) $\dot{V}_{cooler\text{-}ft}$, ft^3/h-ft:

$$\dot{V}_{cooler\text{-}ft} = \frac{\dot{V}_{cooler}}{C_L} \qquad (4\text{-}9)$$

Where:

C_L = the total crack length of the test unit as shown in Figure 4, ft; and

$\dot{V}_{cooler}$ = infiltration rate from the cooler test, ft^3/h.

4.3 IRD Effectiveness Testing

4.3.1 IRD Test Alternatives

(a) The following IRD effectiveness assumptions may be used:

(1) Strip Curtains Effectiveness: E = 0.5

(2) Air Curtains Effectiveness: E = 0.3

(b) If an IRD is tested and found to have a higher performing effectiveness than the default values proposed above, that value may be used in the energy calculations.

(c) All non-strip curtain and non-air curtain IRD's must be tested following the test procedure below.

4.3.2 Doorway Testing Geometry

(a) IRD effectiveness tests must use the following door sizes:

(1) The testing must be completed for each device at the correct representative size for small, medium and/or large doorways.

(2) For doors with width ≤ 48 inches and height ≤ 84 inches, the small door test opening size may be used ("small test"): width = 48 inches ± 0.5 inch and height = 84 inches ± 0.5 inch

(3) For doors with width ≤ 96 inches and height ≤ 144 inches, the medium door test opening size may be used ("medium test"): width = 96 inches ± 0.5 inch and height = 144 inches ± 0.5 inch

(4) For doors of any width or height, the large door test opening size may be used ("large test"): Width = 144 inches ± 0.5 inch and height = 180 inches ± 0.5 inch.

(5) For the small door test, a test volume of dimension and construction and door location shown in Figure 4 must be used.

(6) For all medium and large door tests, the width and height of the test unit must be increased in size, directly proportional to the increased door size over the small door test. For example since the medium doorway width is twice the size of the small door, the test unit must be twice as wide as shown in Figure 4.

4.3.3 IRD Test Procedure Requirements

(a) Use ASTM E741–06 (incorporated by reference, see § 431.303), with the following exceptions to the procedure:

(1) Within 3 minutes +/− 30 seconds of achieving gas concentration uniformity, with the infiltration reduction device in place, a hinged door should be opened at an angle greater than or equal to 90 degrees.

(2) The elapsed time, from zero degrees position (closed) to greater than or equal to 90 degrees (open) must be no longer than 5 seconds.

(3) The door must then be held at an angle greater than or equal to 90 degrees for 5 min +/− 5 seconds and then closed over a period no longer than 5 seconds. For non-hinged doors, the door must reach its maximum opened position, be held open, and reach a fully closed position in the same elapsed time as described above for hinge-type doors.

(4) The gas concentration must be sampled again after the door has been closed. Samples should continue being taken until the gas concentration is once again uniform spatially within the walk-in.

(5) A gas concentration sample set must be taken once the tracer gas has uniformly dispersed in the internal space using the methodology described in 4.2.

(i) Following ASTM E741–06, the calculated result is $V_{rate,with\text{-}device\ i,j}$

(6) The test should be repeated exactly as described with the infiltration reduction device (IRD) removed or deactivated.

(i) Following ASTM E741–06, the calculated result is $V_{rate,without\text{-}device\ i,j}$

4.4 NFRC Door Testing

4.4.1 Door Conduction Testing

(a) All doors, as defined in section 2.1(b), must be tested using NFRC 100–2010–E0A1 (incorporated by reference, see § 431.303).

(1) Internal conditions:

(i) Air temperature of 35 °F (1.7 °C) for cooler doors and −10 °F (−23.3 °C) for freezer doors.

(ii) Mean inside radiant temperature same as shown in (1)(i) above.

(2) External conditions.

(i) Air temperature of 75 °F (23.9 °C).

(ii) Mean outside radiant temperature same as shown in (2)(i) above.

(iii) Direct solar irradiance = 0 Btu/h-ft^2 (0 W/m^2).

(iv) The average convective heat transfer coefficient on both interior and exterior surfaces of the door should be based on "natural convection" as described in section 4.3 of NFRC 100–2010–E0A1.

4.4.2 Door Infiltration Testing

(a) All doors must be tested using NFRC 400–2010–E0A1 (incorporated by reference, see § 431.303).

(b) Number of tests:

(1) One door system of representative sizes of "small," "medium," and "large" as defined in 4.3.2(a), that have identical construction (i.e. only differ in dimensional size) may be used for extrapolating the infiltration of other doors that only differ in size as described in 4.3.2(a).

(c) Testing must be completed at six pressure differentials for both positive and negative pressure (exfiltration and infiltration):

(1) 0.0401 in-H_2O (10 Pa).

(2) 0.0803 in-H_2O (20 Pa).

(3) 0.1204 in-H_2O (30 Pa).

(4) 0.1606 in-H_2O (40 Pa).

(5) 0.2007 in-H_2O (50 Pa).

(6) 0.2409 in-H_2O (60 Pa).

(d) At each of the six pressure differentials described above, the airflow rate must be measured.

(e) Using the six pressure differentials and measured flow rates (in both directions) the values for C_i and n_i, must be found using log-linear regression equation below:

$$\dot{V}_{door} = C_i(\Delta P)^{n_i} \qquad (4\text{-}10)$$

Where:

i = index corresponding to the exfiltration or infiltration test;

$\dot{V}_{door}Q$ = the airflow rate, ft^3/h (m^3/s);

ΔP = the differential pressure, in-H_2O (Pa);

C_i = coefficient determined based on goodness of fit to test data of type i; and

n_i = exponent determined based on goodness of fit to test data of type i.

(f) Find the average C and n:

$$C = \frac{C_{infiltration} + C_{exfiltration}}{2} \qquad (4\text{-}11)$$

$$n = \frac{n_{infiltration} + n_{exfiltration}}{2} \qquad (4\text{-}12)$$

Where:

$C_{infiltration}$ = coefficient determined using log-linear regression of infiltration test;

$C_{exfiltration}$ = coefficient determined using log-linear regression of exfiltration test;

$n_{infiltration}$ = exponent determined using log-linear regression of infiltration test; and
$n_{exfiltration}$ = exponent determined using log-linear regression of exfiltration test.

(g) If n is found to be less than 0.5 or greater than 1.0 the test is considered invalid and the infiltration and exfiltration tests must be repeated until valid value for n is determined.

(h) Using the valid n, corresponding C and the equation below, determine, $\dot{V}_{door}Q$, the infiltration for the corresponding pressure differentials (m^3/s) for both cooler and freezer application:

(1) Coolers: 0.006 in-H_2O (1.5 Pa).

(2) Freezers: 0.014 in-H_2O (3.5 Pa).

$$\dot{V}_{door} = C(\Delta P)^n \qquad (4\text{-}13)$$

Where:

$\dot{V}_{door}Q$ = the airflow rate, ft^3/h (m^3/s);
ΔP = the differential pressure, in-H_2O (Pa);
C = coefficient determined based on goodness of fit; and
n = exponent determined based on goodness of fit.

(i) Using the resulting $\dot{V}_{door}Q$ for coolers and freezers, calculate the normalized infiltration rate per length of "operable crack perimeter," $\dot{V}_{door\ norm}Q$, as defined in ASTM E–283–04 (ASTM E–283–04 section 12.3.1) (incorporated by reference, see § 431.303) must be calculated.

$$\dot{V}_{door\ norm} = \frac{\dot{V}_{door}}{P_{door\ crack}} \qquad (4\text{-}14)$$

Where:

$\dot{V}_{door}Q$ = the airflow rate, ft^3/h (m^3/s); and
$P_{door\ crack}$ = door operable crack perimeter, ft.

(j) $\dot{V}_{door\ norm}Q$, for the corresponding representative door test size, may be used for calculating the infiltration rate of doors with differing operable crack perimeter.

(k) If a testing entity desires such, $\dot{V}_{door}Q$ may be found for all doors instead of calculating an infiltration rate based on $\dot{V}_{door\ norm}Q$.

[FR Doc. 2010–21364 Filed 9–8–10; 8:45 am]

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Federal Register

Thursday,
September 9, 2010

Part IV

Department of Defense

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project, Department of the Army, Army Research, Development and Engineering Command, Tank Automotive Research, Development and Engineering Center (TARDEC); Notice

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project, Department of the Army, Army Research, Development and Engineering Command, Tank Automotive Research, Development and Engineering Center (TARDEC)

AGENCY: Office of the Deputy Under Secretary of Defense (Civilian Personnel Policy) (DUSD (CPP)), Department of Defense (DoD).

ACTION: Notice of proposal to design and implement a personnel management demonstration project.

SUMMARY: Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, Public Law 103–337, (10 U.S.C. 2358 note), as amended by section 1109 of NDAA for FY 2000, Public Law 106–65, and section 1114 of NDAA for FY 2001, Public Law 106–398, authorizes the Secretary of Defense to conduct personnel demonstration projects at DoD laboratories designated as Science and Technology Reinvention Laboratories (STRLs). The above-cited legislation authorizes DoD to conduct demonstration projects to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management. Section 1105 of the NDAA for FY 2010, Public Law 111–84, 123 Stat. 2486, October 28, 2009, designates additional DoD laboratories as STRLs for the purpose of designing and implementing personnel management demonstration projects for conversion of employees from the personnel system which applied on October 28, 2009. The TARDEC is listed in subsection 1105(a) of NDAA for FY 2010 as one of the newly designated STRLs.

DATES: TARDEC's demonstration project proposal may not be implemented until a 30-day comment period is provided, comments addressed, and a final **Federal Register** notice published. To be considered, written comments must be submitted on or before October 12, 2010. Implementation of this demonstration project will begin no earlier than February 1, 2011.

ADDRESSES: Send comments on or before the comment due date by mail to Ms. Betty A. Duffield, CPMS–PSSC, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144; by fax to (703) 696–5462; or by e-mail to *Betty.Duffield@cpms.osd.mil*.

FOR FURTHER INFORMATION CONTACT: *TARDEC:* U.S. Army Tank Automotive Research, Development and Engineering Center (TARDEC), 6501 East 11 Mile Road, Warren, MI 48397–5000, ATTN: RDTA–COS/MS 204 Mr. Gregory L Berry, Warren, MI 48397–5000.

DoD: Ms. Betty Duffield, CPMS–PSSC, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144.

SUPPLEMENTARY INFORMATION:

1. Background

Since 1966, many studies of DoD laboratories have been conducted on laboratory quality and personnel. Almost all of these studies have recommended improvements in civilian personnel policy, organization, and management. Pursuant to the authority provided in section 342(b) of Public Law 103–337, as amended, a number of DoD STRL personnel demonstration projects were approved. These projects are "generally similar in nature" to the Department of Navy's "China Lake" Personnel Demonstration Project. The terminology, "generally similar in nature," does not imply an emulation of various features, but rather implies a similar opportunity and authority to develop personnel flexibilities that significantly increase the decision authority of laboratory commanders and/or directors.

This demonstration project involves: (1) Two appointment authorities (permanent and modified term); (2) extended probationary period for newly hired engineering and science employees; (3) pay banding; (4) streamlined delegated examining; (5) modified reduction-in-force (RIF) procedures; (6) simplified job classification; (7) the Contribution-based Compensation and Appraisal System (CCAS); (8) academic degree and certificate training; (9) sabbaticals; (10) a Voluntary Emeritus Corps; (11) direct hire authority for candidates with advanced degrees for scientific and engineering positions; and (12) Distinguished Scholastic Achievement Appointment Authority.

2. Overview

The NDAA for FY 2010 not only designated new STRLs but also repealed the National Security Personnel System (NSPS) mandating conversion of NSPS covered employees to their former personnel system or one that would have applied absent the NSPS. A number of TARDEC employees are covered by the NSPS and must be converted to another personnel system. Section 1105 of NDAA for FY 2010 stipulates the STRLs designated in subsection (a) of section 1105 may not implement any personnel system, other than a personnel system under an appropriate demonstration project as defined in section 342(b) of Public Law 103–337, as amended, without prior congressional authorization. In addition, any conversion under the provisions of section 1105 shall not adversely affect any employee with respect to pay or any other term or condition of employment; shall be consistent with section 4703(f) of title 5 United States Code (U.S.C.); and shall be completed within 18 months after enactment of NDAA for FY 2010. Therefore, since TARDEC is both designated an STRL by section 1105 of NDAA for FY 2010 and has NSPS covered employees, it must convert, at a minimum, its NSPS covered employees to a personnel management demonstration project before the end of April 2011.

3. Access to Flexibilities of Other STRLs

Flexibilities published in this **Federal Register** notice shall be available for use by the STRLs previously enumerated in section 9902(c)(2) of title 5, United States Code, which are now redesignated in section 1105 of the NDAA for FY 2010, Public Law 111–84, 123 Stat. 2486, October 28, 2009, if they wish to adopt them in accordance with DoD Instruction 1400.37; pages 73248 to 73252 of volume 73, **Federal Register**; and after the fulfilling of any collective bargaining obligations.

Dated: September 1, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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I. Executive Summary

TARDEC is a subordinate organization of the U.S. Army Research, Development and Engineering Command (RDECOM). TARDEC is the U.S. Army's Ground Vehicle Center of Excellence and the ground systems integration domain owner for RDECOM. TARDEC provides engineering and scientific expertise for DoD manned and unmanned ground systems and ground support systems. It is the Nation's laboratory for advanced military automotive technology and the Army's lead for advanced science and technology research, demonstration, development, and full Life Cycle engineering for ground vehicle electronics and architecture, power and mobility, intelligent ground systems, maneuver support and sustainment, and survivability.

At TARDEC, the top priority is to deliver the most advanced technology solutions to improve the Nation's ground vehicle fleet. To do this effectively requires more than just hard work and dedication. It takes leadership, vision, and the determination to execute that vision. To be truly successful, the workforce needs to be able to lead, innovate, integrate, and deliver.

To achieve this goal, TARDEC must be able to hire, retain, and continually motivate enthusiastic, innovative, and highly-educated scientists and engineers, supported by accomplished business management and administrative professionals as well as a skilled administrative and technical support staff.

The goal of the project is to enhance the quality and professionalism of the TARDEC workforce through improvements in the efficiency and effectiveness of the human resource system. The project interventions will strive to achieve the best workforce for the TARDEC mission, adjust the workforce for change, and improve workforce satisfaction. The TARDEC proposed demonstration project is similar to the Department of Defense Civilian Acquisition Workforce Personnel Demonstration Project, commonly known as the "Acq Demo." TARDEC has been using the Acq Demo's Contribution-Based Compensation and Appraisal System (CCAS) and its pay banding structure for a number of years. The TARDEC Project also uses concepts from the U.S. Army Communications-Electronics Research, Development and Engineering Center (CERDEC) demonstration project and the Naval Research Laboratory demonstration project. The results of the project will be evaluated within five years of implementation.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of DoD STRLs can be enhanced by expanding opportunities available to employees and by allowing greater managerial control over personnel functions through a more responsive and flexible personnel system. Federal laboratories need more efficient, cost-effective, and timely processes and methods to acquire and retain a highly creative, productive, educated, and trained workforce. This project, in its entirety, attempts to improve employees' opportunities and provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve the highest quality organization and hold them accountable for the proper exercise of this authority within the framework of an improved personnel management system.

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. The provisions of this project plan will not be modified, or extended to individuals or groups of employees not included in the project plan, without the approval of the ODUSD (CPP). The provisions of DoDI 1400.37 are to be followed for any modifications, adoptions, or changes to this demonstration project plan.

B. Problems With the Present System

TARDEC has participated in a number of personnel systems and personnel demonstrations over the past 25 years. These include the current Civil Service General Schedule (GS) system, the Acq Demo Project, and the NSPS. In October 2009, as part of the NDAA for FY 2010, TARDEC was designated as a STRL for the purpose of designing and implementing a personnel management demonstration project for conversion of employees from the personnel system(s) which applied to them on October 28, 2009. TARDEC's experience with each of these prior personnel systems was that, although each had positive features, each also had negative aspects. As a result of TARDEC's experience, it was determined that certain features from the earlier systems were worthwhile to carry forward and any shortcomings/limitations corrected or alleviated.

The current GS system has existed in essentially the same form since 1949. Work is classified into one of fifteen overlapping pay ranges that correspond with the fifteen grades. Base pay is set at one of those fifteen grades and the ten interim steps within each grade. The Classification Act of 1949 rigidly defines types of work by occupational series and grade, with very precise qualifications for each job. This system does not quickly or easily respond to new ways of designing work and changes in the work itself.

The performance management model that has existed since the passage of the Civil Service Reform Act in 1980 has come under extreme criticism. Employees frequently report there is inadequate communication of performance expectations and feedback on performance. There are perceived inaccuracies in performance ratings with general agreement that the ratings are inflated and often unevenly distributed by grade, occupation, and geographic location.

The need to change the current hiring system is essential as TARDEC must be able to recruit and retain scientific, engineering, acquisition support and other professionals, and skilled technicians. TARDEC must be able to compete with the private sector for the best talent and be able to make job offers in a timely manner with the attendant bonuses and incentives to attract high quality employees and be in compliance with public law.

Finally, current limitations on training, retraining and otherwise developing employees make it difficult to correct skill imbalances and to prepare current employees for new lines of work to meet changing missions and emerging technologies.

TARDEC's proposed personnel management demonstration project, by building on previous strengths and addressing shortcomings, is intended to provide the highest potential for movement to a single system that will

meet the needs of TARDEC and all its employees.

C. Changes Required/Expected Benefits

The primary benefit expected from this demonstration project is greater organizational effectiveness through increased employee satisfaction. The long-standing Department of the Navy's "China Lake" and the National Institute of Standards and Technology (NIST) demonstration projects have produced impressive statistics on increased job satisfaction and quality of work versus that for the Federal workforce in general. This project will demonstrate that a human resource system tailored to the mission and needs of the TARDEC workforce will facilitate increased:

1. Quality in the workforce and resultant products;
2. Timeliness of key personnel processes;
3. Retention of "excellent performers";
4. Success in recruitment of personnel with critical skills;
5. Management authority and accountability;
6. Satisfaction of customers; and
7. Workforce satisfaction with the personnel management system.

An evaluation model was developed for the Director, Defense, Research and Engineering (DDR&E) in conjunction with STRL service representatives and the Office of Personnel Management (OPM). The model will measure the effectiveness of this demonstration project and will be used to measure the results of specific personnel system changes.

D. Participating Organizations

TARDEC is comprised of employees located at the main site in Warren, MI, with others geographically dispersed at the locations shown in Appendix A. TARDEC has employees matrixed to Program Executive Office Combat Support and Combat Service Support; Program Executive Office Ground Combat Systems; Program Executive Office Integration; and Tank Automotive Command (TACOM) Life Cycle Management Command (LCMC) Joint Project Office. Successor organizations will continue coverage in the demonstration project.

E. Participating Employees and Union Representation

This demonstration project will cover approximately 1,427 TARDEC civilian employees under title 5, U.S.C. in the occupations listed in Appendix B. The project plan does not cover members of the Senior Executive Service (SES), Scientific and Professional (ST) employees, Federal Wage System (FWS) employees, employees covered by the Defense Civilian Intelligence Personnel System (DCIPS), Department of Army (DA) and Army Command centrally funded interns, or students employed under the Summer Hire Program.

Department of Army and Army Material Command centrally funded interns will not be converted to the demonstration project until they reach their full performance level. They will continue to be covered under the Total Army Performance Evaluation System (TAPES). The American Federation of Government Employees (AFGE) Local 1658 represents approximately 90% of TARDEC's professional and non-professional workforce.

To foster union acceptance of TARDEC's proposed personnel demonstration project, initial discussions with the Union officials began in December 2009. Negotiations will begin in earnest after publication of this **Federal Register** notice (FRN). TARDEC will continue to fulfill its obligation to consult and/or negotiate with all labor organizations in accordance with 5 U.S.C. 4703(f) and 7117, as applicable.

F. Project Design

In October 2009, section 1105 of NDAA for FY 2010 directed TARDEC to transition to a laboratory demonstration project. TARDEC senior leadership decided to move toward adopting many aspects of both the Acq Demo and the CERDEC laboratory personnel demonstration project as modified by this FRN. The Acq Demo project was approved in 1999 and the CERDEC project was approved in 2001. TARDEC hopes to benefit from using the best practices from these demonstration projects.

G. Personnel Management Board

1. TARDEC is creating a Personnel Management Board to oversee and monitor the fair, equitable, and consistent implementation of the provisions of the demonstration project to include establishment of internal controls and accountability. Members of the board will be senior leaders appointed by the TARDEC Director. As needed, ad hoc members (such as labor counsel, human resource representatives, *etc.*) will serve as advisory members to the board.

2. The board will execute the following:

a. Determine the composition of the CCAS pay pools in accordance with the guidelines of this proposal and internal procedures;

b. Review operation of pay pools and provide guidance to pay pool managers;

c. Oversee disputes in pay pool issues;

d. Formulate and execute the civilian pay budget;

e. Manage the awards pools;

f. Determine hiring and promotion-based pay as well as exceptions to CCAS base pay increases;

g. Conduct classification review and oversight, monitor and adjust classification practices, and decide board classification issues;

h. Approve major changes in position structure;

i. Address issues associated with multiple pay systems during the demonstration project;

j. Establish contribution goals and other evaluation descriptors;

k. Assess the need for changes to demonstration project procedures and policies;

l. Review requests for Supervisory/Team Leader Base Pay Adjustments and provide recommendations to the appropriate Center Director;

m. Ensure in-house budget discipline;

n. Manage the number of employees by occupational family and pay band;

o. Develop policies and procedures for administering Developmental Opportunity Programs;

p. Ensure that all employees are treated in a fair and equitable manner in accordance with the policies, regulations and guidelines covering this demonstration project; and,

q. Monitor the evaluation of the project.

III. Personnel System Changes

A. Pay Banding

The design of the TARDEC pay banding system takes advantage of the many reviews performed by OPM, DoD, and DA. The design has the benefit of being preceded by exhaustive studies of pay banding systems currently practiced in the Federal sector, to include those practiced by the Navy's "China Lake" experiment and NIST. The pay band system is designed to facilitate conversion, when and if appropriate, of GS, Acq Demo, and NSPS employees into the TARDEC demo.

1. Occupational Families, Career Paths, and Pay Band Levels

Occupations with similar characteristics will be grouped together into one of three occupational families with career paths and pay band levels designed to facilitate pay progression. These occupational families are Engineering and Science (E&S), Business and Technical (B&T), and General Support (GEN). Each occupational family's career path will

be composed of pay bands corresponding to recognized advancement and career progression expected within the occupations. These career paths and their pay bands will not be the same for each occupational family. Each career path will be divided into three to five pay bands. Employees track into an occupational family based on their current OPM classification series as provided in Appendix B. The current occupations have been examined, and their characteristics and distribution have served as guidelines in the development of the following three occupational families:

Engineering and Science (E&S) (Pay Plan DB): This occupational family includes technical professional positions such as engineers, physicists, chemists, mathematicians, operations research analysts, and computer scientists. Specific course work or educational degrees are required for these occupations. Five pay bands have been established for the E&S occupational family:

a. Band I is a student trainee track covering GS–1, step 1, through GS–4, step 10.

b. Band II is a developmental track covering GS–5, step 1, through GS–11, step 10.

c. Band III is a full-performance technical track covering GS–12, step 1, through GS–13, step 10. Some first-level supervisory positions may also be included in this band.

d. Band IV includes both senior technical positions along with supervisors-managers covering GS–14, step 1, through GS–15, step 10.

e. Band V provides the ability to accommodate science and engineering positions having duties and responsibilities that exceed the GS–15 classification criteria. The DoD is developing classification, compensation, and performance management policy, guidance, and implementation processes for this pay band level that will be published in a separate FRN. TARDEC will supplement this information through internal operating guidance.

Business & Technical (B&T) (Pay Plan DE): This occupational family includes such positions as program acquisition specialists, equipment specialists, engineering and electronics technicians, finance, accounting, administrative, and management analysts. Employees in these positions may or may not require specific course work or educational degrees. Four pay bands have been established for the B&T occupational family:

a. Band I is a student trainee track covering GS–1, step 1, through GS–4, step 10.

b. Band II is a developmental/full performance track covering GS–5, step 1, through GS–11, step 10.

c. Band III is a full performance track covering GS–12, step 1, through GS–13, step 10.

d. Band IV is a senior technical/manager track covering GS–14, step 1, through GS–15, step 10.

General Support (GEN) (Pay Plan DK): This occupational family is composed of positions for which specific course work or educational degrees are not required. Clerical work usually involves the processing and maintenance of records. Assistant work requires knowledge of methods and procedures within a specific administrative area. This family includes such positions as secretaries, office automation clerks, and budget/program/computer assistants. Three pay bands have been established for the GEN occupational family:

a. Band I includes entry-level positions covering GS–1, step 1, through GS–4, step 10.

b. Band II includes full-performance positions covering GS–5, step 1, through GS–7, step 10.

c. Band III includes senior technicians/assistants/secretaries covering GS–8, step 1, through GS–10, step 10.

2. Pay Band Design

The pay bands for the TARDEC Lab Demo occupational families and how they relate to the current GS framework are shown in Table 1.

TABLE 1—TARDEC LAB DEMO PAY BANDS WITH EQUIVALENT GS GRADES

Occupational Family	Lab Demo Pay Bands with Equivalent GS Grades				
DB	I	II	III	IV	V
Engineering & Science	GS 1–4	GS 5–11	GS 12–13	GS 14–15	> GS–15
DE	I	II	III	IV	
Business & Technical	GS 1–4	GS 5–11	GS–12–13	GS–14–15	
DK	I	II	III		
General Support	GS 1–4	GS 5–7	GS 8–10		

The pay bands for the TARDEC Lab Demo occupational families and how they relate to the current Department of Defense Civilian Acquisition Workforce Personnel Demonstration Project framework are shown in Table 2.

TABLE 2—TARDEC LAB DEMO PAY BANDS WITH EQUIVALENT ACQ DEMO PAY BANDS

Occupational Family	Lab Demo Pay Bands with Equivalent Acq Demo Pay Bands				
	I	II	III	IV	V
DB	NH–I	NH–II	NH–III	NH–IV	
Engineering & Science					
DE	NH–I	NH–II	NH–III	NH–IV	
Business & Technical	NJ–I	NJ–II NJ–III	NJ–IV		
DK	NK–I	NK–II	NK–III		
General Support					

The pay bands for the TARDEC Lab Demo occupational families and how they relate to the NSPS conversion framework are shown in Table 3.

TABLE 3—TARDEC LAB DEMO PAY BANDS WITH EQUIVALENT NSPS PAY BANDS

Occupational Family	Lab Demo Pay Bands with Equivalent NSPS Pay Bands				
	I	II	III	IV	V
DB	YP–1	YD–1, YP–1	YD–2, YF–2	YD–3, YF–2, YF–3	
E&S					
DE	YP–1, YB–1, YE–1	YA–1, YA–2, YB–1, YB–2, YB–3, YE–1, YE–2, YE–3, YP–1	YA–2, YB–3, YC–2, YE–3, YE–4	YA–3, YC–2, YC–3	
Business & Technical					
DK	YB–1, YE–1, YP–1	YB–1, YB–2, YE–1, YE–2, YP–1	YB–2, YE–2, YP–1		
General Support					

*NSPS Pay Bands overlap Lab Demo bands and Occupational Families.

3. Science and Engineering Positions Classified Above GS–15 (Pay Band V)

The career path pay banding plan for the E&S occupational family includes a pay band V to provide the ability to accommodate positions having duties and responsibilities that exceed the GS–15 classification criteria. This pay band is based on the Above GS–15 Position concept found in other STRL personnel management demonstration projects that was created to solve a critical classification problem. The STRLs have positions warranting classification above GS–15 because of their technical expertise requirements including inherent supervisory and managerial responsibilities. However, these positions are not considered to be appropriately classified as Scientific and Professional Positions (STs) because of the degree of supervision and level of managerial responsibilities. Neither are these positions appropriately classified as Senior Executive Service (SES) positions because of their requirement for advanced specialized scientific or engineering expertise and because the positions are not at the level of general managerial authority and impact required for an SES position.

The original Above GS–15 Position concept was to be tested for a five-year period. The number of trial positions was set at 40 with periodic reviews to determine appropriate position requirements. The Above GS–15 Position concept is currently being evaluated by DoD management for its effectiveness; continued applicability to the current STRL scientific, engineering, and technology workforce needs; and appropriate allocation of billets based on mission requirements. The degree to which the laboratory plans to participate in this concept and develop classification, compensation, and performance management policy, guidance, and implementation processes will be based on the final outcome of the DoD evaluation (see Section III.A.1.e).

B. Classification

1. Occupational Series

The GS classification system has over 400 occupational series, which are divided into 23 occupational groupings. TARDEC currently has positions in approximately 65 occupational series that fall into approximately three occupational groupings. All positions listed in Appendix B will be in the classification structure. Provisions will be made for including other occupations in response to changing missions.

2. Classification Standards and Position Descriptions

TARDEC will use an automated classification system. The present system of OPM classification standards will be used for the identification of proper series and occupational titles of positions within the demonstration project. Current OPM position classification standards will not be used to grade positions in this project. However, the grading criteria in those standards will be used as a framework to develop new and simplified pay band factor level descriptors for each pay band determination. The objective is to record the essential criteria for each pay band within each occupational family career path by stating the characteristics of the work, the responsibilities of the position, the competencies required, and the expected contributions. The pay band factor level descriptors will serve as both classification criteria and assessment criteria and may be found in Appendix C. New position descriptions will replace the current position/job descriptions. The pay band factor level descriptors for each pay band will serve as an important component in the new position description, which will also include position-specific information, and provide data element information pertinent to the job. The computer-assisted process will produce information necessary for position descriptions. The new descriptions will be easier to prepare, minimize the amount of writing time, and make the position description a more useful and accurate tool for other personnel management functions.

Specialty work codes (narrative descriptions) may be used to further differentiate types of work and the competencies required for particular positions within an occupational family and pay band. Each code represents a specialization or type of work within the occupation.

3. Fair Labor Standards Act

Fair Labor Standards Act (FLSA) exemption and non-exemption determinations will be consistent with criteria found in 5 CFR part 551. All demonstration project positions are covered by the FLSA unless they meet the criteria for exemption. Classification Specialists will evaluate positions on a case-by-case basis comparing the duties and responsibilities assigned, the pay band factor level descriptors for each pay band level, and the FLSA criteria in accordance with 5 CFR part 551. Additionally, the advice and assistance of the servicing Civilian Personnel Advisory Center will be obtained in making determinations. The benchmark position descriptions will not be the sole basis for the determination. Basis for exemption will be documented and attached to each position description. Exemption criteria will be narrowly construed and applied only to those employees who clearly meet the spirit of the exemption. Changes will be documented and provided to the Civilian Personnel Advisory Center.

4. Classification Authority

The TARDEC Director will have delegated classification authority and may, in turn, re-delegate this authority to appropriate levels. Position descriptions will be developed to assist managers in exercising delegated position classification authority. Managers will identify the occupational family, job series, functional code, specialty work code, pay band level, and the appropriate acquisition codes. Personnel specialists will provide ongoing consultation and guidance to managers and supervisors throughout the classification process. These decisions will be documented on the position description.

5. Classification Appeals

Classification appeals under this demonstration project will be processed using the following procedures: An employee may appeal the determination of occupational family, occupational series, position title, and pay band level of his/her position at any time. An employee must formally raise the area of concern to supervisors in the immediate chain of command, either verbally or in writing. If an employee is not satisfied with the DoD response, he or she may then appeal to OPM only after DoD has rendered a decision on all the provisions of the demonstration project. Appellate decisions from OPM are final and binding on all administrative, certifying, payroll, dispersing, and accounting officials of the Government. Time periods for cases processed under 5 CFR part 511 apply.

An employee may not appeal the accuracy of the position description, the demonstration project classification criteria, or the pay-setting criteria; the assignment of occupational series to the occupational family; the propriety of a pay schedule; or matters grievable under an administrative or negotiated grievance procedure.

The evaluations of classification appeals under this demonstration project are based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the CPAC/CHRA providing personnel service and will include copies of appropriate demonstration project criteria.

C. Contribution-Based Compensation and Appraisal System (CCAS)

1. Overview

The purpose of CCAS is to provide an effective, efficient, and flexible method for assessing, compensating, and managing the TARDEC workforce. CCAS is essential for the development and continued growth of the high quality, extremely productive, and innovative workforce needed to achieve a quality, agile and innovative organization and meet mission requirements. The CCAS allows for more employee involvement in the assessment process, fosters increased communication between supervisor and employee, promotes a clear accountability of performance, facilitates employee career progression, and provides an understandable and rational basis for pay changes by linking pay, performance, and contribution. The CCAS process described herein applies to all career paths and pay band levels I through IV. The assessment process for E&S Pay Band V positions will be based on the final outcome of the DoD evaluation and documented in TARDEC Internal Operating Instructions (see Section III.A.1.e. for additional information).

CCAS is an assessment system that measures the employee's level of contribution to the organization's mission and how well the employee performed a job. Contribution is simply defined as the measure of the demonstrated value of what an employee did in terms of accomplishing or advancing the organizational objectives and mission impact. CCAS promotes base pay adjustment decisions made on the basis of an individual's overall annual contribution and current base pay, in relation to the other contributions and their level of base pay in the pay pool. The measurement of overall contribution is through a rating process which determines the Overall Contribution Score (OCS).

An employee's performance is a component of contribution that influences the ultimate OCS. Contribution is measured by using a set of factors, discriminators, and descriptors, each of which is relevant to the success of the TARDEC mission. Taken together, these factors, discriminators, and descriptors capture the critical content of jobs in each career path. These factors, discriminators, and descriptors may be modified or supplemented if experience or changing mission requirements indicates a need to do so. These factors, discriminators, and descriptors are the same as those to classify a position at the appropriate pay band level.

The six (6) factors are:

1. Problem Solving,
2. Teamwork/Cooperation,
3. Customer Relations,
4. Leadership/Supervision,
5. Communication, and
6. Resource Management.

Each factor has multiple levels of increasing contribution corresponding to the pay band levels. Each factor contains descriptors for each respective level within the relevant career path. See Appendix C for CCAS Factor Descriptions, Level Descriptors, and Discriminators.

The appropriate occupational family career path pay band level performance factor descriptors are used by the rating official to determine the employee's actual contribution score. Employees can score within, above, or below their pay band level. For example, a pay band level II employee could score in the pay band level I, II, III, or IV range. Therefore, for the CCAS process, descriptors for all pay band levels of the occupational family performance factors are presented to better assist the supervisor with the employee assessment.

Normally, the rating period will be one year. The minimum rating period will be 90 days. CCAS payouts can be in the form of increases to base pay and/or in the form of bonuses that are not added to base pay but rather are given as a lump sum payment. Other awards such as special acts, time-off awards, etc., will be retained separately from the CCAS payouts.

The system will have the flexibility to be modified, if necessary, as more experience is gained under the project.

3. Pay Pools

TARDEC employees will be placed into pay pools that are defined for the purpose of determining performance payouts under the CCAS system. The guidelines in the next paragraph are provided for determining pay pools. These guidelines will normally be followed; however, the TARDEC Director may deviate from the guidelines if there is a compelling need to do so and so documents the rationale in writing.

The TARDEC Director will establish pay pools. Typically, pay pools will have between 35 and 300 employees. A pay pool should be large enough to encompass a reasonable distribution of ratings but not so large as to compromise rating consistency. Supervisory personnel typically will be placed in a pay pool separate from subordinate non-supervisory personnel. Neither the pay pool manager nor supervisors within a pay pool will recommend or set their own individual pay. Decisions regarding the amount of the performance payout are based on the established formal payout calculations.

Funds within a pay pool available for performance payouts are divided into two components, base pay and bonus.

These funds will be defined based on historical data. Base pay increase fund will be set at no less than two percent of total base pay. The bonus amount will be set at no less than one percent of total base pay. The TARDEC Personnel Management Board will annually review the pay pool funding and recommend adjustments to the TARDEC Director to ensure cost discipline over the life of the demonstration project.

4. Annual Appraisal Cycle and Rating Process

Typically, the annual appraisal cycle begins on October 1 and ends on September 30 of the following year. At the beginning of the annual appraisal period, the pay band level descriptors for each factor will be provided to employees so that they know the basis on which their performance will be assessed. At the discretion of the pay pool manager, weights will be applied to the factors. A weight of zero may not be applied to any factor and the sum of all weights must equal 100. Employees will be informed of the weights at the beginning of the rating cycle.

Supervisor and employee discussion of specific work assignments and established contribution goals for the rating period for each of the six factors should be conducted on an ongoing basis. These goals can be modified during the rating period and form the foundation of the contributions expected to be achieved.

Typically, the rating official is the first-level supervisor. If the current first-level supervisor has been in place for less than 90 days during the rating cycle, the second-level supervisor serves as the initial rating official. If the second-level supervisor is in place for less than 90 days during the rating cycle, the next higher level supervisor in the employee's rating chain conducts the assessment.

Employees and supervisors alike are expected to actively participate in on-going formal and informal performance discussions regarding expectations. The timing of these discussions will vary based on the nature of work performed, but will occur at least at the mid-point and end of the rating period. At least one review, normally the mid-point review, will be documented as a progress review. More frequent, task specific, discussions may be appropriate in some organizations.

The employee will provide a list of his/her accomplishments to the supervisor at both the mid-point and end of the rating period using the six Contribution Factors described in Section III.C.1. An employee may elect to provide self-ratings on the contribution/performance factors and/or solicit input from team members, customers, peers, supervisors in other units, subordinates, and other sources which will assist the supervisor in fully evaluating contributions. At the end of the annual appraisal period, the immediate supervisor (rating official), from employees' inputs and his/her own knowledge, identifies for each employee the appropriate contribution level and recommends the OCS.

To determine the OCS, numerical values are assigned based on the contribution levels of individuals, using the ranges shown in Table 4. Generally, the OCS is calculated by averaging the numerical values (as weighted) assigned for each of the six performance/contribution factors. (All OCS's will be rounded up to the nearest whole number). The rating official in conjunction with the second-level supervisor reviews the OCS for all employees, correcting any inconsistencies identified and making the appropriate adjustments in the factor ratings.

Table 4. Contribution Score Ranges by Occupational Family

		Engineering & Science (DB)	Business & Technical (DE)	General Support (DK)
Pay Band Levels		Point Range	Point Range	Point Range
	Very High	115	95	70
V	Range	100 - 115		
	High	96 – 100	79 - 83	
IV	Med	84 – 95	67 - 78	
	Low	79 – 83	61 - 66	
	High	79 – 83	62 - 66	57 - 61
III	Med	67 – 78	52 - 61	47 - 56
	Low	61 – 66	43 - 51	38 - 46
	High	62 – 66	47 - 51	42 - 46
II	MH	51 – 61	41 - 46	
	Med	41 – 50	36 - 40	30 - 41
	ML	30 – 40	30 - 35	
	Low	22 – 29	22 - 29	22 - 29
	High	24 – 29	24 - 29	24 - 29
I	Med	06 – 23	06 - 23	06 - 23
	Low	0 -5	0 -5	0 -5

The pay pool panel conducts a final review of the OCS for each employee in the pay pool. The pay pool panel has the authority to make OCS adjustments, after discussion with the initial rating officials, to ensure equity and consistency. Final approval of OCS rests with the pay pool manager, the individual within the organization responsible for managing the CCAS process. The OCS, as approved by the pay pool manager, becomes the rating of record. Rating officials will communicate the factor scores and OCS

to each employee and discuss the results.

If on October 1, the employee has served under CCAS for less than ninety (90) consecutive calendar days, the rating official shall wait for the subsequent annual cycle to assess the employee.

Employees who have served under CCAS for less than 90 consecutive calendar days shall not receive contribution rating increases or contribution awards for that cycle.

5. Linking OCS to Base Pay Adjustment

a. The Normal Pay Range (NPR)

The CCAS integrated pay schedule provides a direct link between contribution, performance, and base pay. This is shown by the graph in Table 5. The horizontal axis spans from 0 to the maximum OCS of 115 for positions in pay band levels I through V. Employees who are performing above the defined criteria of the top pay band level may not exceed the OCS score of 115. The vertical axis spans from zero dollars to the dollar equivalent of the highest positions authorized under this lab demonstration. This encompasses the full base pay range (excluding locality pay and staffing supplements) under this demonstration for the given calendar year (**Note:** Table 5 currently depicts Calendar Year 2010). Each year the rails for the NPR are adjusted based on the GS general pay increase under 5 U.S.C. 5303. The area between the upper and lower rails is considered the normal pay range; when an annual overall contribution score (OCS) plotted against a base pay rate falls on or within the NPR rails, the base pay rate is considered to be appropriate. While there may be rates of base pay that fall above or below the NPR that could be considered not appropriate, there may be circumstances to account for these rates of base pay outside the NPR. Such circumstances as saved pay or minimal contributions/performance could account for base pay rates above the NPR. For base pay rates below the NPR, such situations as exceptional contributions or growth in position responsibilities may warrant higher base pay. Employees whose annual OCS plotted against their base pay falls on or within the rails are considered appropriately compensated. Employees whose current base pay falls above or below the NPR for their assessed contribution score are considered inappropriately compensated.

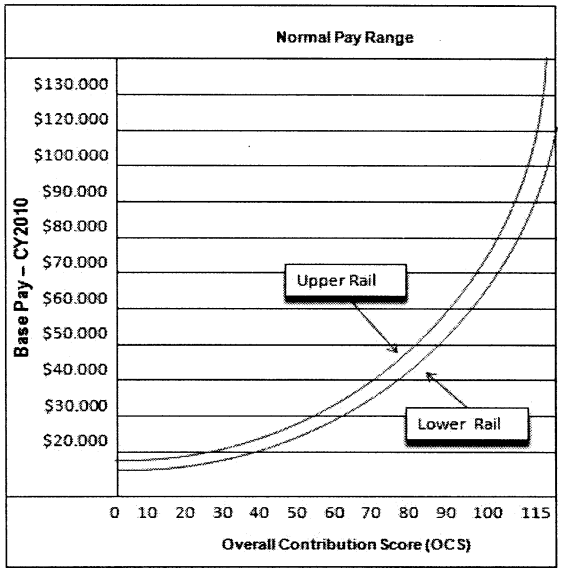
b. The NPR was established using the following parameters:

(1) The lowest possible score is an OCS of 0, which equates to the lowest base pay under this demonstration project, GS–1, step 1, and

(2) The OCS of 115 equates to the maximum base pay of Pay Band V.

The upper and lower rails are determined by the formulae below, encompass an area of +/− 8.0 percent in terms of base pay which correlates to approximately +/− 4.0 OCS points.

Table 5. Normal Pay Range



c. Formulae:

Given these constraints, the formulae for the upper and lower rails found in Table 5 are:

Base pay upper rail = (GS–1, Step 1) * (1.0800) * (1.020043) ^{OCS}

Base pay lower rail = (GS–1, Step 1) * (0.9200) * (1.020043) ^{OCS}

d. The NPR is the same for all the occupational families. What varies among the occupational families are the beginnings and endings of the pay band levels. The minimum and maximum numerical OCS values and associated base pay for each pay band level by occupational family are provided in Table 5. These minimum and maximum breakpoints represent the lowest and highest base pay for the bands; and the minimum and maximum base pay possible for each pay band level. Locality pay or staffing supplements are not included in the NPR but are added to base pay as appropriate.

Table 6. OCS and Pay Band Base Pay Ranges

$ (CY10 OCS Salaries)					
Occupational Family	I	II	III	IV	V*
E&S (DB)	$17,803 – $31,871	$27,431 – $65,731	$60,283 – $93,175	$84,697 – $129,517	TBD
	0-29	22-66	61-83	79-100	100-115
Business & Technical (DE)	$17,803 – $31,871	$27,431 – $65,731	$60,283 – $3,175	$84,697 – $129,517	
	0-29	22-66	61-83	79-100	
General Support (DK)	$17,803 – $31,871	$27,431 – $44,176	$37,631 – $59,505		
	0-29	22-51	38-61		

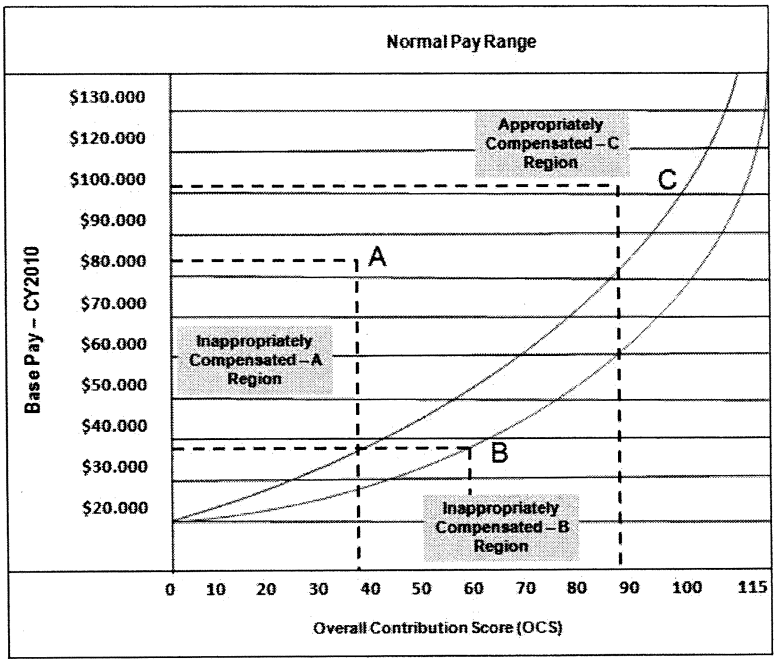
**Pay Band V is above GS-15. Base pay amounts to be determined.*

e. OCS Base Pay Adjustment Guidelines

After the pay pool manager approves the OCS for all employees in the pay pool, the current base pay versus OCS is plotted for all employees on a chart similar to Table 7. This plot relates contribution to base pay, and identifies the placement of each employee into one of three regions: Inappropriately Compensated (A Region—above the NPR), Appropriately Compensated (C Region—within the NPR), or Inappropriately Compensated (B Region—below the NPR).

In Table 7, employee C is in the Appropriately Compensated Region (falls on or within the NPR). Employee B is in the Inappropriately Compensated Region (falls below the lower NPR) for his/her contribution to the organization. Employee A is in the Inappropriately Compensated Region above the NPR (*i.e.,* receives high base pay due to such circumstances such as saved pay or contributions do not justify the base pay).

Table 7. Compensation Regions Defined by NPR



f. Table 8 illustrates the additional pay categories available for the three groupings of employees.

The employees whose base pay falls within the NPR must receive the full General Pay Increase (GPI), may receive a contribution rating increase of up to 6 percent, and may receive a contribution award. The contribution rating increase is included as a permanent increase in base pay, but the contribution award is a lump-sum payment that does not affect base pay.

The employees whose base pay falls above the NPR could be denied part or all of the GPI and may receive no contribution rating increase or contribution bonus. The intent of the demonstration project is to allow managers to retain the ability to determine how much, if any, of the general pay increase would be authorized on a case-by-case basis.

The employees whose base pay falls below the NPR must receive the full general pay increase, may receive up to a 20 percent permanent increase in pay, and also may receive a contribution award.

Employees on retained rate in the demonstration plan will receive base pay adjustments in accordance with 5 U.S.C. 5363 and 5 CFR part 536. An employee receiving a retained rate is not eligible for a contribution rating increase, but may receive a contribution award.

In general, those employees whose base pay falls below the NPR should expect to receive greater percentage base pay increases than those whose base pay is above the NPR. Over time, people will migrate closer to the normal pay range and receive base pay appropriate for their level of contribution.

Employees whose OCS would result in awarding a contribution rating increase such that the base pay exceeds the maximum base pay for their current pay band level may receive a contribution award equaling the difference.

Table 8. Compensation Eligibility Chart

Category	General Pay Increase	Contribution Base Pay Increase	Contribution Bonus	[1]Locality Pay	Staffing Supplement
Above the NPR	Could be reduced or denied	NO	NO	YES	Could be reduced or denied
Within the NPR	YES	YES[2] - Up to 6 percent	YES[5]	YES	YES
Below the NPR	YES	YES[3,4] - Up to 20 percent	YES[5]	YES	YES

[1] Base pay plus locality pay may not exceed Executive Level IV adjusted base pay. S&E pay band level V cap to be determined.

[2] May not exceed upper rail of NPR for employee's OCS or maximum base pay for current pay band level.

[3] Over 20 percent requires Director's approval.

[4] May not exceed 6 percent above the lower rail or the maximum base pay for current pay band level.

[5] Pay pool manager approves up to $10,000. Amounts exceeding $10,000 require Director's approval.

6. Accelerated Compensation for Developmental Positions (ACDP)

(a) Accelerated Compensation for Developmental Positions (ACDP) is a pay-setting provision that may be used to recognize the development and attainment of job-related competencies for TARDEC employees participating in training programs, internships, or other developmental capacities as determined by the TARDEC Director. The ACDP includes TARDEC employees serving under the Student Career Experience Program (SCEP) and Student Temporary Employment Program (STEP). ACDP is an increase to base salary. It provides management the opportunity to increase the base pay of employees in developmental positions at rates which match or exceed career ladder promotion rates under the GS system or other labor market forces.

(b) An ACDP increase to base salary may be awarded at anytime throughout the rating year. In order to receive an ACDP, the employee must be in a pay and duty status, have been on an approved CCAS standard for 90 consecutive days and have successfully met the Contribution Goal Objectives of the CCAS standard as determined by a management official.

(c) ACDP is payment in addition to the annual contribution rating increase and contribution award. It generally will not exceed 20 percent of the employee's base pay; however, a higher increase may be provided on a case-by-case basis if approved by an official who is at a higher level than the official who made the initial decision.

(d) ACDP base pay increase is separate funding from the pay pool process.

7. Inadequate CCAS Contribution

Inadequate performance at any time during the appraisal period is considered grounds for initiation of a reduction-in-pay or removal action. The following procedures replace those established in 5 U.S.C. 4303 pertaining to reductions in grade or removal for unacceptable performance except with respect to appeals of such actions. 5 U.S.C. 4303(e) provides the statutory authority for appeals of contribution-based actions. As is currently the situation for performance-based actions taken under 5 U.S.C. 4303, contribution-based actions shall be sustained if the decision is supported by substantial evidence and the Merit Systems Protection Board shall not have mitigation authority with respect to such actions. The separate statutory authority to take contribution-based actions under chapter 75 of title 5, U.S.C., as modified in the waiver section of this notice (section IX), remains unchanged by these procedures.

When an employee's OCS plots above the upper rail of the NPR and the employee is considered to be contributing inadequately the supervisor has two options. The first is to take no action but to document this decision in a memorandum for the record. A copy of this memorandum will be provided to the employee and to higher levels of management. The second option is to inform the employee, in writing, that unless the contribution increases to, and is sustained at, a higher level, the employee may be reduced in pay, reduced in pay band level, or removed.

The second option will include a Contribution Improvement Plan (CIP). The CIP will state how the employee's contribution is inadequate, what improvements/results are required, recommendations on how to achieve adequate contribution, assistance that the laboratory may offer to the employee to assist in improving contribution, and consequences of failure to improve. Additionally, the CIP must include standards for adequate contribution, actions required of the employee, and time in which they must be accomplished to increase and sustain the employee's contribution at an adequate level. When an employee is placed on a CIP, the rating official will afford the employee a reasonable opportunity (a minimum of 60 days) to demonstrate acceptable contribution. These provisions also apply to an employee whose contribution deteriorates during the year.

Employees who are on a CIP at the time pay determinations are made do not receive performance payouts or the annual GPI. An employee who receives an unacceptable OCS rating of record will not receive any portion of the GPI or RIF service credit until such time as his/her performance improves to the acceptable level and remains acceptable for at least 90 days. When the employee has performed acceptably for at least 90 days, the GPI will not be retroactive but will be granted at the beginning of the next pay period after the supervisor authorizes its payment.

Once an employee has been afforded a reasonable opportunity to demonstrate adequate contribution but fails to do so, a reduction-in-pay (which may include a change to a lower pay band level and/or reassignment), or removal action may be proposed. If the employee's contribution increases to an acceptable level and is again determined to deteriorate in any factor within two years from the beginning of the opportunity period, actions may be initiated to effect reduction in pay or removal with no additional opportunity to improve. If an employee has contributed acceptably for two years from the beginning of an opportunity period, and the employee's overall contribution once again declines to an inadequate level, the employee will be afforded an additional opportunity to demonstrate adequate contribution before it is determined whether or not to propose a reduction in pay or removal.

An employee whose reduction in pay or removal is proposed is entitled to a 30-day advance notice of the proposed action that identifies specific instances of inadequate contribution by the employee on which the action is based. The employee will be afforded a reasonable time to answer the notice of proposed action orally and/or in writing.

A decision to reduce pay or remove an employee for inadequate contribution may be based only on those instances of inadequate contribution that occurred during the two-year period ending on the date of issuance of the proposed action. The employee will be issued written notice at or before the time the action will be effective. Such notice will specify the instances of inadequate contribution by the employee on which the action is based and will inform the employee of any applicable appeal or grievance rights.

All relevant documentation concerning a reduction in pay or removal that is based on inadequate contribution will be preserved and made available for review by the affected employee or a designated representative. At a minimum, the records will consist of a copy of the notice of proposed action; the written answer of the employee or a summary when the employee makes an oral reply; and the written notice of decision and the reasons thereof, along with any supporting material including documentation regarding the opportunity afforded the employee to demonstrate adequate contribution.

8. Base Pay Increases and Bonuses

The payouts made to employees from the pay pool may be a mix of base pay increases and/or one-time bonuses, such that all of the allocated funds are disbursed as intended. To continue to provide performance incentives while also ensuring cost discipline, base pay increases may be limited. Certain employees will not be able to receive the projected base pay increase due to base pay caps. Base pay is capped when an employee reaches the maximum rate of base pay in an assigned pay band. Also, for employees receiving retained rates above the applicable pay band maximum, the entire performance payout will be in the form of a bonus payment.

In addition, a pay pool manager may request approval from the TARDEC Director for use of an Extraordinary Achievement Recognition. Such recognition grants a base pay increase and/or bonus to an employee. The funds available for an Extraordinary Achievement Recognition are separately funded within the constraints of the budget.

9. Awards

To provide additional flexibility in motivating and rewarding individuals and groups, some portion of the award budget will be reserved for special acts and other categories as they occur. Awards may include, but are not limited to, special acts, patents, suggestions, on-the-spot, and time-off. The funds available to be used for traditional 5 U.S.C. awards are separately funded within the constraints of the laboratory's budget.

While not directly linked to the CCAS system, this additional flexibility is important to encourage outstanding accomplishments and innovation in accomplishing the diverse mission of TARDEC. Additionally, to foster and encourage teamwork among its employees, organizations may give group awards. The TARDEC Director will have the authority to grant special act awards to covered employees of up to $25,000 IAW the criteria of AR 672–20, Incentive Awards.

10. Reverse Feedback

Employee feedback to supervisors is considered essential for the success of the TARDEC CCAS system. A feedback instrument for subordinates to anonymously evaluate the effectiveness of their supervisors is being developed and shall be implemented as part of the demonstration project. Supervisors and their managers will be provided the results of that feedback in a format that does not identify individual raters or ratings. The data will be aggregated into a summary and used to establish both personal and organizational performance development goals. The use of this type of instrument will help focus attention on desired leadership behaviors, structure the feedback in a constructive manner, and offset the power imbalance that often prevents supervisors from getting useful feedback from their employees.

11. Adverse Actions

Except where specifically waived or modified in this plan, adverse action procedures under 5 CFR part 752 remain unchanged.

12. Grievance of Overall Contribution Score

An employee may grieve the OCS received under the CCAS system. Non-bargaining unit employees, and bargaining unit employees covered by a negotiated grievance procedure that does not permit grievances over performance ratings, must file under administrative grievance procedures. Bargaining unit employees whose negotiated grievance procedures cover

performance rating grievances must file under those negotiated procedures. Contribution payout amounts resulting from OCS cannot be grieved.

D. Hiring Authority

1. Qualifications

The qualifications required for placement into a position in a pay band within an occupational family career path will be determined using the OPM Operating Manual for Qualification Standards for GS Positions. Since the pay bands are anchored to the GS grade levels, the minimum qualification requirements for a position will be those corresponding to the lowest GS grade incorporated into that pay band. For example, for a position in the E&S occupational family Pay Band II, individuals must meet the basic requirements for a GS–5 as specified in the OPM Qualification Standard for Professional and Scientific Positions.

Selective factors may be established for a position in accordance with the OPM Operating Manual for Qualification Standards for GS Positions, when determined to be critical to successful job performance. These factors will become part of the minimum requirements for the position, and applicants must meet them in order to be eligible. If used, selective factors will be stated as part of the qualification requirements in vacancy announcements and recruiting bulletins.

2. Delegated Examining

Competitive service positions will be filled through Merit Staffing, direct-hire authority, Delegated Examining, or other sources. Where delegated to the laboratory level, hiring authority will be exercised in accordance with the requirements of the delegation of authority. The Rule of Three will be eliminated. When there are no more than 15 qualified, eligible applicants and all are either preference eligibles or there are no preference eligibles, all will be immediately referred to the selecting official without rating and ranking. Rating and ranking will be required only when the number of qualified candidates exceeds 15 or there is a mix of preference and non-preference applicants. Statutes and regulations covering veterans' preference will be observed in the selection process and when rating and ranking are required.

3. Distinguished Scholastic Achievement Appointment

This demonstration project establishes a Distinguished Scholastic Achievement Appointment using an alternative examining process which provides the authority to appoint undergraduates and graduates through the doctoral level to professional positions at the equivalent of GS–7 through GS–11, and GS–12 positions.

At the undergraduate level, candidates may be appointed to positions at a base pay level no greater than the equivalent of GS–7, step 10, provided that:

(1) They meet minimum standards for the positions as published in OPM's Operating Manual "Qualification Standards for General Schedule Positions" plus any selective factors stated in the vacancy announcement;

(2) the occupation has a positive education requirement; and

(3) the candidate has a cumulative grade point average (GPA) of 3.5 or better (on a 4.0 scale) in those courses in those fields of study that are specified in the Qualifications Standards for the occupational series.

Appointments may also be made at the equivalent of GS–9 through GS–12 on the basis of graduate education and/or experience for those candidates with a GPA of 3.5 or better (on a scale of 4.0) for graduate level courses in the field of study required for the occupation.

Veterans' preference procedures will apply when selecting candidates under this authority. Preference eligibles who meet the above criteria will be considered ahead of nonpreference eligibles. In making selections, to pass over any preference eligible(s) to select a nonpreference eligible requires approval under current pass-over or objection procedures. Priority must also be given to displaced employees as may be specified in OPM and DoD regulations.

4. Direct Hire Authority for Candidates With Advanced Degrees for Scientific and Engineering Positions

a. Background:

The TARDEC has an urgent need for direct hire authority to appoint qualified candidates possessing an advanced degree to scientific and engineering positions. The market is extremely competitive with industry and academia for the small supply of highly-qualified and security clearable candidates with a Masters Degree or Ph.D. in science or engineering. There are 35,000 scientists and engineers employed in the DoD laboratories; 27% hold Masters Degrees, while 10% are in possession of a Ph.D. The TARDEC employs around 1,427 scientists and engineers; 21% holding Masters Degrees, while 2% percent are in possession of a Ph.D. Over the next five years, the TARDEC plans to hire approximately 500 of the country's best and brightest scientists and engineers (S&Es) just to keep pace with attrition. This number does not include the impact that actions such as Base Realignment and Closure may have on the attrition of S&Es from the TARDEC. Statistics indicate that the available pool of advanced degree, clearable candidates is substantially diminished by the number of non-U.S. citizens granted degrees by U.S. institutions. For instance, in 2006, 20% of Masters Degrees in science and over 35% of Ph.D.s in science were awarded to temporary residents.

It is expected that this hiring authority, together with streamlined recruitment processes, will be very effective in hiring candidates possessing a Masters or Ph.D. and accelerating the hiring process. For instance, under a similar authority found in the NDAA for FY 2009, section 1108, Public Law 110–417, October 28, 2009, one STRL had fifteen Ph.D. selectees in 2009 for the sixteen vacancies for which they were using this hiring authority. Another STRL, using this expedited hiring authority in calendar year 2009, made thirty firm hiring offers in an average of thirteen days from receipt of paper work in the Human Resources Office. Of these thirty selectees, twenty-three possessed Ph.D.s.

b. Definitions:

(1) Scientific and engineering positions are defined as all professional positions in scientific and engineering occupations (with a positive education requirement) utilized by the laboratory.

(2) An advanced degree is a Master's or higher degree from an accredited college or university in a field of scientific or engineering study directly related to the duties of the position to be filled.

(3) Qualified candidates are defined as candidates who:

(a) Meet the minimum standards for the position as published in OPM's operating manual, "Qualification Standards for General Schedule Positions," or the laboratory's demonstration project qualification standards specific to the position to be filled;

(b) Possess an advanced degree; and

(c) Meet any selective factors.

(4) "Employee" is defined by section 2105 of title 5, U.S.C.

c. Provisions:

(1) Use of this appointing authority must comply with merit system principles when recruiting and appointing candidates with advanced degrees to covered occupations.

(2) Qualified candidates possessing an advanced degree may be appointed without regard to the provisions of subchapter 1 of chapter 33 of title 5,

United States Code, other than sections 3303, 3321, and 3328 of such title.

(3) The hiring threshold for this authority shall be consistent with DoD policy and legislative language as expressed in any National Defense Authorization Act addressing such.

(4) Positions and candidates must be counted on a full-time equivalent basis.

(5) Science and engineering positions that are filled as of the close of the fiscal year are those positions encumbered on the last day of the fiscal year.

(6) When completing the personnel action, the following will be given as the authority for the Career-Conditional, Career, Term, Temporary, or special demonstration project appointment authority: Section 1108, NDAA for FY 09.

(7) Evaluation of this hiring authority will include information and data on its use, such as numerical limitation, hires made, how many veterans hired, declinations, difficulties encountered, and/or recognized efficiencies.

5. Legal Authority

For actions taken under the auspices of this demonstration project, the legal authorities, Public Law 103–337, as amended, and Public Law 111–84 will be used. For all other actions, the nature of action codes and legal authority codes prescribed by OPM, DoD, or DA will continue to be used.

6. Modified Term Appointments

TARDEC conducts a variety of projects that range from three to six years. The current four-year limitation on term appointments for competitive service employees often forces the termination of these employees prior to completion of projects they were hired to support. This disrupts the research and development process and affects the organization's ability to accomplish the mission and serve its customers.

TARDEC will continue to have career and career-conditional appointments and temporary appointments not-to-exceed one year. These appointments will use existing authorities and entitlements. Under the demonstration project, TARDEC will have the added authority to hire individuals under a modified term appointment. These appointments will be used to fill positions for a period of more than one year, but not more than a total of five years when the need for an employee's services is not permanent. The modified term appointments differ from term employment as described in 5 CFR part 316 in that they may be made for a period not to exceed five, rather than four years. The TARDEC Director is authorized to extend a term appointment one additional year.

Employees hired under the modified term appointment authority are in a non-permanent status, but may be eligible for non-competitive conversion to career or career-conditional appointments. To be converted, the employee must:

a. Have been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the term position may be eligible for conversion to a career or career-conditional appointment at a later date;

b. have served two years of continuous service in the term position; and

c. have not been placed on a CIP.

Employees serving under term appointments at the time of conversion to the demonstration project will be converted to the new modified term appointments provided they were hired for their current positions under competitive procedures. These employees will be eligible for conversion to career-conditional or career appointments if they:

(1) Have served two years of continuous service in the term position;

(2) are selected under merit promotion procedures for the permanent position; and

(3) have not been placed on a CIP.

Time served in term positions prior to conversion to the modified term appointment is creditable, provided the service was continuous.

7. Initial Probationary Period

The initial probationary period will not be less than one year and will not exceed three years for all newly hired employees as defined in 5 CFR part 315. The specific probationary period will be defined and controlled by the TARDEC Director. The purpose of the probationary period is to allow supervisors an adequate period of time to fully evaluate an employee's ability to complete a cycle of work and to fully assess an employee's contribution and conduct. All other features of the current probationary period are retained including the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee. These provisions only apply to those employees who have been appointed under the authority of this demonstration project.

8. Termination of Initial Probationary Period Employees

The probationary or trial period is designed to give supervisors the opportunity to assess how well an employee can perform the duties of a job and if the employee is otherwise well suited for the position. Probationary employees may be terminated for any lawful reason including, but not limited to, failure to demonstrate proper conduct, technical competency, and/or acceptable contribution for continued employment. They may also be terminated for conditions arising before employment. When a supervisor decides to terminate an employee during the probationary period, the supervisor shall terminate the employee's services by written notification stating the reasons for termination and the effective date of the action. The information in the notice shall, at a minimum, outline the supervisor's reasons for termination.

9. Supervisory Probationary Periods

New supervisors, that is, those who have not previously completed a supervisory probationary period, will be required to complete a one-year probationary period for the initial appointment to a supervisory position. An additional supervisory probationary period of one year may be required when an employee is officially assigned to a different supervisory position that constitutes a major change in supervisory responsibilities from any previously held supervisory position. If, during a supervisory probationary period, the decision is made to return the employee to a non-supervisory position for reasons related to supervisory performance, the employee will be returned to a comparable position of no lower base pay than the position from which promoted or reassigned.

10. Voluntary Emeritus Corps

Under the demonstration project, the Director will have the authority to offer retired or separated employees voluntary positions. The Director may redelegate this authority. Voluntary Emeritus Corps assignments are not considered employment by the Federal government (except for purposes of injury compensation). Thus, such assignments do not affect an employee's entitlement to buyouts or severance payments based on an earlier separation from Federal service.

The Voluntary Emeritus Corps will ensure continued quality services while reducing the overall salary line by allowing higher paid employees to accept retirement incentives with the opportunity to retain a presence in the TARDEC community. The program will be beneficial during manpower reductions, as employees accept

retirement and return to provide a continuing source of corporate knowledge and valuable on-the-job training or mentoring to less experienced employees.

To be accepted into the Volunteer Emeritus Corps, a volunteer must be recommended by a TARDEC manager to the TARDEC Director or delegated authority. Not everyone who applies is entitled to an emeritus position. The responsible official will document acceptance or rejection of the applicant. For acceptance, documentation must be retained throughout the assignment. For rejection, documentation will be maintained for two years.

To ensure success and encourage participation, the volunteer's Federal retirement pay (whether military or civilian) will not be affected while serving in a voluntary capacity. Retired or separated Federal employees may accept an emeritus position without a break or mandatory waiting period.

Voluntary Emeritus Corps volunteers will not be permitted to monitor contracts on behalf of the Government or to participate on any contracts or solicitations where a conflict of interest exists. The volunteers may be required to submit a financial disclosure form annually. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established among the volunteer, the responsible official, and the Civilian Personnel Advisory Center. The agreement must be finalized before the assumption of duties and shall include the following:

a. Statement that the voluntary assignment does not constitute an appointment in the Civil Service, is without compensation, and the volunteer waives any claims against the Government based on the voluntary assignment;

b. statement that the volunteer will be considered a Federal employee only for the purpose of injury compensation;

c. volunteer's work schedule;

d. Length of agreement (defined by length of project or time defined by weeks, months, or years);

e. Support provided by the organization (travel, administrative support, office space, and supplies);

f. statement of duties;

g. statement providing that no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a volunteer;

h. provision allowing either party to void the agreement with two working days written notice;

i. level of security access required by the volunteer (any security clearance required by the position will be managed by the employing organization);

j. provision that any publication(s) resulting from his/her work will be submitted to the Director for review and approval;

k. statement that the employee accepts accountability for loss or damage to Government property occasioned by his/her negligence or willful action;

l. statement that his/her activities on the premises will conform to the regulations and requirements of the organization;

m. statement that the employee will not release any sensitive or proprietary information without the written approval of the employing organization and further agrees to execute additional non-disclosure agreements as appropriate, if required, by the nature of the anticipated services;

n. statement that the employee will not disclose any inventions made in the course of work performed at the TARDEC. The Director has the option to obtain title to any such invention on behalf of the U.S. Government. Should the Director elect not to take title, the TARDEC shall at a minimum retain a non-exclusive, irrevocable, paid-up, royalty-free license to practice or have practiced the invention worldwide on behalf of the U.S. Government; and

o. statement that he/she agrees to comply with designated mandatory training.

Exceptions to the provisions in this procedure may be granted by the Director on a case-by-case basis.

E. Internal Placement

1. Promotion

A promotion is the movement of an employee to a higher pay band in the same occupational family career path or to another pay band in a different occupational family career path, wherein the pay band in the new occupational family has a higher maximum base pay than the band from which the employee is moving. The move from one band to another must result in an increase in the employee's base pay to be considered a promotion. Positions with known promotion potential to a higher band within an occupational family career path will be identified when they are filled. Movement from one occupational family to another will depend upon individual competencies, qualifications, and the needs of the organization. Supervisors may consider promoting employees at any time, since promotions are not tied to the CCAS system. Progression within a pay band is based upon contribution/performance base pay increases; as such, these actions are not considered promotions and are not subject to the provisions of this section. Except as specified below, promotions will be processed under competitive procedures in accordance with Merit System Principles and requirements of the local merit promotion plan.

2. Reassignment

A reassignment is the movement of an employee from one position to a different position within the same occupational family and pay band or to another occupational family and pay band wherein the pay band in the new family has the same maximum base pay. The employee must meet the qualifications requirements for the occupational family and pay band.

Employees may be eligible for an increase to base salary upon temporary or permanent reassignment as described in this section. A decision to increase an employee's pay under this section will be based upon business rules that will define criteria necessary to justify a base pay increase. Examples of criteria may include, but are not limited to, one or more of the following factors:

a. A determination that an employee's responsibilities will significantly increase;

b. critical mission or business requirements;

c. need to advance multi-functional competencies;

d. labor market conditions, *e.g.,* availability of candidates and labor market rates;

e. reassignment from a nonsupervisory to a supervisory position;

f. employee's past and anticipated performance and contribution;

g. physical location of position;

h. specialized skills, knowledge, or education possessed by the employee in relation to those required by the position; and

i. salaries of other employees in the organization performing similar work.

When an employee is reassigned within his/her current pay band or to a comparable pay band, an authorized management official will set base pay at an amount no less than the employee's current base pay and may increase the employee's current base pay by up to 6 percent. If the employee's current base pay exceeds the maximum of the new pay band, no increase is provided, and the employee's rate will be set at that maximum rate. There is no limit to the

number of times an employee can be reassigned, but local business rules will be established to monitor and control all cases that receive a reassignment base pay change to ensure fairness and consistency across the workforce. Reassignment base pay thresholds may be modified or increased by internal business rules, policies, or procedures as organizational experience dictates.

3. Demotion or Placement in a Lower Pay Band

A demotion is a placement of an employee into a lower pay band within the same occupational family or placement into a pay band in a different occupational family with a lower maximum base pay. Demotions may be for cause (performance or conduct) or for reasons other than cause (*e.g.,* erosion of duties, reclassification of duties to a lower pay band, application under competitive announcements, at the employee's request, or placement actions resulting from RIF procedures).

4. Simplified Assignment Process

Today's environment of downsizing and workforce fluctuations mandates that the organization have maximum flexibility to assign duties and responsibilities to individuals. Pay banding can be used to address this need, as it enables the organization to have maximum flexibility to assign an employee with either no change or an increase in base pay within broad descriptions consistent with the needs of the organization and the individual's qualifications and level. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same level, area of expertise, and qualifications would not constitute an assignment outside the scope or coverage of the current position description. For instance, a technical expert could be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or organization consistent with that individual's qualifications. This flexibility allows broader latitude in assignments and further streamlines the administrative process and system while providing management the option of granting additional base pay in recognition of more complex work or broader scope of responsibility.

5. Details

The temporary assignment of an employee to a different demonstration project position for a specific period when the employee is expected to return to his or her regular duties at the end of an assignment. (An employee who is on detail is considered for pay and strength purposes to be permanently occupying his or her regular position.)

6. Exceptions to Competitive Procedures

The following actions are excepted from competitive procedures:

a. Re-promotion to a position which is in the same pay band or GS equivalent and occupational family as the employee previously held on a permanent basis within the competitive service.

b. Promotion, reassignment, demotion, transfer, or reinstatement to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

c. A position change permitted by reduction-in-force procedures.

d. Promotion without current competition when the employee was appointed through competitive procedures to a position with a documented career ladder.

e. A temporary promotion or detail to a position in a higher pay band of 180 days or less.

f. A promotion due to the reclassification of positions based on accretion (addition) of duties.

g. A promotion resulting from the correction of an initial classification error or the issuance of a new classification standard.

h. Consideration of a candidate who did not receive proper consideration in a competitive promotion action.

i. Impact of person in the job and Factor IV process (application of the Research Grade Evaluation Guide, Equipment Development Grade Evaluation Guide, Part III, or similar guides) promotions.

F. Pay Administration

1. General

Pay administration policies will be established by the Personnel Management Board. These policies will be exempt from Army Regulations or RDECOM local pay fixing policies, but will conform to basic governmental pay fixing policy. Employees whose performance is acceptable may be eligible for the full annual general pay increase and the full locality pay. TARDEC may make full use of recruitment, retention, and relocation payments as provided for by OPM under 5 U.S.C. and 5 CFR pay flexibilities unless waived by this FRN.

2. Pay and Compensation Ceilings

An employee's total monetary compensation paid in a calendar year may not exceed the rate of pay for Level I of the Executive Schedule to be consistent with 5 CFR 530.201 and consistent with 5 U.S.C. 5307 and 5 CFR part 530, subpart B. In addition, each pay band will have its own base pay ceiling. Base pay rates for the various pay bands will be linked to the OCS of the CCAS system. Other than where a retained rate applies, base pay will be limited to the maximum base pay payable for each pay band.

3. Pay Setting for Appointment

Upon initial appointment, the individual's base pay may be set at the lowest base pay in the pay band or anywhere within the pay band level consistent with the special qualifications of the individual and the unique requirements of the position. These special qualifications may be in the form of education, training, experience, or any combination thereof that is pertinent to the position in which the employee is being placed. Guidance on pay setting for new hires will be established by the Personnel Management Board.

4. Highest Previous Rate (HPR)

HPR will be considered in placement actions authorized under rules similar to the HPR rules in 5 CFR 531.221. Use of HPR will be at the supervisor's discretion; but if used, HPR is subject to policies established by the Personnel Management Board.

5. Pay Setting for Promotion

The minimum base pay increase upon promotion to a higher pay band will be six percent or the minimum base pay rate of the new pay band, whichever is greater. The maximum amount of a base pay increase for a promotion will not exceed $10,000, or other such amount as established by the Personnel Management Board, but in no case will the increase exceed the maximum base pay for the pay band. The maximum base pay increase for promotion may be exceeded when necessary to allow for the minimum base pay increase. When a temporary promotion is terminated, the employee's pay entitlements will be re-determined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by the Personnel Management Board. In no case may those adjustments increase the base pay for the position of record beyond the applicable pay range maximum base pay rate.

6. Pay Setting for Reassignment

A reassignment may be effected without a change in base pay. However, a base pay increase may be granted where a reassignment significantly increases the complexity, responsibility, and authority or for other compelling reasons. Such an increase is subject to the specific guidelines established by the Personnel Management Board.

7. Pay Setting for Demotion or Placement in a Lower Pay Band

Employees demoted for cause (performance or conduct) are not entitled to pay retention and will receive a minimum of a five percent decrease in base pay. Employees demoted for reasons other than cause (*e.g.,* erosion of duties, reclassification of duties to a lower pay band, application under competitive announcements or at the employee's request, or placement actions resulting from RIF procedures) may be entitled to pay retention in accordance with the provisions of 5 U.S.C. 5363 and 5 CFR part 536, except as waived or modified in section IX of this plan.

Employees who are on a CIP at the time base pay determinations are made do not receive contribution payouts or the general pay increase. This action may result in a base pay that is identified in a lower pay band. This occurs because the minimum rate of base pay in a pay band increases as the result of the general pay increase (5 U.S.C. 5303).

8. Supervisory and Team Leader Pay Adjustments

a. Supervisory and team leader pay adjustments may be approved by the TARDEC Director based on the recommendation of the Personnel Management Board to compensate employees with supervisory or team leader responsibilities. Only employees in supervisory or team leader positions as defined by the OPM GS Supervisory Guide or GS Leader Grade Evaluation Guide may be considered for the pay adjustment. These pay adjustments are funded separately from performance pay pools. These pay adjustments are increases to base pay, ranging up to ten percent of that pay rate for supervisors and up to five percent of that pay rate for team leaders. Pay adjustments are subject to the constraint that the adjustment may not cause the employee's base pay to exceed the pay band maximum base pay. Criteria to be considered in determining the base pay increase percentage include:

(1) Needs of the organization to attract, retain, and motivate high quality supervisors/team leaders;

(2) budgetary constraints;

(3) years and quality of related experience;

(4) relevant training;

(5) performance appraisals and experience as a supervisor/team leader;

(6) organizational level of position; and

(7) impact on the organization.

a. The pay adjustment will not apply to employees in Pay Band V of the E&S occupational family.

b. After the date of conversion into the demonstration project, a pay adjustment may be considered under the following conditions:

(1) New hires into supervisory/team leader positions will have their initial rate of base pay set at the supervisor's discretion within the pay range of the applicable pay band. This rate of pay may include a pay adjustment determined by using the ranges and criteria outlined above.

(2) An employee selected for a supervisory/team leader position that is within the employee's current pay band may also be considered for a base pay adjustment. If a supervisor/team leader is already authorized a base pay adjustment and is subsequently selected for another supervisor/team leader position within the same pay band, then the base pay adjustment will be re-determined.

(3) Existing Supervisors/Team Leaders will be converted at their existing base rate of pay and may be eligible for a base pay adjustment upon review of the Personnel Management Board following the conversion.

c. The supervisor/team leader pay adjustment will be reviewed annually, with possible increases or decreases based on the appraisal scores for the performance element, Team/Project Leadership or Supervision/EEO. The initial dollar amount of a base pay adjustment will be removed when the employee voluntarily leaves the position. The cancellation of the adjustment under these circumstances is not an adverse action and is not subject to appeal. If an employee is involuntarily removed from a non-probationary supervisory/team leader position for unacceptable performance or conduct, the base pay adjustment will be removed under adverse action procedures. However, if an employee is involuntarily removed from a non-probationary supervisory/team leader position for conditions other than unacceptable performance or conduct, then pay retention will follow current law and regulations at 5 U.S.C. 5362 and 5363 and 5 CFR part 536, except as waived or modified in section IX.

9. Supervisory and Team Leader Pay Differentials

Supervisory and team leader pay differentials may be used by the TARDEC Director to provide an incentive and to reward supervisors and team leaders as defined by the OPM GS Supervisory Guide and GS Leader Grade Evaluation Guide. Pay differentials are not funded from performance pay pools. A pay differential is a cash incentive that may range up to ten percent of base pay for supervisors and up to five percent of base pay for team leaders. It is paid on a pay-period basis for a specified period of time not to exceed (NTE) one year and is not included as part of the base pay. Criteria to be considered in determining the amount of the pay differential are the same as those identified for Supervisory and Team Leader Pay Adjustments. The pay differential will not apply to employees in Pay Band V of the E&S occupational family.

The pay differential may be considered, either during conversion into or after initiation of the demonstration project, if the supervisor/team leader has subordinate employees in the same pay band. The differential must be terminated if the employee is removed from a supervisory/team leader position, regardless of cause.

After initiation of the demonstration project, all personnel actions involving a supervisory or team leader differential will require a statement signed by the employee acknowledging that the differential may be terminated or reduced at the discretion of the TARDEC Director. The termination or reduction of the differential is not an adverse action and is not subject to appeal.

10. Staffing Supplements

Employees assigned to occupational categories and geographic areas covered by GS special rates will be entitled to a staffing supplement if the maximum adjusted base pay for the banded GS grades (*i.e.,* the maximum GS locality rate) to which assigned is a special rate that exceeds the maximum GS locality rate for the banded grades. The staffing supplement is added to the base pay, much like locality rates are added to base pay. For employees being converted into the demonstration project, total pay immediately after conversion will be the same as immediately before (excluding the impact of any WGI buy-in for GS employees), but a portion of the total pay will be in the form of a staffing supplement. Adverse action and pay retention provisions will not apply to

the conversion process, as there will be no loss or decrease in total pay.

The staffing supplement is calculated as follows. Upon conversion, the demonstration base rate will be established by dividing the employee's former GS basic pay (including any locality pay or special salary rate) or, for former NSPS employees, the NSPS adjusted salary (including any local market supplement) by the staffing factor. The staffing factor will be determined by dividing the maximum special rate for the banded grades by the GS unadjusted rate corresponding to that special rate (step 10 of the GS rate for the same grade as the special rate). The employee's demonstration staffing supplement is derived by multiplying the demonstration base pay rate by the staffing factor minus one. Therefore, the employee's final demonstration special staffing rate equals the demonstration base pay rate plus the staffing supplement. This amount will equal the employee's former GS or NSPS adjusted base pay rate. Simplified, the formula is this:

$$\text{Staffing Factor} = \frac{\text{Maximum special rate for the banded grades}}{\text{GS unadjusted rate corresponding to that special rate}}$$

$$\text{Demonstration base pay rate} = \frac{\text{Former GS or NSPS adjusted base pay rate or equivalent (specialty or locality rate)}}{\text{Staffing factor}}$$

$$\text{Staffing supplement} = \text{Demo or NSPS base pay rate* (staffing factor -1)}$$

$$\text{Pay upon conversion} = \text{Demonstration base pay rate + staffing supplement (sum will equal existing adjusted rate)}$$

If an employee is in a band where the maximum GS or NSPS adjusted base pay rate for the banded grades is a locality rate, when the employee enters into the demonstration project, the demonstration base pay rate is derived by dividing the employee's former GS adjusted base pay rate (the higher of locality rate or special rate) by the applicable locality pay factor. The employee's demonstration locality-adjusted base pay rate will equal the employee's former GS adjusted base pay rate in accordance with the above provisions using the new special salary rate. Any GS or special rate schedule adjustment will require computing the staffing supplement again. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may over time supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, pay retention provisions will be applied. Upon geographic movement, an employee who receives the staffing supplement will have the supplement recomputed. Any resulting reduction in pay will not be considered an adverse action or a basis for pay retention.

An established base pay rate plus the staffing supplement will be considered adjusted base pay for the same purposes as a locality rate under 5 CFR 531.610, *i.e.,* for purposes of retirement, life insurance, premium pay, severance pay, and advances in pay. It will also be used to compute worker's compensation payments and lump-sum payments for accrued and accumulated annual leave.

If an employee is in an occupational category covered by a new or modified special salary rate table, and the pay band to which assigned is not entitled to a staffing supplement, then the employee's adjusted base pay may be reviewed and adjusted to accommodate the rate increase provided by the special salary rate table. The review may result in a one-time base pay increase if the employee's adjusted base pay equals or is less than the highest special salary rate grade and step that exceeds the comparable locality grade and step. Demonstration project operating procedures will identify the officials responsible to make such reviews and determinations.

11. Pay Retention Within the Demonstration Project

For purposes of actions within the TARDEC demonstration project that provide entitlement to pay retention, the standard provisions of pay retention, (5 U.S.C. 5362 and 5363 and 5 CFR part 536) shall apply to employees after conversion to the demonstration project, except as waived or modified in Section IX of this plan. Wherever the term "grade" is used in the law or regulation, the term "pay band" will be substituted. The TARDEC Director may also grant pay retention to employees who meet general eligibility requirements, but do not have specific entitlement by law, provided they are not specifically excluded.

G. Employee Development

1. Expanded Developmental Opportunity Program

The Expanded Developmental Opportunity Program will be available to all demonstration project employees. Expanded developmental opportunities complement existing developmental opportunities such as long-term training; rotational job assignments; developmental assignments to Army Materiel Command/Army/DoD; and self-directed study via correspondence courses, local colleges, and universities. Each developmental opportunity must result in a product, service, report, or study that will benefit the TARDEC or customer organization as well as increase the employee's individual effectiveness. The developmental opportunity period will not result in loss of (or reduction) in base pay, leave to which the employee is otherwise entitled, or credit for service time. The positions of employees on expanded developmental opportunities may be back-filled (*i.e.,* with temporarily assigned, detailed or promoted employees or with term employees). However, that position or its equivalent must be made available to the employee upon return from the developmental period. The Personnel Management Board will provide written guidance for employees on application procedures and develop a process that will be used to review and evaluate applicants for developmental opportunities.

a. Sabbaticals. The TARDEC Director has the authority to grant paid or unpaid sabbaticals to all career employees. The purpose of a sabbatical will be to permit an employee to engage in study or uncompensated work experience that will benefit the organization and contribute to the employee's development and effectiveness. Each

sabbatical must result in a product, service, report, or study that will benefit the TARDEC mission as well as increase the employee's individual effectiveness. Various learning or developmental experiences may be considered, such as advanced academic teaching; research; self-directed or guided study; and on-the-job work experience.

One paid sabbatical of up to twelve months in duration or one unpaid sabbatical of up to six months in a calendar year may be granted to an employee in any seven-year period. Employees will be eligible to request a sabbatical after completion of seven years of Federal service. Employees approved for a paid sabbatical must sign a service obligation agreement to continue in service in the TARDEC for a period three times the length of the sabbatical. If an employee voluntarily leaves TARDEC before the service obligation is completed, he/she is liable for repayment of expenses incurred by TARDEC that are associated with training during the sabbatical. Expenses do not include salary costs. The TARDEC Director has the authority to waive this requirement. Criteria for such waivers will be addressed in the operating procedures.

Specific procedures will be developed for processing sabbatical applications upon implementation of the demonstration project.

b. Critical Skills Training (Training for Degrees). The TARDEC Director has the authority to approve academic degree training consistent with 5 U.S.C. 4107. Training is an essential component of an organization that requires continuous acquisition of advanced and specialized knowledge. Degree training is also a critical tool for recruiting and retaining employees with or requiring critical skills. Academic degree training will ensure continuous acquisition of advanced specialized knowledge essential to the organization, and enhance our ability to recruit and retain personnel critical to the present and future requirements of the organization. Degree or certificate payment may not be authorized where it would result in a tax liability for the employee without the employee's express and written consent. Any variance from this policy must be rigorously determined and documented. Guidelines will be developed to ensure competitive approval of degree or certificate payment and that such decisions are fully documented. Employees approved for degree training must sign a service obligation agreement to continue in service in TARDEC for a period three times the length of the training period. If an employee voluntarily leaves the TARDEC before the service obligation is completed, he/she is liable for repayment of expenses incurred by TARDEC related to the critical skills training. Expenses do not include salary costs. The TARDEC Director has the authority to waive this requirement. Criteria for such waivers will be addressed in the operating procedures.

c. Student Career Experience Program (SCEP) Service Agreement. The extended repayment period also applies to employees under the SCEP who have received tuition assistance. They will be required to sign a service agreement up to three times the length of the academic training period or periods (semesters, trimesters, or quarters).

H. Reduction-in-Force (RIF) Procedures

The competitive area may be determined by occupational family, lines of business, product lines, organizational units, funding lines, occupational series, functional area, and/or geographical location, or a combination of these elements, and must include all Demonstration Project employees within the defined competitive area. The RIF system has a single round of competition to replace the current GS two-round process. Once the position to be abolished has been identified, the incumbent of that position may displace another employee when the incumbent has a higher retention standing and is fully qualified for the position occupied by the employee with a lower standing.

Retention standing is based on tenure, veterans' preference, and length of service augmented by performance. Modified term appointment and temporary employees are in tenure group III for RIF purposes. RIF procedures are not required when separating these employees when their appointments expire.

Displacement is limited to one pay band level below the employee's present pay band level within the occupational family career path. Pay band level I employees can displace within their current pay band level. A veterans' preference eligible employee with a compensable service connected disability of 30 percent or more may displace up to two pay band levels below the employee's present level within the career path. A pay band level I preference eligible employee (with a compensable service connected disability of 30 percent or more) can displace within their current pay band. The same "*undue disruption*" standard currently utilized, serves as the criteria to determine if an employee is fully qualified.

The additional RIF service credit for performance shall be based on the last three OCS scores and will be applied as follows:

a. Seven years of credit for each year the OCS is equal to or greater than 94 percent of the expected OCS.

b. Four years of credit for each year the OCS is less than 94 percent of the expected OCS, except, Zero (0) years of credit for each year the employee was on a CIP during the rating cycle and the OCS is less than 92 percent of the expected OCS.

Note 1: Expected OCS is the OCS that corresponds to the employee's base pay at the time of rating.

An employee whose current overall contribution score places him/her in the area above the upper rail and on a CIP, any time during the rating cycle, may only displace an employee who is also above the upper rail and also on a CIP during that same period. The displaced individual may similarly displace another employee on a CIP. If/When there is no position in which an employee can be placed by this process or assigned to a vacant position, that employee will be separated. If an employee has not been rated under the demonstration project their rating will be considered acceptable and they will be given the full 21 years of performance credit. After completion of the first or second rating cycle the total years of service will be prorated based on ratings received to date.

IV. Implementation Training

A. Critical to the success of the demonstration project is the training developed to promote understanding of the broad concepts and finer details needed to implement and successfully execute this project. New pay banding, job classification, and performance management systems all contribute to significant cultural change to the organization. Training will be tailored to address employee concerns and to encourage comprehensive understanding of the demonstration project. Training will be required both prior to implementation and at various times during the life of the demonstration project.

B. A training program will begin prior to implementation and will include modules tailored for employees, supervisors, senior managers, and administrative staff. Typical modules are:

1. An overview of the demonstration project personnel system;

2. How employees are converted into and out of the system;

3. Pay banding;

4. The CCAS system;
5. Defining contribution goals;
6. How to assign weights;
7. Assessing performance—giving feedback;
8. New position descriptions; and
9. Demonstration project administration and formal evaluation.

C. Various types of training are being considered, including videos, on-line tutorials, and train-the-trainer concepts.

V. Conversion Into the Demonstration Project

A. Conversion From NSPS to the Demonstration Project

1. Placement Into Demonstration Project Occupational Families, Career Paths, Pay Plans, and Pay Bands

The employee's NSPS occupational series, pay plan, pay band, and supervisory code will be considered upon converting into the demonstration project as follows:

a. Determine the appropriate demonstration project pay plan. Employees will be converted into an occupational family career path pay plan based on the occupational series of their position. If there is a separate pay plan for supervisors, conversion to that pay plan will be without regard to the occupational series. In cases where the employee is assigned to a NSPS-unique occupational series, a corresponding OPM occupational series must be identified using OPM GS classification standards and guidance to determine the proper demonstration project pay plan.

b. Determine the appropriate demonstration project pay band. The appropriate pay band will be determined by establishing the corresponding GS grade for the employee's NSPS position using OPM GS classification standards and guidance. Once the GS grade has been determined, the employee's position will be placed in the appropriate demonstration project pay band in the occupational family career path. In cases where a GS grade is encompassed in more than one pay band of a career path, a careful review will be required using demonstration project classification criteria to determine the appropriate pay band in which to place the position.

2. Setting Pay Upon Conversion to the Demonstration Project

a. Determine the appropriate base salary. Conversion from NSPS into the demonstration project will be accomplished with full employee pay protection. Adverse action provisions will not apply to the conversion action. In accordance with section 1113(c)(1) of NDAA 2010, which prohibits a loss of or decrease in pay upon transition from NSPS, employees converting to the demonstration project will retain the adjusted salary (as defined in 5 CFR 9901.304) from their NSPS permanent or temporary position at the time the position converts. Upon conversion, the retained NSPS adjusted salary may not exceed Level IV of the Executive Schedule plus 5 percent. If the employee's base pay exceeds the maximum rate for his or her assigned demonstration project pay band, the employee will be placed on indefinite pay retention until an event, as described in 5 CFR 536.308, results in a loss of eligibility for or termination of pay retention. Increases to the retained rate after conversion will be in accordance with applicable regulations; however, for any NSPS employee whose retained rate exceeds Executive Level IV upon conversion, any adjustment to the retained rate in accordance with applicable pay retention regulations may not cause the employee's adjusted pay to exceed Executive Level IV plus 5 percent.

b. Employees Previously Covered by an NSPS Targeted Local Market Supplement (TLMS)

Employees who were covered by an NSPS TLMS prior to conversion to the demonstration project will no longer be covered by a TLMS. Instead they may receive a locality or similar supplement (*e.g.,* a staffing supplement), whichever is greater, or pay retention, if applicable. The adjusted base pay upon conversion will not change.

c. Other Pay. Once converted, employees may receive other adjustments and/or differentials, as applicable, as described in this **Federal Register** notice or an internal operating instruction.

3. Fair Labor Standards Act (FLSA) Status

Since FLSA provisions were not waived under NSPS and duties do not change upon conversion to the demonstration project, the FLSA status determination will remain the same upon conversion. Employees will be converted to the demonstration project with the same FLSA status they had under NSPS.

4. Transition Equity

During the first 12 months following conversion to the demonstration project, management may approve certain adjustments within the pay band for pay equity reasons stemming from conversion. For example, if an employee would have been otherwise promoted but demonstration project pay band placement no longer provides a promotion opportunity, a pay equity adjustment may be authorized provided the adjustment does not cause the employee's base pay to exceed the maximum rate of his or her assigned pay band and the employee's performance warrants an adjustment. The decision to grant a pay equity adjustment is at the sole discretion of TARDEC management and is not subject to employee appeal procedures.

During the first 12 months following conversion, management may approve an adjustment of not more than 10 percent, provided the adjustment does not cause the employee's base pay to exceed the maximum rate of his or her assigned pay band and the employee's performance warrants an adjustment, to mitigate base pay inequities that may be caused by artifacts of the process of conversion into STRL pay bands. For instance, inappropriate "leap-frogging" of more senior employees by more junior employees when the inversion of compensation levels are not warranted by performance or mission accomplishment outcomes.

5. Pay Band Retention

Employees converting from NSPS to the demonstration project will not be granted pay band retention based on the pay band formerly assigned to their NSPS position.

6. Converting Employees on NSPS Term and Temporary Appointments

a. Employees serving under term appointments at the time of conversion to the demonstration project will be converted to modified term appointments provided they were hired for their current positions under competitive procedures. These employees will be eligible for conversion to career or career-conditional appointments in the competitive service provided they:

(1) Have served two years of continuous service in the term position;

(2) Were selected for the term position under competitive procedures; and

(3) Are performing at a satisfactory level.

Converted term employees who do not meet these criteria may continue on their term appointment up to the not-to-exceed date established under NSPS. Extensions of term appointments after conversion may be granted in accordance with 5 CFR part 316, subpart D.

b. Employees serving under temporary appointments under NSPS when their organization converts to the demonstration project will be converted

and may continue on their temporary appointment up to the not-to-exceed date established under NSPS. Extensions of temporary appointments after conversion may be granted in accordance with 5 CFR 213.104 for excepted service employees and 5 CFR part 316, subpart D, for competitive service employees.

7. Probationary Periods

a. Initial probationary period. NSPS employees who have completed an initial probationary period prior to conversion from NSPS will not be required to serve a new or extended initial probationary period. NSPS employees who are serving an initial probationary period upon conversion from NSPS will serve the time remaining on their initial probationary period and may have their initial probationary period extended in accordance with the demonstration project regulation and implementing issuances.

b. Supervisory probationary period. NSPS employees who have completed a supervisory probationary period prior to conversion from NSPS will not be required to serve a new or extended supervisory probationary period while in their current position. NSPS employees who are serving a supervisory probationary period upon conversion from NSPS will serve the time remaining on their supervisory probationary period.

B. Conversion From Non-NSPS System to the Demonstration Project

Conversion from current GS, Acq Demo, or other systems not covered by NSPS into the new pay band system will be accomplished during implementation of the demonstration project (refer Section III.A.2 and Table 1). Initial entry into the demonstration project will be accomplished through a full employee-protection approach that ensures each employee an initial place in the appropriate pay band without loss or decrease of adjusted base pay on conversion. If the employee's base pay exceeds the maximum rate for his or her assigned demonstration project pay band, the employee will be placed on pay retention.

Employees serving under term appointments at the time of the implementation of the demonstration project will be converted to the modified term appointment if all requirements (refer III.D.4 Revisions to Term Appointments) have been satisfied. Position announcements, *etc.,* will not be required for these term appointments.

Employees serving under temporary appointments at the time of the implementation of the demonstration project will be converted to the demonstration project. Employees on temporary appointments at the time of conversion may continue on those appointments up to the not-to-exceed date established under the former system. Extensions of temporary appointments may be granted in accordance with 5 CFR 213.104 for excepted service employees and 5 CFR part 316, subpart D, for competitive service employees.

Employees who are covered by GS special salary rates prior to entering the demonstration project will no longer be considered a special salary rate employee under the demonstration project. Instead, they will receive locality pay or a staffing supplement, whichever is greater. Special conversion rules, as described in III.F.10, describe staffing supplements which replace GS special salary rates and NSPS targeted local market supplements and apply to employees in occupations and geographic locations to which GS special salary rates or NSPS targeted local market supplements would otherwise apply. The adjusted base pay of these employees will not change. Rather, the employees will receive a new adjusted base pay rate computed under the staffing supplement rules in section III.F.10.

Employees who are on temporary promotions at the time of conversion will be converted to a pay band commensurate with the grade of the position to which temporarily promoted. At the conclusion of the temporary promotion, the employee will revert to the grade or pay band that corresponds to the position of record. When a temporary promotion is terminated, pay will be determined based on the position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by the Personnel Management Board. In no case may those adjustments increase the pay for the position of record beyond the applicable pay band maximum base pay. The only exception will be if the original competitive promotion announcement stipulated that the promotion could be made permanent; in these cases, actions to make the temporary promotion permanent will be considered, and if implemented, will be subject to all existing priority placement programs.

During the first 12 months following conversion, employees will receive pay increases for non-competitive promotion equivalents when the grade level of the promotion is encompassed within the same pay band, the employee's performance warrants the promotion, and promotions would have otherwise occurred during that period. For employees who receive an in-level promotion in accordance with this provision at the time of conversion, a prorated step increase equivalent as defined below will not be provided.

For GS employees, rules governing GS within-grade increases (WGIs) will continue in effect until conversion. Adjustments to a GS employee's base pay for WGI equity will be computed as of the effective date of conversion provided the employee is performing at an acceptable level of competence as defined in 5 CFR 531.403. WGI equity will be acknowledged by increasing base pay by a prorated share based upon the number of full weeks an employee has completed toward the next higher step. Payment will equal the value of the employee's next WGI times the proportion of the waiting period completed (weeks completed in waiting period/weeks in the waiting period) at the time of conversion. GS employees at step 10 or receiving retained rates, on the day of implementation will not be eligible for WGI equity adjustments since they are already at or above the top of the step scale. GS employees serving on retained grade will receive WGI equity adjustments provided they are not at step 10 or receiving a retained rate. Acq Demo and NSPS employees do not receive WGI's and will convert into the demonstration project without WGI adjustments.

Employees who enter the demonstration project from other pay systems (DCIPS, Acq Demo, or other STRLs) after initial implementation by lateral transfer, promotion, reassignment, reduction in band, or realignment will be subject to the pay rules that govern conversion out of their respective systems. Pay conversion into Lab Demo will be based upon the job classification of the employee's new position.

C. Movement Out of the Demonstration Project

1. Termination of Coverage Under the TARDEC Demonstration Project Pay Plans

In the event employees' coverage under the TARDEC demonstration project pay plans is terminated, employees move with their demonstration project position to another system applicable to TARDEC employees. The grade of their demonstration project position in the

new system will be based upon the position classification criteria of the gaining system. Employees when converted to their positions classified under the new system will be eligible for pay retention under 5 CFR part 536, if applicable.

2. Determining a GS-Equivalent Grade and GS-Equivalent Rate of Pay for Pay Setting Purposes When a TARDEC Employee's Coverage by a Demonstration Project Pay Plan Terminates or the Employee Voluntarily Exits the TARDEC Demonstration Project

a. If a demonstration project employee is moving to a GS or other pay system position, the following procedures will be used to translate the employee's project pay band to a GS-equivalent grade and the employee's project base pay to the GS-equivalent rate of pay for pay setting purposes. The equivalent GS grade and GS rate of pay must be determined before movement out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For lateral reassignments, the equivalent GS grade and rate will become the employee's converted GS grade and rate after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (*e.g.,* promotion rules, highest previous rate rules, pay retention rules), as if the GS converted grade and rate were actually in effect immediately before the employee left the demonstration project.

(1) Equivalent GS-Grade-Setting Provisions

An employee in a pay band corresponding to a single GS grade is provided that grade as the GS-equivalent grade. An employee in a pay band corresponding to two or more grades is determined to have a GS-equivalent grade corresponding to one of those grades according to the following rules:

(a) The employee's adjusted base pay under the demonstration project (including any locality payment or staffing supplement) is compared with step 4 rates in the highest applicable GS rate range. For this purpose, a GS rate range includes a rate in:

i. The GS base schedule;

ii. The locality rate schedule for the locality pay area in which the position is located; or

iii. The appropriate special rate schedule for the employee's occupational series, as applicable.

If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

(b) If the employee's adjusted base pay under the demonstration project equals or exceeds the applicable step 4 adjusted base pay rate of the highest GS grade in the band, the employee is converted to that grade.

(c) If the employee's adjusted base pay under the demonstration project is lower than the applicable step 4 adjusted base pay rate of the highest grade, the adjusted base pay under the demonstration project is compared with the step 4 adjusted base pay rate of the second highest grade in the employee's pay band. If the employee's adjusted base pay under the demonstration project equals or exceeds the step 4 adjusted base pay rate of the second highest grade, the employee is converted to that grade.

(d) This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted base pay under the demonstration project rate equals or exceeds the applicable step 4 adjusted base pay rate of the grade. The employee is then converted at that grade. If the employee's adjusted base pay is below the step 4 adjusted base pay rate of the lowest grade in the band, the employee is converted to the lowest grade.

(e) Exception: An employee will not be provided a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or lateral transfer into the project, unless since that time the employee has either undergone a reduction in band or a reduction within the same pay band due to unacceptable performance.

(2) Equivalent GS-Rate-of-Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rates of pay to GS rates of pay in accordance with the following rules:

(a) The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

(b) An employee's adjusted base pay under the demonstration project (*i.e.,* including any locality payment or staffing supplement) is converted to a GS adjusted base pay rate on the highest applicable GS rate range for the converted GS grade. For this purpose, a GS rate range includes a rate range in:

i. The GS base schedule,

ii. An applicable locality rate schedule, or

iii. An applicable special rate schedule.

(c) If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted base pay under the demonstration project is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of base pay would be the GS base rate corresponding to the converted GS locality rate (*i.e.,* same step position).

(d) If the highest applicable GS rate range is a special rate range, the employee's adjusted base pay under the demonstration project is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of base pay will be the GS rate corresponding to the converted special rate (*i.e.,* same step position).

(3) Employees With Pay Retention

If an employee is receiving a retained rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her pay band level. Demonstration project operating procedures will outline the methodology for determining the GS-equivalent pay rate for an employee retaining a rate under the demonstration project.

3. Within-Grade Increase—Equivalent Increase Determinations

Service under the demonstration project is creditable for within-grade increase purposes upon conversion back to the GS pay system. Performance pay increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

D. Personnel Administration

All personnel laws, regulations, and guidelines not waived by this plan will remain in effect. Basic employee rights will be safeguarded and Merit System Principles will be maintained. Servicing CPACs will continue to process personnel-related actions and to provide other appropriate services.

E. Automation

The TARDEC will continue to use the Defense Civilian Personnel Data System (DCPDS) for the processing of personnel-related data. Payroll servicing

will continue from the respective payroll offices.

An automated tool will be used to support computation of performance-related pay increases and awards and other personnel processes and systems associated with this project.

F. Experimentation and Revision

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the new system is working. DoDI 1400.37, July 28, 2009, provides instructions for adopting other STRL flexibilities, making minor changes to an existing demonstration project, and requesting new initiatives.

VI. Project Duration

Public Law 103–337 removed any mandatory expiration date for section 342(b) demonstration projects. TARDEC, DA, and DoD will ensure this project is evaluated for the first five years after implementation in accordance with 5 U.S.C. 4703. Modifications to the original evaluation plan or any new evaluation will ensure the project is evaluated for its effectiveness, its impact on mission, and any potential adverse impact on any employee groups. Major changes and modifications to the interventions will be made if warranted by formative evaluation data and will be published in the **Federal Register** to the extent required. At the five-year point, the demonstration project will be reexamined for permanent implementation, modification and additional testing, or termination of the entire demonstration project.

VII. Evaluation Plan

A. Overview

Chapter 47 of title 5 U.S.C. requires that an evaluation be performed to measure the effectiveness of the demonstration project and its impact on improving public management. A comprehensive evaluation plan for the entire demonstration program, originally covering 24 DoD laboratories, was developed by a joint OPM/DoD Evaluation Committee in 1995. This plan was submitted to the Office of Defense Research and Engineering and was subsequently approved. The main purpose of the evaluation is to determine whether the waivers granted result in a more effective personnel system and improvements in ultimate outcomes (*i.e.,* organizational effectiveness, mission accomplishment, and customer satisfaction).

B. Evaluation Model

1. Appendix D shows an intervention model for the evaluation of the demonstration project. The model is designed to evaluate two levels of organizational performance: intermediate and ultimate outcomes. The intermediate outcomes are defined as the results from specific personnel system changes and the associated waivers of law and regulation expected to improve human resource (HR) management (*i.e.,* cost, quality, and timeliness). The ultimate outcomes are determined through improved organizational performance, mission accomplishment, and customer satisfaction. Although it is not possible to establish a direct causal link between changes in the HR management system and organizational effectiveness, it is hypothesized that the new HR system will contribute to improved organizational effectiveness.

2. Organizational performance measures established by the organization will be used to evaluate the impact of a new HR system on the ultimate outcomes. The evaluation of the new HR system for any given organization will take into account the influence of three factors on organizational performance: context, degree of implementation, and support of implementation. The context factor refers to the impact which intervening variables (*e.g.,* downsizing, changes in mission, or the economy) can have on the effectiveness of the program. The degree of implementation considers:

a. The extent to which the HR changes are given a fair trial period;

b. The extent to which the changes are implemented; and

c. The extent to which the changes conform to the HR interventions as planned.

The support of implementation factor accounts for the impact that factors such as training, internal regulations and automated support systems have on the support available for program implementation. The support for program implementation factor can also be affected by the personal characteristics (*e.g.,* attitudes) of individuals who are implementing the program.

3. The degree to which the project is implemented and operated will be tracked to ensure that the evaluation results reflect the project as it was intended. Data will be collected to measure changes in both intermediate and ultimate outcomes, as well as any unintended outcomes, which may happen as a result of any organizational change. In addition, the evaluation will track the impact of the project and its interventions on veterans and other protected groups, the Merit System Principles, and the Prohibited Personnel Practices. Additional measures may be added to the model in the event that changes or modifications are made to the demonstration plan.

4. The intervention model at Appendix D will be used to measure the effectiveness of the personnel system interventions implemented. The intervention model specifies each personnel system change or "intervention" that will be measured and shows:

a. The expected effects of the intervention,

b. The corresponding measures, and

c. The data sources for obtaining the measures.

Although the model makes predictions about the outcomes of specific interventions, causal attributions about the full impact of specific interventions will not always be possible for several reasons. For example, many of the initiatives are expected to interact with each other and contribute to the same outcomes. In addition, the impact of changes in the HR system may be mitigated by context variables (*e.g.,* the job market, legislation, and internal support systems) or support factors (*e.g.,* training, automation support systems).

C. Evaluation

A modified quasi-experimental design will be used for the evaluation of the STRL Personnel Demonstration Program. Because most of the eligible laboratories are participating in the program, a title 5 U.S.C. comparison group will be compiled from the Central Personnel Data File (CPDF). This comparison group will consist of workforce data from Government-wide research organizations in civilian Federal agencies with missions and job series matching those in the DoD laboratories. This comparison group will be used primarily in the analysis of pay banding costs and turnover rates.

D. Method of Data Collection

1. Data from several sources will be used in the evaluation. Information from existing management information systems and from personnel office records will be supplemented with perceptual survey data from employees to assess the effectiveness and perception of the project. The multiple sources of data collection will provide a more complete picture as to how the interventions are working. The information gathered from one source will serve to validate information obtained through another source. In so

doing, the confidence of overall findings will be strengthened as the different collection methods substantiate each other.

2. Both quantitative and qualitative data will be used when evaluating outcomes. The following data will be collected:

a. Workforce data;
b. Personnel office data;
c. Employee attitude surveys;
d. Focus group data;
e. Local site historian logs and implementation information;
f. Customer satisfaction surveys; and
g. Core measures of organizational performance.

3. The evaluation effort will consist of two phases, formative and summative evaluation, covering at least 5 years to permit inter- and intra-organizational estimates of effectiveness. The formative evaluation phase will include baseline data collection and analysis, implementation evaluation, and interim assessments. The formal reports and interim assessments will provide information on the accuracy of project operation and current information on impact of the project on veterans and protected groups, Merit System Principles, and Prohibited Personnel Practices. The summative evaluation will focus on an overall assessment of project outcomes after five years. The final report will provide information on how well the HR system changes achieved the desired goals, which interventions were most effective, and whether the results can be generalized to other Federal installations.

VIII. Demonstration Project Costs

A. Cost Discipline

An objective of the demonstration project is to ensure in-house cost discipline. A baseline will be established at the start of the project, and labor expenditures will be tracked yearly. Implementation costs (including project development, automation costs, step buy-in costs, and evaluation costs) are considered one-time costs and will not be included in the cost discipline.

The Personnel Management Board will track personnel cost changes and recommend adjustments if required to achieve the objective of cost discipline.

B. Developmental Costs

Costs associated with the development of the personnel demonstration project include software automation, training, and project evaluation. All funding will be provided through the organization's budget. The projected annual expenses are summarized in Table 9. Project evaluation costs are not expected to continue beyond the first five years unless the results and external requirements warrant further evaluation.

TABLE 9—PROJECTED DEVELOPMENT COSTS

[In thousands of dollars]

	FY10	FY11	FY12	FY13	FY14
Training	25K	50K	15K	10K	5K
Project Evaluation	0K	30K	25K	25K	25K
Automation	50K	40K	40K	40K	40K
Totals	75K	120K	80K	75K	70K

IX. Required Waivers to Law and Regulation

Public Law 106–398 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are waivers of law and regulation that will be necessary for implementation of the demonstration project. In due course, additional laws and regulations may be identified for waiver request.

The following waivers and adaptations of certain title 5 U.S.C. and 5 CFR provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.

A. Waivers to Title 5 U.S.C.

Chapter 5, section 552a: Records maintained on individuals. This section is waived only to the extent required to clarify that volunteers under the Voluntary Emeritus Corps are considered employees of the Federal government for purposes of this section.

Chapter 31, section 3111: Acceptance of Volunteer Service. Waived to allow for a Volunteer Emeritus Corps in addition to student volunteers.

Chapter 33, subchapter 1, section 3318(a): Competitive Service, Selection from Certificate. Waived to the extent necessary to eliminate the requirement for selection using the "Rule of Three."

Chapter 33, section 3319: Alternative Ranking and Selection Procedures. This section is waived to eliminate quality categories.

Chapter 33, section 3321: Competitive Service; Probationary Period. This section waived only to the extent necessary to replace grade with "pay band level."

Chapter 33, section 3341: Details. Waived as necessary to extend the time limits for details.

Chapter 41, section 4108 (a)–(c): Employee Agreements: Service After Training. Waived to the extent necessary to: (1) Provide that the employee's service obligation is to continue in the service of TARDEC for the period of the required service; (2) permit the TARDEC Director, to waive in whole or in part, a right of recovery; and (3) require employees under the Student Career Experience Program who have received tuition assistance to sign a service agreement up to three times the length of the training.

Chapter 43, section 4302 and 4303: Waived to the extent necessary to: (1) Substitute pay band for grade; and (2) provide that moving to a lower pay band as a result of not receiving the general pay increase because of poor performance is not an action covered by the provisions of sections 4303(a) through (d).

Chapter 43, section 4304(b)(1) and (3): Responsibilities of the OPM. Waived in its entirety to remove the responsibilities of the OPM with respect to the performance appraisal system.

Chapter 45, subchapter I, section 4502(a) and (b): Waiver to permit TARDEC to approve awards up to $25,000 for individual employees.

Chapter 51, sections 5101–5112: Classification. Waived as necessary to allow for the demonstration project pay banding system.

Chapter 53, sections 5301, 5302 (8) and (9), 5303, and 5304: Pay Comparability System. Sections 5301,

5302, and 5304 are waived to the extent necessary to allow: (1) Demonstration project employees to be treated as GS employees and (2) basic rates of pay under the demonstration project to be treated as scheduled rates of pay.

Chapter 53, section 5305: Special Pay Authority. Waived to the extent necessary to allow for use of a staffing supplement in lieu of the special pay authority.

Chapter 53, sections 5331–5336: General Schedule Pay Rates. Waived in its entirety to allow for the demonstration project's pay banding system and pay provisions.

Chapter 53, sections 5361–5366: Grade and Pay Retention. Waived to the extent necessary to: (1) Replace "grade" with "pay band;" (2) allow demonstration project employees to be treated as GS employees; (3) provide that pay band retention provisions do not apply to conversions from GS special rates or NSPS Targeted Local Market Supplements to demonstration project pay, as long as total pay is not reduced, to reductions in pay due solely to the removal of a supervisory pay adjustment upon voluntarily leaving a supervisory position, and to movements to a lower pay band as a result of not receiving the general pay increase due to a rating of record of "Unacceptable" contribution; (4) provide that an employee on pay retention whose rating of record is "Unacceptable" contribution is not entitled to 50 percent of the amount of the increase in the maximum rate of base pay payable for the pay band of the employee's position; and (5) provide that pay retention does not apply to reduction in base pay due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement.

Chapter 55, section 5542(a) (1)–(2): Overtime rates; computation. Waived to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the "applicable special rate" in applying the pay cap provisions.

Chapter 55, section 5545(d): Hazardous duty differential. Waived to the extent necessary to allow demonstration project employees to be treated as GS employees.

Chapter 55, section 5546: Waived to allow holiday premium pay at twice an employee's adjusted salary hourly rate for each hour worked as directed or approved, including overtime hours.

Chapter 55, section 5547 (a)–(b): Limitation on premium pay. Waived to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which an employee belongs is deemed to be the applicable special rate in applying the pay cap provisions in 5 U.S.C. 5547.

Chapter 57, section 5753, 5754, and 5755: Recruitment and relocation bonuses, retention incentives and supervisory differentials. Waived to the extent necessary to allow: (1) Employees and positions under the demonstration project to be treated as employees and positions under the GS and (2) that management may offer a bonus to incentivize geographic mobility to a SCEP student.

Chapter 59, section 5941: Allowances based on living costs and conditions of environment; employees stationed outside continental U.S. or Alaska. Waived to the extent necessary to provide that cost of living allowances paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM).

Chapter 75, sections 7501(1), 7511(a)(1)(A)(ii), and 7511(a)(1)(C)(ii): Adverse Actions—Definitions. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Chapter 75, section 7512(3): Adverse actions. Waived to the extent necessary to replace "Grade" with "Pay Band."

Chapter 75, section 7512(4): Adverse actions. Waived to the extent necessary to provide that adverse action provisions do not apply to: (1) Conversions from GS special rates to demonstration project pay, as long as total pay is not reduced; (2) reductions in pay due to the removal of a supervisory or team leader pay adjustment upon voluntary movement to a non-supervisory or non-team leader position; and (3) reduction in supervisory pay due to a performance review.

B. Waivers to Title 5 CFR

Part 300, sections 300.601 through 300.605: Time-in-Grade restrictions. Waived to eliminate time-in-grade restrictions in the demonstration project.

Part 308, sections 308.101 through 308.103: Volunteer service. Waived to allow for a Voluntary Emeritus Corps in addition to student volunteers.

Part 315, section 315.801(a), 315.801(b)(1), (c), and (e), and 315.802(a) and (b)(1): Probationary period and Length of probationary period. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Part 315, section 315.901 and 315.907: Probation on Initial Appointment to a Supervisory or Managerial Position. This section waived only to the extent necessary to replace grade with "pay band level."

Part 316, sections 316.301, 316.303, and 316.304: Term Employment. (These sections are waived to allow modified term appointments as described in this **Federal Register** notice.)

Part 332, sections 332.401 and 332.404: Order on Registers and Order of Selection from Certificates. (These sections are waived to the extent necessary to allow: (1) No rating and ranking when there are 15 or fewer qualified applicants and no preference eligibles; (2) the hiring and appointment authorities as described in this **Federal Register** notice; and (3) elimination of the "rule of three."

Part 335, section 335.103(c)(1)(i) and (ii): Agency promotion programs. Waived to the extent necessary to extend the length of details and temporary promotions without requiring competitive procedures or numerous short-term renewals.

Part 337, section 337.101(a): Rating applicants. Waived to the extent necessary to allow referral without rating when there are 15 or fewer qualified candidates and no qualified preference eligibles.

Part 340, subpart A, subpart B, and subpart C: Other than Full-Time Career Employment. (These subparts are waived to the extent necessary to allow a Volunteer Emeritus Corps.)

Part 351, Reduction in Force. This part is waived to the extent necessary to allow provisions of the RIF plan as described in this **Federal Register** notice. In accordance with this FR, TARDEC will define the competitive area, retention standing, and displacement limitations. Specific waivers include:

Part 351.402(b): Competitive area. Waived to expand the definition of a competitive area.

Part 351, section 351.504: Credit for performance. Waived as necessary to revise the method for adding years of service based on performance; to allow for single round of competition; and modified displacement. Sections 351.601—351.608: Release from

Competitive Level. Waived order of release from a competitive level based upon augmented service performance.

Part 351, section 351.701: Assignment involving displacement. Waived to the extent that bump and retreat rights are limited to one pay band with the exception of 30 percent preference eligibles who are limited to two pay bands (or equivalent of five GS grades); to limit the assignment rights of employees with an unacceptable current rating of record to a position held by another employee with an unacceptable rating of record; and to modify assignment rights to allow for a single round of competition.

Part 410, section 410.309: Agreements to continue in service. Waived to the extent necessary to allow the TARDEC Director to determine requirements related to continued service agreements, including employees under the Student Career Experience Program who have received tuition assistance.

Part 430, subpart B: Performance Appraisal for GS and Certain Other Employees. Waived to the extent necessary to be consistent with the demonstration project's CCAS system.

Part 430, section 430.208(a)(1) and (2): Rating Performance. Waived to allow presumptive ratings for new employees hired 90 days or less before the end of the appraisal cycle or for other situations not providing adequate time for an appraisal.

Part 432, sections 432.101–432.105: Regarding performance based reduction in grade and removal actions. These sections are waived to the extent necessary to: (1) Replace grade with "pay band;" (2) exclude reductions in pay band level not accompanied by a reduction in pay; and (3) allow provisions of CCAS. For employees who are reduced in pay band level without a reduction in pay, sections 432.105 and 432.106 (a) do not apply.

Part 451, subpart A, section 451.103(c)(2): Waived with respect to performance awards under the TARDEC CCAS.

Part 451, Sections 451.106(b) and 451.107(b): Awards. Waived to permit TARDEC to approve awards up to $25,000 for individual employees.

Part 511, subpart A: General Provisions and subpart B: Coverage of the GS. Waived to the extent necessary to allow for the demonstration project classification system and pay banding structure.

Part 511, section 511.601: Applicability of regulations. Classification appeals modified to the extent that white collar positions established under the project plan, although specifically excluded from title 5 CFR, are covered by the classification appeal process outlined in this FRN section III.B.5, as amended below.

Part 511, section 511.603(a): Right to appeal. Waived to the extent necessary to substitute pay band for grade.

Part 511, section 511.607(b): Non-Appealable Issues. Add to the list of issues that are neither appealable nor reviewable, the assignment of series under the project plan to appropriate occupational families and the demonstration project classification criteria.

Part 530, subpart C: Special Rate Schedules for Recruitment and Retention. Waived in its entirety to allow for staffing supplements.

Part 531, subparts B: Determining Rate of Basic Pay. Waived to the extent necessary to allow for pay setting and CCAS under the provisions of the demonstration project.

Part 531, subparts D and E: Within-Grade Increases and Quality Step Increases. Waived in its entirety.

Part 531, subpart F: Locality-Based Comparability Payments. Waived to the extent necessary to allow: (1) Demonstration project employees, except employees in Pay Band V of the E&S occupational family, to be treated as GS employees; and (2) base rates of pay under the demonstration project to be treated as scheduled annual rates of pay.

Part 536: Grade and Pay Retention: These sections waived to the extent necessary to: (1) Replace grade with "pay band;" (2) allow Demonstration project employees to be treated as GS employees; and (3) to allow provisions of this **Federal Register** notice pertaining to pay band and pay retention.

Part 550, sections 550.105 and 550.106: Bi-weekly and annual maximum earnings limitations. Waived to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the applicable special rate in applying the pay cap provisions in 5 U.S.C. 5547.

Part 550, section 550.703: Definitions. Waived to the extent necessary to modify the definition of "reasonable offer" by replacing "two grade or pay levels" with "one band level" and "grade or pay level" with "band level."

Part 550, section 550.902: Definitions. Waived to the extent necessary to allow demonstration project employees to be treated as GS employees.

Part 575, subparts A, B, and C: Recruitment, Relocation, and Retention Incentives. Waived to the extent necessary to allow: (1) Employees and positions under the demonstration project covered by pay banding to be treated as employees and positions under the GS; (2) Occupational Family relocation incentives to new SCEP students; and (3) relocation incentives to SCEP students whose worksite is in a different geographic location than that of the college enrolled.

Part 575, subpart D: Supervisory Differentials. Subpart D is waived in its entirety.

Part 591, subpart B: Cost-of-Living Allowance and Post Differential—Non-foreign Areas. Waived to the extent necessary to allow: (1) Demonstration project employees to be treated as employees under the GS.

Part 752, sections 752.101, 752.201, 752.301 and 752.401: Principal statutory requirements and Coverage. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Part 752, section 752.401: Coverage. Waived to the extent necessary to replace grade with pay band and to provide that a reduction in pay band level is not an adverse action if it results from the employee's rate of base pay being exceeded by the minimum rate of base pay for his/her pay band.

Part 752, section 752.401(a)(4): Coverage. Waived to the extent necessary to provide that adverse action provisions do not apply to: (1) Conversions from GS special rates or NSPS Targeted Local Market Supplements to demonstration project pay, as long as total pay is not reduced; and (2) reductions in pay due to the removal of a supervisory or team leader pay adjustment upon voluntary movement to a non-supervisory or non-team leader position or decreases in the amount of a supervisory or team leader pay adjustment based on the annual review.

Appendix A: TARDEC Employees by Duty Location

(Totals excludes SES, ST, and Wage Grade)

Appendix A: TARDEC Employees by Duty Location

(Totals excludes SES, ST, and Wage Grade

DUTY LOCATION	EMPLOYEES	SERVICING PERSONNEL OFFICE
TARDEC Warren, MI	1093	NE Region
Matrixed to PEO's	312	NE Region
York, PA	1	NE Region
New Cumberland, PA	11	NE Region
Selfridge AFB, MI	1	NE Region
Ft. Hood, TX	2	NE Region
Ft. Bragg, NC	1	NE Region
Ft. Lewis, WA	1	NE Region
Ft. Hueneme, CA	2	NE Region
Alexandria, VA	1	NE Region
Ft. Benning, GA	1	NE Region
McClean, VA	1	NE Region
Total All Employees	1427	

Appendix B: Occupational Series by Occupational Family

Engineering & Science

0801 General Engineering and Architecture Series
0803 Safety Engineering Series
0806 Materials Engineering Series
0819 Environmental Engineering Series
0830 Mechanical Engineering Series
0850 Electrical Engineering Series
0854 Computer Engineering Series
0855 Electronics Engineering Series
0858 Bioengineering and Biomedical Engineering Series
0861 Aerospace Engineering Series
0893 Chemical Engineering Series
0896 Industrial Engineering Series
0899 General Engineering Student Trainee Series
1301 General Physical Science Series
1306 Health Physics Series
1310 Physics Series
1320 Chemistry Series
1321 Metallurgy Series
1399 Physical Science Student Trainee Series
1501 General Mathematics and Statistics Series
1515 Operations Research Series
1520 Mathematics Series
1550 Computer Science Series
1599 Mathematics and Statistics Student Trainee Series

Business/Technical

0018 Safety and Occupational Health Management Series
0301 Miscellaneous Administration and Program Series
0340 Management Series
0341 Administrative Officer Series
0342 Support Services Administration Series
0343 Management and Program Analysis Series
0346 Logistics Management Series
0501 Financial Administration and Program Series
0510 Accounting Series
0802 Engineering Technical Series
0856 Electronics Technical Series
0895 Industrial Engineering Technical Series
0905 General Attorney Series
0950 Paralegal Specialist Series
1000 Information and Arts Group Series
1035 Public Affairs Series
1071 Audiovisual Production Series
1083 Technical Writing and Editing Series
1084 Visual Information Series
1100 Business and Industry Series
1102 Contracting Series
1222 Patent Attorney Series
1311 Physical Science Technician Series
1410 Librarian Series
1412 Technical Information Services Series
1670 Equipment Services Series
1702 Education and Training Technician Series
1712 Training Instructor Series
1910 Quality Assurance Series
2032 Packaging Series
2210 Information Technology Management Series

General Support

0303 Miscellaneous Clerk and Assistant Series
0318 Secretary Series
0326 Office Automation Clerical and Assistance Series
0335 Computer Clerk and Assistant Series
0344 Management and Program Clerical and Assistance Series

Appendix C: Contribution-Based Compensation and Appraisal System (CCAS) Factors

Career Path 1: Engineering and Science Professional

Factor 1: Problem Solving

Factor Description: This factor describes/captures personal and organizational problem-solving results.

Expected Performance Criteria (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Completed work meets projects/programs objectives. Flexibility, adaptability, and decisiveness are exercised appropriately. Descriptors indicate the type of contribution

appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

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LEVEL DESCRIPTORS	DISCRIMINATORS
Level I	
• Performs activities on a task; assists supervisor or other appropriate personnel.	• Scope/Impact
• Resolves routine problems within established guidelines.	• Complexity/Difficulty
• Independently performs assigned tasks within area of responsibility; refers situations to supervisor or other appropriate personnel when existing guidelines do not apply.	• Independence
• Takes initiative in determining and implementing appropriate procedures.	• Creativity
Level II	
• Plans and conducts functional technical activities for projects/programs.	• Scope/Impact
• Identifies, analyzes, and resolves complex/difficult problems.	• Complexity/Difficulty
• Independently identifies and resolves conventional problems which may require deviations from accepted policies or instructions.	• Independence
• Adapts existing plans and techniques to accomplish complex projects/programs. Recommends improvements to the design or operation of systems, equipment, or processes.	• Creativity
Level III	
• Independently defines, directs, or leads highly challenging projects/programs. Identifies and resolves highly complex problems not susceptible to treatment by accepted methods.	• Scope/Impact
• Develops, integrates, and implements solutions to diverse, highly complex problems across multiple areas and disciplines.	• Complexity/Difficulty
• Anticipates problems, develops sound solutions and action plans to ensure program/mission accomplishment.	• Independence
• Develops plans and techniques to fit new situations to improve overall program and policies. Establishes precedents in application of problem-solving techniques to enhance existing processes.	• Creativity
Level IV	
• Defines, establishes, and directs organizational focus	• Scope/Impact

LEVEL DESCRIPTORS	DISCRIMINATORS
(on challenging and highly complex project/ programs). Identifies and resolves highly complex problems that cross organizational boundaries and promulgates solutions. Resolution of problems requires mastery of the field to develop new hypotheses or fundamental new concepts.	
• Assesses and provides strategic direction for resolution of mission critical problems, policies, and procedures.	• Complexity/Difficulty
• Works at senior level to define, integrate, and implement strategic direction for vital programs with long-term impact on large numbers of people. Initiates actions to resolve major organizational issues. Promulgates innovative solutions and methodologies.	• Independence
• Works with senior management to establish new fundamental concepts and criteria and stimulate the development of new policies, methodologies, and techniques. Converts strategic goals into programs or policies.	• Creativity

Factor 2: Teamwork/Cooperation

Factor Description: This factor, applicable to all teams, describes/captures individual and organizational teamwork and cooperation.

Expected Performance Criteria (Applicable To All Contributions at All Levels):

Work is timely, efficient, and of acceptable quality. Personal and organizational interactions exhibit and foster cooperation and teamwork. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I • Works with others to accomplish routine tasks. • Contributes ideas in own area of expertise. Interacts cooperatively with others. • Regularly completes assignments in support of team goals.	• Scope of Team Effort • Contribution to Team • Effectiveness
Level II • Works with others to accomplish projects/programs. • Uses varied approaches to resolve or collaborate on projects/programs issues. Facilitates cooperative interactions with others. • Guides/supports others in executing team assignments. Proactively functions as an integral part of the team.	• Scope of Team Effort • Contribution to Team • Effectiveness
Level III • Works with others to accomplish complex projects/programs. • Applies innovative approaches to resolve unusual/difficult issues significantly impacting important policies or programs. Promotes and maintains environment for cooperation and teamwork. • Leads and guides others in formulating and executing team plans. Expertise is sought by peers.	• Scope of Team Effort • Contribution to Team • Effectiveness
Level IV • Leads/guides/mentors workforce in dealing with complex problems. • Solves broad organizational issues. Implements strategic plans within and across organizational components. Ensures a cooperative teamwork environment. • Leads/guides workforce in achieving organizational goals. Participates on high-level teams. Is sought out for consultation.	• Scope of Team Effort • Contribution to Team • Effectiveness

Factor 3: Customer Relations

Factor Description: This factor describes/captures the effectiveness of personal and organizational interactions with customers (anyone to whom services or products are provided), both internal (within an assigned organization) and external (outside an assigned organization).

Expected Performance Criteria (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Personal and organizational interactions enhance customer relations and actively promote rapport with customers. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I • Independently carries out routine customer requests. • Participates as a team member to meet customer needs. • Interacts with customers on routine issues with appropriate guidance.	• Breadth of Influence • Customer Needs • Customer Interaction Level
Level II • Guides the technical/functional efforts of individuals or team members as they interact with customers. • Initiates meetings and interactions with customers to understand customer needs/expectations. • Interacts independently with customers to communicate information and coordinate actions.	• Breadth of Influence • Customer Needs • Customer Interaction Level
Level III • Guides and integrates functional efforts of individuals or teams in support of customer interaction. Seeks innovative approaches to satisfy customers. • Establishes customer alliances, anticipates and fulfills customer needs, and translates customer needs to programs/projects. • Interacts independently and proactively with customers to identify and define complex/difficult problems and to develop and implement strategies or techniques for resolving program/project problems (e.g., determining priorities and resolving conflict among customers' requirements).	• Breadth of Influence • Customer Needs • Customer Interaction Level
Level IV • Leads and manages the organizational interactions with customers from a strategic standpoint. • Works to assess and promulgate political, fiscal, and other factors affecting customer and program/project needs. Works with customer at management levels to resolve problems affecting programs/projects (e.g., problems that involve determining priorities and resolving conflicts among customers' requirements). • Works at senior level to stimulate customer alliances for program/project support. Stimulates, organizes, and leads overall customer interactions.	• Breadth of Influence • Customer Needs • Customer Interaction Level

Factor 4: Leadership/Supervision

Factor Description: This factor describes/captures individual and organizational leadership and/or supervision. Recruits, develops, motivates, and retains quality team members in accordance with EEO/AA and Merit Principles. Takes timely/appropriate personnel actions, communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers team members.

Expected Performance Criteria (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Leadership and/or supervision effectively promotes commitment to mission accomplishment. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I	
• Takes initiative in accomplishing assigned tasks.	• Leadership Role
• Provides inputs to others in own technical/functional area.	• Breadth of Influence
• Seeks and takes advantage of developmental opportunities.	• Mentoring/Employee Development
Level II	
• Actively contributes as a team member/leader; provides insight and recommends changes or solutions to problems.	• Leadership Role
• Proactively guides, coordinates, and consults with others to accomplish projects.	• Breadth of Influence
• Identifies and pursues individual/team development opportunities.	• Mentoring/Employee Development
Level III	
• Provides guidance to individuals/teams; resolves conflicts. Considered a functional/technical expert by others in the organization; is regularly sought out by others for advice and assistance.	• Leadership Role
• Defines, organizes, and assigns activities to accomplish projects/programs goals. Guides, motivates, and oversees the activities of individuals and teams with focus on projects/programs issues.	• Breadth of Influence
• Fosters individual/team development by mentoring. Pursues or creates training development programs for self and others.	• Mentoring/Employee Development
Level IV	
• Establishes and/or leads teams to carry out complex projects or programs. Resolves conflicts. Creates climate where empowerment and creativity thrive. Recognized as a technical/functional authority on specific issues.	• Leadership Role
• Leads, defines, manages, and integrates efforts of several groups or teams. Ensures organizational mission and program success.	• Breadth of Influence
• Fosters the development of other team members by providing guidance or sharing expertise. Directs assignments to encourage employee development and cross-functional growth to meet organizational needs. Pursues personal professional development.	• Mentoring and Employee Development

Factor 5: Communication

Factor Description: This factor describes/captures the effectiveness of oral/written communications.

Expected Performance Criteria (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Communications are clear, concise, and at appropriate level. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
• Level I • Communicates routine task status/results as required. • Provides timely data and written analyses for input to management/technical reports or contractual documents. • Explains status/results of assigned tasks.	• Level of Interaction (Audience) • Written • Oral
Level II • Communicates team or group tasking results, internally and externally, at peer levels. • Writes, or is a major contributor to, management/technical reports or contractual documents. • Presents informational briefings.	• Level of Interaction (Audience) • Written • Oral
Level III • Communicates project or program results to all levels, internally and externally. • Reviews and approves, or is a major contributor to/ lead author of, management reports or contractual documents for external distribution. Provides inputs to policies. • Presents briefings to obtain consensus/approval.	• Level of Interaction (Audience) • Written • Oral
Level IV • Determines and communicates organizational positions on major projects or policies to senior level. • Prepares, reviews, and approves major reports or policies of organization for internal and external distribution. Resolves diverse viewpoints/controversial issues. • Presents organizational briefings to convey strategic vision or organizational policies.	• Level of Interaction (Audience) • Written • Oral

Factor 6: Resource Management

Factor Description: This factor describes/ captures personal and organizational utilization of resources to accomplish the mission. (Resources include, but are not limited to, personal time, equipment and facilities, human resources, and funds.)

Expected Performance Criteria (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Resources are utilized effectively to accomplish mission. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I	
• Uses assigned resources needed to accomplish tasks.	• Scope of Responsibility
• Plans individual time and assigned resources to accomplish tasks.	• Planning/Budgeting
• Effectively accomplishes assigned tasks.	• Execution/Efficiency
Level II	
• Plans and utilizes appropriate resources to accomplish project goals.	• Scope of Responsibility
• Optimizes resources to accomplish projects/programs within established schedules.	• Planning/Budgeting
• Effectively accomplishes projects/programs goals within established resource guidelines.	• Execution/Efficiency
Level III	
• Plans and allocates resources to accomplish multiple projects/programs.	• Scope of Responsibility
• Identifies and optimizes resources to accomplish multiple projects/programs goals.	• Planning/Budgeting
• Effectively accomplishes multiple projects/programs goals within established guidelines.	• Execution/Efficiency
Level IV	
• Develops, acquires, and allocates resources to accomplish mission goals and strategic objectives.	• Scope of Responsibility
• Formulates organizational strategies, tactics, and budget/action plan to acquire and allocate resources.	• Planning/Budgeting
• Optimizes, controls, and manages all resources across projects/programs. Develops and integrates innovative approaches to attain goals and minimize expenditures.	• Execution/Efficiency

Career Path 2: Business and Technical Support

Factor 1: Problem Solving

Factor Description: This factor describes/captures personal and organizational problem-solving.

Expected Performance Criteria (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Completed work meets project/program objectives. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I	
• Conducts activities on a task; assists supervisors or other appropriate personnel.	• Scope/Impact
• Resolves routine problems within established guidelines.	• Complexity/Difficulty
• Works with others in solving problems with appropriate guidance.	• Independence
• Takes initiative in selecting and implementing appropriate procedures.	• Creativity
Level II	
• Plans and conducts technical activities for projects.	• Scope/Impact
• Identifies and resolves non-routine technical problems utilizing established patterns and methods.	• Complexity/Difficulty
• Identifies and resolves problems; adapts accepted policies, procedures, or methods with moderate guidance.	• Independence
• Adapts existing plans and techniques to accomplish projects.	• Creativity
Level III	
• Plans and conducts challenging and difficult technical activities for projects/programs.	• Scope/Impact
• Develops, integrates, and implements solutions to complex problems on projects/programs.	• Complexity/Difficulty
• Identifies problems; develops solutions and action plans with minimal guidance.	• Independence
• Develops plans and techniques to fit new situations.	• Creativity
Level IV	
• Identifies and resolves complex problems that may cross functional/technical boundaries and promulgates solutions.	• Scope/Impact
• Develops, integrates/implements solutions to diverse, complex problems which may cross multiple projects/programs or functional/technical areas.	• Complexity/Difficulty
• Independently resolves and coordinates technical problems involving multiple projects/programs.	• Independence
• Develops plans and techniques to fit new situations and/or to address issues that cross technical/functional areas.	• Creativity

Factor 2: Teamwork/Cooperation

Factor Description: This factor describes/captures individual and organizational teamwork and cooperation.

Expected Performance Criteria (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Personal and organizational interactions exhibit and foster cooperation and teamwork. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I	
• Works with others to accomplish routine tasks.	• Scope of Team Effort
• Contributes ideas in own area of expertise. Interacts cooperatively with others.	• Contribution to Team
• Regularly completes assignments in support of team goals.	• Effectiveness
Level II	
• Works with others in accomplishing projects.	• Scope of Team Effort
• Contributes ideas in own area of expertise. Facilitates cooperative interactions with others.	• Contribution to Team
• Supports others in executing team assignments. Proactively functions as an integral part of the team.	• Effectiveness
Level III	
• Works with others to accomplish complex projects/programs.	• Scope of Team Effort
• Guides others to resolve or collaborate on complex projects/programs issues. Promotes cooperative interactions with others.	• Contribution to Team
• Integrates technical expertise and guides activities to support team accomplishment.	• Effectiveness
Level IV	
• Leads others to accomplish complex projects and programs.	• Scope of Team Effort
• Applies innovative approaches to resolve unusual/difficult technical/management issues. Promotes and maintains environment for cooperation and teamwork.	• Contribution to Team
• Leads and guides others in formulating and executing team plans. Expertise is sought by others.	• Effectiveness

Factor 3: Customer Relations

Factor Description: This factor describes/captures the effectiveness of personal and organizational interactions with customers (anyone to whom services or products are provided), both internal (within an assigned organization) and external (outside an assigned organization).

Expected Performance Criteria (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Personal and organizational interactions enhance customer relations and actively promote rapport with customers. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I	
• Assists customer support activities.	• Breadth of Influence
• Participates as a team member to meet customer needs.	• Customer Needs
• Interacts with customers on routine issues with appropriate guidance.	• Customer Interaction Level
Level II	
• Actively participates with others to satisfy customer requests.	• Breadth of Influence
• Interacts with customers to respond to customer needs/expectations.	• Customer Needs
• Interacts with customers to communicate information and coordinate action.	• Customer Interaction Level
Level III	
• Guides the technical efforts of individuals or teams as they relate with customers. Deviates from standard approaches when necessary.	• Breadth of Influence
• Initiates meetings and interactions with customers to understand customer needs/expectations.	• Customer Needs
• Interacts independently and proactively with customers to identify/define problems and to implement solutions.	• Customer Interaction Level
• Level IV	
• Leads and coordinates technical efforts of individuals or teams in support of customer interactions. Develops innovative approaches to satisfy customers.	• Breadth of Influence
• Establishes customer alliances; anticipates and fulfills customer needs and translates customer needs to projects/programs. Organizes and leads customer interactions.	• Customer Needs
• Interacts proactively with customers to identify and define complex/controversial problems and to develop and implement strategies or techniques for resolving projects/programs issues.	• Customer Interaction Level

Factor 4: Leadership/Supervision

Factor Description: This factor describes/captures individual and organizational leadership and/or supervision. Recruits, develops, motivates, and retains quality team members in accordance with EEO/AA and Merit Principles. Takes timely/appropriate personnel actions, communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers team members.

Expected Performance Criteria (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Leadership and/or supervision effectively promotes commitment to mission accomplishment. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I • Takes initiative in accomplishing assigned tasks. Asks for assistance as appropriate. • Provides input to others in technical/functional area. • Seeks and takes advantage of developmental opportunities.	• Leadership Role • Breadth of Influence • Mentoring and Employee Development
Level II • Actively contributes as team member; takes initiative to accomplish assigned projects. • Consults and coordinates with others to complete projects within established guidelines. • Identifies and pursues individual/team developmental opportunities.	• Leadership Role • Breadth of Influence • Mentoring and Employee Development
Level III • Actively contributes as team member or leader. Recognized for functional/technical expertise. • Defines, organizes, and assigns activities to accomplish goals. Guides, motivates and oversees others in accomplishing projects/programs. • Promotes developmental opportunities for self and team. Advises others to seek specific training.	• Leadership Role • Breadth of Influence • Mentoring and Employee Development
Level IV • Provides guidance to individuals/teams; resolves conflicts. Serves as subject matter expert. • Guides, motivates, and oversees multiple complex projects/programs. • Directs assignments to encourage employee development and cross-technical/functional growth to meet organizational needs. Pursues self-development.	• Leadership Role • Breadth of Influence • Mentoring and Employee Development

Factor 5: Communication

Factor Description: This factor describes/captures the effectiveness of oral/written communications.

Expected Performance Criteria (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Communications are clear, concise, and at appropriate level. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I	
• Communicates routine task/status/results as required.	• Level of Interaction (Audience)
• Provides data and accurate draft documentation of assigned tasks for input to reports or documents.	• Written
• Explains status/results of assigned tasks.	• Oral
Level II	
• Communicates team or group project status/results at equivalent levels within the agency.	• Level of Interaction (Audience)
• Writes segments of management/technical reports or documents.	• Written
• Communicates group/team results.	• Oral
Level III	
• Communicates projects/programs status/results to management.	• Level of Interaction (Audience)
• Consolidates input and writes management/technical reports/documents for projects/programs.	• Written
• Presents projects/programs briefings.	• Oral
Level IV	
• Determines and communicates projects/programs positions at senior levels.	• Level of Interaction (Audience)
• Prepares, reviews, and approves management/technical reports for internal and external distribution.	• Written
• Presents projects/programs briefings to obtain consensus/approval. Represents the organization as technical subject matter expert.	• Oral

Factor 6: Resource Management

Factor Description: This factor describes/captures personal and organizational utilization of resources to accomplish the mission.

Expected Performance Criteria (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Resources are utilized effectively to accomplish mission. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I • Uses assigned resources to accomplish tasks. • Plans individual time to accomplish tasks. • Effectively accomplishes assigned tasks with appropriate guidance.	• Scope of Responsibility • Planning/Budgeting • Execution/Efficiency
Level II • Identifies and uses resources appropriately to accomplish projects. • Plans resources to achieve task schedules. • Independently accomplishes assigned tasks.	• Scope of Responsibility • Planning/Budgeting • Execution/Efficiency
Level III • Plans and utilizes appropriate resources to accomplish projects/programs. • Optimizes resources to accomplish projects within established milestones. • Effectively accomplishes projects/programs within established resource guidelines.	• Scope of Responsibility • Planning/Budgeting • Execution/Efficiency
Level IV • Plans and allocates resources to accomplish multiple project/program goals. • Identifies and optimizes resources to accomplish multiple project/program goals. • Effectively accomplishes multiple project/program goals within established thresholds. Develops innovative approaches to attain goals and minimize resource expenditures.	• Scope of Responsibility • Planning/Budgeting • Execution/Efficiency

Career Path 3: General Support

Factor 1: Problem Solving

Factor Description: This factor describes/captures personal and organizational problem solving.

Expected Performance Criteria (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Completed work meets project/program objectives. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I	
• Conducts activities on a segment of a task. Assists supervisor or other appropriate personnel.	• Scope/Impact
• Applies standard rules, procedures, or operations to resolve routine problems.	• Complexity/Difficulty
• Independently carries out routine tasks.	• Independence
• Takes initiative in selecting and implementing appropriate procedures.	• Creativity
Level II	
• Plans and conducts administrative activities for projects.	• Scope/Impact
• Develops, modifies, and/or applies rules, procedures, or operations to resolve problems of moderate complexity/difficulty.	• Complexity/Difficulty
• Independently plans and executes assignments; resolves problems and handles deviations.	• Independence
• Identifies and adapts guidelines for new or unusual situations.	• Creativity
Level III	
• Plans and conducts complex administrative activities.	• Scope/Impact
• Develops rules, procedures, or operations for complex/difficult organizational tasks.	• Complexity/Difficulty
• Identifies issues and determines approaches and methods to accomplish tasks. Initiates effective actions and resolves related conflicts.	• Independence
• Identifies issues requiring new procedures and develops appropriate guidelines.	• Creativity

Factor 2: Teamwork/Cooperation

Factor Description: This factor describes/captures individual and organizational teamwork and cooperation.

Expected Performance Criteria (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Personal and organizational interactions exhibit and foster cooperation and teamwork. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I • Works with others to accomplish routine tasks. • Contributes ideas on routine procedures. Interacts cooperatively with others. • Regularly completes tasks in support of team goals.	• Scope of Team Effort • Contribution to Team • Effectiveness
Level II • Works with others to accomplish tasks. • Resolves administrative problems; facilitates cooperative interactions with others. • Guides others and coordinates activities in support of team goals. Proactively functions as an integral part of the team.	• Scope of Team Effort • Contribution to Team • Effectiveness
Level III • Works with others on complex issues/problems that may cross functional areas. • Applies expertise in resolving complex administrative issues. Promotes and maintains environment for cooperation/teamwork. Sets tone for internal/external cooperation. • Leads and guides others in formulating and executing plans in support of team goals.	• Scope of Team Effort • Contribution to Team • Effectiveness

Factor 3: Customer Relations

Factor Description: This factor describes/captures the effectiveness of personal and organizational interactions with customers (anyone to whom services or products are provided), both internal (within an assigned organization) and external (outside an assigned organization).

Expected Performance Criteria (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Personal and organizational interactions enhance customer relations and actively promote rapport with customers. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I	
• Assists customer support activities.	• Breadth of Influence
• Meets routine customer needs.	• Customer Needs
• Interacts with customers on routine issues within specific guidelines.	• Customer Interaction Level
Level II	
• Guides the administrative efforts of individuals or team members as they interact with customers.	• Breadth of Influence
• Independently interacts with customers to understand customer needs/expectations.	• Customer Needs
• Interacts independently with customers to communicate information and coordinate actions.	• Customer Interaction Level
Level III	
• Identifies, defines, and guides administrative efforts in support of customer interactions; coordinates and focuses activities to support multiple customers.	• Breadth of Influence
• Establishes customer alliances and translates needs to customer service.	• Customer Needs
• Works independently with customers at all levels to define services and resolve non-routine problems.	• Customer Interaction Level

Factor 4: Leadership/Supervision

Factor Description: This factor describes/captures individual and organizational leadership and/or supervision. Recruits, develops, motivates, and retains quality team members in accordance with EEO/AA and Merit Principles. Takes timely/appropriate personnel actions, communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers team members.

Expected Performance Criteria (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Leadership and/or supervision effectively promotes commitment to mission accomplishment. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I	
• Takes initiative in accomplishing assigned tasks. Asks for assistance as appropriate.	• Leadership Role
• Provides input in administrative/functional area.	• Breadth of Influence
• Seeks and takes advantage of developmental opportunities.	• Mentoring and Employee Development
Level II	
• Actively contributes as team member or leader; takes initiative to accomplish assigned projects.	• Leadership Role
• Guides others in accomplishing projects.	• Breadth of Influence
• Identifies and pursues individual/team developmental opportunities.	• Mentoring and Employee Development
Level III	
• Provides guidance to individuals/teams; resolves conflicts. Expertise solicited by others.	• Leadership Role
• Guides and accounts for results or activities of individuals, teams, or projects.	• Breadth of Influence
• Promotes individual/team development; leads development of training programs for self and others.	• Mentoring and Employee Development

Factor 5: Communication

Factor Description: This factor describes/captures the effectiveness of oral/written communications.

Expected Performance Criteria (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Communications are clear, concise, and at appropriate level. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I	
• Communicates routine task/status results as required.	• Level of Interaction (Audience)
• Writes timely and accurate draft documentation.	• Written
• Explains status/results of assigned tasks.	• Oral
Level II	
• Interprets and communicates administrative procedures within immediate organization.	• Level of Interaction (Audience)
• Prepares, coordinates, and consolidates documents, reports, or briefings.	• Written
• Communicates/presents internal administrative/functional procedures and tasks internally and externally.	• Oral
Level III	
• Develops and advises on administrative procedures and communicates them to all levels, both internally and externally.	• Level of Interaction (Audience)
• Prepares, reviews, and/or approves documents, reports, or briefings.	• Written
• Explains and/or communicates administrative/functional procedures at all levels.	• Oral

Factor 6: Resource Management

Factor Description: This factor describes/captures personal and organizational utilization of resources to accomplish the mission. (Resources include, but are not limited to, personal time, equipment and facilities, human resources, and funds.)

Expected Performance Criteria (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Available resources are utilized effectively to accomplish mission. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I	
• Uses assigned resources to accomplish tasks.	• Scope of Responsibility
• Plans individual time and assigned resources to accomplish tasks.	• Planning/Budgeting
• Effectively accomplishes assigned tasks.	• Execution/Efficiency
Level II	
• Identifies and uses resources to accomplish projects.	• Scope of Responsibility
• Plans resources to achieve project schedules.	• Planning/Budgeting
• Effectively accomplishes projects within established resource guidelines.	• Execution/Efficiency
Level III	
• Plans, acquires, and allocates resources to accomplish objectives.	• Scope of Responsibility
• Coordinates resources across projects.	• Planning/Budgeting
• Optimizes resource utilization across projects.	• Execution/Efficiency

Appendix D: Intervention Model

Intervention	Expected Effects	Measures	Data Sources
1. Compensation			
a. Pay banding	Increased organizational flexibility	Perceived flexibility	Attitude survey
	Reduced administrative workload, paper work reduction	Actual/perceived time savings	Personnel office data, PME results, attitude survey
	Advanced in-hire rates	Starting salaries of banded v. non-banded employees	Workforce data
	Slower pay progression at entry levels	Progression of new hires over time by band, career path	Workforce data
	Increased pay potential	Mean salaries by band, group, demographics Total payroll costs	Workforce data Personnel office data
	Increased satisfaction with advancement	Employee perceptions of advancement	Attitude survey
	Increased pay satisfaction	Pay satisfaction, internal/external equity	Attitude survey
	Improved recruitment	Offer/acceptance ratios; Percent declinations	Personnel office data
b. Conversion buy-in	Employee acceptance	Employee perceptions of equity, fairness Cost as a percent of payroll	Attitude survey Workforce data
c. Pay differentials/ adjustments	Increased incentive to accept supervisory/team leader positions	Perceived motivational power	Attitude survey
2. Performance Management			
a. Cash awards/ bonuses	Reward/motivate performance	Perceived motivational power	Attitude survey

Intervention	Expected Effects	Measures	Data Sources
	To support fair and appropriate distribution of awards	Amount and number of awards by group, demographics	Workforce data
		Perceived fairness of awards	Attitude survey
		Satisfaction with monetary awards	Attitude survey
b. Performance based pay progression	Increased pay-performance link	Perceived pay-performance link	Attitude survey
		Perceived fairness of ratings	Attitude survey
	Improved performance feedback	Satisfaction with ratings	Attitude survey
		Employee trust in supervisors	Attitude survey
		Adequacy of performance feedback	Attitude survey
	Decreased turnover of high performers/Increased turnover of low performers	Turnover by performance rating scores	Workforce data
	Differential pay progression of high/low performers	Pay progression by performance scores, career path	Workforce data
	Alignment of organizational and individual performance objectives and results	Linkage of performance objectives to strategic plans/goals	Performance objectives, strategic plans
	Increased employee involvement in performance planning and assessment	Perceived involvement	Attitude survey/focus groups
		Performance management	Personnel regulations
c. New appraisal process	Reduced administrative burden	Employee and supervisor perceptions of revised procedures	Attitude survey
	Improved communication	Perceived fairness of process	Focus groups

Intervention	Expected Effects	Measures	Data Sources
d. Performance development	Better communication of performance expectations	Feedback and coaching procedures used	Focus groups Personnel office data
		Time, funds spent on training by demographics	Training records
	Improved satisfaction and quality of workforce	Perceived workforce quality	Attitude survey
3. "White Collar" Classification			
a. Improved classification systems with generic standards	Reduction in amount of time and paperwork spent on classification	Time spent on classification procedures	Personnel office data
		Reduction of paperwork/number of personnel actions (classification/promotion)	Personnel office data
	Ease of use	Managers' perceptions of time savings, ease of use	Attitude survey
b. Classification authority delegated to managers	Increased supervisory authority/accountability	Perceived authority	Attitude survey
	Decreased conflict between management and personnel staff	Number of classification disputes/appeals pre/post	Personnel records
		Management satisfaction with service provided by personnel office	Attitude survey
	No negative impact on internal pay equity	Internal pay equity	Attitude survey
c. Dual career ladder	Increased flexibility to assign employees	Assignment flexibility	Focus groups, surveys
	Improved internal mobility	Perceived internal mobility	Attitude survey
	Increased pay equity	Perceived pay equity	Attitude survey
	Flatter organization	Supervisory/non-supervisory ratios	Workforce data Attitude survey
	Improved quality of supervisory staff	employee perceptions of quality or supervisory	Attitude survey
4. Modified RIF			
	Minimize loss of high performing employees with needed skills	Separated employees by demographics, performance scores	Workforce dataAttitude survey/focus group

Intervention	Expected Effects	Measures	Data Sources
	Contain cost and disruption	Satisfaction with RIF Process	Attitude survey/focus group
		Cost comparison of traditional vs. Modified RIF	Personnel office/budget Data
		Time to conduct RIF - personnel office data	Personnel office data
		Number of Appeals/reinstatements	Personnel office data
5. Hiring Authority			
a. Delegated Examining	Improved ease and timeliness of hiring process	Perceived flexibility in authority to hire	Attitude survey
	Improved recruitment of employees in shortage categories	Offer/accept ratios	Personnel office data
		Percent declinations	Personnel office data
		Timeliness of job offers	Personnel office data
		GPAs of new hires, educational levels	Personnel office data
	Reduced administrative workload/paperwork reduction	Actual/perceived skills	Attitude survey
b. Term Appointment Authority	Increased capability to expand and contract workforce	Number/percentage of conversions from modified term to permanent appointments	Workforce data Personnel office data
c. Flexible Probationary Period	Expanded employee assessment	Average conversion period to permanent status	Workforce data Personnel office data
		Number/percentage of employees completing probationary period	Workforce data Personnel office data
		Number of separations during probationary period	Workforce data Personnel office data
d.Distinguish Scholastic Achievement Appointment	Improved ease and timeliness of hiring process	Perceived flexibility in authority to hire	Attitude survey

Intervention	Expected Effects	Measures	Data Sources
	Improved recruitment of employees in shortage categories	Offer/accept ratios	Personnel office data
		Percent declinations	Personnel office data
		Timeliness of job offers	Personnel office data
		GPAs of new hires, educational levels	Personnel office data
	Reduced administrative workload/paperwork reduction	Actual/perceived skills	Attitude survey
6. Expanded Development Opportunities			
a. Sabbaticals	Expanded range of professional growth and development	Number and type of opportunities taken	Workforce data
	Application of enhanced knowledge and skills to work product	Employee and supervisor perceptions	Attitude survey
b. Critical Skills Training	Improved organizational effectiveness	Number and type of trainingPlacement of employees, skills imbalances correctedEmployee and supervisor perceptionsApplication of knowledge gained from training	Personnel office dataPersonnel office dataAttitude surveyAttitude survey/ focus group
7. Combination Of All Interventions			
All	Improved organizational effectiveness	Combination of personnel measures	All data sources
	Improved management of workforce	Employee/Management job satisfaction (intrinsic/extrinsic)	Attitude survey
	Improved planning	Planning procedures	Strategic planning documents
		Perceived effectiveness of planning procedures	Attitude survey
	Improved cross functional coordination	Actual/perceived coordination	Organizational charts
	Increased product success	Customer satisfaction	Customer satisfaction surveys

Intervention	Expected Effects	Measures	Data Sources
	Cost of innovation	Project training/ development costs (staff salaries, contract cost, training hours per employee)	Demo project office records Contract documents
8. Context:			
Regionalization	Reduced servicing ratios/ costs	HR servicing ratios	Personnel office data, workforce data
		Average cost per employee served	Personnel office data, workforce data
	No negative impact on service quality	Service quality, timeliness	Attitude survey/focus groups

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Federal Register

Thursday,
September 9, 2010

Part V

Department of Defense

Science and Technology Reinvention Laboratory (STRL) Personnel Management Demonstration Project, Department of the Navy (DON), Naval Air System Command (NAVAIR), Naval Air Warfare Center, Weapons Division (NAWCWD) and Naval Air Warfare Center, Aircraft Division (NAWCAD); Notice

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology Reinvention Laboratory (STRL) Personnel Management Demonstration Project, Department of the Navy (DON), Naval Air System Command (NAVAIR), Naval Air Warfare Center, Weapons Division (NAWCWD) and Naval Air Warfare Center, Aircraft Division (NAWCAD)

AGENCY: Office of the Deputy Under Secretary of Defense (Civilian Personnel Policy), (DUSD (CPP)), Department of Defense (DoD).

ACTION: Notice of proposal to design and implement a personnel management demonstration project.

SUMMARY: Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, Public Law (Pub. L.) 103–337 (10 U.S.C. 2358 note), as amended by section 1109 of NDAA for FY 2000, Public Law 106–65, and section 1114 of NDAA for FY 2001, Public Law 106–398, authorizes the Secretary of Defense to conduct personnel demonstration projects at DoD laboratories designated as Science and Technology Reinvention Laboratories (STRLs). The above-cited legislation authorizes DoD to conduct demonstration projects to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management. Section 1105 of the NDAA for FY 2010, Public Law 111–84, 123 Stat. 2486, October 28, 2009, designates additional DoD laboratories as STRLs for the purpose of designing and implementing personnel management demonstration projects for conversion of employees from the personnel system which applied on October 28, 2009. The NAWCWD and the NAWCAD are listed in subsection 1105(a) of NDAA for FY 2010 as two of the newly designated STRLs. These two STRLs will be the participants in the demonstration project proposal described in this **Federal Register** Notice (FRN).

DATES: The NAWCWD and NAWCAD demonstration project proposal may not be implemented until a 30-day comment period is provided, comments addressed, and a final **Federal Register** notice published. To be considered, written comments must be submitted on or before October 12, 2010. Implementation of this demonstration project, once approved, will begin no earlier than February 1, 2011 and no later than April 28, 2011.

ADDRESSES: Send comments on or before the comment due date by mail to Ms. Betty A. Duffield, CPMS–PSSC, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144; by fax to (703) 696–5462; or by e-mail to *Betty.Duffield@cpms.osd.mil.*

FOR FURTHER INFORMATION CONTACT:

NAVAIR: Mr. Richard Cracraft, Naval Air Warfare Center, Weapons Division (NAWCWD), Code 730000D, 1 Administration Circle, Building 00464, China Lake, CA 93555–6100.

DoD: Ms. Betty A. Duffield, CPMS–PSSC, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144

SUPPLEMENTARY INFORMATION:

1. Background

Since 1966, many studies of Department of Defense (DoD) laboratories have been conducted on laboratory quality and personnel. Almost all of these studies have recommended improvements in civilian personnel policy, organization, and management. Pursuant to the authority provided in section 342(b) of Public Law 103–337, as amended, a number of DoD STRL personnel demonstration projects were approved. These projects are "generally similar in nature" to the Department of Navy's "China Lake" Personnel Demonstration Project. The terminology, "generally similar in nature," does not imply an emulation of various features, but rather implies a similar opportunity and authority to develop personnel flexibilities that significantly increase the decision authority of laboratory commanders and/or directors. The STRL Personnel Management Demonstration Projects involve broad-banded pay systems and simplified classification; compensation linked to performance, including contribution-based pay; recruitment and staffing changes; and enhanced training and development including critical skills training, Voluntary Emeritus Corps, and sabbaticals.

This demonstration project involves: (1) Two appointment authorities (permanent and modified term); (2) extended probationary period for newly hired employees; (3) pay banding; (4) streamlined delegated examining; (5) modified reduction-in-force (RIF) procedures; (6) simplified job classification; (7) a mission aligned objectives and compensation based appraisal system; (8) market based starting salaries; (9) academic degree and certificate training; (10) sabbaticals; and (11) a Voluntary Emeritus Corps.

2. Overview

The covered organizations transitioned to the National Security Personnel System (NSPS) late in 2008. Subsequently, section 1113 of NDAA for FY 2010, Public Law 111–84,123 Stat. 2486, required all employees to exit NSPS by no later than January 1, 2012. Another section of NDAA for FY 2010, section 1105, identifies NAWCAD and NAWCWD as STRLs and requires them to convert to an STRL demonstration project within 18 months of enactment of NDAA for FY 2010. This FRN provides notice of the proposal to design and implement an STRL demonstration project plan for the covered organizations.

3. Access to Flexibilities of Other STRLs

Flexibilities published in this **Federal Register** shall be available for use by the STRLs previously enumerated in section 9902(c)(2) of title 5, United States Code, which are now designated in section 1105 of the NDAA for FY 2010, Public Law 111–84, 123 Stat. 2486, October 28, 2009, if they wish to adopt them in accordance with DoD Instruction 1400.37; pages 73248 to 73252 of volume 73, **Federal Register**; and the fulfilling of any collective bargaining obligations.

Dated: September 1, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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Appendix E: Career Stage Rating Benchmarks Examples

I. Executive Summary

NAWCAD is an organization within NAVAIR dedicated to maintaining a center of excellence for fixed- and rotary-wing aircraft and their propulsion systems, avionics systems, training systems, take-off and landing systems, and associated support and equipment including air traffic control and communications and ship/shore/air operations. NAWCAD has three primary locations: Patuxent River, MD; Lakehurst, NJ; and Orlando, FL. These facilities support research, development, test, evaluation, engineering, and fleet support of Navy and Marine Corps air vehicle systems and trainers. NAWCAD is a world leader in Naval aviation whose products and services include: Aircraft, avionics, air-launched weapons, electronic warfare systems, cruise missiles, unmanned aerial vehicles, launch and arresting gear, training equipment and facilities, and all other equipment related to Navy and Marine Corps air power. The mission of the NAWCAD is to be the Navy's principal research, development/test, evaluation, engineering, and fleet support activity for naval aircraft, engines, avionics, aircraft support systems, and ship/shore/air operations. NAWCAD is the steward of the ranges, test facilities, laboratories, and aircraft necessary to support the Fleet's acquisition requirements.

NAWCWD is an organization within NAVAIR dedicated to maintaining a center of excellence in weapons development for the DON. NAWCWD has two locations: China Lake, CA hosting the land test range and Point Mugu, CA hosting the sea test range. NAWCWD is a world leader in Research, Development, Acquisition, Test, and Evaluation (RDA, T&E) of guided missiles, advanced weapons and systems, complex software integration on tactical aircraft, energetic materials, and subsystems. It is also a Center of Excellence for weapons and armaments and live-fire survivability testing. The mission of the NAWCWD is to provide Navy and Marine Corps warriors with effective, affordable, integrated warfare systems, and lifecycle support to ensure battlespace dominance. The NAWCWD is the steward of the ranges, test facilities, and laboratories necessary to support the Fleet's acquisition requirements.

The goal of this demonstration project is to enhance and sustain the quality and professionalism of the covered organizations' workforces through improvements in the efficiency and effectiveness of the human resource system. The project interventions will strive to achieve the best workforce for the mission, adjust the workforce for change, and improve workforce satisfaction. This demonstration project is built on the concepts, and uses much of the same language, as the other STRL demonstration projects already in place in DoD and is guided by 25 years of experience in operating the Navy's "China Lake," demonstration project. The results of the project will be evaluated within five years of implementation.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of DoD STRLs can be enhanced by expanding opportunities available to employees and by allowing greater managerial control over personnel functions through a more responsive and flexible personnel system. Federal laboratories need more efficient, cost effective, and timely processes and methods to acquire and retain a highly creative, productive, educated, and trained workforce. This project, in its entirety, attempts to improve employees' opportunities and provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve the highest quality

organization and hold them accountable for the proper exercise of this authority within the framework of an improved personnel management system.

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. The provisions of this project plan will not be modified, or extended to individuals or groups of employees not included in the project plan without the approval of the ODUSD(CPP). The provisions of DoDI 1400.37 are to be followed for any modifications, adoptions, or changes to this demonstration project plan.

B. Problems With the Present System

The current Civil Service General Schedule (GS) system has existed in essentially the same form since 1949. Work is classified into one of fifteen overlapping pay ranges that correspond with the fifteen grades. Base pay is set at one of those fifteen grades and the ten interim steps within each grade. The Classification Act of 1949 rigidly defines types of work by occupational series and grade, with very precise qualifications for each job. This system does not quickly or easily respond to new ways of designing work and changes in the work itself.

The performance management model that has existed since the passage of the Civil Service Reform Act in 1980 has come under extreme criticism. Employees frequently report there is inadequate communication of performance expectations and feedback on performance. There are perceived inaccuracies in performance ratings with general agreement that the ratings are inflated and often unevenly distributed by grade, occupation and geographic location.

The present reduction-in-force (RIF) process is unresponsive to requirements for work force restructuring and requires enhancement to provide better retention of the highest performing employees with mission appropriate skills.

The need to change the current hiring system is essential as the covered organizations must be able to recruit and retain scientific, engineering, acquisition, skilled technical, and other professional, administrative, and support employees. The covered organizations must be able to compete with the private sector for the best talent and be able to make job offers in a timely manner with the attendant bonuses and incentives to attract high quality employees.

Current limitations on training, retraining, and otherwise developing employees make it difficult to correct skill imbalances and to prepare current employees for new lines of work to meet changing missions and emerging technologies.

C. Changes Required/Expected Benefits

1. The primary benefit expected from this demonstration project is greater organizational effectiveness through increased employee satisfaction. The Department of the Navy "China Lake" and NIST demonstration projects produced impressive statistics on increased job satisfaction and quality of employees versus that for the Federal workforce in general. This project will demonstrate that a human resource system tailored to the mission and needs of the covered organizations' workforce will facilitate increased:

a. Quality in the workforce and resultant products,

b. Timeliness of key personnel processes,

c. Retention of "excellent performers,"

d. Success in recruitment of personnel with critical skills,

e. Management authority and accountability,

f. Satisfaction of customers, and

g. Workforce satisfaction with the personnel management system.

2. An evaluation model was developed for the Director of Defense, Research and Engineering (DDR&E) in conjunction with STRLs, service representatives, and the Office of Personnel Management (OPM). The model, as modified in this plan, will measure the effectiveness of this demonstration project and will be used to measure the results of specific personnel system changes.

D. Participating Organizations

NAWCAD and NAWCWD are organizations within the NAVAIR and are composed of five business units located at five diverse major geographic locations. The locations are: Lakehurst, NJ, Patuxent River, MD; Orlando, FL; China Lake, CA; and Pt. Mugu, CA. Additionally there are employees in a variety of other geographic locations shown in Appendix A. It should be noted that sites with fewer than 10 people may change. Successor organizations will continue coverage in the demonstration project.

E. Participating Employees and Union Representation

This demonstration project will cover approximately 8,400 NAWCAD and NAWCWD civilian employees under title 5 U.S.C. in the occupations listed in Appendix B. The project plan does not cover members of the Senior Executive Service (SES), Scientific and Professional (ST) employees, Federal Wage System (FWS) employees, employees presently covered by the Defense Civilian Intelligence Personnel System (DCIPS), or DON centrally funded interns.

The details and provisions covered under this Personnel Management Demonstration Project do not apply to any bargaining unit within NAWCAD or NAWCWD until a mutual agreement is reached between the STRL organization and the applicable exclusive representative. This demonstration project will not cover any bargaining unit members at implementation. If there is interest on the part of any of NAWCAD's or NAWCWD's bargaining units at any of their sites in participating in the NAWCAD or NAWCWD STRL demonstration project, negotiations would begin after publication of this **Federal Register** notice. The covered STRL organizations will fulfill their obligation to consult and/or negotiate with all labor organizations in accordance with 5 U.S.C. 4703(f) and 7117, as applicable.

F. Project Design

An overarching objective in the project design has been the development of a personnel system that provides a maximum opportunity for adaptability to meet the variety of requirements of organizations engaged in missions ranging from RDA, T&E of guided missiles, advanced weapons and systems, complex software integration on tactical aircraft, energetic materials and subsystems to fixed- and rotary-wing aircraft and their propulsion systems, avionics systems, training systems, take-off and landing systems, associated support and equipment including air traffic control and communications, and ship/shore/air operations. This demonstration project is built upon the successes of the many demonstration projects that have preceded it and adapts many of the provisions and features that have been shown to be successful in these other STRL demonstration projects to the NAWCAD and NAWCWD organizations.

G. Personnel Management Board

1. The covered organizations will create a Personnel Management Board to oversee and monitor the fair, equitable, and consistent implementation of the provisions of the demonstration project to include establishment of internal controls and accountability. Members of the board are senior leaders appointed by the Executive Directors of the covered organizations. As needed, ad

hoc members will serve in an advisory capacity to the Board.

2. The board will execute the following:

a. Establish policies and issue guidance on the composition of pay pools in accordance with the guidelines of this proposal and internal procedures;

b. Review operation of pay pools and provide guidance to Pay Pool Managers;

c. Oversee disputes in pay pool issues;

d. Establish policies and issue guidance on the formulation and execution of the civilian pay budget;

e. Establish policies and issue guidance on the awards pools;

f. Establish policies and issue guidance on hiring and promotion base pay as well as exceptions to pay-for-performance base pay increases;

g. Establish policies and issue guidance on classification review and oversight, monitoring and adjusting classification practices and deciding board classification issues;

h. Approve major changes in position structure;

i. Address issues associated with multiple pay systems during the demonstration project;

j. Establish policies and issue guidance on and approve Standard Performance Elements and Benchmarks;

k. Assess the need for changes to demonstration project procedures and policies;

l. Ensure in-house budget discipline;

m. Establish policies and issue guidance for workforce staffing and budget plans;

n. Develop policies and procedures for administering Developmental Opportunity Programs;

o. Ensure that all employees are treated in a fair and equitable manner in accordance with the policies, regulations and guidelines covering this demonstration project; and,

p. Monitor the evaluation of the project.

III. Personnel System Changes

A. Pay Banding

The design of the pay banding system has the benefit of being preceded by exhaustive studies of pay banding systems currently practiced in the Federal sector. The pay banding system will replace both the current NSPS and GS structure. The flexibilities in this pay banding section are similar in nature to the authority granted to: The Naval Ocean Systems Center, San Diego, California 92152 and the Naval Weapons Center, China Lake, California 93555, 45 FR 26504, April 18, 1980.

1. Occupational Families

Occupations with similar characteristics will be grouped together into one of five occupational families with pay band levels designed to facilitate pay progression. Progression through the band depends on individual achievement, contribution to the mission goals, and accomplishment of higher level, broader scope, more difficult work assignments. Each occupational family will be composed of pay bands corresponding to recognized advancement and career progression expected within the occupations. These pay bands will replace individual grades and will not be the same for each occupational family. Each occupational family will be divided into three to six pay bands with each pay band covering the same base pay range that would be covered by one or more GS grades. Employees track into an occupational family based on their current series as provided in Appendix B. Note that where the current series does not exist outside of NSPS the employee will be placed in the appropriate OPM series before being placed into an STRL occupational family. Upon conversion into the demonstration project each employee is assured an initial placement in the STRL demonstration project without a loss in pay. The upper and lower pay rate for base pay of each band is defined by the GS rate for the grade and step as indicated in Figure 1 except for Pay Band V of the Engineering and Science occupational family. Comparison to the GS grades and NSPS pay bands was used in setting the upper and lower base pay dollar limits of the pay band levels. However, once employees are moved into the demonstration project, GS grades and NSPS pay bands will no longer apply. The current occupations have been examined, and their characteristics and distribution have served as guidelines in the development of the following five occupational families:

a. Scientific and Engineering (S&E) (Pay Plan DP): This occupational family includes technical professional positions, such as engineers, physicists, chemists, mathematicians, operations research analysts, and computer scientists. Specific course work or educational degrees are required for these occupations. Four bands have been established for the S&E occupational family:

(1) Band I is a student trainee developmental track covering GS–1, step 1, through GS–4, step 10.

(2) Band II is a developmental track covering GS–5, step 1, through GS–11, step 10.

(3) Band III is a full-performance technical track covering GS–12, step 1, through GS–13, step 10.

(4) Band IV includes senior technical positions covering GS–14, step 1, through GS–15, step 10.

b. S&E Technician (Pay Plan DT): This occupational family includes technician positions, such as engineering technicians, electronics technicians, physical science technicians, mathematic technicians, and geodetic technicians. These occupations require practical technical expertise in scientific or engineering support but specific course work or educational degrees are not required for these occupations. Four bands have been established for the S&E Technician occupational family:

(1) Band I is an entry level trainee developmental track covering GS–1, step 1, through GS–4, step 10.

(2) Band II is a developmental/full performance track covering GS–5, step 1, through GS–9, step 10.

(3) Band III is a full-performance technical track covering GS–10, step 1 through GS–11, step 10.

(4) Band IV includes senior technical covering GS–12, step 1, through GS–13, step 10.

c. Technical Specialist (Pay Plan DS): This occupational family includes such positions as logistics management specialists, equipment specialists, computer specialists, and telecommunications specialists. Employees in these positions may or may not require specific course work or educational degrees. Five bands have been established for this occupational family:

(1) Band I is a student trainee developmental track covering GS–1, step 1, through GS–4, step 10.

(2) Band II is a developmental/full performance track covering GS–5, step 1, through GS–9, step 10.

(3) Band III is a full performance track covering GS–10, step 1, through GS–11, step 10.

(4) Band IV is a senior specialist track covering GS–12, step 1, through GS–13, step 10.

(5) Band V is an expert specialist track covering GS–14, step 1, through GS–15, step 10.

d. Business Professional & Program Management (Pay Plan DA): This occupational family includes such positions as program managers, program acquisition specialists, budget officers, financial managers, accountants, administrative officers, human resources specialists, and management analysts. Employees in these positions

may or may not require specific course work or educational degrees. Five bands have been established for this occupational family:

(1) Band I is a student trainee developmental track covering GS–1, step 1, through GS–4, step 10.

(2) Band II is a developmental/full performance track covering GS–5, step 1, through GS–9, step 10.

(3) Band III is a full performance track covering GS–10, step 1, through GS–11, step 10.

(4) Band IV is a senior specialist track covering GS–12, step 1, through GS–13, step 10.

(5) Band V is an expert specialist track covering GS–14, step 1, through GS–15, step 10.

e. Administrative Support (Pay Plan DG): This occupational family is composed of positions for which specific course work or an educational degree is not required. Clerical work usually involves the processing and maintenance of records. Assistant work requires knowledge of methods and procedures within a specific administrative area. This family includes such positions as secretaries, office managers, office automation clerks, security technician, safety technician, library technician and budget/program/computer assistants. Six bands have been established for this occupational family:

(1) Band I includes entry-level/developmental positions covering GS–1, step 1, through GS–3, step 10.

(2) Band II* includes developmental and low-range full-performance positions covering GS–4, step 1, through GS–5, step 10.

(3) Band III* includes mid-range full-performance technicians/assistants/secretaries covering GS–5, step 1, through GS–6, step 10.

(4) Band IV* includes high-range full-performance technicians/assistants/secretaries covering GS–6, step 1, through GS–7, step 10.

(5) Band V includes senior technicians/assistants/secretaries covering GS–8, step 1, through GS–9, step 10.

(6) Band VI includes expert technicians/assistants/secretaries covering GS–10, step 1, through GS–11, step 10.

* Band III overlaps with band II and IV. These bands replicate a feature used by the Navy's "China Lake" project.

f. The Supervision and Management pay band includes all employees performing supervisory functions. This pay band is not applicable to team leaders. To be classified to these pay bands the supervisor must perform the full range of supervisory duties. To meet the full range of supervisory duties the supervisor must perform 3 of the first 4, and a total of 6 or more of the following:

(1) Plan work and prepare performance plans covering work to be accomplished by subordinates, set and adjust short-term priorities, and prepare schedules for completion of work;

(2) Assign work to subordinates based on priorities, selective consideration of the difficulty and requirements of assignments, and the capabilities of employees;

(3) Evaluate work performance of subordinates and recommend official performance ratings;

(4) Give advice, counsel, or instruction to employees on both work and administrative matters;

(5) Interview candidates for positions in the unit; recommend appointment, promotion, or reassignment to such positions;

(6) Hear and resolve complaints from employees, referring group grievances and more serious unresolved complaints to a higher level supervisor or manager;

(7) Effect minor disciplinary measures, such as warnings and reprimands, recommending other action in more serious cases;

(8) Identify developmental and training needs of employees, providing or arranging for needed development and training;

(9) Find ways to improve production or increase the quality of the work directed;

(10) Make appropriate distinctions in levels of performance while equitably applying performance standards.

A supervisory position cannot be established on the basis of only one subordinate position. These pay bands can include any series.

(1) Band II is a supervision and management track covering GS–6, step 1, through GS–8, step 10.

(2) Band III is a supervision and management track covering GS–9, step 1, through GS–11, step 10.

(3) Band IV is a supervision and management track covering GS–12, step 1, through GS–14, step 10.

(4) Band V is a supervision and management track covering GS–14, step 1, through GS–15, step 10.

(5) Band VI is reserved for those S&E professional positions classified above GS–15.

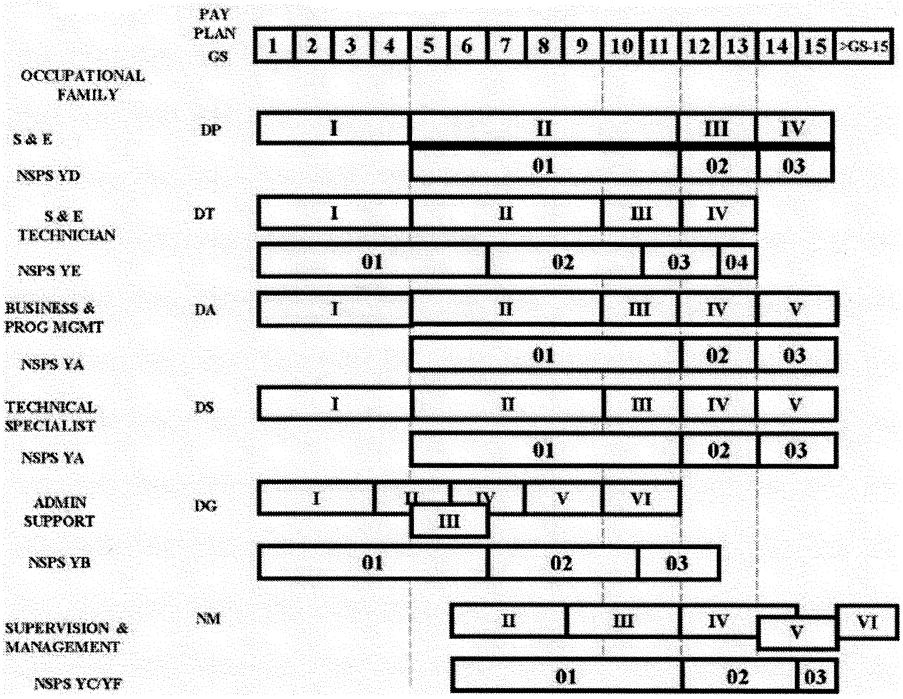
* Band IV overlaps with band V. These bands replicate a feature used by the NAVSEA Warfare Centers' STRL demonstration project.

2. Pay Band Design

The demonstration project pay bands for the occupational families and how they relate to the current GS and NSPS framework are shown in Figure 1.

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Figure 1. STRL Pay Bands Compared to NSPS and GS



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3. Above GS–15 Positions

The pay banding plan for the Supervision and Management occupational family includes a pay band VI to provide the ability to accommodate positions having duties and responsibilities that exceed the GS–15 classification criteria. This pay band is based on the Above GS–15 Position concept found in other STRL personnel management demonstration projects that was created to solve a critical classification problem. The STRLs have positions warranting classification above GS–15 because of their technical expertise requirements including inherent supervisory and managerial responsibilities. However, these positions are not considered to be appropriately classified as Scientific and Professional Positions (STs) because of the degree of supervision and level of managerial responsibilities. Neither are these positions appropriately classified as Senior Executive Service (SES) positions because of their requirement for advanced specialized scientific or engineering expertise and because the positions are not at the level of general managerial authority and impact required for an SES position.

The original Above GS–15 Position concept was to be tested for a five-year period. The number of trial positions was set at 40 with periodic reviews to determine appropriate position requirements. The Above GS–15 Position concept is currently being evaluated by DoD management for its effectiveness; continued applicability to the current STRL scientific, engineering, and technology workforce needs; and appropriate allocation of billets based on mission requirements. The degree to which the laboratory plans to participate in this concept and develop classification, compensation and performance management policy, guidance, and implementation processes will be based on the final outcome of the DoD evaluation. Additional guidance will be included in NAWCAD/NAWCWD internal issuances.

B. Classification

The flexibilities in this Classification section are similar in nature to the authority granted to the Naval Ocean Systems Center, San Diego, California 92152 and the Naval Weapons Center, China Lake, California 93555, 45 FR 26504, April 18, 1980.

1. Occupational Series

The present GS classification system has over 400 occupational series, which are divided into 23 occupational groupings. The covered organizations currently have positions in approximately 132 occupational series that fall into 21 occupational groupings. All positions listed in Appendix B will be in the classification structure. Provisions will be made for including other occupations in response to changing missions.

2. Classification Standards and Position Descriptions

The present system of OPM classification standards will be used for the identification of proper series and occupational titles of positions within the demonstration project. Current OPM position classification standards will not be used to grade positions in this project. However, the grading criteria in those standards will be used as a framework to develop new and simplified standards for the purpose of pay band determinations. The objective is to record the essential criteria for each pay band within each occupational family by stating the characteristics of the work, the responsibilities of the position, and the competencies required. New position descriptions will replace the current job descriptions. The classification standard for each pay band will serve as an important component in the new position description, which will also include position-specific information, and provide selective placement factors and other data element information pertinent to the job.

Specialty area codes (SAC) written as narrative descriptions and assigned a specific identification code may be used to further differentiate types of work and the competencies required for particular positions within an occupational family and pay band. Each

code represents a specialization or type of work within the occupation.

3. Fair Labor Standards Act

Fair Labor Standards Act (FLSA) exemption and non-exemption determinations will be consistent with criteria found in 5 CFR part 551. All employees are covered by the FLSA unless they meet the criteria for exemption. The duties and responsibilities outlined in the classification standards for each pay band will be compared to the FLSA criteria. As a general rule, the FLSA status can be matched to occupational family and pay band as indicated in Figure 2. For example, positions classified in Pay Band I of the S&E occupational family are typically nonexempt, meaning they are covered by the overtime entitlements prescribed by the FLSA. An exception to this guideline includes supervisors/managers whose primary duty meets the definitions outlined in the OPM GS Supervisory Guide. Therefore, supervisors/managers in any of the pay bands who meet the foregoing criteria are exempt from the FLSA. Supervisors with classification authority will make the determinations on a case-by-case basis by comparing assigned duties and responsibilities to the classification standards for each pay band and the 5 CFR part 551 FLSA criteria. Additionally, the advice and assistance of the servicing Human Resources Office (HRO) and the servicing Human Resources Service Center (HRSC) can be obtained in making determinations. The benchmark position descriptions will not be the sole basis for the determination; the actual duties performed are the controlling criteria. Exemption criteria will be narrowly construed and applied only to those employees who clearly meet the spirit of the exemption.

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Figure 2 – Typical FLSA Status

(Pay Bands)

Occupational Family	I	II	III	IV	V	VI
S&E	N	N/E	E	E	E	
S&E Tech	N	N/E	N/E	E		
Tech Spec	N	N/E	N/E	E	E	
Bus/Prog Mgmt	N	N/E	N/E	E	E	
Admin Sup	N	N	N	N	N/E	N/E
Supv/Mgr	E	E	E	E	E	E

BILLING CODE 5001–06–C

N—Non-Exempt from FLSA; E—Exempt from FLSA; N/E—Exemption status determined on a case-by-case basis.

Note: Although typical exemption status under the various pay bands is shown in the above table, actual FLSA exemption determinations are made on a case-by-case basis.

4. Classification Authority

The covered organizations' Executive Directors will have delegated classification authority for all pay bands with the exception of Supervision and Management band VI and may, in turn, re-delegate this authority to appropriate levels. Classification authority for Science and Engineering band V will be consistent with DoD guidance. Position descriptions will be developed to assist managers in exercising delegated position classification authority. Managers will identify the occupational family, job series, functional code, specialty work code, pay band level, and the appropriate acquisition codes. Human resources specialists will provide ongoing consultation and guidance to managers and supervisors throughout the classification process. These decisions will be documented on the position description.

5. Classification Appeals

Classification appeals under this demonstration project will be processed using the following procedures: An employee may appeal the determination of occupational family, occupational series, position title, and pay band of his/her position at any time. An employee must formally raise the area of concern to supervisors in the immediate chain of command, either verbally or in writing. If the employee is not satisfied with the supervisory response, he/she may then appeal to the Executive Director of his/her organization. If the employee is not satisfied with the Executive Director's response, he/she may then appeal to the DoD appellate level. Appeal decisions rendered by DoD will be final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the government. Classification appeals are not accepted on positions which exceed the equivalent of a GS–15 level. Additional guidance will be included in the NAWCAD/NAWCWD internal issuances.

An employee may not appeal the accuracy of the position description, the demonstration project classification criteria, or the pay-setting criteria; the assignment of occupational series to the occupational family; the propriety of a pay schedule; or matters covered by an administrative or negotiated grievance procedure, or an alternative dispute resolution procedure.

The evaluations of classification appeals under this demonstration project are based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the HRO/HRSC providing personnel service and will include copies of appropriate demonstration project criteria.

C. Mission Aligned Objectives and Compensation

1. Overview

The purpose of mission aligned objectives and compensation is to directly link the work of the employee to the mission of the organization and provide a mechanism for recognizing

the impact of the employee's accomplishments and contributions to help achieve that mission. It also provides an effective, efficient, and flexible method for assessing, compensating, and managing the covered organization's workforce. It is essential for the development of a highly productive workforce and to provide management at the lowest practical level, the authority, control, and flexibility needed to achieve a quality organization and meet mission requirements. Mission aligned objectives and compensation allows for more employee involvement in the assessment process, strives to increase communication between supervisor and employee, promotes a clear accountability of performance, facilitates employee career progression, and provides an understandable and rational basis for pay changes by linking mission directly to both annual evaluations and compensation outcomes.

The mission aligned objectives and compensation system uses annual payouts that are based on the employee's accomplishments and contributions to mission accomplishment rather than within-grade increases, quality step increases, promotions from one grade to another where both grades are now in the same pay band (*i.e.,* there are no within-band promotions), and performance awards. In addition to objectives, other factors that can be considered in determining overall payout include organizational performance, team performance, or a combination of individual performance, contribution, and/or compensation. If elements other than the employee's individual accomplishments and contributions against their objectives and their compensation will be taken into consideration, this must be a part of the written performance plan. The employee must be advised of the applicability of these factors within the same time requirements as the individual mission objectives. The normal rating period will be one year. Objectives, representing joint efforts of employees and their supervisors, must be in place within 30 days from the beginning of each rating period and the minimum rating period will be 90 days. First-time hires into demonstration project positions must have plans in place within 30 days of the effective date of their entry into the demonstration project and current demonstration project employees who change positions during the performance year should have their plans updated with new objectives no later than 30 days after assignment to the new position. Mission aligned compensation and rewards payouts can be in the form of increases to base pay and/or in the form of bonuses that are not added to base pay but rather are given as a lump sum cash bonus. Other awards such as special acts, time-off awards, etc., will be retained separately from the pay-for-performance payouts.

Employees who do not meet the 90 day minimum requirement will be ineligible for a normal rating and will be given a presumptive rating. They may receive only the general pay increase and they may also receive title 5 cash awards if appropriate.

The system will have the flexibility to be modified, if necessary, as more experience is gained under the project. The flexibilities in this Mission Aligned Objectives and Compensation section are similar in nature to the authority granted to: (1) The Naval Ocean Systems Center, San Diego, California 92152 and the Naval Weapons Center, China Lake, California 93555, 45 FR 26504, April 18, 1980, and (2) the Army Research Laboratory (ARL), 65 FR 3500, January 21, 2000.

2. Individual Mission Objectives (IMO)

Individual mission objectives will be directly related to achieving the mission of the employee's organization. They define a target level of activity, expressed as a tangible, measurable objective, against which actual achievement can be compared. These objectives will specifically identify what is expected of the employee during the rating period and will typically consist of three to ten results-oriented statements. It is expected that these objectives will also incorporate important behavioral practices such as teamwork and cooperation where they are key to successful accomplishment of the assignment. A Supervision/EEO objective is mandatory for all managers/supervisors. The employee and his/her supervisor will jointly develop the employee's individual mission objectives at the beginning of the rating period. These are to be reflective of the employee's duties/responsibilities, pay band and pay level in the band as well as the mission/organizational goals and priorities. Objectives will be reviewed annually and revised upon changes in pay reflecting increased responsibilities commensurate with pay increases. Use of generic one-size-fits-all objectives will be avoided, as individual mission objectives are to define an individual's specific responsibilities and expected accomplishments for the performance year. In contrast, rating benchmarks as described in the next paragraph will identify characteristics, against which the accomplishment of objectives will be measured. As a part of this demonstration project, training focused on overall organizational objectives and the development of individual mission objectives will be held for both supervisors and employees.

Individual mission objectives may be jointly modified, changed or deleted as appropriate during the rating cycle. As a general rule, objectives should only be changed when circumstances outside the employee's control prevent or hamper the accomplishment of the original objectives. It is also appropriate to change objectives when mission or workload shifts occur.

All objectives are critical. A critical mission objective is defined as an attribute of job performance that is of sufficient importance that achievement below the minimally acceptable level requires remedial action and may be the basis for removing an employee from his/her position. Non-critical objectives will not be used. Each of the objectives may be assigned a weight, which reflects its importance in accomplishing an individual's mission objectives. The minimum weight assigned may not be less than 10%. The sum of the weights for all of the elements must equal 100. At the beginning of the rating period, higher level managers will review the objectives and weights assigned to employees within the pay pool, to verify consistency and appropriateness.

3. Rating Benchmarks

Rating benchmarks define characteristics that will be used to evaluate the employee's success in accomplishing his/her individual mission objectives. The use of characteristics for scoring purposes helps to ensure comparable scores are assigned while accommodating diverse individual objectives. A single set of rating benchmarks for each band or rating benchmarks by career stage may be used for evaluating the annual performance of all NAWCAD and NAWCWD personnel covered by this plan. An example of each type of benchmark is shown at Appendices D and E. The set of benchmarks used may evolve over time, based on experience gained during each rating cycle. This evolution is essential to capture the critical characteristics the organization encourages in its workforce toward meeting individual and organizational objectives. This is particularly true in an environment where technology and work processes are changing at an increasingly rapid pace. The Personnel Management Board will annually review the set of benchmarks and set

them for the entire organization before the beginning of the rating period.

4. Performance Feedback and Formal Ratings

The most effective means of communication is person-to-person discussion between supervisors and employees of requirements, performance goals, and desired results. Employees and supervisors alike are expected to actively participate in these discussions for optimum clarity regarding expectations and identify potential obstacles to meeting goals. In addition, employees should explain (to the extent possible) what they need from their supervisor to support goal accomplishment. The timing of these discussions will vary based on the nature of work performed, but will occur at least at the mid-point and end of the rating period. The supervisor and employee will discuss job performance and accomplishments in relation to the expectations in the mission aligned objectives. At least one review, normally the mid-point review, will be documented as a formal progress review. More frequent, task specific discussions may be appropriate in some organizations. In cases where work is accomplished by a team, team discussions regarding goals and expectations will be appropriate. The employee will provide a statement of his/her accomplishments to the supervisor at both the mid-point and end of the rating period.

At the end of the rating period, following a review of the employee's accomplishments, the supervisor will rate each of the individual mission objectives. Benchmark performance standards will be developed that describe the level of performance associated with a score. Using these benchmarks, the supervisor decides where the achievements and contributions of the employee most closely match the benchmarks and assigns an appropriate score. It should be noted that these scores are not discussed with the employee or considered final until all scores are reconciled and approved by the Pay Pool Manager. The rating scores will then be multiplied by the objective-weighting factor to determine the weighted score expressed to two decimal points. The weighted scores for each objective will then be totaled to determine the employee's overall appraisal score and rounded to a whole number as follows: If the first two digits to the right of the decimal are .51 or higher, it will be rounded to the next higher whole number; if the first two digits to the right of the decimal are .50 or lower, then the decimal value is truncated.

The covered STRL organizations will use a five-level rating methodology with associated payout point ranges in which level five signifies the highest level of performance. The rater will prepare and recommend the rating, number of payout points, and the distribution of the payout between base pay increase and bonus, as applicable, for each employee. These recommendations will then be reviewed by the pay pool panel to ensure equitable rating criteria and methodologies have been applied to all pay pool employees. The final determination of the rating, number of payout points, and payout distribution will be a function of the pay pool panel process and will be approved by the Pay Pool Manager. The criteria used to determine the number and distribution of payout points to assign an employee may include assessment of the employee's contribution towards achieving the mission, the employee's type and level of work, the employee's current compensation and the criticality of their contribution to mission success, consideration of specific achievements, or other job-related significant accomplishments or contributions. The proposed rating and payout point schema is:

Rating	Description	Payout points
5	Exceptional	5, 6
4	Exceeds Mission Expectations.	3, 4
3	Mission Success	0, 1, 2
2	Partial Mission Success.	0
1	Unacceptable	0

Employees with a total score of two or above will receive the equivalent of the GS January general pay increase (GPI). Employees with a total score of one will not receive the January GPI. A rating of one or below will result in a rating of Unacceptable, and the employee will not receive the January GPI and will require administrative action to address the performance deficiency. A score of one or below on a single objective will also result in a rating of Unacceptable.

Employees in receipt of a Letter of Warning of Unacceptable Performance at the end of the performance year will have their rating deferred until the end of the improvement period. At the end of the improvement period, the supervisor will assign a final rating and submit it to the pay pool panel for consideration.

5. Pay Pools

Following the initial scoring of each employee by the rater, the rating officials in an organizational unit, along with their next level of supervision, will review and compare recommended ratings to ensure consistency and equity of the ratings. In this step, each employee's individual mission objectives, accomplishments, preliminary scores and pay are compared. Through discussion and consensus building, consistent and equitable ratings are reached. Managers will not prescribe a distribution of ratings. The Pay Pool Manager will then chair a final review with the rating officials who report directly to him or her to validate these ratings and resolve any scoring issues. If consensus cannot be reached in this process, the Pay Pool Manager makes all final decisions. After this reconciliation process is complete, ratings are finalized. Payouts proceed according to each employee's final rating and payout distribution. Upon approval of this plan, implementing procedures and regulations will provide details on this process to employees and supervisors.

The covered organizations' employees will be placed into pay pools. Neither the Pay Pool Manager, supervisors, or pay pool panel members within a pay pool will in any way recommend or participate in setting their own rating or individual payout except for the normal employee self-assessment process. Pay pools are combinations of organizational units (e.g., level 3 competencies (divisions), level 4 competencies (branches), and level 5 competencies (sections)), functional categories or other groupings of employees that are defined for the purpose of determining payouts under the mission aligned objectives and compensation system. The guidelines in the next paragraph are provided for determining pay pools. These guidelines will normally be followed. However, the Executive Directors of the covered organizations may deviate from the guidelines if there is a compelling need to do so.

The Executive Directors of the covered organizations will establish pay pools. Typically, pay pools will have between 35 and 300 employees. A pay pool should be large enough to encompass a reasonable distribution of ratings but not so large as to compromise rating consistency. Large pay pools may use sub pay pools subordinate to the pay pool due to the size of the pay pool population, the complexity of the mission, or other similar criteria. Pay pool panel members will not serve on pay pools where their

own ratings and payouts are determined. Supervisors and non-supervisors may be placed in separate pay pools. Decisions regarding the amount and distribution of the payouts are based on the employee's most recent rating of record for the performance year, the criteria listed in section III.C.4 above, the type and nature of the funding available to the pay pool, and the number of payout points assigned by the pay pool. Additional guidance on pay pool design and composition will be included in NAWCAD/NAWCWD internal issuances.

Funds within a pay pool available for performance payouts are calculated from anticipated pay increases under the existing system and divided into two components, base pay and bonus. The funds within a pay pool used for base pay increases are those that would have been available from within-grade increases, quality step increases and promotions under the GS system (excluding the costs of promotions still provided under the pay banding system). This amount will initially be defined based on historical data and will initially be set at no less than 2.4% of total base pay annually. The funds available to be used for bonus payouts are funded separately within the constraints of the organization's overall award budget. This amount will initially be defined based on historical data and will initially be set at no less than one percent of total base pay annually. As changes in the demographics of the workforce or other exigencies occur, adjustments may be made to these two factors. The sum of these two factors is referred to as the pay pool percentage factor. The Personnel Management Board will annually review the pay pool funding and recommend adjustments to the Executive Directors to ensure cost discipline over the life of the demonstration project. Cost discipline is assured within each pay pool by limiting the total base pay increase to the funds allocated by the Personnel Management Board.

6. Performance Payout Determination

The payout an employee will receive is based on the total performance rating from the mission aligned objectives and compensation assessment process. An employee will receive a payout as a percentage of base pay. This percentage is based on the number of payout points that equates to their final appraisal score.

The value of a payout point cannot be exactly determined until the rating and reconciliation process is completed and all scores are finalized. The payout point value is expressed as a percentage. The formula that computes the value of each payout point uses base pay rates and is based on:

a. The sum of the base pay of all the employees in the pay pool times the pay pool percentage factor;

b. The employee's base pay;

c. The number of payout points awarded to each employee in the pay pool; and

d. The total number of payout points awarded in the pay pool.

This formula assures that each employee within the pool receives a payout point amount equal to all others in the same pool who are at the same rate of base pay and receiving the same score. The formula is shown in Figure 3.

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Figure 3. Formula

$$\text{Payout Point Value} = \frac{\text{(Sum of base pay for employees in pool) * (pay pool percentage factor)}}{\text{Sum of (base pay * payout points earned) for each employee}}$$

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An individual payout is calculated by first multiplying the payout points earned by the payout point value and multiplying that product by base pay. An adjustment is then made to account for locality pay or staffing supplement. A Pay Pool Manager is accountable for staying within pay pool limits and final decisions on base pay increases and/or bonuses to individuals based on rater recommendations, the final score, the pay pool funds available, and the employee's base pay.

7. Base Pay Increases and Bonuses

The amount of money available for the performance payouts is divided into two components, base pay increases and bonuses. The base pay and bonus funds are based on the pay pool funding formula established annually. Once the individual performance amounts have been determined, the next step is to determine what portion of each payout will be in the form of a base pay increase as opposed to a bonus payment. The payouts made to employees from the pay pool may be a mix of base pay and bonus, such that all of the allocated funds are disbursed. To continue to provide performance incentives while also ensuring cost discipline, base pay increases may be limited or capped. Certain employees will not be able to receive the projected base pay increase due to base pay caps. Base pay is capped when an employee reaches the maximum rate of base pay in an assigned pay band or when a control point applies (*see* below). Also, for employees receiving retained rates above the applicable pay band maximum, the entire performance payout will be in the form of a bonus payment.

When capped, the total payout an employee receives will be in the form of a bonus versus the combination of base pay and bonus. Bonuses are cash payments and are not part of the base pay for any purpose (*e.g.,* lump sum payments of annual leave on separation, life insurance, and retirement). The maximum base pay rate under this demonstration project will be the unadjusted base pay rate of GS–15, Step 10, except for employees in Pay Band VI of the Supervision and Management career path.

8. Extraordinary Achievement Allowance (EAA)

a. NAWCAD and NAWCWD will employ an Extraordinary Achievement Allowance designed to optimize organizational effectiveness. An EAA is defined as a temporary monetary allowance up to 25 percent of base pay, which, when added to an employee's rate of base pay, may not exceed the rate of basic pay for Executive Level IV. It is paid on either a bi-weekly basis concurrent with normal pay days or as a lump sum following completion of a designated contribution period, or combination of these, at the discretion of the Executive Director/Commanding Officer of the appropriate Naval Air Warfare Center. It is not base pay for any purpose, *e.g.,* retirement, life insurance, severance pay, promotion, or any other payment or benefit calculated as a percentage of base pay. The EAA will be available to certain employees whose present contributions are worthy of a higher career level and whose level of

achievement is expected to continue at the higher career level for at least one year.

b. Award of the EAA will generally be appropriate under the following circumstances: (1) Employees have reached the top of their target career levels, (2) when it is not certain that the higher level contributions will continue indefinitely (*e.g.,* a special project expected to be of one to five-year duration), (3) when no further promotion or base pay opportunities are available, or externally imposed limits make changes to higher career levels unavailable, and (4) when the approval time required to effect the action will unreasonably delay appropriate compensation for the employee's achievements but in all situations, when current market conditions compensate similar contributions at a greater rate in private industry and academia than the organization is able to do under normal compensation conditions.

c. To be eligible for EAA, employees must meet the criteria below:

(1) Employees in the S&E, Technical, Business Professional and Program Management career tracks are eligible for the EAA if their contribution to the organization is deemed worthy, as determined by the appropriate NAWC Executive Director/Commander.

(2) Employees may receive an EAA for up to five years. The EAA authorization will be reviewed and reauthorized as necessary, but at least annually at the time of the Mission Aligned Objectives and Compensation System appraisal through nomination by the Pay Pool Manager and approval by the appropriate Executive Director/ Commander.

(3) Monetary payment may be up to 25 percent of base pay.

(4) Nominees are required to sign a statement indicating they understand that the EAA is a temporary allowance; it is not a part of base pay for any purpose; it is subject to review at any time, but at least on an annual basis, and the reduction or termination of the EAA is neither appealable nor grievable.

All other details regarding nomination, termination, reduction, allocation, and budget determination will be stipulated by internal business rules, policies, or procedures established by the Personnel Management Board.

9. Pay Growth Within a Pay Band

As a compensation management tool the Personnel Management Board may establish pay ranges appropriate for a group or class of positions within a pay band or pay bands. Advancement of pay beyond the assigned pay range will generally require approval above the Pay Pool Manager prior to finalizing the pay pool decisions. The request must demonstrate that the complexity and responsibility of the position have substantially changed and the duties of the position are expected to continue at this level in the future thus warranting assignment of the position to a higher pay range. Control points may apply in every occupational family and pay band. Additional guidance will be included in NAWCAD/NAWCWD internal issuances.

10. Awards

To provide additional flexibility in motivating and rewarding individuals and groups, some portion of the performance award budget will be reserved for special acts and other categories as they occur. Awards may include, but are not limited to, special acts, patents, invention awards, suggestions, on-the-spot, and time-off. The funds available to be used for traditional title 5 U.S.C. awards are separately funded within the constraints of the organization's budget.

While not directly linked to the Mission Aligned Objectives and Compensation system, this additional flexibility is important to encourage outstanding accomplishments and innovation in achieving the diverse mission of the covered organizations. Additionally, to foster and encourage teamwork among its employees, organizations may give group awards. Thus, a team leader may recommend and a supervisor may allocate a sum of money to a team for outstanding performance.

The NAWCAD and NAWCWD Commanders will have the authority to grant special act awards to covered employees of up to $25,000 IAW the criteria of SECNAVINST 12451.3. This authority may be delegated to the Executive Directors of the covered organizations.

11. General Pay Increase

Employees who receive an unacceptable rating of record will not receive performance payouts or any portion of the general pay increase and as a result will "migrate" downward in the pay band. This occurs because the rate of base pay in a pay band increases as the result of the general pay increase (5 U.S.C. 5303). If their performance rating continues as Unacceptable, employees who reach the bottom of the overlapping pay scales (they remain identified in the higher classification level as long they are covered in that range) will cross the line into the next lower classification level without specific adverse or performance-based action. This migration is necessary for an employee whose performance over a period of time has been deficient enough to merit the employee's placement in lower level duties/ responsibilities where new opportunities for acceptable performance exist. Clearly the employee who has experienced several performance evaluations and who, in each case, has been given a year to demonstrate improvement has been provided equal or better "due process" than the obviously unsatisfactory employee who is accorded immediate adverse or performance-based action procedures and downgraded or removed after the required 30-day notice period. Further, it should be noted that in these instances the employee's pay will remain constant, the downward migration results from the need to comply with statutory pay levels. Adverse or performance-based action procedures will cover demotion between levels or removal where performance is clearly so unsatisfactory as to preclude retention in the current pay band or as an employee.

12. Requests for Reconsideration

An employee may request reconsideration of the rating-of-record received under the mission aligned objectives and compensation system. A rating of record or job objective rating may be reconsidered by request of an employee only through the process specified in this subpart and implementing issuances. This process will be the sole and exclusive agency administrative process for employees to request reconsideration of a rating of record. Consistent with this part, Pay Pool Managers will make the decision on reconsiderations of rating of record. Pay Pool Managers' decisions are final. A payout point assignment determination, payout distribution determination, or any other payout matter will not be subject to the reconsideration process or any other agency administrative grievance system.

In the event a reconsideration or negotiated grievance decision results in an adjusted rating of record the revised rating will be referred to the Pay Pool Manager for recalculation of the employee's performance payout amount and distribution. Any adjustment to base pay will be retroactive to the effective date of the performance payout. Base pay adjustments will be based on the payout point range appropriate for the adjusted rating of record. Payout point values for the adjusted rating of record will reflect the payout point value paid to other

members across the pay pool for that rating cycle. Decisions made through the reconsideration process or a negotiated grievance procedure will not result in recalculation of the payout made to other employees in the pay pool.

13. Adverse Actions

Except where specifically waived or modified in this plan, adverse action procedures under 5 CFR part 752 remain unchanged.

D. Hiring Authority

Competitive service positions will be filled through Merit Staffing, direct-hire authority, or Delegated Examining.

1. Qualifications

The qualifications required for placement into a position in a pay band within an occupational family will be determined using the OPM "Operating Manual: Qualifications Standards for General Schedule Positions." Since the pay bands are anchored to the GS grade levels, the minimum qualification requirements for a position will be the requirements corresponding to the lowest GS grade incorporated into that pay band. For example, for a position in the S&E occupational family Pay Band II, individuals must meet the basic requirements for a GS–5 as specified in the OPM "Qualification Standard for Professional and Scientific Positions."

Selective factors may be established for a position in accordance with the OPM's "Operating Manual: Qualifications Standards for General Schedule Positions," when determined to be critical to successful job performance. These factors will become part of the minimum requirements for the position, and applicants must meet them in order to be eligible. If used, selective factors will be stated as part of the qualification requirements in vacancy announcements and recruiting bulletins.

2. Delegated Examining

NAWCAD and NAWCWD propose to demonstrate a streamlined examining process for both permanent and non-permanent positions. This authority will be supported by the applicable servicing Human Resource Offices and Human Resources Service Centers in accordance with the Department of Navy's common business processes, systems, and tools. The "Rule of Three" will be eliminated. When there are no more than 15 qualified applicants and no preference eligibles, all eligible applicants are immediately referred to the selecting official without rating and ranking. Rating and ranking will be required only when the number of qualified candidates exceeds 15 or there is a mix of preference and non-preference applicants. Statutes and regulations covering veterans' preference will be observed in the selection process and when rating and ranking are required. If the candidates are rated and ranked, a random number selection method will be used to determine which applicants will be referred when scores are tied after the rating process. Veterans will be referred ahead of non-veterans with the same score. Additional guidance on operating processes will be included in NAWCAD/NAWCWD internal issuances.

3. Distinguished Scholastic Achievement Appointment Authority (DSAA) for Scientific and Engineering Positions

The covered organizations will use the Distinguished Scholastic Achievement Appointment Authority. The DSAA uses an alternative examining process, which provides the authority to appoint individuals with undergraduate or graduate degrees through the doctoral level to professional positions up to the equivalent of GS–12 (DP–03 or DS–04). This enables the covered organizations to respond quickly to hiring needs for eminently qualified candidates possessing distinguished scholastic achievements. Candidates may be appointed provided they meet the minimum standards for the position as published in OPM's "Operating Manual: Qualifications Standards for General Schedule Positions" and the candidate has a cumulative grade point average of 3.5 (on a 4.0 scale) or better in their field of study (or other equivalent score) or are within the top 10 percent of a university's major school of graduate studies for professional occupations, etc.

4. Legal Authority

For actions taken under the auspices of the demonstration project, the legal authority, Public Law 103–337, as amended, will be used. For all other actions, the nature of action codes and legal authority codes prescribed by OPM, DoD, or DON will continue to be used.

5. Expanded Term Appointments

NAWCAD and NAWCWD conduct a variety of projects that range from three to six years. The current four-year limitation on term appointments, as described in 5 CFR part 316, often forces the termination of term employees prior to completion of projects they were hired to support. This disrupts the research and development process and affects the organization's ability to accomplish the mission and serve its customers. Under the demonstration project, the covered organizations will have authority to hire individuals under a modified term appointment for a period of more than one year but not more than five years when the need for an employee's services is not permanent. These appointments may be extended one additional year, for a total of 6 years. The Executive Directors are authorized to extend term appointments. Employees hired under the modified term appointment authority are in a non-permanent status, but may be eligible for conversion to career-conditional or career appointments in the competitive service. To be converted, the employee must have (1) been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the term position may be eligible for conversion to a career-conditional or career appointment at a later date; (2) served a minimum of two years of continuous service in the term position; and (3) be performing at the acceptable level of performance with a current rating of record of Mission Success or higher.

6. Extended Probationary Period

The purpose of extending the probationary period and trial period is to allow supervisors an adequate period of time to fully evaluate an employee's ability to complete a cycle of work and to fully assess an employee's contribution and conduct.

a. Competitive Service

NAWCAD and NAWCWD will implement an extended initial probationary period for competitive service employees. The one-year probationary period will be extended to three years for newly appointed career-conditional, career employees and the one-year trial period will be extended to three years for newly appointed term employees to positions classified to series in the Science and Engineering, Business and Program Management, and Technical Specialist occupational families. For employees in positions classified to series in the S&E Technician and Administrative Support occupational families the one-year probationary period will be extended to two years for newly appointed career-conditional, career employees and the one-year trial period will be extended to two years for newly appointed term employees. The term newly appointed includes conversion to new

appointments, including conversions from term appointments and the excepted service, for this purpose.

Employees who have completed an initial probationary or trial period prior to their conversion into the NAWC STRL will not be required to serve a new or extended initial probationary or trial period. Employees who are serving an initial probationary or trial period upon conversion into the NAWC's STRL will serve the time remaining on their initial probationary period or trial and may have their initial probationary or trial period extended in accordance with the demonstration project regulation and implementing issuances.

If a probationary or trial employee's performance is determined to be Mission Success or higher and the supervisor expects that the Mission Success or higher performance will continue into the future, the supervisor has the option of ending the probationary or trial period at an earlier date, but not before the employee has completed one year of continuous service. If the probationary or trial period is terminated before the end of the two- or three-year period, the immediate supervisor will provide written reasons for his/her decision to the next level of supervision for concurrence prior to implementing the action.

Aside from extending the time period for all newly appointed career-conditional, career and term employees all other features of the initial probationary period as defined in 5 CFR part 315 and trial period as described in 5 CFR part 316 are retained including the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee.

b. Excepted Service

NAWCAD and NAWCWD will implement an extended initial trial period for excepted service employees who are appointed on a permanent or conditional basis or who are given a time-limited appointment lasting three or more years. The trial period will be three years for newly appointed excepted service employees to positions classified to series in the Science and Engineering, Business and Program Management, and Technical Specialist occupational families. For employees in positions classified to series in the S&E Technician and Administrative Support occupational families the trial period will be extended to two years for newly appointed excepted service employees. The term newly appointed includes conversion to new appointments for this purpose.

Employees who have completed an initial trial period prior to their conversion into the NAWC STRL will not be required to serve a new or extended initial trial period. Employees who are serving an initial trial period upon conversion into the NAWC's STRL will serve the time remaining on their initial trial period and may have their initial trial period extended in accordance with the demonstration project regulation and implementing issuances.

If a trial employee's performance is determined to be Mission Success or higher and the supervisor expects that the Mission Success or higher performance will continue into the future, prior to the end of the two- or three-year trial period, a supervisor has the option of ending the trial period at an earlier date, but not before the employee has completed one year of continuous service. If the trial period is terminated before the end of the two- or three-year period, the immediate supervisor will provide written reasons for his/her decision to the next level of supervision for concurrence prior to implementing the action.

7. Termination of Probationary Employees

Probationary employees may be terminated when they fail to demonstrate proper conduct, technical competency, and/or acceptable performance for continued employment, and for conditions arising before employment. When a supervisor decides to terminate an employee during the probationary period because his/her work performance or conduct is unacceptable, the supervisor shall terminate the employee's services by written notification stating the reasons for termination and the effective date of the action. The information in the notice shall, at a minimum, consist of the supervisor's conclusions as to the inadequacies of the employee's performance or conduct, or those conditions arising before employment that support the termination.

8. Supervisory Probationary Periods

NAWCAD and NAWCWD will implement an extended supervisory probationary period. The probationary period for new supervisors will be two years. Except for the increased length, supervisory probationary periods will be made consistent with 5 CFR part 315. Employees who have successfully completed an initial probationary period for supervisory positions will not be required to complete an additional two-year probationary period for initial appointment to a supervisory position. Employees who are serving an initial supervisory probationary period upon conversion into the NAWC's STRL will serve the time remaining on their initial supervisory probationary period and may have their supervisory probationary period extended in accordance with the demonstration project regulation and implementing issuances. If, during this probationary period, the decision is made to return the employee to a non-supervisory position for reasons related to supervisory performance and/or conduct, the employee will be returned to a comparable position of no lower base pay than the position from which promoted or reassigned immediately prior to the supervisory assignment.

9. Volunteer Emeritus Corps

a. NAWCAD and NAWCWD will implement a Voluntary Emeritus Program. Under the demonstration project, the Executive Directors of the covered organizations will have the authority to offer retired or separated employees voluntary positions. This authority may be delegated only to members of the Senior Executive Service (SES). Voluntary Emeritus Corps assignments are not considered employment by the Federal government except for purposes of injury compensation. Thus, such assignments do not affect an employee's entitlement to buyouts or severance payments based on an earlier separation from Federal service. To be accepted into the Volunteer Emeritus Corps, a volunteer must be recommended by a NAWCAD or NAWCWD manager to the NAWCAD or NAWCWD Executive Director or an SES member to whom this authority has been delegated. Not everyone who applies is entitled to an emeritus position. The responsible official will document acceptance or rejection of the applicant. For acceptance, documentation must be retained throughout the assignment. For rejection, documentation will be maintained for two years.

b. To ensure success and encourage participation, the volunteer's Federal retirement pay (whether military or civilian) will not be affected while serving in a voluntary capacity. Retired or separated Federal employees may accept an emeritus position without a break or mandatory waiting period. Voluntary Emeritus Corps volunteers will not be permitted to monitor contracts on behalf of the Government or to participate on any contracts or solicitations where a conflict of interest exists. The volunteers may be required to submit a financial disclosure form annually. The same rules that currently apply to source selection members will

apply to volunteers. An agreement will be established among the volunteer, the responsible official, and the servicing HRO. The agreement must be finalized before the assumption of duties and shall include:

(1) A statement that the voluntary assignment does not constitute an appointment in the Civil Service is without compensation, and the volunteer waives any claims against the Government based on the voluntary assignment;

(2) A statement that the volunteer will be considered a Federal employee only for the purpose of injury compensation;

(3) The volunteer's work schedule;

(4) Length of agreement (defined by length of project or time defined by weeks, months, or years);

(5) Support provided by the organization (travel, administrative support, office space, and supplies);

(6) A statement of duties;

(7) A statement providing that no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a volunteer;

(8) A provision allowing either party to void the agreement with two working days written notice;

(9) The level of security access required by the volunteer (any security clearance required by the position will be managed by the employing organization);

(10) A provision that any publication(s) resulting from his/her work will be submitted to the NAWCAD or NAWCWD Executive Director for review and approval;

(11) A statement that he/she accepts accountability for loss or damage to Government property occasioned by his/her negligence or willful action;

(12) A statement that his/her activities on the premises will conform to the regulations and requirements of the organization;

(13) A statement that he/she will not release any sensitive or proprietary information without the written approval of the employing organization and further agrees to execute additional non-disclosure agreements as appropriate, if required, by the nature of the anticipated services; and,

(14) A statement that he/she agrees to disclose any inventions made in the course of work performed at the NAWCAD or NAWCWD. The NAWCAD or NAWCWD Executive Director has the option to obtain title to any such invention on behalf of the U.S. Government. Should the NAWCAD or NAWCWD Executive Director elect not to take title, the NAWCAD or NAWCWD shall, at a minimum, retain a non-exclusive, irrevocable, paid-up, royalty-free license to practice or have practiced the invention worldwide on behalf of the U.S. Government. Exceptions to the provisions in this procedure may be granted by the NAWCAD or NAWCWD Executive Director on a case-by-case basis.

10. Direct Hire Authority for Scientists and Engineers With Advanced Degrees for Scientific and Engineering Positions

a. Background

The NAWCAD and NAWCWD Laboratories have an urgent need for direct hire authority to appoint qualified candidates possessing an advanced degree to permanent and temporary scientific and engineering positions. The market is extremely competitive with industry and academia for the small supply of highly-qualified and security clearable candidates with a Masters Degree or PhD in science or engineering. There are 35,000 scientists and engineers employed in the DoD laboratories; 27% hold Masters Degrees, while 10% are in possession of a PhD The NAWCAD and NAWCWD Laboratories jointly employ 5974 scientists and engineers; 29% holding Masters Degrees, while 4% are in possession of a PhD Over the next five years, the NAWCAD and NAWCWD Laboratories plan to hire approximately 2,240 of the country's best and brightest scientists and engineers (S&Es) just to keep pace with attrition. This number does not include the impact that several actions such as the Base Realignment and Closure of weapons and armament work to China Lake, California that will result in need to hire additional scientists and engineers above normal attrition levels. Statistics indicate that the available pool of advanced degree, clearable candidates is substantially diminished by the number of non-U.S. citizens granted degrees by U.S. institutions. For instance, in 2006, 20% of Masters Degrees in science and over 35% of PhDs in science were awarded to temporary residents.

It is expected that this hiring authority, together with streamlined recruitment processes, will be very effective in hiring candidates possessing a PhD and accelerating the hiring process. For instance, under a similar authority found in the NDAA for FY 2009, section 1108 (Pub. L. 110–417), October 28, 2009, one STRL had fifteen PhD selectees in 2009 for the sixteen vacancies for which they were using this hiring authority. Another STRL, using this expedited hiring authority in calendar year 2009, made thirty firm hiring offers in an average of thirteen days from receipt of paper work in the Human Resources Office. Of these thirty selectees, twenty-three possessed PhDs.

This authority will be administered by the servicing Human Resources Office and Human Resources Service Center in accordance with the Department of Navy's common business processes, systems and tools and consistent with veterans' preference and merit principles. Use of this appointing authority must comply with 'veterans' preference and merit systems principles when recruiting and appointing candidates with advanced degrees to covered occupations. Qualified candidates possessing an advanced degree may be appointed to both competitive and excepted service without regard to the provisions of subchapter 1 of chapter 33 of title 5, United States Code, other than sections 3303, 3321, and 3328 of such title.

The hiring threshold for this authority shall be consistent with DoD policy and legislative language as expressed in any National Defense Authorization Act addressing such.

When completing the personnel action, the following will be given as the authority for the Career-Conditional, Career, Term, Temporary, or special demonstration project appointment authority: Section 1108, NDAA for FY 09. Evaluation of this hiring authority will include information and data on its use such as numerical limitation, hires made, declinations, how many veterans hired, declinations, difficulties encountered, and/or recognized efficiencies.

b. Definitions

(1) Scientific and engineering positions are defined as all professional positions in scientific and engineering occupations (with a positive education requirement) utilized by the laboratory.

(2) An advanced degree is a Master's or higher degree from an accredited college or university in a field of scientific or engineering study directly related to the duties of the position to be filled.

(3) Qualified candidates are defined as candidates who:

(a) Meet the minimum standards for the position as published in OPM's operating manual, "Qualification Standards for General Schedule Positions," or the laboratory's demonstration project qualification standards specific to the position to be filled;

(b) Possess an advanced degree; and

(c) Meet any selective factors.

(4) The term "employee" is defined by Section 2105 of title 5, U.S.C.

11. Non-Citizen Hiring

Where Executive Orders or other regulations limit hiring non-citizens to the excepted service, both NAWCAD and NAWCWD will have the authority to approve the hiring of non-citizens into competitive service positions when qualified U.S. citizens are not available, and the candidate meets all applicable immigration and security requirements. If a non-citizen candidate is the only qualified candidate for the position, the candidate may be appointed. The selection is subject to approval by the NAWCAD and NAWCWD Executive Director/Commanding Officer or approving manager, as delegated by the appropriate Center Executive Director/ Commanding Officer. This authority may only be delegated to members of the Senior Executive Service (SES).

E. Internal Placement

1. Employees Hired From Outside the NAWC STRL

Employees entering into the NAWC from non-STRL pay systems or from other Federal activities not as the result of a mass organizational conversion will be moved into the demonstration project in the career path and at the level and pay consistent with the duties and responsibilities of the STRL position and individual qualifications.

When an employee is permanently placed (except by conversion under section V.A or by promotion under section II.E.2) in an STRL position from a GS or FWS position through a management-directed action (except for actions taken for misconduct or unacceptable performance), including a management directed reassignment or realignment, or any placement as a result of a reduction in force (RIF), or placement via the Priority Placement Program (PPP), Reemployment Priority List (RPL), or Interagency Career Transition Assistance Plan (ICTAP), the employee will receive a WGI adjustment. The WGI adjustment is calculated based on the number of calendar days between the effective date of the employee's last equivalent increase and the date of conversion into NSPS, regardless of the number of days in a non-pay status (if any). The maximum adjustment may not exceed a full WGI.

An employee who enters into an STRL position from a GS or FWS position through an employee-initiated reassignment, promotion, or change to lower grade may, at the discretion of the authorized management official, also receive a WGI adjustment equivalent increase as described in the paragraph above. The decision to grant this increase will be reviewed and approved by an official who is at a higher level than the official who made the initial decision.

In either case, this increase occurs before any other discretionary reassignment increases provided under the STRL, may not cause the employee's base salary to exceed the maximum rate of the assigned pay band, and is in addition to any other discretionary reassignment increase the employee may be eligible to receive.

2. Promotion

A promotion is the movement of an employee to a higher pay band in the same occupational family or to a higher pay band in a different occupational family. It also includes movement of an employee currently covered by a non-demonstration project personnel system to a demonstration project position in a pay band with a higher level of work. Positions with known promotion potential to a specific band within an occupational family will be identified when they are filled. Not all positions in an occupational family will have promotion potential to the same band. Movement from one occupational family to another will depend upon individual competencies, qualifications and the needs of the organization. Supervisors may consider promoting qualified employees at any time, since promotions are not directly tied to the mission aligned objectives and compensation system. Progression within a pay band is based upon performance base pay increases; as such, these actions are not considered promotions and are not subject to the provisions of this section. Promotions will follow Merit System Principles and basic Federal merit promotion policy that provides for competitive and non-competitive promotions.

To be promoted competitively or non-competitively from one band to the next, an employee must meet the minimum qualifications for the job and have a current rating of record of Mission Success or better or equivalent under a different performance appraisal system. If an employee does not have a current performance rating, the employee will be treated the same as an employee with a rating of record of Mission Success as long as there is no documented evidence of less than acceptable performance.

Higher pay band or higher level of work means a pay band designated to be a higher level of work than an employee's currently assigned band, based on the demonstration classification structure and career progression patterns, either within or across varying pay schedules and career groups, regardless of the specific earning potential of the band. When moving from a non-demonstration position to a demonstration position, the band of the demonstration position is determined to be at a higher level of work than the grade or level of the non-demonstration position based on application of the demonstration classification structure and career progression patterns. Additional guidance will be included in NAWCAD/ NAWCWD internal issuances.

3. Reassignment

A reassignment occurs when an employee moves, voluntarily or involuntarily, to a different position or set of duties within his/her pay band or to a position in a comparable pay band, or from a non-demonstration project position to a demonstration project position at a comparable level of work, on either a temporary or permanent basis. The employee must meet the qualifications requirements for the occupational family and pay band. When an employee is reassigned either within his/her current pay band or to a comparable pay band, an authorized management official will set pay at an amount no less than the employee's current base pay.

Comparable pay band or comparable level of work means pay bands with the equivalent level of work, based on the demonstration classification structure and career progression patterns, within and across varying pay schedules and career groups, regardless of the specific earning potential of the bands. When moving from a non-demonstration position to a demonstration position, the band of the demonstration position is determined to be at a comparable level of work to the grade or level of the non-demonstration position based on application of the demonstration classification structure and career progression patterns. Additional guidance will be included in NAWCAD/ NAWCWD internal issuances.

4. Demotion or Placement in a Lower Pay Band

A demotion is the placement of an employee into a lower pay band or movement from a non-demonstration project position to a demonstration project position at a lower level of work. Demotions may be for cause (performance or conduct) or for reasons other than cause (*e.g.,* erosion of duties, reclassification of duties to a lower pay band, application under competitive announcements, at the employee's request, or placement actions resulting from RIF procedures).

Lower pay band or lower level of work means a pay band designated to be a lower level of work than an employee's currently assigned band, based on the demonstration classification structure and career progression patterns, either within or across varying pay schedules and career groups, regardless of the specific earning potential of the band. When moving from a non-demonstration position to a demonstration position, the band of the demonstration position is determined to be at a lower level of work than the grade or level of the non-demonstration position based on application of the demonstration classification structure and career progression patterns. Additional guidance will be included in NAWCAD/NAWCWD internal issuances.

5. Simplified Assignment Process

Today's environment of downsizing and workforce fluctuations mandates that the organization have maximum flexibility to assign duties and responsibilities to individuals. Pay banding can be used to address this need, as it enables the organization to have maximum flexibility to assign an employee with or without a change in base pay, within broad descriptions, consistent with the needs of the organization and the individual's qualifications and level. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same level, area of expertise, and qualifications would not constitute an assignment outside the scope or coverage of the current position description. For instance, a technical expert could be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or organization consistent with that individual's qualifications. This flexibility allows broader latitude in assignments and further streamlines the administrative process and system.

6. Details and Temporary Promotions

NAWCAD and NAWCWD will implement an Expanded Detail and Temporary Promotion Authority providing the authority to (1) to effect details up to one year to specified positions at the same or similar level; and (2) to effect details or temporary promotions to a higher pay band position up to one year within a 24-month period without competition. The specifics of these authorities will be stipulated by local business rules, policies, or procedures as organizational experience dictates.

7. Exceptions to Competitive Procedures

The following actions are exceptions to competitive procedures:

a. Re-promotion to a position which is in the same pay band or GS equivalent and occupational family as the employee previously held on a permanent basis within the competitive service.

b. Promotion, reassignment, demotion, transfer or reinstatement to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

c. A position change permitted by reduction-in-force procedures.

d. Promotion without current competition when the employee was appointed through competitive procedures to a position with a documented target level.

e. A temporary promotion, or detail to a position in a higher pay band, up to one year in a 24-month period.

f. A promotion due to the reclassification of positions based on accretion (addition) of duties.

g. A promotion resulting from the correction of an initial classification error or the issuance of a new classification standard.

h. Consideration of a candidate who did not receive proper consideration in a competitive promotion action.

Additional guidance will be included in NAWCAD/NAWCWD internal issuances.

F. Pay Administration

1. General

Pay administration policies will be established by the Personnel Management Board. These policies will be exempt from DON pay setting policies, but will conform to basic governmental pay setting policy except for flexibilities contained herein. Employees whose performance is acceptable will receive the full annual general pay increase and the full locality pay. The covered organizations may make full use of recruitment, retention and relocation incentive payments as provided for by OPM. Pay retention will follow current law and regulations at 5 U.S.C. 5362, 5363, and 5 CFR part 536, except as described in this regulation and waived or modified in section IX, the waiver section of this plan. Pay band retention will not be used in this demonstration project.

2. Locality Pay

Employees with a performance rating of Partial Mission Success or better will be entitled to the locality pay authorized for their official duty station in accordance with 5 CFR part 531 subpart F. Employees with a performance rating of Unacceptable will be entitled to only the locality pay increase; they cannot receive any other pay increase or award. In addition, the locality-adjusted pay of any employee may not exceed the rate for Executive Level IV. Geographic movement within the demonstration project will result in the employee's locality pay being recomputed using the newly applicable locality pay percentage, which may result in a higher or lower locality pay and, thus, a higher or lower adjusted base pay.

3. Pay and Compensation Ceilings

An employee's total monetary compensation paid in a calendar year may not exceed the base pay of Level I of the Executive Schedule consistent with 5 U.S.C. 5307 and 5 CFR part 530 subpart B. In addition, each pay band will have its own pay ceiling, just as grades do in the GS. Base pay rates for the various pay bands will be directly keyed to the GS rates, except for the Pay Band VI of the Supervision and Management occupational family. Other than where a retained rate applies, base pay will be limited to the maximum base pay payable for each pay band.

4. Pay Setting for Appointment

Employees whose appointment to a demonstration project position is their initial appointment to the Federal service may have pay set at the lowest base pay in the band or anywhere within the band consistent with the special qualifications of the individual and the unique requirements of the position. These special qualifications may be in the form of education, training, experience or any combination thereof that is pertinent to the position in which the employee is being placed. Both national and local labor market conditions and pay rates may also be taken into consideration to ensure that the Warfare Centers are able to compete for the talent, skills, abilities, and competencies needed to enable them to remain on the cutting edge of science and technology. Guidance on pay setting for new hires will be established by the Personnel Management Board. Highest Previous Rate (HPR) will be considered in placement actions authorized under rules similar to the HPR rules in 5 CFR 531.221. Use of HPR will be at the supervisor's discretion, but if used, HPR is subject to policies established by the Personnel Management Board.

5. Pay Setting for Promotion

The minimum base pay increase upon promotion to a higher pay band will be 6% or the minimum base pay rate of the new pay band, whichever is greater. The maximum amount of the pay increase may not exceed 20%, or other such amount as established by the Personnel Management Board. The maximum base pay increase for promotion may be exceeded when necessary to allow for the minimum base pay increase. For employees covered by a staffing supplement, the demonstration extended base pay is considered base pay for promotion calculations. When a temporary promotion is terminated, the employee's pay entitlements will be re-determined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by the Personnel Management Board. The Personnel Management Board may establish additional pay setting policies for promotions, including increasing the promotion amount beyond 20% with the approval of the NAWCAD and NAWCWD Commanders or Executive Directors. In no case may those adjustments increase the base pay for the position of record beyond the applicable maximum base pay for the pay band.

6. Pay Setting for Reassignment

a. Covered organizations may choose to adopt the flexibility to pay an increase in base pay upon reassignment. If adopted, such an increase will be subject to the specific guidelines established by the Personnel Management Board and will not exceed 5% as a cost containment measure. A reassignment may be effected without a change in base pay. Employees may be eligible for an increase to base salary upon temporary or permanent reassignment as described in section III.E.3. A decision to increase an employee's pay under this section will be based upon clear Personnel Management Board business rules that will define criteria necessary to justify a pay increase. Examples of criteria may include, but are not limited to, one or more of the following factors:

(1) A determination that an employee's responsibilities will significantly increase;

(2) Critical mission or business requirements;

(3) Need to advance multi-functional competencies;

(4) Labor market conditions, *e.g.,* availability of candidates and labor market rates;

(5) Reassignment from a nonsupervisory to a supervisory position;

(6) Employee's past and anticipated performance and contribution;

(7) Physical location of position;

(8) Specialized skills, knowledge, or education possessed by the employee in relation to those required by the position; and

(9) Base pay of other employees in the organization performing similar work.

b. When an employee is reassigned within his/her current pay band or to a comparable pay band, an authorized management official will set pay at an amount no less than the employee's current base pay and may increase the employee's current base pay by up to and including 5%. If the employee's current base pay exceeds the maximum of the new pay band, no increase can be provided. There is no limit to the number of times an employee can be reassigned, but local business rules will be established to monitor and control all cases that receive reassignment base pay changes to ensure fairness and consistency across the workforce. Reassignment base pay thresholds may be modified by internal business rules, policies, or procedures as organizational experience dictates.

7. Pay Setting for Demotion or Placement in a Lower Pay Band

Employees demoted for cause (performance or conduct) are not entitled to pay retention and will receive a minimum of a 5% decrease in base pay or the minimum rate of the lower pay band whichever is greater. Employees demoted for reasons other than cause (*e.g.,* erosion of duties, reclassification of duties to a lower pay band, application under competitive announcements, at the employee's request, or placement actions resulting from RIF procedures) may be entitled to pay retention in accordance with the provisions of 5 U.S.C. 5363 and 5 CFR part 536, except as waived or modified in sections III.F.11 and IX of this plan.

Employees, who receive an unacceptable rating, do not receive performance payouts or the general pay increase. This action may result in base pay that is identified in a lower pay band. This occurs because the minimum rate of base pay in a pay band increases as the result of the general pay increase (5 U.S.C. 5303) while the employee's pay does not change. The employee will be placed in the lower pay band and their salary will remain unchanged. This situation (a reduction-in-band level with no reduction in pay as a result of an unacceptable rating) will not be considered an adverse performance based action.

8. Staffing Supplements

At the time of conversion or OPM approval of a new SSR that would be applicable to covered employees, the NAWCAD and NAWCWD may incorporate the use of special salary rates (SSR) in demonstration project pay ranges. Currently there are no NSPS Targeted Local Market Supplements in use by NAWCAD or NAWCWD so no employees converting from NSPS will be affected if staffing supplements are not implemented at conversion. If staffing supplements are adopted, either at the time of conversion or later, NAWCAD and NAWCWD will implement them via an extension to the demonstration pay ranges and a supplement to a covered employee's salary. Employees assigned to occupational categories and geographic areas where GS SSRs apply may be entitled to a staffing supplement if the maximum adjusted base pay rate for the demonstration band to which the employee is assigned is exceeded by a GS special rate for the employee's occupational category and geographic area. The Personnel Management Board may establish additional policies and provide guidance on the use and application of the staffing supplement including provisions for in band adjustments and limiting application of this feature to fewer occupations than covered by the GS SSR. An extension to the demonstration pay ranges will be used to extend the maximum salary of the pay band for those occupations for which a staffing supplement is approved. The increase of an employee's base pay into this extension will be determined by the annual performance assessment and payout, there is no automatic entitlement to a staffing supplement. Only if an employee's annual assessment and associated payout would cause their base pay to fall within the area of the staffing supplement extension to the pay range for the pay band would they be paid at this level.

The extension to the pay range will be the maximum special salary rate for the banded grades. An employee's base pay is increased by the standard locality increase until the base pay exceeds the maximum GS basic pay for the banded grades. If the employee's base pay will exceed the maximum GS basic pay for the banded grades then the staffing supplement will be applied when authorized. The staffing supplement percent will be set equal to the locality percent and the staffing supplement and

payout is calculated as shown in the following example.

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Scenario: Top of regular RUS pay range is $74, 628 NAWC has adopted a pay scale extension for RUS 2210s and 0856s Top of extended pay range is $78, 445 (equal to the relevant GS RUS SSR)		
A RUS 0856 employee is at top of normal pay scale. Their pay before payout is: STRL base pay = $65, 371 STRL locality pay = $9, 257 (Locality % = 14.16%, same as GS) STRL adjusted base pay = $74, 628		
This employee receives a performance rating of Exceeds Mission Expectations (4) and receives 3 pay out points. The distribution of the payout is 70% salary and 30% bonus. Each payout point is valued at 2%.		
New base pay calculation 65371 * (1 + (3 * .02 * .7) (base pay increase after payout = 3 payout points * 2% pay point value * 70% allocated to salary. Note the remainder will be paid as bonus.)	=	68116.582; rounded to 68117
RUS locality percent = 14.16% Staffing supplement percent = 14.16%		
Staffing supplement calculation 68117 * .1416 (new base pay * staffing supplement percent)	=	9645.3672; rounded to 9645
New adjusted base pay calculation 68117 + 9645 (new base pay + staffing supplement)	=	$77, 672

BILLING CODE 5001–06–C

If the pay scale extension is discontinued or reduced either because the GS SSR has been discontinued or reduced, for NAWC budgetary constraints or other NAWC managerial decisions, the employees receiving a staffing supplement will receive retained pay. There will be no change in the adjusted base pay when placed on pay retention.

9. Educational Pay Adjustment

NAWCAD and NAWCWD will establish an educational base pay adjustment which is separate from the incentive pay process and may not cause the employee's pay to exceed the maximum base pay rate of his or her assigned pay band. An educational pay adjustment is defined as an increase in an employee's base pay by other than the incentive pay process within the employee's current band level to an amount which does not exceed the top of the band. The educational pay adjustment may be used to adjust the pay of individuals who have acquired a level of mission-related education that would otherwise make the employee qualified for an appointment at a higher level and would be used in lieu of a new appointment. For example, this authority may be used to adjust the pay of graduate level Student Career Experience Program (SCEP) students or employees who have obtained an advanced degree, *e.g.,* a PhD in a field related to the work of their position or the mission of their organization. An employee may receive an educational base pay adjustment or a reassignment base pay increase but not both at the same time.

10. Developmental Promotions

NAWCAD and NAWCWD will employ developmental promotions to achieve compensation growth commensurate to an employee's progression while in developmental assignments. A developmental promotion is an increase to base pay that may be provided to employees participating in NAWCAD and NAWCWD training programs or in other developmental capacities as determined by Personnel Management Board policy. Developmental promotions recognize growth and development in the acquisition of job related competencies combined with successful performance of job objectives. The use of developmental promotions is limited to (1) employees in a developmental pay band of a non-supervisory pay schedule and who are in developmental or trainee level positions; and (2) employees in positions which are assigned to a Student Career Experience Program (SCEP).

Standards by which developmental promotion increases are provided and criteria by which additional base pay increases will be determined will be established and documented in internal business rules, policies, or procedures. The amount of the developmental

promotion increase generally will not exceed 20 percent of an employee's base pay. The decision to grant a developmental promotion exceeding 20 percent of an employee's base pay must be made on a case-by-case basis and approved by the appropriate Executive Director/Commanding Officer or their delegate as established by internal business rules, policies, or procedures. This authority may be delegated only to members of the Senior Executive Service (SES). The amount of the developmental promotion increase may not cause the employee's base pay to exceed the top of the employee's pay band or that set by internal business rule, policy, or procedure. To qualify for a developmental promotion, an employee must have a rating of record of Mission Success or better. A developmental promotion may be awarded to an employee who does not have a rating of record if an authorizing official conducts a performance assessment and determines that the employee is performing at the Mission Success level or better. This performance assessment does not constitute a rating of record. If an employee has a current performance rating below Mission Success and the supervisor believes the employee's performance has improved to the Mission Success level or better, the employee has demonstrated this improved performance for 90 days or more and it is expected that this level of performance will continue, the supervisor may conduct a performance assessment and forward it to the Pay Pool Manager for approval. If the Pay Pool Manager concurs with the supervisor's assessment, then the employee may be given a developmental promotion. There is no entitlement to an additional assessment beyond the annual assessment; this decision is totally at managerial discretion. If an additional assessment is made, it is not a rating of record and there will be no retroactive pay changes associated with it.

A developmental promotion increase may not be granted unless an employee is in a pay and duty status under the NAWCAD/NAWCWD STRL demonstration project on the effective date of the increase.

11. Pay Retention

Pay retention will follow current law and regulations at 5 U.S.C. 5362, 5363, and 5 CFR part 536, except as waived or modified in the Staffing Supplements section and section IX of this plan. Pay band (grade) retention does not apply under this demonstration project. The NACWAD or NAWCWD Executive Director may also grant pay retention to employees who meet general eligibility requirements, but do not have specific entitlement by law, provided they are not specifically excluded.

G. Employee Development

1. Expanded Developmental Opportunity Program

The Expanded Developmental Opportunity Program will be available to all demonstration project employees. Expanded developmental opportunities complement existing developmental opportunities such as long-term training, rotational job assignments, and developmental assignments to DON/DoD, and self-directed study via correspondence courses and local colleges and universities. Each developmental opportunity must result in a product, service, report, or study that will benefit the NAWCAD or NAWCWD or customer organization as well as increase the employee's individual effectiveness. The developmental opportunity period will not result in loss of (or reduction) in base pay, leave to which the employee is otherwise entitled, or credit for service time. The positions of employees on expanded developmental opportunities may be back-filled (*i.e.,* with temporarily assigned, detailed, or promoted employees or with term employees). However, that position or its equivalent must be made available to the employee upon return from the developmental period. The Personnel Management Board will provide written guidance for employees on application procedures and develop a process that will be used to review and evaluate applicants for development opportunities.

a. Sabbaticals

The Executive Directors of the covered organizations have the authority to grant paid or unpaid sabbaticals to all career employees. The purpose of a sabbatical will be to permit an employee to engage in study or uncompensated work experience that will benefit the organization and contribute to the employee's development and effectiveness. Each sabbatical must result in a product, service, report, or study that will benefit the NAWCAD or NAWCWD mission as well as increase the employee's individual effectiveness. Various learning or developmental experiences may be considered, such as advanced academic teaching; research; self-directed or guided study; and on-the-job work experience.

One paid sabbatical of up to twelve months in duration or one unpaid sabbatical of up to six months in a calendar year may be granted to an employee in any seven-year period. Employees will be eligible to request a sabbatical after completion of seven years of Federal service. Employees approved for a paid sabbatical must sign a service obligation agreement to continue in service in the covered organizations for a period of three times the length of the sabbatical. If an employee voluntarily leaves the covered organizations before the service obligation is completed, he/she is liable for repayment of expenses incurred by the covered organizations that are associated with training during the sabbatical. Expenses do not include salary costs. The Executive Directors of the covered organizations have the authority to waive this requirement. Criteria for such waivers will be addressed in the operating procedures. Specific procedures will be developed for processing sabbatical applications upon implementation of the demonstration project.

b. Critical Skills Training (Training for Degrees)

The Executive Directors of the covered organizations have the authority to approve academic degree training consistent with 5 U.S.C. 4107. Training is an essential component of an organization that requires continuous acquisition of advanced and specialized knowledge. Degree training is also a critical tool for recruiting and retaining employees with or acquiring critical skills. Academic degree training will ensure continuous acquisition of advanced specialized knowledge essential to the organization and ability to recruit and retain personnel critical to the present and future requirements of the organization. Degree or certificate payment may not be authorized where it would result in a tax liability for the employee without the employee's express and written consent. Any variance from this policy must be rigorously determined and documented. Guidelines will be developed to ensure competitive approval of degree or certificate payment and that those decisions are fully documented. Employees approved for degree training must sign a service obligation agreement to continue in service in the covered organizations for a period of three times the length of the training period. If an employee voluntarily leaves the NAWCAD or NAWCWD before the service obligation is completed, he/she is liable for repayment of expenses incurred by the covered organizations

related to the critical skills training. Expenses do not include salary costs. The Executive Directors of the covered organizations have the authority to waive this requirement. Criteria for such waivers will be addressed in the STRL internal operating procedures.

H. Reduction-in-Force (RIF) Procedures

RIF procedures will be used when an employee faces separation or downgrading due to lack of work, shortage of funds, reorganization, insufficient personnel ceiling, the exercise of re-employment or restoration rights, or furlough for more than 30 calendar days or more than 22 discontinuous days. The procedures in 5 CFR part 351 will generally be followed with some modifications pertaining to the competitive areas, assignment rights, the addition of a performance sub-group and grade/pay band retention. Modified term appointment employees are in Tenure Group III for RIF purposes. RIF procedures are not required when separating these employees when their appointments expire.

1. Competitive Areas

Separate RIF competitive areas for demonstration and non-demonstration project employees will be established at each geographic location. Within the demonstration project separate competitive areas will be established for each demonstration occupational family. Demonstration supervisors will be placed in the competitive area for their occupational family but in separate competitive levels within that career field. Bumps and retreats will occur only within the same competitive area and only to positions for which the employee meets all qualification standards including medical and/or physical qualifications.

Within each competitive area, competitive levels will be established based on the occupational family, pay band, series and SAC so that positions are similar enough in duties and qualifications that employees can perform the duties and responsibilities of any other position in the competitive level upon assignment to it, without any loss of productivity beyond what is normally expected. For S&E competitive levels the Warfare Centers may also choose to use the OPM classification functional code as a defining element.

2. Assignment Rights

An employee may displace another employee by bump or retreat to one pay band below the employee's existing pay band. A preference eligible with a compensable service-connected disability of 30 percent or more may retreat to positions two pay bands below his/her current band.

3. Crediting Performance in RIF

Reductions in force are accomplished using the existing procedures with the retention factors of: Tenure, veterans' preference, performance, and length of service, in that order. The performance subgroup will be based on the most recent three ratings of record during the preceding four years. There will be three groupings within the performance subgroup: Mission Superior (H), Mission Success (S) and Mission Deficiency (L). The most recent ratings of records will be combined to determine the performance subgroup. The High subgroup will include those employees who have consistently demonstrated superior performance. The Mission Success subgroup will include the next level of demonstrated performance and the Mission Deficiency subgroup will include those who have failed to achieve expected levels of performance for one or more years. Additional guidance on determining performance subgroups will be included in NAWCAD/NAWCWD internal issuances.

Employees who have been rated under different patterns of summary rating levels and have at least the equivalent of a rating of record of three will receive RIF appraisal credit for the non-demonstration performance ratings equivalent to Mission Success based on the demonstration project's modal score for the employee's competitive area. If the employee received less than the equivalent of Mission Success, then that rating will be compared to the demonstration project one or two rating and best fit chosen. Additional guidance on ratings equivalency will be included in NAWCAD/NAWCWD internal issuances.

In some cases, an employee may not have three ratings of record. If an employee has fewer than three annual ratings of record, then for each missing rating, RIF appraisal credit will be based on the demonstration project's modal score for the most recently completed appraisal period on record for the employee's competitive area. For an employee who has no ratings of record, all credit will be based on the repeated use of a single modal rating from the most recently completed appraisal period on record for the employee's competitive area.

An employee who has received a written decision that his/her performance is unacceptable has no bump or retreat rights. An employee who has been demoted for unacceptable performance, and as of the date of the issuance of the RIF notice has not received a performance rating in the position to which demoted, will receive the same credit granted for a Level 3 rating of record. An employee with a current unacceptable rating of record has assignment rights only to a position held by another employee who has an unacceptable rating of record.

IV. Implementation Training

Critical to the success of the demonstration project is the training developed to promote understanding of the broad concepts and finer details needed to implement and successfully execute this project. A new pay banding schema and performance management system both represent significant cultural change to the organization. Training will be tailored to address employee concerns and encourage comprehensive understanding of the demonstration project. Training will be required both prior to implementation and at various times during the life of the demonstration project. A training program will begin prior to implementation and will include modules tailored for employees, supervisors, senior managers, and administrative staff. Typical modules are:

1. An overview of the demonstration project personnel system;
2. How employees are converted into and out of the system;
3. Pay banding;
4. The mission aligned objectives and compensation system;
5. Defining mission aligned performance objectives;
6. How weights may be used with the mission aligned performance objectives;
7. Assessing performance—giving feedback;
8. New position descriptions; and
9. Demonstration project administration and formal evaluation.

Various types of training are being considered including videos, on-line tutorials, and train-the-trainer concepts.

V. Movement Into and Out of the Demonstration Project

A. Conversion From NSPS to the Demonstration Project

1. Placement Into Demonstration Project Pay Plans and Pay Bands

The employee's NSPS occupational series, pay plan, pay band, and supervisory code will be considered upon converting into the demonstration project as follows:

a. Determine the appropriate demonstration project pay plan. Employees will be converted into a pay

plan based on the occupational series of their position. There is a separate pay plan for supervisors; conversion to that pay plan will be without regard to the occupational series. In cases where the employee is assigned to a NSPS-unique occupational series, a corresponding OPM occupational series must be identified using OPM GS classification standards and guidance to determine the proper demonstration project pay plan.

b. Determine the appropriate pay band. The appropriate pay band will be determined by establishing the corresponding demonstration project pay band for the employee's NSPS position using demonstration project pay band definitions, classification standards and guidance. Once the demonstration project pay band has been determined, the employee's position will be placed in the demonstration project pay band. In cases where a demonstration project pay band overlaps more than one NSPS pay band, placement will be made using demonstration project pay band definitions and classification criteria to determine the appropriate pay band in which to place the position.

2. Pay Upon Conversion

Conversion from NSPS into the demonstration project will be accomplished with full employee pay protection. Adverse action provisions will not apply to the conversion action. In accordance with section 1113(c)(1) of NDAA 2010, which prohibits a loss of or decrease in pay upon transition from NSPS, employees converting to the demonstration project will retain the adjusted salary (as defined in 5 CFR 9901.304) from their NSPS permanent position at the time the position converts. Upon conversion, the retained NSPS adjusted salary may not exceed Level IV of the Executive Schedule plus 5 percent. If the employee's base pay exceeds the maximum rate for his or her assigned demonstration project pay band, the employee will be placed on indefinite pay retention until an event, as described in 5 CFR 536.308, results in a loss of eligibility for or termination of pay retention. Increases to the retained rate after conversion will be in accordance with applicable regulations; however, for any NSPS employee whose retained rate exceeds EX–IV upon conversion, any adjustment to the retained rate in accordance with applicable pay retention regulations may not cause the employee's adjusted pay to exceed EX–IV plus 5 percent.

NAWCAD and NAWCWD do not have any employees who are covered by an NSPS targeted local market supplement (TLMS), but if such coverage occurs between the date of this FRN and conversion to the demonstration project such employees will no longer be covered by a TLMS. Instead they may receive a locality or similar supplement (*e.g.,* a staffing supplement), or pay retention, if applicable. The adjusted base pay will not change upon conversion.

Once converted, employees may receive other adjustments and/or differentials, as applicable, as described in this regulation or an implementing issuance.

3. Fair Labor Standards Act (FLSA) Status

Since FLSA provisions were not waived under NSPS and duties do not change upon conversion to the demonstration project, the FLSA status determination will remain the same upon conversion. Employees will be converted to the demonstration project with the same FLSA status they had under NSPS.

4. Transition Equity

During the first 12 months following conversion to the demonstration project, management may approve certain adjustments within the pay band for pay equity reasons stemming from conversion. For example, if an employee would have been otherwise promoted but demonstration project pay band placement no longer merits promotion, a pay equity adjustment may be authorized provided the adjustment does not cause the employee's base pay to exceed the maximum rate of his or her assigned pay band and the employee's performance warrants an adjustment. The decision to grant a pay equity adjustment is at the sole discretion of management and is not subject to employee appeal procedures.

During the first 18 months following conversion, management may approve promotions of less than 6% or increases in base pay of not more than 20% provided the adjustment does not cause the employee's base pay to exceed the maximum rate of his or her assigned pay band. The employee's performance must warrant an adjustment and these actions will be limited to those necessary to mitigate compensation inequities that are directly related to the transition/conversion from NSPS to the demonstration project. For instance, inappropriate "leap-frogging" of more senior employees by more junior employees when the inversion of compensation levels are not warranted by performance or mission accomplishment outcomes. The Personnel Management Board will establish policy and guidance for this provision and this guidance will be included in NAWCAD/NAWCWD internal issuances.

5. Converting Employees on NSPS Term and Temporary Appointments

a. Employees serving under term appointments at the time of conversion to the demonstration project will be converted to a modified term appointment provided they were hired for their current positions under competitive procedures. These employees will be eligible for conversion to career or career-conditional appointments in the competitive service provided they:

(1) Have served two years of continuous service in the term position;

(2) were selected for the term position under competitive procedures; and

(3) are performing at a NSPS Valued Performer, demonstration Mission Success, or equivalent level under another system. Additional guidance will be included in NAWCAD/NAWCWD internal conversion issuances.

Converted term employees who do not meet these criteria may continue on their term appointment up to the not-to-exceed date established under NSPS. Extensions of term appointments for employees who do not meet the above criteria may be granted after conversion in accordance with the provision of this regulation.

b. Employees serving under temporary appointments under NSPS when their organization converts to the demonstration project will be converted and may continue on their temporary appointment up to the not-to-exceed date established under NSPS. Extensions of temporary appointments after conversion may be granted in accordance with 5 CFR 213.104 for excepted service employees and 5 CFR part 316, subpart D, for competitive service employees.

6. Probationary Periods

a. Initial probationary period. Employees who have completed an initial probationary period prior to conversion from NSPS will not be required to serve a new or extended initial probationary period. Employees who are serving an initial probationary period upon conversion from NSPS will serve the time remaining on their initial probationary period and may have their initial probationary period extended in accordance with the demonstration project regulation and implementing issuances.

b. Supervisory probationary period. NSPS employees who have completed a

supervisory probationary period prior to conversion from NSPS will not be required to serve a new or extended supervisory probationary period. NSPS employees who are serving a supervisory probationary period upon conversion from NSPS will serve the time remaining on their supervisory probationary period and may have their supervisory probationary period extended in accordance with the demonstration project regulation and implementing issuances.

B. Conversion From Other Personnel Systems

Employees who enter this demonstration project from other personnel systems (*e.g.,* Defense Civilian Intelligence Personnel System, DoD Civilian Acquisition Workforce Demonstration Project, or other STRLs) due to a reorganization, mandatory conversion, Base Closure and Realignment Commission decision, or other directed action will be converted into the NAVAIR STRL demonstration project via movement of their positions using an appropriate Nature of Action Code. Employees' positions will be classified based upon the position classification criteria and pay band definitions under the laboratory demonstration project rules and their pay, upon conversion, maintained under applicable pay setting rules.

C. Movement Out of the NAVAIR STRL Demonstration Project

1. Termination of Coverage Under the NAVAIR STRL Demonstration Project Pay Plans

In the event employees' coverage under the NAVAIR STRL demonstration project pay plans is terminated, employees move with their demonstration project positions to another system applicable to NAVAIR STRL employees. The grade of their demonstration project position in the new system will be based upon the position classification criteria of the gaining system. Employees when converted to their positions classified under the new system will be eligible for pay retention under 5 CFR part 536, if applicable.

2. Determining a GS-Equivalent Grade and GS-Equivalent Rate of Pay for Pay Setting Purposes When a NAVAIR Employee's Coverage by a Demonstration Project Pay Plan Terminates or the Employee Voluntarily Exits the NAVAIR STRL Demonstration Project

a. If a demonstration project employee is moving to a GS or other pay system position, the following procedures will be used to translate the employee's project pay band to a GS-equivalent grade and the employee's project base pay to the GS-equivalent rate of pay for pay setting purposes. The equivalent GS grade and GS rate of pay must be determined before movement out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For lateral reassignments, the equivalent GS grade and rate will become the employee's converted GS grade and rate after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (*e.g.,* promotion rules, highest previous rate rules, pay retention rules), as if the GS converted grade and rate were actually in effect immediately before the employee left the demonstration project.

b. Equivalent GS-Grade-Setting Provisions

An employee in a pay band corresponding to a single GS grade is provided that grade as the GS-equivalent grade. An employee in a pay band corresponding to two or more grades is determined to have a GS-equivalent grade corresponding to one of those grades according to the following rules:

(1) The employee's adjusted base pay under the demonstration project (including any locality payment or staffing supplement) is compared with step 4 rates in the highest applicable GS rate range. For this purpose, a GS rate range includes a rate in:

(a) The GS base schedule;

(b) the locality rate schedule for the locality pay area in which the position is located; or

(c) the appropriate special rate schedule for the employee's occupational series, as applicable.

If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

(2) If the employee's adjusted base pay under the demonstration project equals or exceeds the applicable step 4 adjusted base pay rate of the highest GS grade in the band, the employee is converted to that grade.

(3) If the employee's adjusted base pay under the demonstration project is lower than the applicable step 4 adjusted base pay rate of the highest grade, the adjusted base pay under the demonstration project is compared with the step 4 adjusted base pay rate of the second highest grade in the employee's pay band. If the employee's adjusted base pay under the demonstration project equals or exceeds the step 4 adjusted base pay rate of the second highest grade, the employee is converted to that grade.

(4) This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted base pay under the demonstration project rate equals or exceeds the applicable step 4 adjusted base pay rate of the grade. The employee is then converted at that grade. If the employee's adjusted base pay is below the step 4 adjusted base pay rate of the lowest grade in the band, the employee is converted to the lowest grade.

(5) *Exception:* An employee will not be provided a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or lateral transfer into the project, unless since that time the employee has either undergone a reduction in band or a reduction within the same pay band due to unacceptable performance.

c. Equivalent GS-Rate-of-Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rates of pay to GS rates of pay in accordance with the following rules:

(1) The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

(2) An employee's adjusted base pay under the demonstration project (*i.e.,* including any locality payment or staffing supplement) is converted to a GS adjusted base pay rate on the highest applicable GS rate range for the converted GS grade. For this purpose, a GS rate range includes a rate range in:

(a) The GS base schedule,

(b) an applicable locality rate schedule, or

(c) an applicable special rate schedule.

(3) If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted base pay under the demonstration project is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of base pay would be the GS base rate corresponding to the converted GS locality rate (*i.e.,* same step position).

(4) If the highest applicable GS rate range is a special rate range, the employee's adjusted base pay under the demonstration project is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of base pay will be the GS rate corresponding to the converted special rate (*i.e.,* same step position).

(d) *Employees with Pay Retention:* If an employee is receiving a retained rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her pay band level. Demonstration project operating procedures will outline the methodology for determining the GS-equivalent pay rate for an employee retaining a rate under the demonstration project.

3. Supervision and Management Pay Band VI Employees

The Above GS–15 Position concept is currently being evaluated by DoD management for its effectiveness; continued applicability to the current STRL scientific, engineering, and technology workforce needs; and appropriate allocation of billets based on mission requirements. The nature and extent of the conversion out of the demonstration project process for employees in these positions will be determined by the final DoD guidance. Additional guidance may be included in NAWCAD/NAWCWD internal issuances.

4. Employees With Pay Retention

If an employee is receiving a retained rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her pay band level. Demonstration project operating procedures will outline the methodology for determining the GS-equivalent pay rate for an employee retaining a rate under the demonstration project.

5. Within-Grade Increase—Equivalent Increase Determinations

Service under the demonstration project is creditable for within-grade increase purposes upon conversion back to the GS pay system. Performance pay increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

D. Personnel Administration

All personnel laws, regulations, and guidelines not waived by this plan will remain in effect. Basic employee rights will be safeguarded and Merit System Principles will be maintained. Servicing HRSCs will continue to process personnel-related actions and provide other appropriate services.

E. Automation Support

1. General

One of the major goals of the demonstration project is to streamline the personnel processes to increase cost effectiveness. Automation must play an integral role in achieving that goal. Without the necessary automation to support the interventions proposed for the demonstration project, optimal cost benefit cannot be realized. In addition, adequate information to support decisionmaking must be available to managers if line management is to assume greater authority and responsibility for human resources management. Automation to support the demonstration project is required at the DON and DoD level, (in the form of changes to the Defense Civilian Personnel Data System) to facilitate processing and reporting of demonstration project personnel actions, and may be ultimately required by the Naval Air Warfare Centers to assist in processing of a variety of personnel-related actions in order to facilitate management processes and decisionmaking.

2. Defense Civilian Personnel Data System (DCPDS)

DCPDS is the Department of Defense's authoritative personnel data system and program of record and, as such, will be the system of choice for the STRL labs.

F. Experimentation and Revision

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the new system is working. DoDI 1400.37, July 28, 2009, provides instructions for adopting other STRL flexibilities, making minor changes to an existing demonstration project, and requesting new initiatives.

VI. Project Duration

Public Law 103–337 removed any mandatory expiration date for this demonstration. The covered organizations, DON and DoD will ensure this project is evaluated for the first five years after implementation in accordance with 5 U.S.C. 4703. Modifications to the original evaluation plan or any new evaluation will ensure the project is evaluated for its effectiveness, its impact on mission, and any potential adverse impact on any employee groups. Major changes and modifications to the interventions would be made if formative evaluation data warranted and will be published in the **Federal Register** to the extent required. At the five-year point, the demonstration will be reexamined for permanent implementation, modification and additional testing, or termination of the entire demonstration project.

VII. Evaluation Plan

A. Overview

Chapter 47 of 5 U.S.C. requires that an evaluation be performed to measure the effectiveness of the demonstration project and its impact on improving public management. A comprehensive evaluation plan for the entire demonstration program, originally covering 24 DoD laboratories, was developed by a joint OPM/DoD Evaluation Committee in 1995. This plan was submitted to the Office of Defense Research & Engineering and was subsequently approved. The main purpose of the evaluation is to determine whether the waivers granted result in a more effective personnel system and improvements in ultimate outcomes (*i.e.,* organizational effectiveness, mission accomplishment, and customer satisfaction).

B. Evaluation Model

Appendix C shows an intervention model for the evaluation of the demonstration project. The model is designated to evaluate two levels of organizational performance: Intermediate and ultimate outcomes. The intermediate outcomes are defined as the results from specific personnel system changes and the associated waivers of law and regulation expected to improve human resource (HR) management (*i.e.,* cost, quality, timeliness). The ultimate outcomes are determined through improved organizational performance, mission accomplishment, and customer satisfaction. Although it is not possible to establish a direct causal link between changes in the HR management system and organizational effectiveness, it is hypothesized that the new HR system will contribute to improved organizational effectiveness.

Organizational performance measures established by the organization will be used to evaluate the impact of a new HR system on the ultimate outcomes. The evaluation of the new HR system for any given organization will take into account the influence of three factors on organizational performance: Context,

degree of implementation, and support of implementation. The context factor refers to the impact which intervening variables (i.e., downsizing, changes in mission, or the economy) can have on the effectiveness of the program. The degree of implementation considers the extent to which the:

(1) HR changes are given a fair trial period;

(2) Changes are implemented; and

(3) Changes conform to the HR interventions as planned.

The support of implementation factor accounts for the impact that factors such as training, internal regulations and automated support systems have on the support available for program implementation. The support for program implementation factor can also be affected by the personal characteristics (*e.g.,* attitudes) of individuals who are implementing the program.

The degree to which the project is implemented and operated will be tracked to ensure that the evaluation results reflect the project as it was intended. Data will be collected to measure changes in both intermediate and ultimate outcomes, as well as any unintended outcomes, which may happen as a result of any organizational change. In addition, the evaluation will track the impact of the project and its interventions on veterans and other protected groups, the Merit Systems Principles, and the Prohibited Personnel Practices. Additional measures may be added to the model in the event that changes or modifications are made to the demonstration plan.

The intervention model at Appendix C will be used to measure the effectiveness of the personnel system interventions implemented. The intervention model specifies each personnel system change or "intervention" that will be measured and shows:

(1) The expected effects of the intervention,

(2) The corresponding measures, and

(3) The data sources for obtaining the measures.

Although the model makes predictions about the outcomes of specific interventions, causal attributions about the full impact of specific interventions will not always be possible for several reasons. For example, many of the initiatives are expected to interact with each other and contribute to the same outcomes. In addition, the impact of changes in the HR system may be mitigated by context variables (*e.g.,* the job market, legislation, and internal support systems) or support factors (*e.g.,* training and automation support systems).

C. Evaluation

A modified quasi-experimental design will be used for the evaluation of the STRL Personnel Demonstration Program. Because most of the eligible laboratories are participating in the program, a title 5 U.S.C. comparison group will be compiled from the Central Personnel Data File (CPDF). This comparison group will consist of workforce data from Government-wide research organizations in civilian Federal agencies with missions and job series matching those in the DoD laboratories. This comparison group will be used primarily in the analysis of pay banding costs and turnover rates.

D. Method of Data Collection

Data from several sources will be used in the evaluation. Information from existing management information systems and from personnel office records will be supplemented with perceptual survey data from employees to assess the effectiveness and perception of the project. The multiple sources of data collection will provide a more complete picture as to how the interventions are working. The information gathered from one source will serve to validate information obtained through another source. In so doing, the confidence of overall findings will be strengthened as the different collection methods substantiate each other.

Both quantitative and qualitative data will be used when evaluating outcomes. The following data will be collected:

(1) Workforce data;

(2) Personnel office data;

(3) Employee attitude surveys;

(4) Focus group data;

(5) Local site historian logs and implementation information;

(6) Customer satisfaction surveys; and

(7) Core measures of organizational performance.

The evaluation effort will consist of two phases, formative and summative evaluation, covering at least five years to permit inter- and intra-organizational estimates of effectiveness. The formative evaluation phase will include baseline data collection and analysis, implementation evaluation, and interim assessments. The formal reports and interim assessments will provide information on the accuracy of project operation, and current information on impact of the project on veterans and protected groups, Merit System Principles, and Prohibited Personnel Practices. The summative evaluation will focus on an overall assessment of project outcomes after five years. The final report will provide information on how well the HR system changes achieved the desired goals, which interventions were most effective, and whether the results can be generalized to other Federal installations.

VIII. Demonstration Project Costs

A. Cost Discipline

An objective of the demonstration project is to ensure in-house cost discipline. A baseline will be established at the start of the project and salary expenditures will be tracked yearly. Implementation costs (including project development, automation costs, and evaluation costs) are considered one-time costs and will not be included in the cost discipline. The Personnel Management Board will track personnel cost changes and recommend adjustments if required to achieve the objective of cost discipline.

B. Developmental Costs

Costs associated with the development of the personnel demonstration project include software automation, training, and project evaluation. All funding will be provided through the organization's budget. The projected annual expenses are summarized in Table 1. Project evaluation costs are not expected to continue beyond the first five years unless the results warrant further evaluation.

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TABLE 1—PROJECTED DEVELOPMENT COSTS

(In thousands of dollars)

	FY10	FY11	FY12	FY13	FY14
Software Development & Automation	$150K	$650K	$200K	$150K	$100K
Training Development & Workforce Train	$300K	$1,000K	$400K	$100K	$100K
Project Evaluation	$0	$0	$100K	$100K	$100K
Totals	$450	$1,650K	$700K	$350K	$300K

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IX. Required Waivers to Law and Regulation

Public Law 106–398 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are waivers of law and regulation that will be necessary for implementation of the demonstration project. In due course, additional laws and regulations may be identified for waiver request. The following waivers and adaptations of certain title 5 U.S.C. and title 5 CFR provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.

A. Waivers to Title 5, U.S.C.

Chapter 5, section 552a: Records. Waive to the extent required to clarify that volunteers under the Voluntary Emeritus Corps are considered employees of the Federal Government for purposes of this section.

Chapter 31, section 3111: Acceptance of volunteer service. Waive to allow for a Volunteer Emeritus Corps in addition to student volunteers.

Chapter 33, subchapter I— Examination, Certification, and Appointment: Waived except for sections 3302, 3321, and 3328 to allow for direct hire authority for scientists and engineers with advanced degrees for professional positions.

Chapter 33, section 3317(a): Competitive service, certification from register (in so far as "rule of three" is eliminated under the demonstration project).

Chapter 33, subchapter 1, Section 3318(a): Competitive Service, Selection from Certificate. Waived in its entirety to eliminate the requirement for selection using the "rule of three." Veterans' preference provisions remain unchanged.

Chapter 33, section 3321: Competitive Service; Probationary Period. This section waived to the extent necessary to replace grade with "pay band level and allow probationary periods of up to 3 years.

Chapter 33, section 3341: Details. Waived as necessary to extend the time limits for details.

Chapter 35, section 3502: Waived to the extent to allow for performance retention subgroups and 3502(c) waived in its entirety.

Chapter 41, section 4108(a)–(c): Waived to the extent necessary to require the employee to continue in the service of the covered organizations for the period of the required service and to the extent necessary to permit the Executive Director of the covered organizations, to waive in whole or in part a right of recovery.

Chapter 43, section 4302: Waived to the extent necessary to substitute "pay band" for "grade."

Chapter 43, section 4303: Waived to the extent necessary to (1) substitute "pay band" for "grade" and (2) provide that moving to a lower pay band as a result of not receiving the general pay increase because of poor performance is not an action covered by the provisions of sections 4303(a)–(d).

Chapter 43, section 4304(b)(1) and (3): Responsibilities of the OPM. Waived in its entirety to remove the responsibilities of the OPM with respect to the performance appraisal system.

Chapter 45, section 4502: Limitation of cash awards to $10K. Waived to allow NAWCAD and NAWCWD Commanders to approve awards up to $25K.

Chapter 51 Classification, section 5101—5112: Purpose; Definitions, application; Determination of applicability; Basis for grading positions; Standards for classification of positions; Basis for classifying positions; Classification of positions; Classification of positions above GS–15 ; Review of classification of positions, Revocation and restoration of authority to classify positions, and general authority of the Office of Personnel Management:— Waived to the extent that white collar employees will be covered by pay banding and to the extent that classification appeals will be decided by the NAWC Executive Director with final appeal to the Department of Defense.

Chapter 53, sections 5301, 5302(1), (8) and (9), 5303, and 5304: Pay Comparability System. Waived to the extent necessary to allow (1) demonstration project employees to be treated as GS employees, (2) basic rates of pay under the demonstration project to be treated as scheduled rates of pay, and (3) the demonstration project pay system to be adjusted by the GS annual adjustments to pay schedules.

Chapter 53, section 5305: Special Pay Authority. Waived to the extent necessary to allow for use of a staffing supplement in lieu of the special pay authority.

Chapter 53, sections 5331–5336: GS Pay Rates. Waived in its entirety to allow for the demonstration project's pay banding system and pay provisions.

Chapter 53, sections 5361–5366: Grade and Pay Retention. Waived to the extent necessary to: (1) Replace "grade" with "pay band"; (2) allow demonstration project employees to be treated as GS employees; (3) provide that an employee on pay retention whose rating of record is "Unacceptable" is not entitled to 50 percent of the amount of the increase in the maximum rate of base pay payable for the pay band of the employee's position; (4) provide that pay retention does not apply to reduction in base pay due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement; (5) allow no provision of grade or pay band retention under this demonstration project and (6) allow demonstration project employees receiving a staffing supplement to retain the adjusted base pay if the staffing supplement is discontinued or reduced. This waiver applies to ST employees only if they move to a GS-equivalent position within the demonstration project under conditions that trigger entitlement to pay retention.

Chapter 55, section 5542(a)(1)–(2): Overtime rates; computation. Waived to the extent necessary to provide that the

GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the "applicable special rate" in applying the pay cap provisions in 5 U.S.C. 5542.

Chapter 55, section 5545(d): Hazardous duty differential. Waived to the extent necessary to allow demonstration project employees to be treated as GS employees.

Chapter 55, section 5547(a)–(b): Limitation on premium pay. Waived to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the "applicable special rate" in applying the pay cap provisions in 5 U.S.C. 5547.

Chapter 57, section 5753, 5754, and 5755: Recruitment and relocation, bonuses, incentives, and supervisory differentials. Waived to the extent necessary to allow employees and positions under the demonstration project to be treated as employees and positions under the GS.

Chapter 59, section 5941: Allowances based on living costs and conditions of environment; employees stationed outside continental U.S. or Alaska. Waived to the extent necessary to provide that cost-of-living allowances paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM).

Chapter 75, sections 7501(1), 7511(a)(1)(A)(ii), and 7511(a)(1)(C)(ii): Adverse Actions—Definitions. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Chapter 75, section 7512(3): Adverse actions. Waived to the extent necessary to replace "grade" with "pay band."

Chapter 75, section 7512(4): Adverse actions. Waived to the extent necessary to provide that adverse action provisions do not apply to (1) conversions from GS special rates or NSPS Targeted Local Market Supplements to demonstration project pay, as long as total pay is not reduced and (2) reductions in pay due to the removal of a supervisory or team leader pay adjustment upon voluntary movement to a non-supervisory or non-team leader position.

B. Waivers to Title 5, CFR

Part 293, subpart D: Personnel Records. Employee Performance File System Records. Waived to the extent necessary to be consistent with the demonstration project's mission aligned objectives and compensation system and to allow definition and establishment of its automated system of records and retention requirements.

Part 300, sections 300.601 through 300.605: Time-in-Grade restrictions. Waived to eliminate time-in-grade restrictions in the demonstration project.

Part 308, sections 308.101 through 308.103: Volunteer service. Waived to allow for a Voluntary Emeritus Corps in addition to student volunteers.

Part 315, section 315.801(a), 315.801(b)(1), (c), and (e), and 315.802(a) and (b)(1): Probationary period and Length of probationary period. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Part 315, section 315.901: Statutory requirement. Waived to the extent necessary to replace "grade" with "pay band."

Part 315, section 315.905: Length of the probationary period. Waived to the extent necessary to allow for a two-year supervisory/managerial probationary period.

Part 316, section 316.301: Purpose and duration. Waived to the extent necessary to allow for term appointments for more than 4 years.

Part 316, section 316.303: Tenure of term employees. Waived to the extent necessary to allow term employees to acquire competitive status.

Part 316, section 316.304: Trial Period. Waived to the extent necessary to allow for up to a three year trial period.

Part 332, section 332.402: "Rule of three" will not be used in the demonstration project. When there are no more than 15 qualified applicants and no preference eligible, all eligible applicants are referred to the selection official without rating or rankings. Statutes and regulations covering veterans' preference are observed in the selection process and when rating and ranking are required.

Part 332, section 332.404: Order of selection from certificates. Waived to the extent necessary to eliminate the requirement for selection using the "rule of three."

Part 335, section 335.103: Agency promotion programs. Waived to the extent necessary to extend the length of details and temporary promotions without requiring competitive procedures.

Part 337, section 337.101(a): Rating applicants. Waived to the extent necessary to allow referral without rating when there are 15 or fewer qualified candidates and no qualified preference eligibles.

Part 340, subpart A, subpart B, and subpart C: Other than Full-Time Career Employment. These subparts are waived to the extent necessary to allow a Volunteer Emeritus Corps.

Part 351, section 351.401: Determining retention standing. Waived to the extent necessary to allow use of performance subgroups in determining retention standing.

Part 351, section 351.402(b): Competitive area. Waived to the extent necessary to allow separate competitive areas for demonstration and non-demonstration project employees and to allow separate competitive areas for each demonstration occupational family.

Part 351, section 351.403: Competitive level. Waived to the extent necessary to replace "grade" with "pay band" and to allow use of demonstration project criteria, such as specialty area code, to be used in the definition of competitive levels.

Part 351, section 351.501: Order of retention—competitive service. Waived as necessary to allow use of performance subgroups in determining retention standing and allow no additional years of service based on performance.

Part 351, section 351.502: Order of retention—excepted service. Waived as necessary to allow use of performance subgroups in determining retention standing and allow no additional years of service based on performance.

Part 351, section 351.504: Credit for performance. Waived as necessary to allow for use of performance subgroups rather than adding years of service based on performance.

Part 351, section 351.701: Assignment involving displacement. Waived to the extent that bump and retreat rights are limited to one pay band with the exception of 30 percent preference eligibles who are limited to two bands (or equivalent of five grades), and to limit the assignment rights of employees with an unacceptable current rating of record to a position held by another employee with an unacceptable rating of record.

Part 410, section 410.309: Agreements to continue in service. Waived to the extent necessary to allow the Executive Directors of the covered organizations to determine requirements related to continued service agreements.

Part 430, subpart B: Performance Appraisal for GS, Prevailing Rate, and Certain Other Employees. Waived to the extent necessary to be consistent with the demonstration project's mission aligned objectives and compensation system.

Part 430, section 430.208(a)(1) and (2): Rating Performance. Waived to allow presumptive ratings for new employees hired 90 days or less before the end of the appraisal cycle or for other situations not providing adequate time for an appraisal.

Part 432, Performance based reduction-in-grade and removal actions: Modified to the extent that an employee may be removed, reduced in pay band level with a reduction in pay, reduced in pay without a reduction in pay band level and reduced in pay band level without a reduction in pay based on unacceptable performance. Also, modified to delete reference to critical element. For employees who are reduced in pay band level without a reduction in pay, Sections 432.105 and 432.106(a) do not apply.

Part 432, section 432.102: Coverage. Waived to the extent that the term "grade" is replaced with "pay band."

Part 432, section 432.104: Addressing unacceptable performance. References to "critical elements" are deleted as all elements are critical and adding that the employee may be "reduced in pay band level, or pay, or removed" if performance does not improve to an acceptable level during a reasonable opportunity period.

Part 432, section 432.105(a)(2): Proposing and taking action based on unacceptable performance: Waive "If an employee has performed acceptably for 1 year" to allow for "within two years from the beginning of a PIP."

Part 451, subpart A, section 451.103(c)(2): Waived with respect to performance awards under the NAVAIR Extraordinary Achievement Allowance and demo incentive awards authority.

Part 451, subpart A, section 451.106 and 451.107: Waived to allow the NAWCAD and NAWCWD Commanders authority to grant special act awards to covered employees of up to $25,000.

Part 511, subpart A, subpart B, and subpart F: Classification within the General Schedule. Waived in its entirety.

Part 530, subpart C: Special Rate Schedules for Recruitment and Retention. Waived in its entirety to allow for staffing supplements.

Part 531, subpart B.: Determining Rate of Basic Pay. Waived to the extent necessary to allow for pay setting, including educational pay adjustments and pay for performance under the provisions of the demonstration project.

Part 531, subparts D and E: Within-Grade Increases, and Quality Step Increases. Waived in its entirety.

Part 531, subpart F: Locality-Based Comparability Payments. Waived to the extent necessary to allow (1) demonstration project employees, except employees in Pay Band V of the S&E occupational family, to be treated as GS employees and (2) base rates of pay under the demonstration project to be treated as scheduled annual rates of pay.

Part 536: Grade and Pay Retention. Waived to the extent necessary to (1) replace "grade" with "pay band;" (2) provide that pay retention provisions do not apply to conversions from GS special rates to demonstration project pay, as long as total pay is not reduced, and to movement from a supervisory position to a non-supervisory position, as long as total pay is not reduced; (3) allow demonstration project employees to be treated as GS employees; (4) provide that pay retention provisions do not apply to movements to a lower pay band as a result of not receiving the general increase due to an annual performance rating of "Unacceptable;" (5) provide that an employee on pay retention whose rating of record is "Unacceptable" is not entitled to 50 percent of the amount of the increase in the maximum rate of base pay payable for the pay band of the employee's position; (6) allow no provision of grade or pay band retention under this demonstration project; (7) provide that pay retention does not apply to reduction in base pay due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement and (8) allow demonstration project employees receiving a staffing supplement to retain the adjusted base pay if the staffing supplement is discontinued or reduced. This waiver applies to ST employees only if they move to a GS equivalent position within the demonstration project under conditions that trigger entitlement to pay retention.

Part 550, sections 550.105 and 550.106: Bi-weekly and annual maximum earnings limitations. Waived to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the "applicable special rate" in applying the pay cap provisions in 5 U.S.C. 5547.

Part 550, section 550.703: Definitions. Waived to the extent necessary to modify the definition of "reasonable offer" by replacing "two grade or pay levels" with "one band level" and "grade or pay level" with "band level."

Part 550, section 550.902: Definitions. Waived to the extent necessary to allow demonstration project employees to be treated as GS employees. This waiver does not apply to employees in Pay Band V of the S&E occupational family.

Part 575, subparts A, B, C, and D: Recruitment Incentives, Relocation Incentives, Retention Incentives. Waived to the extent necessary to allow employees and positions under the demonstration project covered by pay banding to be treated as employees and positions under the GS.

Part 591, subpart B: Cost-of-Living Allowance and Post Differential—Non-foreign Areas. Waived to the extent necessary to allow (1) demonstration project employees to be treated as employees under the GS and (2) employees in Band V of the S&E occupational family to be treated as ST employees for the purposes of these provisions.

Part 752, sections 752.101, 752.201, 752.301 and 752.401: Principal statutory requirements and Coverage. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Part 752, section 752.401: Coverage. Waived to the extent necessary to replace "grade" with "pay band," and to provide that a reduction in pay band level is not an adverse action if it results from the employee's rate of base pay being exceeded by the minimum rate of base pay for his/her pay band.

Part 752, section 752.401(a)(4): Coverage. Waived to the extent necessary to provide that adverse action provisions do not apply to (1) conversions from GS special rates or NSPS Targeted Local Market Supplements to demonstration project pay, as long as total pay is not reduced and (2) movement from a supervisory pay band to a non-supervisory pay band as long as total pay is not reduced.

BILLING CODE 5001–06–P

GSA GEOGRAPHIC LOCATION CODE	DUTY LOCATION
011716073	Hoover, AL
011730089	Huntsville, AL
012585089	Redstone Arsenal, AL
040530019	Tucson, AZ
040620027	Yuma, AZ
060543073	Camp Pendleton, CA
060675029	China Lake, CA
060860073	Coronado, CA
061077029	Edwards AFB, CA
061090025	El Centro, CA
061264073	Fallbrook, CA
061880031	Lemoore, CA
062090013	Martinez, CA
062194073	Miramar Naval Air Sta., CA
062250053	Monterey, CA
062341073	Naval Air Station, CA
062622111	Oxnard AFB, CA
062700037	Pasadena, CA
062861073	Point Loma Complex, CA
062862111	Point Mugu, CA
062890111	Port Hueneme, CA
063260073	San Diego, CA
063397111	San Nicolas Island, CA
090260011	Groton, CT
110010001	Washington, DC
110400001	Wash Navy Yard, DC
120000091	Okaloosa Cnty, FL
120485031	Cecil Field, FL
120935091	Eglin A.F.B., FL
121130001	Gainesville, FL
121510031	Jacksonville, FL
121972031	Mayport, FL
122070113	Milton, FL

GSA GEOGRAPHIC LOCATION CODE	DUTY LOCATION
122156033	Naval Air Station, FL
122161095	Naval Warfare Center, FL
122162031	Naval Aviation Depot, FL
122164031	Naval Air Station, FL
122360095	Orlando, FL
122490033	Pensacola, FL
122811085	Sewalls Point, FL
122950057	Tampa, FL
130280121	Atlanta, GA
133015039	Kings Bay, GA
153500003	Kaneohe, HI
158206003	Pearl Harbor Naval Base, HI
173595097	Great Lakes, IL
181055101	Crane, IN
182210097	Indianapolis, IN
221690071	New Orleans, LA
231150005	Brunswick, ME
240840017	Indian Head, MD
241096037	Patuxent River, MD
241364037	Saint Inigoes, MD
241480009	Solomons, MD
250478017	Hanscom Fields, MA
281590075	Meridian, MS
297080510	St Louis, MO
320090001	Fallon, NV
330360013	New London, NH
341580029	Lakehurst, NJ
342095029	Naval Air Warfare Center, NJ
362840103	Huntington, NY
370885049	Cherry Point, NC
371670051	Fayetteville, NC
371685051	Fort Bragg, NC
372330133	Jacksonville, NC
372894049	Marine Corps Air Station, NC

GSA GEOGRAPHIC LOCATION CODE	DUTY LOCATION
392090113	Dayton, OH
399165113	Wright Patterson AFB, OH
404725109	Tinker AFB, OK
421230055	Chambersburg, PA
421657089	Coolbaugh Township, PA
422063091	Dresher, PA
424800071	Manheim, PA
425698101	Philadelphia, PA
425699041	Naval Support Activity, PA
426540101	Philadelphia, PA
426600003	Pittsburgh, PA
428475089	Tobyhanna, PA
429420111	Windber, PA
440136005	Naval Base, RI
450140013	Beaufort, SC
451040045	Greenville, SC
470092031	Arnold AFB, TN
471660157	Millington, TN
472470031	Tullahoma, TN
480150375	Amarillo, TX
480260439	Arlington, TX
481550273	Corpus Christi, TX
481730113	Dallas, TX
482450439	Fort Worth, TX
483700273	Kingsville, TX
491560049	Provo, UT
510000013	Arlington, VA
510702810	Damneck Nav Fac, VA
511220059	Herndon, VA
511686710	Naval Base, VA
511687013	Arlington, VA
511720700	Newport News, VA
511760710	Norfolk, VA
511822810	Oceana Nav Air Sta, VA

GSA GEOGRAPHIC LOCATION CODE	DUTY LOCATION
511906013	Pentagon, VA
512010153	Quantico, VA
512540810	Virginia Beach, VA
512564001	Wallops Island, VA
512690199	Yorktown, VA
530105035	Bangor, WA
531960033	Seattle, WA
532508029	Whidbey Island NAS, WA
GM9000000	Stuttgart, Germany
GQ0100000	Agana, GUAM
JA0600000	Atsugi, Japan
JA2600000	Futenma, Japan
JA3800000	Iwakuni, Japan
JA3825000	Iwakuni Marine Corps Air Stn, Japan
JA3950000	Kadena AF Okinawa, Japan
JA5615000	Okinawa Island, Japan
NO6000000	Oslo, Norway

Appendix B: Occupational Series by Occupational Family

NAWCAD/WD - STRL Series Included with-in Occupational Families									
S & E (DP)	0170	0180	0193	0199	0401	0403	0408	0413	0499
	0701	799	0801	0803	0806	0808	0810	0819	0830
	0850	0854	0855	0861	0893	0896	0899	1301	1306
	1310	1313	1320	1321	1340	1350	1360	1384	1399
	1515	1520	1529	1550	1599				
S & E TECHNICIAN (DT)	0802	0818	0856	0895	0899	1060	1098	1152	1199
	1311	1341	1374	1399	1521	1599	1960	1999	
BUSINESS & PROGRAM MANAGEMENT (DA)	0018	0028	0080	0099	0132	0199	0201	0260	0299
	0301	0340	0341	0343	0399	0501	0505	0510	0560
	0599	0905	0950	0999	1001	1010	1035	1040	1071
	1082	1083	1084	1099	1101	1102	1103	1199	1222
	1299	1410	1412	1499	1601	1640	1699	1750	1799
	1801	1899	2003	2010	2099	2101	2199		
TECHNICAL SPECIALIST (DS)	0301	0346	0391	0392	0399	0560	0599	1040	1099
	1150	1199	1670	1699	1910	1999	2101	2152	2181
	2199	2210	2299						
ADMIN SUPPORT (DG)	0019	0086	0099	0203	0299	0302	0303	0304	0305
	0309	0318	0322	0326	0344	0361	0394	0399	0503
	0525	0540	0544	0561	0599	0986	0999	1105	1106
	1107	1108	1199	1411	1499	1603	1699	2005	2099
	2204	2299							
Supervision & Management (NM)	**The Supervision & Management pay plan does not represent an occupational family. Supervisory and managerial positions are classified to an appropriate series for the scientific, engineering, technical, business, or administrative work of the position and will be placed in the occupational family covering that series. The Supervision & Management pay plan was created with cognizance that this is a separate line of work with different qualifications and grade level and banding requirements.**								

Appendix C: Intervention Model

Intervention	Expected Effects	Measures	Data Sources
1. COMPENSATION			
a. Pay banding	Increased organizational flexibility	Perceived flexibility	Attitude survey
	Reduced administrative workload, paper work reduction	Actual/perceived time savings	Personnel office data, PME results, attitude survey
	Advanced in-hire rates	Starting salaries of banded v. non-banded employees	Workforce data
	Slower pay progression at entry levels	Progression of new hires over time by band, career path	Workforce data
	Increased pay potential	Mean salaries by band, group, demographics Total payroll costs	Workforce data Personnel office data
	Increased satisfaction with advancement	Employee perceptions of advancement	Attitude survey
	Increased pay satisfaction	Pay satisfaction, internal/external equity	Attitude survey
	Improved recruitment	Offer/acceptance ratios; Percent declinations	Personnel office data
b. Conversion buy-in	Employee acceptance	Employee perceptions of equity, fairness Cost as a percent of payroll	Attitude survey Workforce data
c. Pay differentials/ adjustments	Increased incentive to accept supervisory/team leader positions	Perceived motivational power	Attitude survey

Intervention	Expected Effects	Measures	Data Sources
2. PERFORMANCE MANAGEMENT			
a. Cash awards/ bonuses	Reward/motivate performance	Perceived motivational power	Attitude survey
	To support fair and appropriate distribution of awards	Amount and number of awards by group, demographics	Workforce data
		Perceived fairness of awards	Attitude survey
		Satisfaction with monetary awards	Attitude survey
b. Performance based pay progression	Increased pay-performance link	Perceived pay-performance link	Attitude survey
		Perceived fairness of ratings	Attitude survey
	Improved performance feedback	Satisfaction with ratings	Attitude survey
		Employee trust in supervisors	Attitude survey
		Adequacy of performance feedback	Attitude survey
	Decreased turnover of high performers/Increased turnover of low performers	Turnover by performance rating scores	Workforce data
	Differential pay progression of high/low performers	Pay progression by performance scores, career path	Workforce data

Intervention	Expected Effects	Measures	Data Sources
	Alignment of organizational and individual performance objectives and results	Linkage of performance objectives to strategic plans/goals	Performance objectives, strategic plans
	Increased employee involvement in performance planning and assessment	Perceived involvement Performance management	Attitude survey/focus groups Personnel regulations
c. New appraisal process	Reduced administrative burden	Employee and supervisor perceptions of revised procedures	Attitude survey
	Improved communication	Perceived fairness of process	Focus groups
d. Performance development	Better communication of performance expectations	Feedback and coaching procedures used Time, funds spent on training by demographics	Focus groups Personnel office data Training records
	Improved satisfaction and quality of workforce	Perceived workforce quality	Attitude survey
3. "WHITE COLLAR" CLASSIFICATION			
a. Improved classification systems with generic standards	Reduction in amount of time and paperwork spent on classification	Time spent on classification procedures Reduction of paperwork/number of personnel actions (classification/promotion)	Personnel office data Personnel office data

Intervention	Expected Effects	Measures	Data Sources
	Ease of use	Managers' perceptions of time savings, ease of use	Attitude survey
b. Classification authority delegated to managers	Increased supervisory authority/accountability	Perceived authority	Attitude survey
	Decreased conflict between management and personnel staff	Number of classification disputes/appeals pre/post Management satisfaction with service provided by personnel office	Personnel records Attitude survey
	No negative impact on internal pay equity	Internal pay equity	Attitude survey
c. Dual career ladder	Increased flexibility to assign employees	Assignment flexibility	Focus groups, surveys
	Improved internal mobility	Perceived internal mobility	Attitude survey
	Increased pay equity	Perceived pay equity	Attitude survey
	Flatter organization	Supervisory/non-supervisory ratios	Workforce data Attitude survey
	Improved quality of supervisory staff	employee perceptions of quality or supervisory	Attitude survey
4. Modified RIF			
	Minimize loss of high performing employees with needed skills	Separated employees by demographics, performance scores	Workforce dataAttitude survey/focus group

Intervention	Expected Effects	Measures	Data Sources
	Contain cost and disruption	Satisfaction with RIF Process	Attitude survey/focus group
		Cost comparison of traditional vs. Modified RIF	Personnel office/budget Data
		Time to conduct RIF - personnel office data	Personnel office data
		Number of Appeals/reinstatements	Personnel office data
5. Hiring Authority			
a. Delegated Examining	Improved ease and timeliness of hiring process	Perceived flexibility in authority to hire	Attitude survey
	Improved recruitment of employees in shortage categories	Offer/accept ratios	Personnel office data
		Percent declinations	Personnel office data
		Timeliness of job offers	Personnel office data
		GPAs of new hires, educational levels	Personnel office data
	Reduced administrative workload/paperwork reduction	Actual/perceived skills	Attitude survey
b. Term Appointment Authority	Increased capability to expand and contract workforce	Number/percentage of conversions from modified term to permanent appointments	Workforce data Personnel office data

Intervention	Expected Effects	Measures	Data Sources
c. Flexible Probationary Period	Expanded employee assessment	Average conversion period to permanent status	Workforce data Personnel office data
		Number/percentage of employees completing probationary period	Workforce data Personnel office data
		Number of separations during probationary period	Workforce data Personnel office data
6. Expanded Development Opportunities			
a. Sabbaticals	Expanded range of professional growth and development	Number and type of opportunities taken	Workforce data
	Application of enhanced knowledge and skills to work product	Employee and supervisor perceptions	Attitude survey
b. Critical Skills Training	Improved organizational effectiveness	Number and type of trainingPlacement of employees, skills imbalances correctedEmployee and supervisor perceptionsApplication of knowledge gained from training	Personnel office dataPersonnel office dataAttitude surveyAttitude survey/ focus group
7. Combination Of All Interventions			
All	Improved organizational effectiveness	Combination of personnel measures	All data sources

Intervention	Expected Effects	Measures	Data Sources
	Improved management of workforce	Employee/Management job satisfaction (intrinsic/extrinsic)	Attitude survey
	Improved planning	Planning procedures Perceived effectiveness of planning procedures	Strategic planning documents Attitude survey
	Improved cross functional coordination	Actual/perceived coordination	Organizational charts
	Increased product success	Customer satisfaction	Customer satisfaction surveys
	Cost of innovation	Project training/ development costs (staff salaries, contract cost, training hours per employee)	Demo project office records Contract documents
8. Context:			
Regionalization	Reduced servicing ratios/ costs	HR servicing ratios Average cost per employee served	Personnel office data, workforce data Personnel office data, workforce data
	No negative impact on service quality	Service quality, timeliness	Attitude survey/focus groups

BILLING CODE 5001–06–C

Appendix D: Individual Pay Band Level Rating Benchmarks Examples

These are examples for illustration purposes only, the actual benchmarks may be different from what is shown here. These are an example showing a benchmark for each pay band level in an occupational family:

Scientific and Engineering (S&E) (Pay Plan DP)

Example Rating Benchmarks

Band II

Level 3:

• With guidance, effectively achieved the stated objective.

• With guidance, organized and prioritized own tasks to deliver the objective, adjusting work plans and overcoming obstacles as necessary.

• Demonstrated high standards of personal and professional conduct and represented the organization or work unit effectively.

Level 5

Additions at the Level 5:

• Contributed results beyond what was expected; results were far superior in quality, quantity, timeliness and/or impact to the stated objective.

• Exhibited the highest standards of professionalism.

Band III

Level 3:

• Effectively achieved the stated objective, anticipating and overcoming significant obstacles. Adapts established methods and procedures when needed.

• Results were technically sound, accurate, thorough, documented, and met applicable authorities, standards, policies, procedures and guidelines.

• Planned, organized prioritized, and scheduled own work activities to deliver the objective in a timely and effective manner, making adjustments to respond to changing situations and anticipating and overcoming difficult obstacles as necessary.

• Demonstrated high standards of personal and professional conduct and represented the organization or work unit effectively.

Level 5

Additions at the Level 5:

• Contributed results beyond what was expected; results were far superior in quality, quantity, and/or impact to the stated objective to what would be expected at this level.

• Exhibited the highest standards of professionalism.

Appendix E: Career Stage Rating Benchmarks Examples

These are examples for illustration purposes only, the actual benchmarks may be different from what is shown here. These are an example showing benchmarks by career stage, which may cover multiple pay band levels in multiple occupational families:

Example Rating Benchmarks

Career Stage: Journey.
Objective Rating: 1.
Performance Standard:

• Failed to achieve all or part of the stated critical element; or

• Failed to provide products that were sound, accurate, thorough and documented, and regularly failed to meet applicable authorities, standards, policies, procedures and guidelines; or

• Failed to plan, organize, prioritize, and schedule own work activities to deliver the critical element in a timely and effective manner. Relied on others to frequently assist with or redo work assignments; or

• Demonstrated poor cooperation or inability to work with others.

Career Stage: Journey.
Objective Rating: 3.
Performance Standard:

• Effectively accomplished the stated critical element by achieving results that

were technically sound, accurate, thorough, and documented and met applicable authorities, standards, policies, procedures and guidelines.

• Planned, organized, prioritized and scheduled own work activities to deliver the critical element in a timely and effective manner, making adjustments to respond to changing situations as necessary.

• Demonstrated high standards of teamwork and cooperation.

Career Stage: Journey.

Objective Rating: 5.

Performance Standard: (Measured in addition to the above)

• Achieved outcomes and results that are far superior in quality, quantity, timeliness and/or impact to what would ordinarily be expected at this level.

• Accomplishments and outcomes were of such magnitude that they contributed to the organization exceeding its mission goals and objectives for the year.

• Persisted in overcoming obstacles and put forth extra effort to accomplish difficult assignments.

• Represented the organization or work unit effectively through model team cooperation.

[FR Doc. 2010–22172 Filed 9–8–10; 8:45 am]

BILLING CODE 5001–06–P

Federal Register

Thursday,
September 9, 2010

Part VI

Department of Defense

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project, Department of the Army, Army Research, Development and Engineering Command, Armament Research, Development and Engineering Center (ARDEC); Notice

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project, Department of the Army, Army Research, Development and Engineering Command, Armament Research, Development and Engineering Center (ARDEC)

AGENCY: Office of the Deputy Under Secretary of Defense (Civilian Personnel Policy) (DUSD (CPP)), Department of Defense (DoD).

ACTION: Notice of proposal to design and implement a personnel management demonstration project.

SUMMARY: Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, Public Law (Pub. L.) 103–337 (10 U.S.C. 2358 note), as amended by section 1109 of NDAA for FY 2000, Public Law 106–65, and section 1114 of NDAA for FY 2001, Public Law 106–398, authorizes the Secretary of Defense to conduct personnel demonstration projects at DoD laboratories designated as Science and Technology Reinvention Laboratories (STRLs) to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management. Section 1105 of the NDAA for FY 2010, Public Law 111–84, 123 Stat. 2486, October 28, 2009, designates additional DoD laboratories as STRLs for the purpose of designing and implementing personnel management demonstration projects for conversion of employees from the personnel system which applied on October 28, 2009. The ARDEC is listed in subsection 1105(a) of NDAA for FY 2010 as one of the newly designated STRLs.

DATES: ARDEC's demonstration project proposal may not be implemented until a 30-day comment period is provided, comments addressed, and a final **Federal Register** notice published. To be considered, written comments must be submitted on or before October 12, 2010. Implementation of this demonstration project, once approved, will begin no earlier than January 1, 2011.

ADDRESSES: Send comments on or before the comment due date by mail to Ms. Betty A. Duffield, CPMS–PSSC, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144; by fax to (703) 696–5462; or by e-mail to *Betty.Duffield@cpms.osd.mil.*

FOR FURTHER INFORMATION CONTACT: *ARDEC:* Ms. Christina Duncan, U.S. Army ARDEC, Human Capital Management Office, Building 1, 3rd Floor, RDAR–EIH, Picatinny Arsenal, NJ 07806–5000.

DoD: Ms. Betty Duffield, CPMS–PSSC, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144.

SUPPLEMENTARY INFORMATION:

1. Background

Since 1966, many studies of DoD laboratories have been conducted on laboratory quality and personnel. Almost all of these studies have recommended improvements in civilian personnel policy, organization, and management. Pursuant to the authority provided in section 342(b) of Public Law 103–337, as amended, a number of DoD STRL personnel demonstration projects were approved. These projects are "generally similar in nature" to the Department of Navy's "China Lake" Personnel Demonstration Project. The terminology, "generally similar in nature," does not imply an emulation of various features, but rather implies a similar opportunity and authority to develop personnel flexibilities that significantly increase the decision authority of laboratory commanders and/or directors.

This demonstration project involves:

(1) Two appointment authorities (permanent and modified term);

(2) Modified probationary period for newly hired employees;

(3) Modified supervisory and managerial probationary period;

(4) Pay banding;

(5) Streamlined delegated examining;

(6) Modified reduction-in-force (RIF) procedures;

(7) Simplified job classification;

(8) A contribution-based appraisal system;

(9) Academic degree and certificate training;

(10) Sabbaticals;

(11) A Volunteer Emeritus Corps;

(12) Direct hire authority for candidates with advanced degrees for scientific and engineering positions; and

(13) Distinguished Scholastic Achievement Appointment Authority.

2. Overview

The NDAA for FY 2010 not only designated new STRLs but also repealed the National Security Personnel System (NSPS) mandating conversion of NSPS covered employees to their former personnel system or one that would have applied absent the NSPS. A number of ARDEC employees are covered by the NSPS and must be converted to another personnel system. Section 1105 of NDAA for FY 2010 stipulates the STRLs designated in subsection (a) of section 1105 may not implement any personnel system, other than a personnel system under an appropriate demonstration project as defined in section 342(b) of Public Law 103–337, as amended, without prior congressional authorization. In addition, any conversion under the provisions of section 1105 shall not adversely affect any employee with respect to pay or any other term or condition of employment; shall be consistent with section 4703(f) of title 5 United States Code (U.S.C.), and shall be completed within 18 months after enactment of NDAA for FY 2010. Therefore, since ARDEC is both designated an STRL by section 1105 of NDAA for FY 2010 and has NSPS covered employees, it must convert, at a minimum, its NSPS covered employees to a personnel management demonstration project before the end of April 2011.

3. Access to Flexibilities of Other STRLs

Flexibilities published in this **Federal Register** notice shall be available for use by the STRLs previously enumerated in section 9902(c)(2) of title 5, United States Code, which are now designated in section 1105 of the NDAA for FY 2010, Public Law 111–84, 123 Stat. 2486, October 28, 2009, if they wish to adopt them in accordance with DoD Instruction 1400.37; pages 73248 to 73252 of volume 73, **Federal Register**; and after the fulfilling of any collective bargaining obligations.

Dated: September 2, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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I. Executive Summary

The Armament Research, Development and Engineering Center includes the ARDEC organizations at Picatinny Arsenal, NJ; Watervliet Arsenal, NY; Rock Island Arsenal, IL; and ARDEC employees with duty stations at other sites. The intent of this demonstration project is to cover all employees, subject to bargaining unit agreement.

The ARDEC provides integrated science, technology, and engineering solutions to address the armament, munitions, and fire control needs for the Army. The ARDEC's core competency is working with weapon systems at all stages of the materiel life cycle. The ARDEC maintains the following fundamental capabilities:

(1) Armaments and Weapons;
(2) Fire Control;
(3) Energetics, Warheads, and Ammunition;
(4) Ammunition Logistics;
(5) Explosive Ordnance Disposal; and
(6) Homeland Defense Technology.

In order to sustain these unique capabilities, the ARDEC must be able to hire, retain, and continually motivate enthusiastic, innovative, and highly-educated scientists and engineers, supported by accomplished business management and administrative professionals, as well as a skilled administrative and technical support staff.

The goal of the project is to enhance the quality and professionalism of the ARDEC workforce through improvements in the efficiency and effectiveness of the human resource system. The project interventions will strive to achieve the best workforce for the ARDEC mission, adjust the workforce for change, and improve workforce satisfaction. With some modifications, this project mirrors the STRL personnel management demonstration project, designed by the U.S. Army Edgewood Chemical Biological Center (ECBC). The ARDEC Demonstration Project was built on the ECBC concepts and uses much of the same language; however, it includes several concepts from the Air Force Research Laboratory (AFRL), Naval Research Laboratory (NRL), and the DoD Civilian Acquisition Workforce (Acq Demo) personnel management demonstration projects. Of significant note is the inclusion of a contribution-based compensation and assessment system similar to that used in the Acq Demo program. The results of the project will be evaluated within five years of implementation.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of DoD STRLs can be enhanced by expanding opportunities available to employees and by allowing greater managerial control over personnel functions through a more responsive and flexible personnel system. Federal laboratories need more efficient, cost effective, and timely processes and methods to acquire and retain a highly-creative, productive, educated, and trained workforce. This project, in its entirety, attempts to improve employees' opportunities and provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve the highest quality organization, and hold them accountable for the proper exercise of this authority within the framework of an improved personnel management system.

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. The provisions of this project plan will not be modified, or extended to individuals or groups of employees not included in the project plan without the approval of the DUSD(CPP). The provisions of DoDI 1400.37 are to be followed for any modifications, adoptions, or changes to this demonstration project plan.

B. Problems With the Present System

The ARDEC has participated in a number of personnel systems and personnel demonstrations over the past 25 years. These include the current Civil Service General Schedule (GS) system (80 percent of ARDEC employees are currently in this GS system); Acq Demo Project from 2001 to 2006; and NSPS from 2006 to the present (20 percent of ARDEC employees are currently in NSPS). The ARDEC's experience with each of these prior personnel systems was that, although each had positive features, each also had negative aspects. As a result of the ARDEC's experience, it was determined that certain features from the earlier systems were worthwhile to carry forward and certain shortcomings/limitations needed to be corrected or alleviated.

The current Civil Service GS system has existed in essentially the same form since 1949. Work is classified into one of fifteen overlapping pay ranges that correspond with the fifteen grades. Base pay is set at one of those fifteen grades and the ten interim steps within each grade. The Classification Act of 1949 rigidly defines types of work by occupational series and grade, with very precise qualifications for each job. This system does not quickly or easily respond to new ways of designing work and changes in the work itself.

The performance management model that has existed since the passage of the Civil Service Reform Act in 1980 has come under extreme criticism. Employees frequently report there is inadequate communication of performance expectations and feedback on performance. There are perceived inaccuracies in performance ratings with general agreement that the ratings are inflated and often unevenly distributed by grade, occupation, and geographic location.

The need to change the current hiring system is essential as the ARDEC must be able to recruit and retain scientific, engineering, acquisition support and other professionals and skilled technicians. The ARDEC must be able to compete with the private sector for the best talent and be able to make job offers in a timely manner with the attendant bonuses and incentives to attract high quality employees and be in compliance with public law.

Finally, current limitations on training, retraining, and otherwise developing employees make it difficult to correct skill imbalances and to prepare current employees for new lines of work to meet changing missions and emerging technologies.

The ARDEC's proposed personnel management demonstration project, by building on previous strengths and addressing shortcomings, is intended to provide the highest potential for movement to a single system that will meet the needs of the ARDEC and all its employees.

C. Changes Required/Expected Benefits

The primary benefit expected from this demonstration project is greater organizational effectiveness through increased employee satisfaction. The long-standing Department of the Navy "China Lake" and National Institute of Standards and Technology (NIST) demonstration projects have produced impressive statistics on increased job satisfaction and quality of employees versus that for the Federal workforce in general. This project will demonstrate that a human resource system tailored to the mission and needs of the ARDEC workforce will facilitate increased:

1. Quality in the workforce and resultant products;
2. Timeliness of key personnel processes;
3. Retention of excellent performers;
4. Success in recruitment of personnel with critical skills;
5. Management authority and accountability;
6. Satisfaction of customers; and
7. Workforce satisfaction.

An evaluation model was developed for the Director, Defense, Research, and Engineering (DDR&E) in conjunction with STRL service representatives and the Office of Personnel Management (OPM). The model will measure the effectiveness of this demonstration project, as modified in this plan, and will be used to measure the results of specific personnel system changes.

D. Participating Organizations

The ARDEC is comprised of employees headquartered at Picatinny Arsenal, NJ. The ARDEC employees are geographically dispersed at the locations shown in Appendix A. It should be noted that some sites currently employ fewer than ten people and that the sites may change should ARDEC reorganize or realign. Successor organizations will continue coverage in the demonstration project.

E. Participating Employees and Union Representation

This demonstration project will cover approximately 3,400 ARDEC civilian employees under title 5 U.S.C. in the occupational series listed in Appendix B. The project plan does not cover members of the Senior Executive Service (SES), Scientific and Professional (ST) employees, Federal Wage System (FWS) employees, employees presently covered by the Defense Civilian Intelligence Personnel System (DCIPS), or Department of Army (DA), Army Command centrally funded interns and centrally funded students employed under the Student Career Experience Program (SCEP).

The International Federation of Professional and Technical Engineers (IFPTE) Local 1437; the American Federation of Government Employees (AFGE) Local 225; the American Federation of Government Employees (AFGE) Local 15; and the National Federation of Federal Employees (NFFE) Local 2109 represent a majority of the ARDEC employees. Of those employees assigned to the ARDEC, approximately 75 percent are represented by labor unions.

To foster union acceptance of the ARDEC's proposed personnel demonstration project, initial discussions with the four unions began in November 2009. The ARDEC will continue to fulfill its obligation to consult and/or negotiate with all labor organizations in accordance with 5 U.S.C. 4703(f) and 7117, as applicable.

F. Project Design

In October 2009, the 2010 National Defense Authorization Act directed the ARDEC to transition to a laboratory personnel management demonstration project. Following review and analysis of existing DoD demonstration projects, the ARDEC senior leadership decided to adapt the ECBC model, one of the latest Army projects. A series of focus groups, benchmarking and other sensing sessions were completed to determine the unique ARDEC needs and requirements. One key departure from the ECBC model is the shift from their Performance Management System to a Contribution-Based Compensation System (CBCS), similar to the Acq Demo project.

G. Personnel Management Board (PMB)

1. ARDEC will create a PMB to oversee and monitor the fair, equitable, and consistent implementation of the provisions of the demonstration project to include establishment of internal controls and accountability. Members of the board will be senior leaders appointed by the ARDEC Director. As needed, ad hoc members (such as labor counsel, human resource representatives, *etc.*) will serve as advisory members to the board.

2. At a minimum, duties executed by the board will be to:

a. Determine the composition of the pay pools in accordance with the guidelines of this proposal and internal procedures;

b. Review operation of pay pools and provide guidance to pay pool managers;

c. Oversee disputes in pay pool issues;

d. Formulate and manage the civilian pay pool budget;

e. Formulate and manage the civilian bonus pool budget;

f. Determine hiring, reassignment, and promotion base pay as well as exceptions to Contribution-Based Compensation System base pay increases;

g. Conduct classification review and oversight, monitor and adjust classification practices, and decide board classification issues;

h. Approve major changes in position structure;

i. Address issues associated with multiple pay systems during the demonstration project;

j. Manage standard Contribution Factors and Descriptors;

k. Identify and implement improvements to demonstration project procedures and policies;

l. Review requests for Supervisory/Team Leader Base Pay Adjustments and provide recommendations to the Director;

m. Ensure in-house budget discipline;

n. Manage the number of employees by Occupational Family and pay band;

o. Develop policies and procedures for administering Developmental Opportunity Programs;

p. Ensure that all employees are treated in a fair and equitable manner in accordance with all policies, regulations, and guidelines covering this demonstration project;

q. Monitor the evaluation of the project; and

r. Establish and manage the Accelerated Compensation for Developmental Positions (ACDP).

III. Personnel System Changes

A. Pay Banding

The design of the ARDEC pay banding system takes advantage of the many reviews performed by DA, DoD, OPM, and others. The design also has the benefit of being preceded by exhaustive studies of pay banding systems currently practiced in the Federal sector, to include those practiced by the China Lake experiment and NIST. The ARDEC pay banding system will replace the current GS grade and NSPS pay band structures.

1. Occupational Families

Occupations with similar characteristics will be grouped together

into one of three Occupational Families with career paths and pay band levels designed to facilitate pay progression. These Occupational Families are Engineering and Science (E&S), Business and Technical (B&T), and General (GEN). Each Occupational Family's career path will be composed of pay bands corresponding to recognized advancement and career progression patterns within the covered occupations. These career paths and their pay bands will replace the NSPS pay band structure and the individual GS grades and will not be the same for each Occupational Family. Each Occupational Family will be divided into three to six pay bands. Employees track into an Occupational Family based on their current OPM classification series as provided in Appendix B. All employees are initially assigned to the Occupational Family and pay band in which their comparable grade fits based on position classification using the GS classification standards. Comparison to the GS grades is used in setting the upper and lower base pay dollar limits of the pay band levels with the exception of Pay Band VI of the E&S Occupational Family (refer to III.A.3). The current occupations have been examined; and their characteristics and distribution have served as guidelines in the development of the three Occupational Families.

a. *Engineering and Science (E&S) (Pay Plan DB):* This Occupational Family includes positions as defined in Appendix B. Specific course work or educational degrees are required for these occupations. Six bands have been established for the E&S career path: (refer to Table 1).

(1) Band I includes student trainee positions.

(2) Band II includes developmental positions.

(3) Band III includes full-performance technical positions.

(4) Band IV includes technical specialist and first level supervisory positions.

(5) Band V includes senior technical and managerial positions.

(6) Band VI includes positions classified above the GS–15 level.

b. *Business and Technical (B&T) (Pay Plan DE):* This Occupational Family includes positions as defined in Appendix B. Employees in these positions may or may not require specific course work or educational degrees. Five bands have been established for the B&T career path: (refer to Table 1).

(1) Band I includes student trainee positions.

(2) Band II includes developmental positions.

(3) Band III includes full-performance technical and first level supervisory positions.

(4) Band IV includes senior technical specialist and supervisory positions.

(5) Band V includes managerial positions.

c. *General Support (GEN) (Pay Plan DK):* This Occupational Family includes positions as defined in Appendix B. Employees in these positions may or may not require specific course work or educational degrees. Three bands have been established for the GEN career path: (refer to Table 1).

(1) Band I covers entry-level and student positions.

(2) Band II covers full-performance positions.

(3) Band III includes supervisory and senior positions.

2. Pay Band Design

The pay bands for the Occupational Families and how they relate to the current GS/NSPS frameworks are shown in Table 1.

TABLE 1—PAY BAND CHARTS

Occupational family	Equivalent GS grades					
	I	II	III	IV	V	VI
E&S	GS–01–04	GS–05–11	GS–12–13	GS–14	GS–15	>GS–15
Business & Technical	GS–01–04	GS–05–11	GS–12–13	GS–14	GS–15	
General Support	GS–01–04	GS–05–08	GS–9			

Occupational family	Equivalent NSPS pay bands [1] [2]					
	I	II	III	IV	V	VI
E&S (DB)	YP–1	YD–1, YF–1, YF–2, YP–1	YD–2, YF–2	YD–3, YF–2, YF–3	YD–3, YF–3	
Business & Technical (DE)	YP–1, YB–1, YE–1	YA–1, YA–2, YB–1, YB–2, YB–3, YC–1, YC–2, YE–1, YE–2, YE–3, YP–1	YA–2, YB–3, YC–2, YE–3, YE–4	YA–3, YC–2, YC–3	YA–3, YC–3	
General Support (DK)	YB–1, YE–1, YP–1	YB–1, YB–2, YE–1, YE–2, YP–1	YB–2, YE–2, YP–1			

[1] NSPS Pay Bands overlap Lab Demo bands and Occupational Families.
[2] Student Career Experience Program participants in YP pay bands are not included in this Demonstration Project.

As the rates of the GS are increased due to the annual general pay increases, the upper and lower base pay rates of the pay bands will also be adjusted. Since pay progression through the bands depends directly on contribution, there will be no scheduled Within-Grade Increases (WGIs) or Quality Step Increases (QSIs) for former GS employees once the pay banding system is in place. GS special rate schedules and NSPS Targeted Local Market Supplements (TLMS) will no longer be applicable to demonstration project employees. Special provisions have

been included to ensure no loss of pay upon conversion (refer to III.F.11 Staffing Supplements). Except for those receiving a staffing supplement and employees on pay retention, employees will receive locality pay in addition to their base pay in the same amount and to the same extent as established for GS employees in accordance with 5 U.S.C. 5304 and 5304a. However, adjusted pay (base + locality) for employees in Band V or below cannot exceed Executive Level IV.3. Science and Engineering Positions Classified Above GS–15.

The career path for the E&S Occupational Family includes a pay band VI to provide the ability to accommodate positions having duties and responsibilities that exceed the GS–15 classification criteria. This pay band is based on the Above GS–15 Position concept found in other STRL personnel management demonstration projects that was created to solve a critical classification problem. The STRLs have positions warranting classification above GS–15 because of the technical expertise requirements including inherent supervisory and managerial responsibilities. However, these positions are not considered to be appropriately classified as Scientific or Professional Positions (STs) because of the degree of supervision and level of managerial responsibilities. Neither are these positions appropriately classified as Senior Executive Service (SES) positions because of the requirement for advanced specialized scientific or engineering expertise, and because the positions are not at the level of the general managerial authority and impact that is required for an SES position.

The original Above GS–15 Position concept was to be tested for a five-year period. The number of trial positions was set at 40 with periodic reviews to determine appropriate position requirements. The Above GS–15 Position concept is currently being evaluated by DoD management for its effectiveness, continued applicability to the current STRL scientific, engineering, and technology workforce needs and appropriate allocation of billets based on mission requirements. The degree to which the laboratory plans to participate in this concept and develop classification, compensation, and performance management policy, guidance, and implementation processes will be based on the final outcome of the DoD evaluation.

B. Classification

1. Occupational Series

The GS classification system has over 400 occupational series which are divided into 23 occupational groupings. The ARDEC currently has positions in approximately 60 occupational series that fall into approximately 16 occupational groupings. All positions listed in Appendix B will be included in the classification structure. Provisions will be made for including other occupations in response to changing missions.

2. Classification Standards and Position Descriptions

The ARDEC may use an automated classification system. The current OPM classification standards will be used for the identification of proper series and occupational titles of positions within the demonstration project. The grading criteria in the OPM classification standards will be used as a framework to develop new and simplified pay band factor level descriptors for each pay band determination. The objective is to record the essential criteria for each pay band within each Occupational Family by stating the characteristics of the work, the responsibilities of the position, the competencies required, and the expected contributions. The Factor Descriptors will serve as both classification criteria and contribution assessment criteria and may be found in Appendix C. New position descriptions will replace the current position/job descriptions. The Factor Descriptors of each pay band will serve as an important component in the new position description, which will also include position-specific information and provide data element information pertinent to the job. The new descriptions will be easier to prepare, minimize the amount of writing time, and make the position description a more useful and accurate tool for other personnel management functions.

Specialty work codes (narrative descriptions) will be used to further differentiate types of work and the competencies required for particular positions within an Occupational Family and pay band. Each code represents a specialization or type of work within the occupation.

3. Fair Labor Standards Act

Fair Labor Standards Act (FLSA) exemption and non-exemption determinations will be consistent with criteria found in 5 CFR part 551. All demonstration project positions are covered by the FLSA unless they meet the criteria for exemption. Positions will be evaluated as needed by comparing the duties and responsibilities assigned the pay band factor level descriptors for each pay band level, and the 5 CFR part 551 FLSA criteria. As a general rule, the FLSA status of a position can be matched to an Occupational Family, career path, and pay band level as indicated in Table 2. For example, positions classified in Pay Band I of the E&S Occupational Family are typically nonexempt, meaning they are covered by the overtime entitlements prescribed by the FLSA. An exception to this guideline includes supervisors/managers whose primary duty meets the definitions outlined in the OPM GS Supervisory Guide. Therefore, supervisors/managers in any of the pay bands who meet the foregoing criteria are exempt from the FLSA. Supervisors with classification authority will make the determinations on a case-by-case basis by comparing assigned duties and responsibilities and pay band factor level descriptors to the 5 CFR part 551 FLSA criteria. Additionally, the advice and assistance of the servicing Civilian Personnel Advisory Center (CPAC) will be obtained in making determinations. The position descriptions will not be the sole basis for the determination. The basis for exemption will be documented and attached to each position description. Exemption criteria will be narrowly construed and applied only to those employees who clearly meet the spirit of the exemption. Changes will be documented and provided to the CPAC.

TABLE 2—FLSA STATUS

[Pay bands]

Occupational family	I	II	III	IV	V	VI
E&S	N	N/E	E	E	E	E
B&T	N	N/E	E	E	E	
GEN	N	N	E			

N—Non-Exempt from FLSA; E—Exempt from FLSA; and N/E—Exemption status determined on a case-by-case basis.

Note: Although typical exemption status under the various pay bands is shown in the above table, actual FLSA exemption determinations are made on a case-by-case basis.

4. Classification Authority

The ARDEC Director will have delegated classification authority and may in turn, re-delegate this authority to appropriate levels. Position descriptions will be developed to assist managers in exercising delegated position classification authority. Managers will identify the Occupational Family, occupational series, functional code, specialty work code, pay band level, and the appropriate acquisition codes. Personnel specialists will provide ongoing consultation and guidance to managers and supervisors throughout the classification process. These decisions will be documented on the position description.

5. Classification Appeals

Classification appeals under this demonstration project will be processed using the following procedures: An employee may appeal the determination of Occupational Family, occupational series, position title, and pay band of his/her position at any time. An employee must formally raise the area of concern to supervisors in the immediate chain of command, either verbally or in writing. If the employee is not satisfied with the supervisory response, he/she may then appeal to the DoD appellate level. Appeal decisions rendered by DoD will be final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government. Classification appeals are not accepted on positions which exceed the equivalent of a GS–15 level. Time periods for cases processed under 5 CFR part 511 apply.

An employee may not appeal the accuracy of the position description, the demonstration project classification criteria, or the pay-setting criteria; the assignment of occupational series to an Occupational Family; the propriety of a pay schedule; matters grievable under an administrative or negotiated grievance procedure; or a decision reached using an alternative dispute resolution procedure.

The evaluations of classification appeals under this demonstration project are based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the servicing Civilian Personnel Advisory Center (CPAC) and will include copies of appropriate demonstration project criteria.

C. Contribution-Based Compensation System

1. Overview

The purpose of the Contribution-Based Compensation System (CBCS) is to provide an effective, efficient, and flexible method for assessing, compensating, and managing the ARDEC workforce. CBCS is essential for the development and continued growth of the high quality, extremely productive and innovative workforce needed to meet mission requirements. The CBCS allows for greater employee involvement in the assessment process, fosters increased communication between supervisor and employee, promotes a clear accountability of performance, facilitates employee career progression, and provides an understandable and rational basis for base pay changes by linking pay, performance, and contribution. The CBCS process described herein applies to all Occupational Families and pay band levels except Pay Band VI of the E&S Occupational Family. The assessment process for E&S Pay Band VI positions will be based on the final outcome of the DoD evaluation and documented in ARDEC Internal Operating Instructions.

CBCS is an assessment system that measures the employee's level of contribution to the organization's mission and how well the employee performed. Contribution is simply defined as the measure of the demonstrated value of employee actions in terms of accomplishing or advancing the organizational objectives and mission impact. CBCS promotes base pay adjustment decisions made on the basis of an individual's overall annual contributions and current base pay in relation to other employees' contributions and their level of compensation in the pay pool. The measurement of overall contribution is determined through a rating process which determines the Overall Contribution Score (OCS). OCS is a key component to the CBCS assessment system in that it:

(1) Provides a consistent scoring scale linked to base pay even as salaries increase in accordance with GPI increases.

(2) Provides a rating scale that enables direct comparison of the level and quality of employee contributions to the current base pay of that employee.

To accomplish (2) above, the employee's current base pay is converted to an Expected OCS (EOCS). The other OCS score, Assessed OCS (AOCS) is the measurement of the employee's contributions in the appraisal process. AOCS is the result of measuring contribution and performance by using the pay band level descriptors for a set of contribution factors and discriminators each of which is relevant to mission success of the organization. The comparison of EOCS and AOCS determines if the employee is appropriately compensated. The same factor level descriptors used for classification will also be used for the annual CBCS employee assessments (*see* Appendix C).

2. Contribution Factors

The following six (6) factors will be used for evaluating the yearly contribution of the ARDEC personnel in all three Occupational Families:

(1) Problem Solving.
(2) Teamwork/Cooperation.
(3) Customer Relations.
(4) Leadership/Supervision.
(5) Communication.
(6) Resource Management.

Each factor has multiple levels of increasing contribution corresponding to the pay band levels. Each factor contains descriptors for each respective pay band level within the relevant Occupational Family.

The appropriate Occupational Family pay band level factor descriptors will be used by the rating official to determine the employee's actual contribution score. Employees can score within, above, or below their pay band level. For example, a pay band level II employee could score in the pay band level I, II, III, or IV range.

3. Pay Pools

The ARDEC employees will be placed into pay pools that are defined for the purpose of determining performance payouts under the CBCS. Pay pools will be established and operated in accordance with the guidelines provided in the following paragraphs. These guidelines will be followed noting the following exception. The ARDEC Director may deviate from the guidelines provided there is a compelling need. The rationale must be documented in writing.

The ARDEC Director will establish pay pools. Typically, pay pools will have between 35 and 300 employees. A pay pool should be large enough to encompass a reasonable distribution of ratings but not so large as to compromise rating consistency. Neither the pay pool manager nor supervisors within a pay pool will recommend or set their own individual pay. Decisions regarding the amount of the contribution payout are based on the established formal payout calculations.

Funds within a pay pool available for contribution payouts are divided into two components, base pay and bonus. These funds will be determined based on historical data. The base pay fund will be set at no less than two percent of total base pay of employees eligible for compensation adjustment in CBCS. The bonus fund will be set at no less than one percent of total base pay. The ARDEC PMB will annually review the pay pool funding and recommend adjustments to the ARDEC Director to ensure cost discipline over the life of the demonstration project. CBCS payouts can be in the form of increases to base pay and/or bonuses that are not added to base pay but rather are given as a lump-sum payment. Other awards such as special acts, time-off awards, *etc.,* will be managed separately from the CBCS payouts.

4. Annual Appraisal Cycle and Rating Process

The annual appraisal cycle normally begins on October 1 and ends on September 30 of the following year. The minimum rating period will be 90 days. At the beginning of the annual appraisal period, the pay band level descriptors for each factor will be provided to employees so that they know the basis on which their performance will be assessed. At the discretion of the pay pool manager, weights will be applied to the factors. If weighting is used, the same weighting will be applied to all similar positions within an Occupational Family in a pay pool. Also, if weighting is used, the minimum weighting will be 10 percent and the sum of all weights must equal 100 percent. Employees will be informed of the weights at the beginning of the rating cycle.

Each supervisor will discuss work assignment, performance and conduct standards, and provide clear objectives to their employees. Typically, the rating official is the first-level supervisor. If the current first-level supervisor has been in place for less than 90 days during the rating cycle, the second-level supervisor serves as the initial rating official. If the second-level supervisor is in place for less than 90 days during the rating cycle, the next higher level supervisor in the employee's rating chain conducts the assessment.

Employees and supervisors alike are expected to actively participate in on-going formal and informal performance discussions regarding expectations. The timing of these discussions will vary based on the nature of work performed, but will occur at least at the mid-point and end of the rating period. At least one review, normally the mid-point review, will be documented as a progress review. More frequent, task specific, discussions may be appropriate in some organizations.

The employee will provide a list of his/her accomplishments to the supervisor at both the mid-point and end of the rating period. An employee may elect to provide self-ratings on the contribution factors and/or solicit input from team members, customers, peers, supervisors in other units, subordinates, and other sources which will assist the supervisor in fully evaluating contributions. At the end of the annual appraisal period, the immediate supervisor (rating official), from employees' inputs and his/her own knowledge, identifies for each employee the appropriate contribution level for each factor, and recommends the AOCS.

To determine the AOCS, numerical values are assigned based on the contribution levels of individuals, using the ranges shown in Table 3. The AOCS is calculated by averaging the numerical values (as weighted if applicable) assigned for each of the six contribution factors. (All AOCS's will be rounded to the nearest tenth of a point. If the decimal is .05 or higher, the AOCS will be rounded up.) The rating official in conjunction with the second-level supervisor reviews the AOCS for all employees, correcting any inconsistencies identified and making the appropriate adjustments in the factor ratings.

Table 3. Contribution Score Ranges By Occupational Family

		Engineering and Science	Business and Technical	General Support
Pay Band Levels		**Point Range**	**Point Range**	**Point Range**
VI		TBD	--	--
	Very High	101-115	101-115	--
	High	97-100	97-100	--
V	Med	91-96	91-96	--
	Low	87-90	87-90	--
	High	91-95	91-95	--
IV	Med	84-90	84-90	--
	Low	79-83	79-83	--
	Very High	--	--	60-64
	High	81-86	81-86	53-59
III	Med	68-80	68-80	47-52
	Low	62-67	62-67	43-46
	High	62-68	62-68	46-54
	Med High	51-61	51-61	--
II	Med	41-50	41-50	30-45
	Med Low	30-40	30-40	--
	Low	22-29	22-29	22-29
	High	24-30	24-30	24-30
I	Med	6-23	6-23	6-23
	Low	0-5	0-5	0-5

The pay pool panel conducts a final review of the AOCS for each employee in the pay pool. The pay pool panel has the authority to make AOCS adjustments, after discussion with the initial rating officials, to ensure equity and consistency. Final approval of AOCS rests with the pay pool manager, the individual within the organization responsible for managing the CBCS process. The AOCS, as approved by the pay pool manager, becomes the rating of record. Rating officials will communicate the factor scores and AOCS to each employee and discuss the results.

If on the last day of the appraisal cycle the employee has served under CBCS for less than 90 days, the first rating will be provided at the end of the next annual rating cycle. The first CBCS appraisal must be rendered within 18 months after entering the demonstration project.

When an employee cannot be evaluated readily by the normal CBCS appraisal process due to special circumstances that take the individual away from normal duties or duty station (*e.g.,* long-term full-time training, active military duty, extended sick leave, leave without pay, *etc.*), the rating official will document the special circumstances on the appraisal form. The rating official will then determine which of the following options to use:

a. Re-certify the employee's last contribution appraisal; or

b. Presume the employee is contributing consistently at his/her pay level.

5. Linking OCS to Compensation Adjustment

a. The Normal Pay Range (NPR)

The CBCS integrated pay schedule provides a direct link between contribution level and base pay. This is shown by the graph in Figure 1. The horizontal axis spans from 0 to the maximum OCS of 100 for positions in pay band levels I through V. Impact of Band VI will be determined after receiving DoD guidance on Band VI positions. The vertical axis spans from zero dollars to the dollar equivalent of the highest positions covered by CBCS. This encompasses the full base pay range (excluding locality pay and staffing supplements) under this demonstration for the given calendar year (*note:* Figure 1 currently depicts Calendar Year (CY) 10. Each year the rails for the NPR are adjusted based on the GS general pay increase under 5 U.S.C. 5303. The area between the upper and lower rails is considered the NPR. This pay range represents a base pay range of plus or minus eight percent from the Standard Pay Line (SPL). The SPL is a mapping of the GS base pay scale to OCS values (*see* formula below) that shows the expected level of contributions (EOCS) from an employee at a specific base pay rate. The SPL and NPR provide the means to link base pay and contribution using a scale that does not change even as a base pay range changes with GPI increases. This scale is not a linear scale but rather adopts and reflects the provision that the former GS basic pay increases (*e.g.,* GPI, step increases) are percentage increases. Thus, the scale reflects that each point increase in OCS reflects a fixed percent increase in base pay. For example, an OCS of 61 reflects an approximate two percent base pay difference over an OCS of 60 and an OCS of 87 reflects an approximate two percent base pay difference over an OCS of 86. The SPL and NPR are established using the following parameters:

(1) The lowest possible score is an OCS of 0, which equates to the lowest base pay under this demonstration project, GS–1, step 1,

(2) The OCS of 100 equates to the base pay of GS–15, step 10.

The SPL is calculated as:

Standard Pay Line (SPL) = (GS–1, Step 1) * $(1.020043)^{OCS}$

The factor 1.020043 is called the SPL factor and reflects the percent increase of salary corresponding to a one point increase in OCS:

SPL Factor = (GS–15, Step 10)/(GS–1, Step 1)$^{(0.01)}$

The SPL Factor will remain the same value (1.020043) for as long as GPI increases are applied as the same percentage increase to GS–1, Step 1, to GS–15, Step 10.

The upper rail is calculated as: Upper Rail = SPL * 1.08

The lower rail is calculated as: Lower Rail = SPL * 0.92

The upper and lower rails encompass an area of ± 8.0 percent in terms of base pay which correlates to approximately ± 4.0 OCS points.

The EOCS is the intersection of the employee's current base pay and the SPL. In the instance of an employee on retained pay, the EOCS is determined by using the maximum base pay of the employee's assigned pay band in lieu of their current base pay.

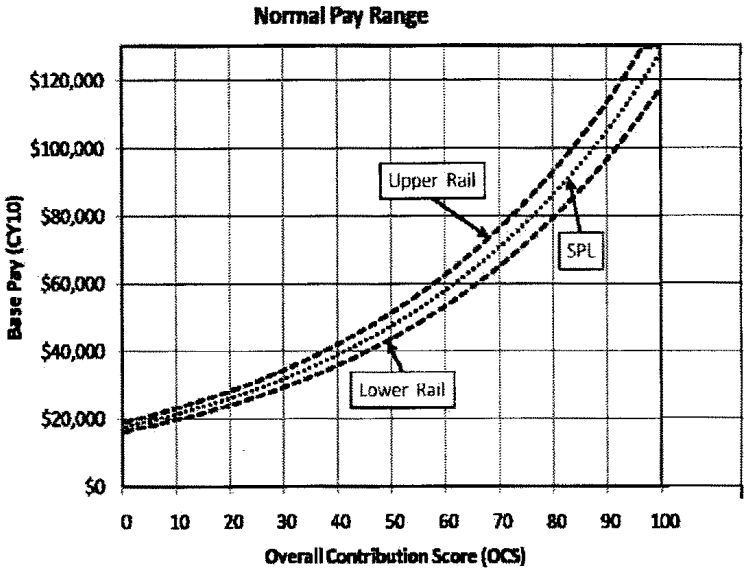


Figure 1. Normal Pay Range

The NPR is the same for all the Occupational Families. What varies among the Occupational Families are the beginnings and endings of the pay band levels. The minimum and maximum numerical OCS values and associated base pay for each pay band level by Occupational Family are provided in Table 4. These minimum and maximum breakpoints represent the lowest and highest base pay for the bands; and the minimum and maximum base pay possible for each pay band level. Locality pay or staffing supplements are not included in the NPR but are added to base pay as appropriate.

Table 4. OCS and Pay Band Base Pay Ranges

Occupational Family	$ (CY10 OCS Salaries)					
	I	II	III	IV	V	VI[1]
E&S	$17,803 – $32,288	$27,548 – $68,634	$60,930 – $98,100	$85,377 – $117,283	$100,066 – $129,517	
	0-30	22-68	62-86	79-95	87-100	
Business & Technical	$17,803 – $32,288	$27,548 – $68,634	$60,930 – $98,100	$85,377 – $117,283	$100,066 – $129,517	
	0-30	22-68	62-86	79-95	87-100	
General Support	$17,803 – $32,288	$27,548 – $51,986	$41,791 – $57,409			
	0-30	22-54	43-59			

[1] Band VI pay and OCS range will be determined based on DoD guidance.

b. OCS-Based Compensation Adjustment Guidelines

After the pay pool manager approves the OCS for all employees in the pay pool, the current base pay versus AOCS is plotted for all employees on a chart similar to Figure 2. This plot relates contribution to base pay, and identifies the placement of each employee into one of three regions: Region A—Above-the-NPR, Region C—Within-the-NPR, or Region B—Below-the-NPR. When an employee is placed in the Region A—Above-the-NPR, the employee is considered to be overcompensated. When an employee is placed in the Region B—Below-the-NPR the employee is considered to be undercompensated and when an employee is placed in the Region C—Within-the-NPR, the employee is considered to be adequately compensated.

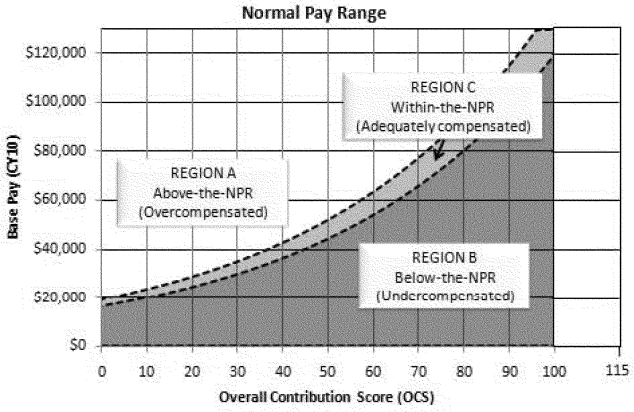


Figure 2. Compensation Regions Defined by NPR

c. The following delineates compensation adjustment guidelines for employees in each of the three regions:

(1) All employees are entitled to the full locality pay or a staffing supplement, as appropriate, (subject to overall salary pay limitations).

(2) The employees whose base pay falls within the NPR (Region C) must receive the full GPI, may receive a Contribution Base Pay Increase of up to 6 percent, and may receive a Contribution Bonus. The Contribution Base Pay Increase is included as a permanent increase in base pay, but the Contribution Bonus is a lump-sum payment that does not affect base pay.

(3) The employees whose base pay falls above the NPR (Region A) could be denied part or all of the GPI and will receive no Contribution Base Pay Increase or Contribution Bonus. The intent of the demonstration project is to allow managers to retain the ability to determine how much, if any, of the GPI an Overcompensated (Region A) employee shall receive, on a case-by-case basis.

(4) The employees whose base pay falls below the NPR (Region B) must receive the full GPI, may receive up to a 20 percent Contribution Base Pay Increase (higher amounts require the approval of the ARDEC Director), and may also receive a Contribution Bonus.

(5) The employees on retained pay in the demonstration project will receive base pay adjustments in accordance with 5 U.S.C. 5363 and 5 CFR part 536. An employee receiving retained pay is not eligible for a Contribution Base Pay Increase, but may receive a Contribution Bonus.

(6) Table 5 illustrates the additional pay adjustments possible for the three groupings of employees.

TABLE 5—COMPENSATION ELIGIBILITY CHART

Category	General pay increase	Contribution base pay increase	Contribution bonus	Locality pay/ staffing supplement [1]
—Above the NPR	Could be reduced or denied	NO	NO	YES.
Within the NPR—	YES	YES [2]—Up to 6 percent	YES [5]	YES.
—Below the NPR	YES	YES [3 4]—Up to 20 percent	YES [5]	YES.

[1] Base pay plus locality pay/staffing supplement may not exceed Executive Level IV, except for Band VI.
[2] May not exceed upper rail of NPR for employee's AOCS or maximum base pay for current pay band level.
[3] Over 20 percent requires ARDEC Director's approval.
[4] May not exceed 6 percent above the lower rail or the maximum base pay for current pay band level.
[5] Pay pool manager approves up to $10,000. Amounts exceeding $10,000 require ARDEC Director's approval.

(7) In general, those employees whose base pay falls below the NPR should expect to receive greater percentage base pay increases than those whose base pay is above the NPR. Over time, people will migrate closer to the normal pay range and base pay appropriate for their level of contribution.

(8) Employees whose AOCS would result in awarding a Contribution Base Pay Increase such that the base pay exceeds the maximum base pay for their current pay band level may receive a Contribution Bonus equaling the difference.

6. Accelerated Compensation for Developmental Positions (ACDP)

ACDP provides for an increase to base pay, bonus, or a combination of these to employees participating in training programs or in other developmental capacities as determined by the ARDEC policy. ACDP recognizes growth and development in the acquisition of job-related competencies combined with successful contribution. In order to receive an ACDP, the employee must be in a pay and duty status and have been on an approved performance plan (may be from any system) for 90 days. Most ACDP increases will occur yearly, comparable to the GS intern career progression. However, when warranted (*e.g.,* high turnover positions, hard-to-fill positions, exceptional performance by the employee), an ACDP increase may occur anytime during the year. Employees under an ACDP will follow the standard CBCS rating cycle. The employee is only entitled to the bonus component as a result of CBCS rating.

7. Extraordinary Achievement Recognition

A pay pool manager may request approval from the ARDEC Director for use of an Extraordinary Achievement Recognition. Such recognition grants a base pay increase and/or bonus to an employee. The funds available for an Extraordinary Achievement Recognition are separately funded within budget constraints.

8. Awards

To provide additional flexibility in motivating and rewarding individuals and groups, some portion of the award budget will be reserved for special acts and other categories as they occur. Awards may include, but are not limited to, special acts, patents, suggestions, on-the-spot, and time-off. The funds available to be used for traditional title 5 U.S.C. awards are separately funded within budget constraints.

While not directly linked to the CBCS, this additional flexibility is important to encourage outstanding contribution and innovation in accomplishing the diverse mission of the ARDEC. Additionally, to foster and encourage teamwork among its employees, organizations may give group awards. The ARDEC Director will have the authority to grant Special Act Awards to covered employees of up to $25,000 IAW the criteria of AR 672–20, Incentive Awards.

9. Adverse Actions

Except where specifically waived or modified in this plan, adverse action procedures under 5 CFR part 752 remain unchanged.

10. Grievance of Assessed Overall Contribution Score

An employee may grieve the AOCS received under the CBCS. Non-bargaining unit employees and bargaining unit employees covered by a negotiated grievance procedure that does not permit grievances over performance ratings must file under administrative grievance procedures. Bargaining unit employees whose negotiated grievance procedures cover performance rating grievances must file under those negotiated procedure. Payout amounts resulting from the contribution assessment cannot be grieved.

11. Inadequate Employee Performance/Contribution

Inadequate performance/contribution at any time during the appraisal period is considered grounds for initiation of a reduction-in-pay or removal action. The following procedures replace those established in 5 U.S.C. 4303 pertaining to reductions in grade or removal for unacceptable performance except with respect to appeals of such actions. 5 U.S.C. 4303(e) provides the statutory authority for appeals of contribution-based actions. As is currently the situation for performance-based actions taken under 5 U.S.C. 4303, contribution-based actions shall be sustained if the decision is supported by substantial evidence; and the Merit Systems Protection Board shall not have mitigation authority with respect to such actions. The separate statutory authority to take contribution-based actions under 5 U.S.C. 75, as modified in the waiver section of this notice (section IX), remains unchanged by these procedures.

When an employee's AOCS plots above the upper rail of the NPR and the employee is considered to be under-performing/contributing, the supervisor has two options. The first is to take no action but to document this decision in a memorandum for the record. A copy of this memorandum will be provided to the employee and management. The second option is to inform the employee, in writing, that unless the contribution increases to, and is sustained at, a higher level, the employee may be reduced in pay, pay band level, or removed.

The second option will include a Contribution Improvement Plan (CIP). The CIP must include standards for acceptable contribution, actions required of the employee, and time in which they must be accomplished to increase and sustain the employee's contribution at an acceptable level. When an employee is placed on a CIP, the rating official will afford the employee a reasonable opportunity (a minimum of 60 days) to demonstrate acceptable contribution. These provisions also apply to an employee whose contribution deteriorates during the year.

Employees who are on a CIP at the time pay determinations are made do not receive performance payouts or the annual GPI. Employees who are on a CIP will not receive any portion of the GPI or RIF service credit until such time as his/her performance improves to the acceptable level and remains acceptable for at least 90 days. When the employee has performed acceptably for at least 90 days, the GPI and RIF service credit will be reinstated at the beginning of the next pay period. No retroactive GPI will be paid for time lost under a CIP.

Once an employee has been afforded a reasonable opportunity to demonstrate acceptable contribution but fails to do so, a reduction-in-pay (which may include a change to a lower pay band level and/or reassignment) or removal action may be proposed. If the employee's contribution increases to an acceptable level and is again determined to deteriorate in any factor within two years from the beginning of the opportunity period, actions may be initiated to effect reduction in pay or removal with no additional opportunity to improve. If an employee has contributed acceptably for two years from the beginning of an opportunity period, and the employee's overall contribution once again declines to an unacceptable level, the employee will be afforded an additional opportunity to demonstrate acceptable contribution before it is determined whether or not to propose a reduction in pay or removal.

An employee whose reduction in pay or removal is proposed is entitled to a 30-day advance notice of the proposed action that identifies specific instances of unacceptable contribution by the employee on which the action is based. The employee will be afforded a reasonable time to answer the notice of proposed action orally and/or in writing.

A decision to reduce pay or remove an employee for unacceptable contribution may be based only on those instances of unacceptable contribution that occurred during the two-year period ending on the date of issuance of the proposed action. The employee will be issued written notice at or before the time the action will be effective. Such notice will specify the instances of unacceptable contribution by the employee on which the action is based and will inform the employee of any applicable appeal or grievance rights.

All relevant documentation concerning a reduction-in-pay or removal that is based on unacceptable contribution will be preserved and made available for review by the affected employee or a designated representative. At a minimum, the records will consist of a copy of the notice of proposed action; the written answer of the employee or a summary when the employee makes an oral reply; and the written notice of decision and the reasons thereof, along with any supporting material including documentation regarding the opportunity afforded the employee to demonstrate acceptable contribution.

D. Hiring Authority

1. Qualifications

The qualifications required for placement into a position in a pay band within an Occupational Family will be determined using the OPM "Operating

Manual for Qualification Standards for GS Positions." Since the pay bands are anchored to the GS grade levels, the minimum qualification requirements for a position will be those corresponding to the lowest GS grade incorporated into that pay band. For example, for a position in the E&S Occupational Family, Pay Band II individuals must meet the basic requirements for a GS–5 as specified in the OPM "Qualification Standard for Professional and Scientific Positions."

Selective factors may be established for a position in accordance with the OPM "Operating Manual for Qualification Standards for GS Positions" when determined to be critical to successful job performance. These factors will become part of the minimum requirements for the position; and applicants must meet them in order to be eligible. If used, selective factors will be stated as part of the qualification requirements in vacancy announcements and recruiting bulletins.

2. Delegated Examining

Competitive service positions will be filled through Merit Staffing, Direct Hire Authority, or Delegated Examining. Where delegated to the laboratory level, hiring authority will be exercised in accordance with the requirements of the delegation of authority. The Rule of Three will be eliminated. When there are no more than fifteen qualified applicants and no preference eligibles, all eligible applicants are immediately referred to the selecting official without rating and ranking. Rating and ranking will be required only when the number of qualified candidates exceeds fifteen or there is a mix of preference and non-preference applicants. Statutes and regulations covering veterans' preference will be observed in the selection process and when rating and ranking are required.

3. Direct Hire Authority for Candidates With Advanced Degrees for Scientific and Engineering Positions

a. Background:

The ARDEC has an urgent need for direct hire authority to appoint qualified candidates possessing an advanced degree to scientific and engineering positions. The market is extremely competitive with industry and academia for the small supply of highly-qualified and security clearable candidates with a Masters Degree or PhD in science or engineering. There are 35,000 scientists and engineers employed in the DoD laboratories; 27 percent hold Masters Degrees, while 10 percent are in possession of a PhD. The ARDEC employs over 2,300 scientists and engineers; 34 percent holding Masters Degrees, while 2.6 percent are in possession of a PhD. Over the next five years, the ARDEC plans to hire approximately 500 of the country's best and brightest scientists and engineers (S&Es) just to keep pace with attrition. This number does not include the impact that actions such as Base Realignment and Closure may have on the attrition of S&Es from the ARDEC. Statistics indicate that the available pool of advanced degree, security clearable candidates is substantially diminished by the number of non-U.S. citizens granted degrees by U.S. institutions. For instance, in 2006, 20 percent of Masters Degrees in science and over 35 percent of PhDs in science were awarded to temporary residents.

It is expected that this hiring authority, together with streamlined recruitment processes, will be very effective in hiring candidates possessing a Masters or PhD and accelerating the hiring process. For instance, under a similar authority found in the NDAA for FY 09, section 1108, Public Law 110–417, October 28, 2009, one STRL had fifteen PhD selectees in 2009 for the sixteen vacancies for which they were using this hiring authority. Another STRL, using this expedited hiring authority in calendar year 2009, made thirty firm hiring offers in an average of thirteen days from receipt of paper work in the Human Resources Office. Of these thirty selectees, twenty-three possessed PhDs.

b. Definitions:

(1) Scientific and engineering positions are defined as all professional positions in scientific and engineering occupations (with a positive education requirement) utilized by the laboratory.

(2) An advanced degree is a Master's or higher degree from an accredited college or university in a field of scientific or engineering study directly related to the duties of the position to be filled.

(3) Qualified candidates are defined as candidates who:

(a) Meet the minimum standards for the position as published in OPM's operating manual, "Qualification Standards for General Schedule Positions," or the laboratory's demonstration project qualification standards specific to the position to be filled;

(b) Possess an advanced degree; and

(c) Meet any selective factors.

(4) The term "employee" is defined by section 2105 of title 5, U.S.C.

c. Provisions:

(1) Use of this appointing authority must comply with merit system principles when recruiting and appointing candidates with advanced degrees to covered occupations.

(2) Qualified candidates possessing an advanced degree may be appointed without regard to the provisions of subchapter 1 of chapter 33 of title 5, United States Code, other than sections 3303, 3321, and 3328 of such title.

(3) The hiring threshold for this authority shall be consistent with DoD policy and legislative language as expressed in any National Defense Authorization Act addressing such.

(4) Positions and candidates must be counted on a full-time equivalent basis.

(5) Science and engineering positions that are filled as of the close of the fiscal year are those positions encumbered on the last day of the fiscal year.

(6) When completing the personnel action, the following will be given as the authority for the Career-Conditional, Career, Term, Temporary, or special demonstration project appointment authority: Section 1108, NDAA for FY 09.

(7) Evaluation of this hiring authority will include information and data on its use, such as numerical limitation, hires made, how many veterans hired, declinations, difficulties encountered, and/or recognized efficiencies.

4. Distinguished Scholastic Achievement Appointment

ARDEC will establish a Distinguished Scholastic Achievement Appointment using an alternative examining process which provides the authority to appoint undergraduates and graduates through the doctoral level to professional positions at the equivalent of GS–7 through GS–11, and GS–12 positions. At the undergraduate level, candidates may be appointed to positions at a pay level no greater than the equivalent of GS–7, step 10, provided that: They meet the minimum standards for the position as published in OPM's operating manual, "Qualification Standards for General Schedule Positions," plus any selective factors stated in the vacancy announcement; the occupation has a positive education requirement; and the candidate has a cumulative grade point average of 3.5 or better (on a 4.0 scale) in those courses in those fields of study that are specified in the qualifications standards for the occupational series. Appointments may also be made at the equivalent of GS–9 through GS–12 on the basis of graduate education and/or experience for those candidates with a grade point average of 3.5 or better (on a 4.0 scale) for graduate level courses in the field of study required for the occupation. Veterans' preference procedures will apply when selecting candidates under this authority.

Preference eligibles who meet the above criteria will be considered ahead of nonpreference eligibles. In making selections, to pass over any preference eligible(s) to select a nonpreference eligible requires approval under current pass-over or objection procedures. Priority must also be given to displaced employees as may be specified in OPM and DoD regulations. Distinguished Scholastic Achievement Appointments will enable ARDEC to respond quickly to hiring needs with eminently qualified candidates possessing distinguished scholastic achievements.

5. Legal Authority

For actions taken under the auspices of this demonstration project, the legal authorities, Public Law 103–337, as amended, and Public Law 111–84 will be used. For all other actions, the nature of action codes and legal authority codes prescribed by OPM, DoD, or DA will continue to be used.

6. Modified Term Appointments

The ARDEC conducts a variety of projects that range from three to six years. The current four-year limitation on term appointments for competitive service employees often results in the termination of these employees prior to completion of projects they were hired to support. This disrupts the research and development process and affects the organization's ability to accomplish the mission and serve its customers.

The ARDEC will continue to have career and career-conditional appointments and temporary appointments not-to-exceed one year. These appointments will use existing authorities and entitlements. Under the demonstration project, ARDEC will have the added authority to hire individuals under a modified term appointment. These appointments will be used to fill positions for a period of more than one year, but not more than a total of five years when the need for an employee's services is not permanent. The modified term appointments differ from term employment as described in 5 CFR part 316 in that they may be made for a period not to exceed five, rather than four years. The ARDEC Director is authorized to extend a modified term appointment one additional year.

Employees hired under the modified term appointment authority are in a non-permanent status, but may be eligible for non-competitive conversion to career-conditional or career appointments. To be converted, the employee must:

(1) Have been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the term position may be eligible for conversion to a career-conditional or career appointment at a later date;

(2) Have served two years of continuous service in the term position; and

(3) Be performing at an acceptable level of performance.

Employees serving under term appointments at the time of conversion to the demonstration project will be converted to the new modified term appointments provided they were hired for their current positions under competitive procedures. These employees will be eligible for conversion to career-conditional or career appointments if they:

(1) Have served two years of continuous service in the term position;

(2) Are selected under merit promotion procedures for the permanent position; and

(3) Have not been placed on a Contribution Improvement Period (CIP).

Time served in term positions prior to conversion to the modified term appointment is creditable, provided the service was continuous.

7. Initial Probationary Period

The probationary period will not be less than one year and will not exceed three years for all newly hired employees as defined in 5 CFR part 315. The specific probationary period will be defined and controlled by the ARDEC Director. The purpose of the probationary period is to allow supervisors an adequate period of time to fully evaluate an employee's ability to complete a cycle of work and to fully assess an employee's contribution and conduct. All other features of the current probationary period are retained including the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee. Any employee fulfilling this probationary period prior to the implementation date will not be affected.

8. Termination of Initial Probationary Period Employees

Probationary employees may be terminated when they fail to demonstrate proper conduct, technical competency, and/or acceptable performance for continued employment and for conditions arising before employment. When a supervisor decides to terminate an employee during the probationary period because his/her work performance or conduct is unacceptable, the supervisor shall terminate the employee's services by written notification subject to higher level management approval. This notification shall state the reason(s) for termination and the effective date of the action. The information in the notice shall, at a minimum, consist of the supervisor's conclusions as to the inadequacies of the employee's performance or conduct or those conditions arising before employment that support the termination.

9. Supervisory and Managerial Probationary Periods

Supervisory and managerial probationary periods will be made consistent with 5 CFR part 315. Current government employees, selected for an initial appointment to a supervisory or managerial position in ARDEC are required to successfully complete a two-year probationary period. If the employee is transferred to a different supervisory position, he or she does not have to repeat the probationary period, but may continue the duration of the probationary period if the time was not completed in the previous supervisory position. If, during this probationary period, the decision is made to return the employee to a non-supervisory/managerial position for reasons related to supervisory/managerial performance, the employee will be returned to a comparable position of no lower pay than the position from which promoted or reassigned.

10. Volunteer Emeritus Corps

Under the demonstration project, the ARDEC Director will have the authority to offer retired or separated employees voluntary positions. The ARDEC Director may re-delegate this authority. Volunteer Emeritus Corps assignments are not considered employment by the Federal government (except for purposes of injury compensation). Thus, such assignments do not affect an employee's entitlement to buyouts or severance payments based on an earlier separation from Federal service. The volunteer's Federal retirement pay (whether military or civilian) is not affected while serving in a voluntary capacity. Retired or separated Federal employees may accept an emeritus position without a break or mandatory waiting period.

The Volunteer Emeritus Corps will ensure continued quality services while reducing the overall salary line by allowing higher paid employees to accept retirement incentives with the opportunity to retain a presence in the ARDEC community. The program will be beneficial during manpower reductions, as employees accept retirement and return to provide a

continuing source of corporate knowledge and valuable on-the-job training or mentoring to less experienced employees.

To be accepted into the Volunteer Emeritus Corps, a volunteer must be recommended by an ARDEC manager to the Director or delegated authority. Not everyone who applies is entitled to an emeritus position. The responsible official will document acceptance or rejection of the applicant. For acceptance, documentation must be retained throughout the assignment. For rejection, documentation will be maintained for two years.

Volunteer Emeritus Corps volunteers will not be permitted to monitor contracts on behalf of the Government or to participate on any contracts or solicitations where a conflict of interest exists. The volunteers may be required to submit a financial disclosure form annually. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established among the volunteer, the responsible official, and the CPAC. The agreement must be finalized before the assumption of duties and shall include the following:

(a) Statement that the voluntary assignment does not constitute an appointment in the Civil Service, is without compensation, and the volunteer waives any claims against the Government based on the voluntary assignment;

(b) Statement that the volunteer will be considered a Federal employee only for the purpose of injury compensation;

(c) Volunteer's work schedule;

(d) Length of agreement (defined by length of project or time defined by weeks, months, or years);

(e) Support provided by the organization (travel, administrative support, office space, and supplies);

(f) Statement of duties;

(g) Statement providing that no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a volunteer;

(h) Provision allowing either party to void the agreement with two working days written notice;

(i) Level of security access required by the volunteer (any security clearance required by the position will be managed by the employing organization);

(j) Provision that any publication(s) resulting from his/her work will be submitted to the ARDEC Director for review and approval;

(k) Statement that he/she accepts accountability for loss or damage to Government property occasioned by his/her negligence or willful action;

(l) Statement that his/her activities on the premises will conform to the regulations and requirements of the organization;

(m) Statement that he/she will not release any sensitive or proprietary information without the written approval of the employing organization and further agrees to execute additional non-disclosure agreements as appropriate, if required, by the nature of the anticipated services;

(n) Statement that he/she agrees to disclose any inventions made in the course of work performed at ARDEC. The ARDEC Director has the option to obtain title to any such invention on behalf of the U.S. Government. Should the ARDEC Director elect not to take title, the ARDEC, shall at a minimum, retain a non-exclusive, irrevocable, paid-up, royalty-free license to practice or have practiced the invention worldwide on behalf of the U.S. Government; and

(o) Statement that he/she agrees to comply with designated mandatory training.

Exceptions to the provisions in this procedure may be granted by the ARDEC Director on a case-by-case basis.

E. Internal Placement

1. Promotion

A promotion is the movement of an employee to a higher pay band in the same Occupational Family or to another pay band in a different Occupational Family, wherein the band in the new Occupational Family has a higher maximum base pay than the band from which the employee is moving. The move from one band to another must result in an increase in the employee's base pay to be considered a promotion unless the employee is on retained pay. Positions with known promotion potential to a higher band within an Occupational Family career path will be identified when they are filled. Movement from one Occupational Family to another will depend upon individual competencies, qualifications, and the needs of the organization. Supervisors may consider promoting employees at any time, since promotions are not tied to the CBCS. Progression within a pay band is based upon contribution base pay increases; as such, these actions are not considered promotions and are not subject to the provisions of this section. Except as specified in III.E.6, promotions will be processed under competitive procedures in accordance with Merit System Principles and requirements of the local merit promotion plan.

To be promoted competitively or non-competitively from one band to the next, an employee must meet the minimum qualifications for the job and have an acceptable level of performance. If an employee does not have a current performance rating, the employee will be treated the same as an employee with an acceptable rating as long as there is no documented evidence of unacceptable performance.

2. Reassignment

A reassignment is the movement of an employee from one position to a different position within the same Occupational Family and pay band or to another Occupational Family and pay band wherein the pay band in the new family has the same maximum base pay. The employee must meet the qualifications requirements for the Occupational Family and pay band.

3. Demotion or Placement in a Lower Pay Band

A demotion is a placement of an employee into a lower pay band within the same Occupational Family or placement into a pay band in a different Occupational Family with a lower maximum base pay. Demotions may be for cause (performance or conduct) or for reasons other than cause (*e.g.,* erosion of duties, reclassification of duties to a lower pay band, application under competitive announcements, at the employee's request, or placement actions resulting from RIF procedures).

4. Simplified Assignment Process

Today's environment of downsizing and workforce fluctuations mandates that the organization have maximum flexibility to assign duties and responsibilities to individuals. Pay banding can be used to address this need, as it enables the organization to have maximum flexibility to assign an employee with either no change or an increase in base pay within broad descriptions consistent with the needs of the organization and the individual's qualifications and level. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same level, area of expertise, and qualifications would not constitute an assignment outside the scope or coverage of the current position description. For instance, a technical expert could be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or

organization consistent with that individual's qualifications. This flexibility allows broader latitude in assignments and further streamlines the administrative process and system while providing management the option of granting additional base pay in recognition of more complex work or broader scope of responsibility.

5. Detail Assignment

Under the demonstration project, the ARDEC's approving manager would have the authority:

(1) To effect details up to one year to demonstration project positions without the current 120-day renewal requirement; and

(2) To effect details to a higher level position in the demonstration project up to one year within a 24-month period without competition.

Detail assignments beyond one year require the approval of the ARDEC Director, and are not subject to the 120-day renewal requirement.

6. Expanded Temporary Promotions

Current regulations require that temporary promotions for more than 120 days to a higher level position than previously held must be made competitively. Under the demonstration project, the ARDEC would be able to effect temporary promotions of not more than one year within a 24-month period without competition to positions within the demonstration project.

7. Exceptions to Competitive Procedures

The following actions are excepted from competitive procedures:

(a) Re-promotion to a position which is in the same pay band or GS equivalent and Occupational Family as the employee previously held on a permanent basis within the competitive service.

(b) Promotion, reassignment, demotion, transfer, or reinstatement to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

(c) A position change permitted by reduction-in-force procedures.

(d) Promotion without current competition when the employee was appointed through competitive procedures to a position with a documented career ladder.

(e) A temporary promotion or detail to a position in a higher pay band of one year or less in a 24-month period.

(f) A promotion due to the reclassification of positions based on accretion (addition) of duties.

(g) A promotion resulting from the correction of an initial classification error or the issuance of a new classification standard.

(h) Consideration of a candidate who did not receive proper consideration in a competitive promotion action.

(i) Impact of person in the job and Factor IV process (application of the Research Grade Evaluation Guide, Equipment Development Grade Evaluation Guide, Part III, or similar guides) promotions.

F. Pay Administration

1. General

Pay administration policies will be established by the PMB. These policies will be exempt from Army Regulations or Higher Headquarter pay fixing policies but will conform to basic governmental pay fixing policy. Employees whose performance is acceptable and not on pay retention will receive the full annual general pay increase and the full locality pay. The ARDEC may make full use of recruitment, retention, and relocation payments as provided for by OPM under 5 U.S.C. and 5 CFR pay flexibilities except as waived by this FRN.

2. Pay and Compensation Ceilings

An employee's total monetary compensation paid in a calendar year may not exceed the rate of pay for Level I of the Executive Schedule consistent with 5 CFR 530.201. In addition, each pay band will have its own base pay ceiling. Base pay rates for the various pay bands were established to approximately cover the pay ranges for the GS grade equivalents. Other than where retained rate applies, base pay will be limited to the maximum base pay rate for each pay band. (*See* Table 4.)

3. Pay Setting for Appointment

Upon initial appointment, the individual's pay may be set at the lowest base pay in the pay band or anywhere within the band level consistent with the special qualifications of the individual and the unique requirements of the position. These special qualifications may be in the form of education, training, experience, or any combination thereof that is pertinent to the position in which the employee is being placed. Guidance on pay setting for new hires will be established by the PMB.

4. Highest Previous Rate

Highest Previous Rate (HPR) will be considered in placement actions authorized under rules similar to the HPR rules in 5 CFR 531.221. Use of HPR will be at the supervisor's discretion; but if used, HPR is subject to policies established by the PMB.

5. Pay Setting for Promotion

The minimum base pay increase upon promotion to a higher pay band will be six percent or the amount necessary to set the new base pay at the minimum base pay rate of the new pay band, whichever is greater. The maximum amount of a base pay increase for a promotion will not exceed $10,000 or other such amount as established by the PMB. The maximum base pay increase for promotion may be exceeded when necessary to allow for the minimum base pay increase. For employees promoted from positions external to Lab Demo covered by special rates, the new demonstration project base pay rate will be calculated to assure an adjusted base pay increase of a minimum of six percent.

When a temporary promotion is terminated, the employee's pay entitlements will be re-determined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by the PMB. In no case may those adjustments increase the base pay for the position of record beyond the applicable pay band maximum base pay rate.

6. Pay Setting for Reassignment

A reassignment may be effected without a change in base pay. However, a base pay increase may be granted where a reassignment significantly increases the complexity, responsibility, and authority or for other compelling reasons. Such an increase is subject to the specific guidelines established by the PMB.

7. Pay Setting for Demotion or Placement in a Lower Pay Band

Employees demoted for cause (performance or conduct) are not entitled to pay retention and will receive a minimum of a five percent decrease in base pay provided that decrease does not result in base pay falling below the minimum rate for the pay band. Employees demoted for reasons other than cause (*e.g.,* erosion of duties, reclassification of duties to a lower pay band, application under competitive announcements, at the employee's request, or placement actions resulting from RIF procedures) may be entitled to pay retention in accordance with the provisions of 5 U.S.C. 5363 and 5 CFR part 536, except as waived or modified in section X of this plan.

8. Pay Setting for Employees on a CIP

Employees who are on a CIP do not receive contribution payouts or the general pay increase. This action may result in a base pay that is below the assigned band. This occurs because the minimum rate of base pay in a pay band increases as the result of the general pay increase (5 U.S.C. 5303). For this situation, the employee will remain in the assigned band until such time as the CIP is resolved. Upon resolution of the CIP, pay or band adjustments shall be made in accordance with this document. This action will not be considered an adverse action, nor will it be grievable.

9. Supervisory and Team Leader Pay Adjustments

a. Supervisory and team leader pay adjustments may be approved by the ARDEC Director based on the recommendation of the PMB to compensate employees with supervisory or team leader responsibilities. Only employees in supervisory or team leader positions may be considered for the pay adjustment. These pay adjustments are funded separately from performance pay pools. These pay adjustments are increases to base pay ranging up to ten percent of the employee's base pay rate. Pay adjustments are subject to the constraint that the adjustment may not cause the employee's base pay to exceed the pay band maximum base pay. Criteria to be considered in determining the base pay increase percentage include:

(1) Needs of the organization to attract, retain, and motivate high-quality supervisors/team leaders;

(2) Budgetary constraints;

(3) Years and quality of related experience;

(4) Relevant training;

(5) Performance appraisals and experience as a supervisor/team leader;

(6) Organizational level of position; and

(7) Impact on the organization.

b. After the date of conversion into the demonstration project, a base pay adjustment may be considered under the following conditions:

(1) New hires into supervisory/team leader positions will have their initial rate of base pay set at the supervisor's discretion within the base pay range of the applicable pay band, subject to approval of the ARDEC Director. This rate of pay may include a base pay adjustment determined by using the ranges and criteria outlined above.

(2) A career employee selected for a supervisory/team leader position that is within the employee's current pay band may also be considered for a base pay adjustment. If a supervisor/team leader is already authorized a base pay adjustment and is subsequently selected for another supervisor/team leader position within the same pay band, the base pay adjustment will be re-determined.

c. Supervisors and team leaders will not receive a base pay adjustment at the time of initial conversion into the demonstration project. The supervisor/team leader pay adjustment will be reviewed annually, with possible increases or decreases based on the AOCS. The initial dollar amount of a base pay adjustment will be removed when the employee voluntarily leaves the position. The cancellation of the base pay adjustment under these circumstances is not an adverse action and is not subject to appeal. If an employee is removed from a supervisory/team leader position for personal cause (performance or conduct), the base pay adjustment will be removed under adverse action procedures. However, if an employee is removed from a non-probationary supervisory/team leader position for conditions other than voluntary or for personal cause, pay retention will follow current law and regulations at 5 U.S.C. 5362 and 5363 and 5 CFR part 536, except as waived or modified in section X.

10. Supervisory and Team Leader Pay Differentials

a. Supervisory and team leader pay differentials may be used by the ARDEC Director to provide an incentive and reward supervisors and team leaders. Pay differentials are not funded from performance pay pools. A pay differential is a cash incentive that may range up to ten percent of base pay for supervisors and for team leaders. It is paid on a pay period basis with a specified not-to-exceed (NTE) of one year or less and is not included as part of the base pay. Criteria to be considered in determining the amount of the pay differential are the same as those identified for Supervisory and Team Leader Pay Adjustments. The differential must be terminated if the employee is removed from a supervisory/team leader position, regardless of cause.

b. After initiation of the demonstration project, all personnel actions involving a supervisory or team leader differential will require a statement signed by the employee acknowledging that the differential may be terminated or reduced at the discretion of the ARDEC Director. The termination or reduction of the differential is not an adverse action and is not subject to appeal.

11. Staffing Supplements

Employees assigned to occupational categories and geographic areas covered by GS special rates will be entitled to a staffing supplement if the maximum adjusted base pay for the banded GS grades to which assigned is a special rate that exceeds the maximum GS locality rate for the banded grades. The staffing supplement is added to the base pay, much like locality rates are added to base pay. For employees being converted into the demonstration project, total pay immediately after conversion will be the same as immediately before (excluding the impact of any WGI buy-in for GS employees), but a portion of the total pay will be in the form of a staffing supplement. Adverse action and pay retention provisions will not apply to the conversion process, as there will be no loss or decrease in total pay.

The staffing supplement is calculated as follows. Upon conversion, the demonstration base rate will be established by dividing the employee's former GS basic pay (including any locality pay or special salary rate) or, for former NSPS employees, the NSPS adjusted base salary (the higher of GS special rate, NSPS targeted local market supplement, or locality rate) by the staffing factor. The staffing factor will be determined by dividing the maximum special rate for the banded grades by the GS unadjusted rate corresponding to that special rate (step 10 of the GS rate for the same grade as the special rate). The employee's demonstration staffing supplement is derived by multiplying the demonstration base pay rate by the staffing factor minus one. Therefore, the employee's final demonstration special staffing rate equals the demonstration base pay rate plus the staffing supplement. This amount will equal the employee's former GS adjusted basic pay rate or NSPS adjusted base salary rate. Simplified, the formula is this:

$$\text{Staffing Factor} = \frac{\text{Maximum special rate for the banded grades}}{\text{GS unadjusted rate corresponding to that special rate}}$$

$$\text{Demonstration base pay rate} = \frac{\text{Former GS or NSPS adjusted pay rate or equivalent (specialty or locality rate)}}{\text{Staffing factor}}$$

$$\text{Staffing supplement} = \text{Demo base pay or NSPS base salary rate* (staffing factor-1)}$$

$$\text{Pay upon conversion} = \text{Demonstration base pay rate + staffing supplement (sum will equal existing adjusted rate)}$$

If an employee is in a band where the maximum GS adjusted basic pay or NSPS adjusted base salary rate for the banded grades is a locality rate, when the employee enters into the demonstration project, the demonstration base pay rate is derived by dividing the employee's former GS adjusted basic pay rate (the higher of locality rate or special rate) by the applicable locality pay factor. The employee's demonstration locality-adjusted base pay rate will equal the employee's former GS adjusted basic pay rate in accordance with the above provisions using the new special salary rate. Any GS or special rate schedule adjustment will require computing the staffing supplement again. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may over time supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, pay retention provisions will be applied. Upon geographic movement, an employee who receives the staffing supplement will have the supplement recomputed. Any resulting reduction in pay will not be considered an adverse action or a basis for pay retention.

An established base pay rate plus the staffing supplement will be considered adjusted base pay for the same purposes as a locality rate under 5 CFR 531.610, *e.g.,* for purposes of retirement, life insurance, premium pay, severance pay, and advances in pay. It will also be used to compute worker's compensation payments and lump-sum payments for accrued and accumulated annual leave.

If an employee is in an occupational category covered by a new or modified special salary rate table, and the pay band to which assigned is not entitled to a staffing supplement, then the employee's adjusted base pay may be reviewed and adjusted to accommodate the rate increase provided by the special salary rate table. The review may result in a one-time base pay increase if the employee's adjusted base pay equals or is less than the highest special salary rate grade and step that exceeds the comparable locality grade and step. Demonstration project operating procedures will identify the officials responsible to make such reviews and determinations.

12. Pay Retention

For purposes of actions within the ARDEC demonstration project that provide entitlement to pay retention, the standard provisions of pay retention under 5 U.S.C. 5362 and 5363 and 5 CFR part 536 shall apply to employees after conversion to the demonstration project, except as waived or modified in Section X of this plan. Wherever the term "grade" is used in the law or regulation, the term "pay band" will be substituted. The intent is to only use pay retention for all situations. Grade retention provisions will not be applicable to the ARDEC Demonstration Project. The ARDEC Director may grant pay retention to employees who meet general eligibility requirements, but do not have specific entitlement by law, provided they are not specifically excluded.

G. Employee Development

1. Expanded Developmental Opportunity Program

The Expanded Developmental Opportunity Program will be available to all demonstration project employees. Expanded developmental opportunities complement existing developmental opportunities such as long-term training; rotational job assignments; developmental assignments to Army Materiel Command, Army, or DoD; and self-directed study via correspondence courses, local colleges, and universities. Each developmental opportunity must result in a product, service, report, or study that will benefit the ARDEC or customer organization as well as increase the employee's individual effectiveness. The developmental opportunity period will not result in loss of (or reduction) in base pay, leave to which the employee is otherwise entitled, or credit for service time. The positions of employees on expanded developmental opportunities may be back-filled (*i.e.,* with temporarily assigned, detailed, or promoted employees or with term employees). However, that position or its equivalent must be made available to the employee upon return from the developmental period. The PMB will provide written guidance for employees on application procedures and develop a process that will be used to review and evaluate applicants for development opportunities.

a. *Sabbatical.* The ARDEC Director has the authority to grant paid or unpaid sabbaticals to all career employees. The purpose of a sabbatical will be to permit employees to engage in study or uncompensated work experience that will benefit the organization and contribute to the employee's development and effectiveness. Each sabbatical must result in a product, service, report, or study that will benefit the ARDEC mission as well as increase the employee's individual effectiveness. Various learning or developmental experiences may be considered, such as advanced academic teaching, research, self-directed or guided study, and on-the-job work experience.

One paid sabbatical of up to twelve months in duration or one unpaid sabbatical of up to six months in a calendar year may be granted to an employee in any seven-year period. Employees will be eligible to request a sabbatical after completion of seven years of Federal service. Employees approved for a paid sabbatical must sign a service obligation agreement to continue in service in the ARDEC for a period three times the length of the sabbatical. If an employee voluntarily leaves the ARDEC organization before the service obligation is completed, he/she is liable for repayment of expenses incurred by ARDEC that are associated with training during the sabbatical. Expenses do not include salary costs. The ARDEC Director has

the authority to waive this requirement. Criteria for such waivers will be addressed in the operating procedures. Specific procedures will be developed for processing sabbatical applications upon implementation of the demonstration project.

b. *Critical Skills Training.* The ARDEC Director has the authority to approve academic degree training consistent with 5 U.S.C. 4107. Training is an essential component of an organization that requires continuous acquisition of advanced and specialized knowledge. Degree training is also a critical tool for recruiting and retaining employees with or requiring critical skills.

Each academic degree training program in its entirety can be approved based upon a complete individual degree study program plan; it will ensure continuous acquisition of advanced specialized knowledge essential to the organization and enhance our ability to recruit and retain personnel critical to the present and future requirements of the organization. Degree or certificate payment may not be authorized where it would result in a tax liability for the employee without the employee's express and written consent. Any variance from this policy must be rigorously determined and documented. Guidelines will be developed to ensure competitive approval of degree or certificate payment and that such decisions are fully documented. Employees approved for degree training must sign a service obligation agreement to continue service in the ARDEC for a period three times the length of the training period commencing after the completion of the entire degree program. If an employee voluntarily leaves the ARDEC before the service obligation is completed, he/she is liable for repayment of expenses incurred by the ARDEC that are related to the critical skills training. Expenses do not include salary costs. The ARDEC Director has the authority to waive this requirement. Criteria for such waivers will be addressed in the operating procedures.

c. *Student Career Experience Program (SCEP) Service Agreement.* The extended repayment period also applies to employees under the SCEP who have received tuition assistance. They will be required to sign a service agreement up to three times the length of the academic training period or periods (semesters, trimesters, or quarters).

H. Reduction-in-Force (RIF) Procedures

The competitive area may be determined by Occupational Family, lines of business, product lines, organizational units, funding lines, occupational series, functional area, and/or geographical location, or a combination of these elements, and must include all Demonstration Project employees within the defined competitive area. The RIF system has a single round of competition to replace the current GS two-round process. Once the position to be abolished has been identified, the incumbent of that position may displace another employee when the incumbent has a higher retention standing and is fully qualified for the position occupied by the employee with a lower standing.

Retention standing is based on tenure, veterans' preference, and length of service augmented by performance. Modified term appointment and temporary employees are in tenure group III for RIF purposes. RIF procedures are not required when separating these employees when their appointments expire.

Displacement is limited to one pay band level below the employee's present pay band level within the Occupational Family career path. Pay band level I employees can displace within their current pay band level. A veterans' preference eligible employee with a compensable service connected disability of 30 percent or more may displace up to two pay band levels below the employee's present level within the Occupational Family career path. A pay band level I preference eligible employee (with a compensable service connected disability of 30 percent or more) can displace within their current pay band. Employees bumped to lower pay band levels are entitled to pay retention. The same "*undue disruption*" standard currently utilized, serves as the criteria to determine if an employee is fully qualified.

The additional RIF service credit for performance shall be based on the last three OCS scores and will be applied as follows:

(1) Seven years of credit for each year the OCS is equal to or greater than 94 percent of the EOCS.

(2) Four years of credit for each year the OCS is less than 94 percent of the EOCS, except, zero (0) years of credit for each year the employee was on a CIP during the rating cycle and the OCS is less than 92 percent of the EOCS.

An employee on a CIP, any time during the rating cycle, may only displace an employee who was also on a CIP during the same rating cycle. The displaced individual may similarly displace another employee on a CIP during the same rating cycle. If there is no position in which an employee can be placed by this process or assigned to a vacant position, that employee will be separated. If an employee has not been rated under the demonstration project their rating will be considered acceptable and they will be given the full 21 years of performance credit. After completion of the first or second rating cycle the total years of service will be prorated based on ratings received to date.

IV. Implementation Training

A. Critical to the success of the demonstration project is the training developed to promote understanding of the broad concepts and finer details needed to implement and successfully execute this project. Pay banding, a new position classification system, and a new CBCS all represent significant cultural change for the organization. Training will be tailored to address employee concerns and to encourage comprehensive understanding of the demonstration project. Training will be required both prior to implementation and at various times during the life of the demonstration project.

B. A training program will begin prior to implementation and will include modules tailored for employees, supervisors, senior managers, and administrative staff. Typical modules are:

1. An overview of the demonstration project;
2. Conversion in and out of the system;
3. Pay banding;
4. The CBCS;
5. Defining objectives;
6. Assigning weights;
7. Assessing performance, including feedback;
8. New position descriptions; and
9. Demonstration project administration and formal evaluation.

C. Various types of training are being considered, including videos, on-line tutorials, and train-the-trainer concepts.

V. Conversion

A. Conversion From the GS System to the Demonstration Project

1. Placement Into Demonstration Project Occupational Families, Career Paths, and Pay Bands

Conversion will be into the Occupational Family and career path that corresponds to the employee's current GS grade and basic pay. If conversion into the demonstration project is accompanied by a simultaneous change in the geographic location of the employee's duty station, the employee's overall GS entitlements (including locality rate) in the new area will be determined before converting

the employee's pay to the demonstration project pay system. Employees will be assured of placement within the new system without loss of total pay.

2. WGI Buy-In

For GS employees, rules governing WGIs will continue in effect until conversion. Adjustments to the employee's GS basic pay for WGI equity will be computed as of the effective date of conversion. WGI equity will be acknowledged by increasing basic pay by a prorated share based upon the number of full weeks an employee has completed toward the next higher step. Payment will equal the value of the employee's next WGI times the proportion of the waiting period completed (weeks completed in waiting period/weeks in the waiting period) at the time of conversion. GS employees at step 10 or receiving a retained rate, on the day of implementation will not be eligible for WGI equity adjustments. GS employees serving on retained grade will receive WGI equity adjustments provided they are not at step 10 or receiving a retained rate.

3. Conversion of Term and Temporary Limited Appointments

Employees serving under a term appointment at the time of demonstration project implementation will be converted to the modified term appointment if all requirements (refer to III.D.6, Modified Term Appointments) have been satisfied. Employees serving under temporary limited appointments at the time of demonstration implementation will be converted to temporary limited appointments.

4. Conversion of Special Salary Rate Employees

Employees who are in positions covered by a special salary rate prior to the demonstration project will no longer be considered a special salary rate employee under the demonstration project. These employees will be eligible for full locality pay. The adjusted pay for these employees will not change. The employees will receive a new staffing adjusted base pay rate computed under the staffing supplement rules in section III.F.11.

5. Probationary Periods

a. Initial probationary period. GS employees who have completed an initial probationary period prior to conversion from GS will not be required to serve a new or extended initial probationary period. GS employees who are serving an initial probationary period upon conversion from GS will serve the time remaining on their initial probationary period and may have their initial probationary period extended in accordance with the demonstration project regulation and implementing issuances.

b. Supervisory probationary period. GS employees who have completed a supervisory probationary period prior to conversion from GS will not be required to serve a new or extended supervisory probationary period while in their current position. GS employees who are serving a supervisory probationary period upon conversion from GS will serve the time remaining on their supervisory probationary period.

B. Conversion From NSPS to the Demonstration Project

1. Placement Into Demonstration Project Occupational Families, Career Paths, Pay Plans, and Pay Bands

The employee's NSPS occupational series, pay plan, pay band, and supervisory code will be considered upon converting into the demonstration project as follows.

a. Determine the appropriate demonstration project pay plan. Employees will be converted into an occupational family career path and pay plan based on the occupational series of their position. In cases where the employee is assigned to a NSPS-unique occupational series, a corresponding OPM occupational series must be identified using OPM GS classification standards and guidance to determine the proper demonstration project pay plan.

b. Determine the appropriate demonstration project pay band. The appropriate pay band will be determined by establishing the corresponding GS grade for the employee's NSPS position using OPM GS classification standards and guidance. Once the GS grade has been determined, the employee's position will be placed in the appropriate demonstration project pay band in the occupational family career path.

2. Pay Upon Conversion From NSPS

Conversion from NSPS into the demonstration project will be accomplished with full employee pay protection. Adverse action provisions will not apply to the conversion action. In accordance with section 1113(c)(1) of NDAA 2010, which prohibits a loss of or decrease in pay upon transition from NSPS, employees converting to the demonstration project will retain the adjusted salary (as defined in 5 CFR 9901.304) from their NSPS permanent or temporary position at the time the position converts. Upon conversion, the retained NSPS adjusted salary may not exceed Level IV of the Executive Schedule plus five percent. If the employee's base pay exceeds the maximum rate for his or her assigned demonstration project pay band, the employee will be placed on indefinite pay retention until an event, as described in 5 CFR 536.308, results in a loss of eligibility for or termination of pay retention.

Employees covered by an NSPS targeted local market supplement (TLMS) prior to conversion to the demonstration project will no longer be covered by a TLMS. Instead, they will receive a staffing supplement. The adjusted base pay upon conversion will not change.

3. Fair Labor Standards Act (FLSA) Status

Since FLSA provisions were not waived under NSPS and duties do not change upon conversion to the demonstration project, the FLSA status determination will remain the same upon conversion. Employees will be converted to the demonstration project with the same FLSA status they had under NSPS.

4. Transition Equity

During the first 12 months following conversion to the demonstration project, management may approve certain adjustments within the pay band for pay equity reasons stemming from conversion. For example, if an employee would have been otherwise promoted but demonstration project pay band placement no longer provides the opportunity for promotion, a pay equity adjustment may be authorized provided the adjustment does not cause the employee's base pay to exceed the maximum rate of his or her assigned pay band and the employee's performance warrants an adjustment. The decision to grant a pay equity adjustment is at the sole discretion of the ARDEC Director and is not subject to employee appeal procedures.

During the first 12 months following conversion, management may approve an adjustment of not more than 20 percent, provided the adjustment does not cause the employee's base pay to exceed the maximum rate of his or her assigned pay band and the employee's performance warrants an adjustment, to mitigate compensation inequities that may be caused by artifacts of the process of conversion into STRL pay bands.

5. Pay Band Retention

Employees converting from NSPS to the demonstration project will not be granted pay band retention based on the

pay band formerly assigned to their NSPS position.

6. Converting Employees on NSPS Term and Temporary Appointments

a. Employees serving under term appointments at the time of conversion to the demonstration project will be converted to modified term appointments provided they were hired for their current positions under competitive procedures. These employees will be eligible for conversion to career or career-conditional appointments in the competitive service provided they:

(1) Have served two years of continuous service in the term position;

(2) Were selected for the term position under competitive procedures; and

(3) Are performing at a satisfactory level.

Converted term employees who do not meet these criteria may continue on their term appointment up to the not-to-exceed date established under NSPS. Extensions of term appointments after conversion may be granted in accordance with 5 CFR part 316, subpart D.

b. Employees serving under temporary appointments under NSPS when their organization converts to the demonstration project will be converted and may continue on their temporary appointment up to the not-to-exceed date established under NSPS. Extensions of temporary appointments after conversion may be granted in accordance with 5 CFR 213.104 for excepted service employees and 5 CFR part 316, subpart D, for competitive service employees.

7. Probationary Periods

a. Initial probationary period. NSPS employees who have completed an initial probationary period prior to conversion from NSPS will not be required to serve a new or extended initial probationary period. NSPS employees who are serving an initial probationary period upon conversion from NSPS will serve the time remaining on their initial probationary period and may have their initial probationary period extended in accordance with the demonstration project regulation and implementing issuances.

c. Supervisory probationary period. NSPS employees who have completed a supervisory probationary period prior to conversion from NSPS will not be required to serve a new or extended supervisory probationary period while in their current position. NSPS employees who are serving a supervisory probationary period upon conversion from NSPS will serve the time remaining on their supervisory probationary period.

C. Conversion From Other Personnel Systems

Employees who enter the demonstration project from other personnel systems (*e.g.,* Defense Civilian Intelligence Personnel System, Civilian Acquisition Workforce Demonstration Project, or other STRLs) will be subject to the pay rules that govern conversion out of their respective systems. Conversion into Lab Demo will be based upon the position classification of the employee's new position and the Lab Demo rules, consistent with the intent as outlined for GS and NSPS above.

D. Movement Out of the ARDEC Demonstration Project

1. Termination of Coverage Under the ARDEC Demonstration Project Pay Plans

In the event employees' coverage under the ARDEC demonstration project pay plans is terminated, employees move with their demonstration project position to another system applicable to ARDEC employees. The grade of their demonstration project position in the new system will be based upon the position classification criteria of the gaining system. Employees when converted to their positions classified under the new system will be eligible for pay retention under 5 CFR part 536, if applicable.

2. Determining a GS-Equivalent Grade and GS-Equivalent Rate of Pay for Pay Setting Purposes When an ARDEC Employee's Coverage by a Demonstration Project Pay Plan Terminates or the Employee Voluntarily Exits the ARDEC Demonstration Project

a. If a demonstration project employee is moving to a GS or other pay system position, the following procedures will be used to translate the employee's project pay band to a GS-equivalent grade and the employee's project base pay to the GS-equivalent rate of pay for pay setting purposes. The equivalent GS grade and GS rate of pay must be determined before movement out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For lateral reassignments, the equivalent GS grade and rate will become the employee's converted GS grade and rate after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (*e.g.,* promotion rules, highest previous rate rules, pay retention rules), as if the GS converted grade and rate were actually in effect immediately before the employee left the demonstration project.

(1) Equivalent GS-Grade-Setting Provisions

An employee in a pay band corresponding to a single GS grade is provided that grade as the GS-equivalent grade. An employee in a pay band corresponding to two or more grades is determined to have a GS-equivalent grade corresponding to one of those grades according to the following rules:

(a) The employee's adjusted base pay under the demonstration project (including any locality payment or staffing supplement) is compared with step 4 rates in the highest applicable GS rate range. For this purpose, a GS rate range includes a rate in:

i. The GS base schedule;

ii. The locality rate schedule for the locality pay area in which the position is located; or

iii. The appropriate special rate schedule for the employee's occupational series, as applicable.

If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

(b) If the employee's adjusted base pay under the demonstration project equals or exceeds the applicable step 4 adjusted base pay rate of the highest GS grade in the band, the employee is converted to that grade.

(c) If the employee's adjusted base pay under the demonstration project is lower than the applicable step 4 adjusted base pay rate of the highest grade, the adjusted base pay under the demonstration project is compared with the step 4 adjusted base pay rate of the second highest grade in the employee's pay band. If the employee's adjusted base pay under the demonstration project equals or exceeds the step 4 adjusted base pay rate of the second highest grade, the employee is converted to that grade.

(d) This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted base pay under the demonstration project rate equals or exceeds the applicable step 4 adjusted base pay rate of the grade. The employee is then converted at that grade. If the employee's adjusted base pay is below the step 4 adjusted base pay rate of the

lowest grade in the band, the employee is converted to the lowest grade.

(e) *Exception:* An employee will not be provided a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or lateral transfer into the project, unless since that time the employee has either undergone a reduction in band or a reduction within the same pay band due to unacceptable performance.

(2) Equivalent GS-Rate-of-Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rates of pay to GS rates of pay in accordance with the following rules:

(a) The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

(b) An employee's adjusted base pay under the demonstration project (*i.e.,* including any locality payment or staffing supplement) is converted to a GS adjusted base pay rate on the highest applicable GS rate range for the converted GS grade. For this purpose, a GS rate range includes a rate range in:

i. The GS base schedule,

ii. An applicable locality rate schedule, or

iii. An applicable special rate schedule.

(c) If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted base pay under the demonstration project is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of base pay would be the GS base rate corresponding to the converted GS locality rate (*i.e.,* same step position).

(d) If the highest applicable GS rate range is a special rate range, the employee's adjusted base pay under the demonstration project is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of base pay will be the GS rate corresponding to the converted special rate (*i.e.,* same step position).

(3) Employees With Pay Retention

If an employee is receiving a retained rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her pay band level. Demonstration project operating procedures will outline the methodology for determining the GS-equivalent pay rate for an employee retaining a rate under the demonstration project.

VI. Other Provisions

A. Personnel Administration

All personnel laws, regulations, and guidelines not waived by this plan will remain in effect. Basic employee rights will be safeguarded and Merit System Principles will be maintained. Servicing CPACs will continue to process personnel-related actions and provide consultative and other appropriate services.

B. Automation

The ARDEC will continue to use standard systems such as the Defense Civilian Personnel Data System (DCPDS) for the processing of personnel-related data. Payroll servicing will continue from the respective payroll offices.

An automated tool will be used to support computation of performance related pay increases and bonus and other personnel processes and systems associated with this project.

C. Experimentation and Revision

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the new system is working. DoDI 1400.37, July 28, 2009, provides instructions for making minor changes to an existing demonstration project and requesting new initiatives.

VII. Project Duration

Public Law 103–337 removed any mandatory expiration date for section 342(b) demonstration projects. The ARDEC, DA, and DoD will ensure this project is evaluated for the first five years after implementation in accordance with 5 U.S.C. 4703. Modifications to the original evaluation plan or any new evaluation will ensure the project is evaluated for its effectiveness, its impact on mission, and any potential adverse impact on any employee groups. Major changes and modifications to the interventions would be made if formative evaluation data warrants and will be published in the **Federal Register** to the extent required. At the five-year point, the demonstration will be reexamined for permanent implementation, modification and additional testing, or termination of the entire demonstration project.

VIII. Evaluation Plan

A. Overview

Chapter 47 of 5 U.S.C. requires that an evaluation be performed to measure the effectiveness of the demonstration project and its impact on improving public management. A comprehensive evaluation plan for the entire demonstration program, originally covering 24 DoD laboratories, was developed by a joint OPM/DoD Evaluation Committee in 1995. This plan was submitted to the Office of Defense Research and Engineering and was subsequently approved. The main purpose of the evaluation is to determine whether the waivers granted result in a more effective personnel system and improvements in ultimate outcomes (*i.e.,* organizational effectiveness, mission accomplishment, and customer satisfaction).

B. Evaluation Model

1. Appendix D shows an intervention model for the evaluation of the demonstration project. The model is designed to evaluate two levels of organizational performance: intermediate and ultimate outcomes. The intermediate outcomes are defined as the results from specific personnel system changes and the associated waivers of law and regulation expected to improve human resource (HR) management (*i.e.,* cost, quality, and timeliness). The ultimate outcomes are determined through improved organizational performance, mission accomplishment, and customer satisfaction. Although it is not possible to establish a direct causal link between changes in the HR management system and organizational effectiveness, it is hypothesized that the new HR system will contribute to improved organizational effectiveness.

2. Organizational performance measures established by the organization will be used to evaluate the impact of a new HR system on the ultimate outcomes. The evaluation of the new HR system for any given organization will take into account the influence of three factors on organizational performance: context, degree of implementation, and support of implementation. The context factor refers to the impact which intervening variables (*i.e.,* downsizing, changes in mission, or the economy) can have on the effectiveness of the program. The degree of implementation considers:

a. The extent to which the HR changes are given a fair trial period;

b. The extent to which the changes are implemented; and

c. The extent to which the changes conform to the HR interventions as planned.

The support of implementation factor accounts for the impact that factors such as training, internal regulations, and automated support systems have on the support available for program implementation. The support for program implementation factor can also be affected by the personal characteristics (*e.g.,* attitudes) of individuals who are implementing the program.

3. The degree to which the project is implemented and operated will be tracked to ensure that the evaluation results reflect the project as it was intended. Data will be collected to measure changes in both intermediate and ultimate outcomes as well as any unintended outcomes, which may happen as a result of any organizational change. In addition, the evaluation will track the impact of the project and its interventions on veterans and other protected groups, the Merit System Principles, and the Prohibited Personnel Practices. Additional measures may be added to the model in the event that changes or modifications are made to the demonstration plan.

4. The intervention model at Appendix D will be used to measure the effectiveness of the personnel system interventions implemented. The intervention model specifies each personnel system change or intervention that will be measured and shows:

a. The expected effects of the intervention,

b. The corresponding measures, and

c. The data sources for obtaining the measures.

Although the model makes predictions about the outcomes of specific intervention, causal attributions about the full impact of specific interventions will not always be possible for several reasons. For example, many of the initiatives are expected to interact with each other and contribute to the same outcomes. In addition, the impact of changes in the HR system may be mitigated by context variables (*e.g.,* the job market, legislation, and internal support systems) or support factors (*e.g.,* training, automation support systems).

C. Evaluation

A modified quasi-experimental design will be used for the evaluation of the STRL Personnel Demonstration Program. Because most of the eligible laboratories are participating in the program, a title 5 U.S.C. comparison group will be compiled from the Central Personnel Data File (CPDF). This comparison group will consist of workforce data from Government-wide research organizations in civilian Federal agencies with missions and job series matching those in the DoD laboratories. This comparison group will be used primarily in the analysis of pay banding costs and turnover rates.

D. Method of Data Collection

1. Data from several sources will be used in the evaluation. Information from existing management information systems and from personnel office records will be supplemented with perceptual survey data from employees to assess the effectiveness and perception of the project. The multiple sources of data collection will provide a more complete picture as to how the interventions are working. The information gathered from one source will serve to validate information obtained through another source. In so doing, the confidence of overall findings will be strengthened as the different collection methods substantiate each other.

2. Both quantitative and qualitative data will be used when evaluating outcomes. The following data will be collected:

a. Workforce data;

b. Personnel office data;

c. Employee attitude surveys;

d. Focus group data;

e. Local site historian logs and implementation information;

f. Customer satisfaction surveys; and

g. Core measures of organizational performance.

3. The evaluation effort will consist of two phases, formative and summative evaluation, covering at least five years to permit inter- and intra-organizational estimates of effectiveness. The formative evaluation phase will include baseline data collection and analysis, implementation evaluation, and interim assessments. The formal reports and interim assessments will provide information on the accuracy of project operation, and current information on impact of the project on veterans and protected groups, Merit System Principles, and Prohibited Personnel Practices. The summative evaluation will focus on an overall assessment of project outcomes after five years. The final report will provide information on how well the HR system changes achieved the desired goals, which interventions were most effective, and whether the results can be generalized to other Federal installations.

IX. Demonstration Project Costs

A. Cost Discipline

An objective of the demonstration project is to ensure in-house cost discipline. A baseline will be established at the start of the project and labor expenditures will be tracked yearly. Implementation costs (including project development, automation costs, step buy-in costs, and evaluation costs) are considered one-time costs and will not be included in the cost discipline.

The PMB will track personnel cost changes and recommend adjustments if required to achieve the objective of cost discipline.

B. Developmental Costs

Costs associated with the development of the personnel demonstration project include software automation, training, and project evaluation. All funding will be provided through the organization's budget. The Projected Annual Expenses are summarized in Table 6. Project evaluation costs are not expected to continue beyond the first five years unless the results and external requirements warrant further evaluation.

TABLE 6—PROJECTED ANNUAL EXPENSES

	FY10	FY11	FY12	FY13	FY14
Training	25K	15K	10K	5K	5K
Project Evaluation	0K	15K	15K	15K	15K
Automation	60K	40K	40K	40K	40K
Totals	85K	70K	65K	60K	60K

X. Required Waivers to Law and Regulation

Public Law 106–398 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are waivers of law and regulation that will be necessary for implementation of the demonstration project. In due course, additional laws and regulations may be identified for waiver request.

The following waivers and adaptations of certain title 5 U.S.C. and 5 CFR provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.

A. Waivers to Title 5, U.S.C.

Chapter 5, section 552a: Records maintained on individuals. This section is waived only to the extent required to clarify that volunteers under the Volunteer Emeritus Corps are considered employees of the Federal government for purposes of this section.

Chapter 31, section 3111: Acceptance of Volunteer Service. Waived to allow for a Volunteer Emeritus Corps in addition to student volunteers.

Chapter 33, subchapter 1, section 3318(a): Competitive Service, Selection from Certificate. Waived to the extent necessary to eliminate the requirement for selection using the "Rule of Three."

Chapter 33, section 3319: Alternative Ranking and Selection Procedures. This section is waived to eliminate quality categories.

Chapter 33, section 3321: Competitive Service; Probationary Period. This section waived only to the extent necessary to replace grade with "pay band level."

Chapter 33, section 3341: Details. Waived in entirety.

Chapter 41, section 4107a(1) and b(2) to the extent required to allow ARDEC to pay for all courses related to a degree program approved by the ARDEC Director.

Chapter 41, section 4108(a)–(c): Employee Agreements; Service After Training. Waived to the extent necessary to: (1) Provide that the employee's service obligation is to the ARDEC organization for the period of the required service; (3) permit the Director, ARDEC, to waive in whole or in part a right of recovery; and (3) require employees under the Student Career Experience Program who have received tuition assistance to sign a service agreement up to three times the length of the training.

Chapter 43, section 4302 and 4303: Waived to the extent necessary to: (1) Substitute pay band for grade and (2) provide that moving to a lower pay band as a result of not receiving the general pay increase because of poor performance is not an action covered by the provisions of sections 4303(a) through (d).

Chapter 43, section 4304(b)(1) and (3): Responsibilities of the OPM. Waived in its entirety to remove the responsibilities of the OPM with respect to the performance appraisal system.

Chapter 45, subchapter I, section 4502(a) and (b)—Waiver to permit ARDEC to approve awards up to $25,000 for individual employees.

Chapter 51, sections 5101–5112: Classification. Waived as necessary to allow for the demonstration project pay banding system.

Chapter 53, sections 5301, 5302 (8) and (9), 5303, and 5304: Pay Comparability System. Sections 5301, 5302, and 5304 are waived to the extent necessary to allow:

(1) Demonstration project employees to be treated as GS employees and (2) basic rates of pay under the demonstration project to be treated as scheduled rates of pay. Occupational Family Chapter 53, section 5305: Special Pay Authority. Waived to the extent necessary to allow for use of a staffing supplement in lieu of the special pay authority.

Chapter 53, sections 5331–5336: General Schedule Pay Rates. Waived in its entirety to allow for the demonstration project's pay banding system and pay provisions.

Chapter 53, sections 5361–5366: Grade and Pay Retention. These sections waived to the extent necessary to: (1) Replace grade with "pay band;" and (2) allow Demonstration project employees to be treated as GS employees.

Chapter 55, section 5542(a)(1)–(2): Overtime rates; computation. Waived to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the "applicable special rate" in applying the pay cap provisions.

Chapter 55, section 5545(d): Hazardous duty differential. Waived to the extent necessary to allow demonstration project employees to be treated as GS employees.

Chapter 55, section 5547(a)–(b): Limitation on premium pay. Waived to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which an employee belongs is deemed to be the applicable special rate in applying the pay cap provisions in 5 U.S.C. 5547.

Chapter 57, section 5753, 5754, and 5755: Recruitment and relocation bonuses, retention incentives and supervisory differentials. Waived to the extent necessary to allow: (1) Employees and positions under the demonstration project to be treated as employees and positions under the GS; and (2) that management may offer a bonus to incentivize geographic mobility to an SCEP student.

Chapter 59, section 5941: Allowances based on living costs and conditions of environment; employees stationed outside continental U.S. or Alaska. Waived to the extent necessary to provide that cost of living allowances paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM).

Chapter 75, sections 7501(1), 7511(a)(1)(A)(ii), and 7511(a)(1)(C)(ii): Adverse Actions—Definitions. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Chapter 75, section 7512(3): Adverse actions. Waived to the extent necessary to replace "Grade" with "Pay Band."

Chapter 75, section 7512(4): Adverse actions. Waived to the extent necessary to provide that adverse action provisions do not apply to: (1) Conversions from GS special rates to demonstration project pay, as long as total pay is not reduced; (2) reductions in pay due to the removal of a supervisory or team leader pay adjustment upon voluntary movement to a non-supervisory or non-team leader position; and (3) reduction in supervisory pay due to a performance review.

B. Waivers to Title 5, CFR

Part 300, sections 300.601 through 300.605: Time-in-Grade restrictions. Waived to eliminate time-in-grade restrictions in the demonstration project.

Part 308, sections 308.101 through 308.103: Volunteer service. Waived to allow for a Volunteer Emeritus Corps in addition to student volunteers.

Part 315, section 315.801(a), 315.801(b)(1), (c), and (e), and 315.802(a) and (b)(1): Probationary

period and Length of probationary period. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Part 315, section 315.901 and 315.907: Probation on Initial Appointment to a Supervisory or Managerial Position. This section waived only to the extent necessary to replace "grade" with "pay band level."

Part 316, sections 316.301, 316.303, and 316.304: Term Employment. These sections are waived to allow modified term appointments as described in this **Federal Register** notice.

Part 332, sections 332.401 and 332.404: Order on Registers and Order of Selection from Certificates. These sections are waived to the extent necessary to allow: (1) No rating and ranking when there are 15 or fewer qualified applicants and no preference eligibles; (2) the hiring and appointment authorities as described in this **Federal Register** notice; and (3) elimination of the "rule of three."

Part 335, section 335.103: Agency promotion programs. Waived to the extent necessary to extend the length of details and temporary promotions without requiring competitive procedures or numerous short-term renewals.

Part 337, section 337.101(a): Rating applicants. Waived to the extent necessary to allow referral without rating when there are 15 or fewer qualified candidates and no qualified preference eligibles.

Part 340, subpart A, subpart B, and subpart C: Other than Full-Time Career Employment. These subparts are waived to the extent necessary to allow a Volunteer Emeritus Corps.

Part 351, Reduction in Force. This part is waived to the extent necessary to allow provisions of the RIF plan as described in this **Federal Register** notice. In accordance with this FR, ARDEC will define the competitive area, retention standing, and displacement limitations. Specific waivers include:

Sections 351.402–351.404: Scope of Competition: this part is waived to the extent necessary to allow for modification of the competitive area;

Sections 351.501–351.504: Retention Standing: this part is waived to the extent necessary to allow for modification of the calculation of the retention standing;

Sections 351.601–351.608: Release from Competitive Level: this part is waived to the extent necessary to allow for the use of pay bands in lieu of grades; and

Section 351.701: Assignment involving displacement. Waived to the extent that bump and retreat rights are limited to one pay band with the exception of 30 percent preference eligibles who are limited to two pay bands (or equivalent of five GS grades), and to limit the assignment rights of employees with an unacceptable current rating of record to a position held by another employee with an unacceptable rating of record.

Part 410, section 410.308(a) and (c) sufficient to allow ARDEC to pay for all courses related to an academic degree program approved by the ARDEC Director.

Part 410, section 410.309: Agreements to continue in service. Waived to the extent necessary to allow the ARDEC Director to determine requirements related to continued service agreements, including employees under the Student Career Experience Program who have received tuition assistance.

Part 430, subpart B: Performance Appraisal for GS and Certain Other Employees. Waived to the extent necessary to be consistent with the CBCS.

Part 430, section 430.208(a)(1) and (2): Rating Performance. Waived to allow presumptive ratings for new employees hired 90 days or less before the end of the appraisal cycle or for other situations not providing adequate time for an appraisal.

Part 432, sections 432.101–432.105: Regarding performance based reduction in grade and removal actions. These sections are waived to the extent necessary to: (1) Replace grade with "pay band"; (2) Exclude reductions in pay band level not accompanied by a reduction in pay; and (3) allow provisions of CBCS. For employees who are reduced in pay band level without a reduction in pay, sections 432.105 and 432.106(a) do not apply.

Part 451, subpart A, section 451.103(c)(2): Waived with respect to performance awards under the ARDEC CBCS.

Part 451, sections 451.106(b) and 451.107(b): Awards. Waived to permit ARDEC to approve awards up to $25,000 for individual employees.

Part 511, subpart A: General Provisions and subpart B: Coverage of the GS. Waived to the extent necessary to allow for the demonstration project classification system and pay banding structure.

Part 511, section 511.601: Applicability of regulations. Classification appeals modified to the extent that white collar positions established under the project plan, although specifically excluded from title 5 CFR, are covered by the classification appeal process outlined in this FRN section III.B.5., as amended below.

Part 511, section 511.603(a): Right to appeal. Waived to the extent necessary to substitute pay band for grade.

Part 511, section 511.607(b): Non-Appealable Issues. Add to the list of issues that are neither appealable nor reviewable, the assignment of series under the project plan to appropriate Occupational Families and the demonstration project classification criteria.

Part 530, subpart C: Special Rate Schedules for Recruitment and Retention. Waived in its entirety to allow for staffing supplements.

Part 531, subpart B: Determining Rate of Basic Pay. Waived to the extent necessary to allow for pay setting and pay for performance under the provisions of the demonstration project.

Part 531, subparts D and E: Within-Grade Increases and Quality Step Increases. Waived in its entirety.

Part 531, subpart F: Locality-Based Comparability Payments. Waived to the extent necessary to allow (1) demonstration project employees to be treated as GS employees, and (2) base rates of pay under the demonstration project to be treated as scheduled annual rates of pay.

Part 536: Grade and Pay Retention: These sections waived to the extent necessary to: (1) Replace grade with "pay band;" (2) allow demonstration project employees to be treated as GS employees; and (3) to allow provisions of this **Federal Register** notice pertaining to ARDEC pay band and pay retention provisions.

Part 550, sections 550.105 and 550.106: Bi-weekly and annual maximum earnings limitations. Waived to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the applicable special rate in applying the pay cap provisions in 5 U.S.C. 5547.

Part 550, section 550.703: Definitions. Waived to the extent necessary to modify the definition of "reasonable offer" by replacing "two grade or pay levels" with "one band level" and "grade or pay level" with "band level."

Part 550, section 550.902: Definitions. Waived to the extent necessary to allow demonstration project employees to be treated as GS employees.

Part 575, subparts A, B, and C: Recruitment, Relocation, and Retention Incentives. Waived to the extent necessary to allow: (1) Employees and positions under the demonstration project covered by pay banding to be treated as employees and positions under the GS; (2) Occupational Family relocation incentives to new SCEP students; and (3) relocation incentives to SCEP students whose worksite is in a different geographic location than that of the college enrolled.

Part 575, subpart D: Supervisory Differentials. Subpart D is waived in its entirety.

Part 591, subpart B: Cost-of-Living Allowance and Post Differential—Non-foreign Areas. Waived to the extent necessary to allow demonstration project employees to be treated as employees under the GS system.

Part 752, sections 752.101, 752.201, 752.301 and 752.401: Principal statutory requirements and Coverage. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Part 752, section 752.401: Coverage. Waived to the extent necessary to replace grade with pay band and to provide that a reduction in pay band level is not an adverse action if it results from the employee's rate of base pay being exceeded by the minimum rate of base pay for his/her pay band.

Part 752, section 752.401(a)(4): Coverage. Waived to the extent necessary to provide that adverse action provisions do not apply to: (1) Conversions from GS special rates or NSPS Targeted Local Market Supplements to demonstration project pay, as long as total pay is not reduced; and (2) reductions in pay due to the removal of a supervisory or team leader pay adjustment upon voluntary movement to a non-supervisory or non-team leader position or decreases in the amount of a supervisory or team leader pay adjustment based on the annual review.

Appendix A

ARDEC EMPLOYEES BY DUTY LOCATION

[Totals Exclude SES, ST, DCIPS and FWS Employees]

Duty location	Employees	Servicing personnel office
Picatinny Arsenal, NJ	2956	NE Region.
Aberdeen Proving Ground, MD	23	NE Region.
Rock Island, IL	155	NC Region.
Adelphi, MD	31	NE Region.
Watervliet, NY	239	NE Region.
Washington, DC	5	NE Region.
Ft. Benning, GA	1	NE Region.
Ft. Knox, KY	1	NE Region.
Ft. Lee, VA	1	NE Region.
Ft. Leonardwood, MO	1	NE Region.
Ft. Shafter, HI	1	NE Region.
Ft. Sill, OK	2	NE Region.
Indianhead, MD	1	NE Region.
MacDill AFB, FL	1	NE Region.
Redstone Arsenal, AL	3	SC Region.
Total All Employees	3,421	

Appendix B

Occupational Series by Occupational Family

I. Engineering & Science

0801 General Engineering Series
0803 Safety Engineering Series
0806 Materials Engineering Series
0819 Environmental Engineering Series
0830 Mechanical Engineering Series
0840 Nuclear Engineering Series
0850 Electrical Engineering Series
0854 Computer Engineering Series
0855 Electronics Engineering Series
0858 Bioengineering and Biomedical Engineering Series
0861 Aerospace Engineering Series
0893 Chemical Engineering Series
0896 Industrial Engineering Series
0899 Engineering and Architecture Trainee Series
1301 General Physical Science Series
1306 Health Physics Series
1310 Physics Series
1320 Chemistry Series
1321 Metallurgy Series
1399 Physical Science Student Trainee Series
1501 General Mathematics and Statistics Series
1515 Operations Research Series
1520 Mathematics Series
1550 Computer Science Series
1599 Mathematics and Statistics Student Trainee Series

II. Business/Technical

0018 Safety and Occupational Health Management Series
0301 Miscellaneous Administration and Program Series
0340 Program Management Series
0341 Administrative Officer Series
0342 Support Services Administration Series
0343 Management and Program Analysis Series
0346 Logistics Management Series
0501 Financial Administration and Program Series
0510 Accounting Series
0601 General Health Science Series
0802 Engineering Technical Series
0856 Electronics Technical Series
0895 Industrial Engineering Technical Series
0905 General Attorney Series
0950 Paralegal Specialist Series
1001 Information and Arts Group Series General Arts and Information Series
1035 Public Affairs Series
1071 Audiovisual Production Series
1083 Technical Writing and Editing Series
1084 Visual Information Series
1101 Business and Industry Series
1102 Contracting Series
1222 Patent Attorney Series
1311 Physical Science Technician Series
1410 Librarian Series
1412 Technical Information Services Series
1670 Equipment Services Series
1702 Education and Training Technician Series
1712 Training Instruction Series
1801 General Inspection, Investigation, Enforcement, and Compliance Series
1910 Quality Assurance Series
2032 Packaging Series

2210 Information Technology Management Series

III. General Support

0303 Miscellaneous Clerk and Assistant Series
0318 Secretary Series
0326 Office Automation Clerical and Assistance Series
0335 Computer Clerk and Assistant Series
0344 Management and Program Clerical and Assistance Series

Appendix C

Contribution Factors and Level Descriptors

1. Occupational Family DB—Engineering and Science

Factor 1–1: Problem Solving

FACTOR DESCRIPTION: This factor describes/captures personal and organizational problem-solving results.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Completed work meets projects/programs objectives. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I	
• Performs activities on a task; assists supervisor or other appropriate personnel.	• Scope/Impact
• Resolves routine problems within established guidelines.	• Complexity/Difficulty
• Independently performs assigned tasks within area of responsibility; refers situations to supervisor or other appropriate personnel when existing guidelines do not apply.	• Independence
• Takes initiative in determining and implementing appropriate procedures.	• Creativity
Level II	
• Plans and conducts functional technical activities for projects/programs.	• Scope/Impact
• Identifies, analyzes, and resolves complex/difficult problems.	• Complexity/Difficulty
• Independently identifies and resolves conventional problems which may require deviations from accepted policies or instructions.	• Independence
• Adapts existing plans and techniques to accomplish complex projects/programs. Recommends improvements to the design or operation of systems, equipment, or processes.	• Creativity
Level III	
• Independently defines, directs, or leads highly challenging projects/programs. Identifies and resolves highly complex problems not susceptible to treatment by accepted methods.	• Scope/Impact
• Develops, integrates, and implements solutions to diverse, highly complex problems across multiple areas and disciplines.	• Complexity/Difficulty
• Anticipates problems, develops sound solutions and action plans to ensure program/mission accomplishment.	• Independence
• Develops plans and techniques to fit new situations to improve overall program and policies. Establishes precedents in application of problem-solving techniques to enhance existing processes.	• Creativity
Level IV	
• Plans and performs work across a broad range of highly complex activities that require substantial	• Scope/Impact

LEVEL DESCRIPTORS	DISCRIMINATORS
Level V • Establishes and/or leads teams to carry out complex projects or programs. Resolves conflicts. Creates climate where empowerment and creativity thrive. Recognized as a technical/functional authority. • Leads, defines, manages, and integrates efforts of several groups or teams. Ensures organizational mission and program success. • Fosters the development of other team members by providing guidance or sharing expertise. Directs assignments to encourage employee development and cross-functional growth to meet organizational needs. Pursues personal professional development.	• Leadership Role • Breadth of Influence • Mentoring/ Employee Development
Level VI • TBD	

Factor 1–2: Teamwork/Cooperation

FACTOR DESCRIPTION: This factor, applicable to all teams, describes/captures individual and organizational teamwork and cooperation.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Personal and organizational interactions exhibit and foster cooperation and teamwork. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I • Works with others to accomplish routine tasks • Contributes ideas in own area of expertise. Interacts cooperatively with others. • Regularly completes assignments in support of team goals.	• Scope of Team Effort • Contribution to Team • Effectiveness
Level II • Works with others to accomplish projects/programs. • Uses varied approaches to resolve or collaborate on projects/programs issues. Facilitates cooperative interactions with others. • Guides/supports others in executing team assignments. Proactively functions as an integral part of the team.	• Scope of Team Effort • Contribution to Team • Effectiveness
Level III • Works with others to accomplish complex projects/programs. • Applies innovative approaches to resolve unusual/difficult issues significantly impacting important policies or programs. Promotes and maintains environment for cooperation and teamwork. • Leads and guides others in formulating and executing team plans. Expertise is sought by peers.	• Scope of Team Effort • Contribution to Team • Effectiveness
Level IV • Leads team(s) working on critical aspects of technology areas or programmatic/ business management efforts. Team results significantly affect internal/external organizations and/or relationships. • Is accountable for quality and effectiveness of team efforts. Integrates efforts across disciplines. • Leads/guides team(s) on highly complex, high priority programs. Is sought out for leadership roles and for consultation on complex issues with internal/external impact.	• Scope of Team Effort • Contribution to Team • Effectiveness
Level V • Leads/guides/mentors workforce in dealing with complex problems. • Solves broad organizational issues. Implements strategic plans within and across organizational components. Ensures a cooperative teamwork environment. • Leads/guides workforce in achieving organizational goals. Participates on high-level teams. Is sought out for consultation on issues of organizational strategy.	• Scope of Team Effort • Contribution to Team • Effectiveness
Level VI • TBD	

Factor 1–3: Customer Relations

FACTOR DESCRIPTION: This factor describes/captures the effectiveness of personal and organizational interactions with customers (anyone to whom services or products are provided), both internal (within an assigned organization) and external (outside an assigned organization).

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Personal and organizational interactions enhance customer relations and actively promote rapport with customers. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

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LEVEL DESCRIPTORS	DISCRIMINATORS
Level I • Independently carries out routine customer requests. • Participates as a team member to meet customer needs. • Interacts with customers on routine issues with appropriate guidance.	• Breadth of Influence • Customer Needs • Customer Interaction Level
Level II • Guides the technical/functional efforts of individuals or team members as they interact with customers. • Initiates meetings and interactions with customers to understand customer needs/expectations. • Interacts independently with customers to communicate information and coordinate actions	• Breadth of Influence • Customer Needs • Customer Interaction Level
Level III • Guides and integrates functional efforts of individuals or teams in support of customer interaction. Seeks innovative approaches to satisfy customers. • Establishes customer alliances, anticipates and fulfills customer needs, and translates customer needs to programs/projects. • Interacts independently and proactively with customers to identify and define complex/difficult problems and to develop and implement strategies or techniques for resolving program/project problems (e.g., determining priorities and resolving conflict among customers' requirements).	• Breadth of Influence • Customer Needs • Customer Interaction Level
Level IV • Leads efforts involving extensive customer interactions and partnerships. Establishes successful working relationships with customers to address and resolve highly complex or controversial issues. • Identifies and fosters new customer alliances. Anticipates customer needs to avoid potential problems and improve customer satisfaction. • Works proactively at senior level to assure customer satisfaction on programs and issues with a high level of customer interest and concern.	• Breadth of Influence • Customer Needs • Customer Interaction Level
Level V • Leads and manages the organizational interactions with customers from a strategic standpoint. • Works to assess and promulgate political, fiscal, and other factors affecting customer and program/project needs. Works with customer at management levels to resolve problems affecting programs/projects (e.g., problems that involve determining priorities and resolving conflicts among customers' requirements). • Collaborates at senior level to stimulate customer alliances for program/project support. Stimulates, organizes, and leads overall customer interactions.	• Breadth of Influence • Customer Needs • Customer Interaction Level
Level VI • TBD	

Factor 1–4: Leadership/Supervision

FACTOR DESCRIPTION: This factor describes/captures individual and organizational leadership and/or supervision. Recruits, develops, motivates, and retains quality team members in accordance with EEO/AA and Merit Principles. Takes timely/appropriate personnel actions, communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers team members.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Leadership and/or supervision effectively promotes commitment to mission accomplishment. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I	
• Takes initiative in accomplishing assigned tasks.	• Leadership Role
• Provides inputs to others in own technical/functional area.	• Breadth of Influence
• Seeks and takes advantage of developmental opportunities.	• Mentoring/ Employee Development
Level II	
• Actively contributes as a team member/leader; provides insight and recommends changes or solutions to problems.	• Leadership Role
• Proactively guides, coordinates, and consults with others to accomplish projects.	• Breadth of Influence
• Identifies and pursues individual/team development opportunities.	• Mentoring/ Employee Development
Level III	
• Provides guidance to individuals/teams; resolves conflicts. Considered a functional/technical expert by others in the organization; is regularly sought out by others for advice and assistance.	• Leadership Role
• Defines, organizes, and assigns activities to accomplish projects/programs goals. Guides, motivates, and oversees the activities of individuals and teams with focus on projects/programs issues.	• Breadth of Influence
• Fosters individual/team development by mentoring. Pursues or creates training development programs for self and others.	• Mentoring/ Employee Development
Level IV	
• As a program area expert, resolves highly complex team problems and conflicts. Effectively seeks out and capitalizes on opportunities for teams/work units to achieve significant results that support organizational goals. Is sought out for consultation and leadership roles.	• Leadership Role
• Leads teams engaged in highly complex and critical work, with accountability for employee motivation, quality, and effectiveness and for team success.	• Breadth of Influence
• Fosters and initiates effective team development to meet current and future organizational needs. Actively seeks out opportunities for and engages in mentoring, coaching, and instruction. Pursues personal professional development.	• Mentoring/ Employee Development

LEVEL DESCRIPTORS	DISCRIMINATORS
Level V • Establishes and/or leads teams to carry out complex projects or programs. Resolves conflicts. Creates climate where empowerment and creativity thrive. Recognized as a technical/functional authority. • Leads, defines, manages, and integrates efforts of several groups or teams. Ensures organizational mission and program success. • Fosters the development of other team members by providing guidance or sharing expertise. Directs assignments to encourage employee development and cross-functional growth to meet organizational needs. Pursues personal professional development.	• Leadership Role • Breadth of Influence • Mentoring/ Employee Development
Level VI • TBD	

Factor 1–5: Communication

FACTOR DESCRIPTION: This factor describes/captures the effectiveness of oral/written communications.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Communications are clear, concise, and at appropriate level. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I	
• Communicates routine task status/results as required.	• Level of Interaction (Audience)
• Provides timely data and written analyses for input to management/technical reports or contractual documents.	• Written
• Explains status/results of assigned tasks.	• Oral
Level II	
• Communicates team or group tasking results, internally and externally, at peer levels.	• Level of Interaction (Audience)
• Writes, or is a major contributor to, management/technical reports or contractual documents.	• Written
• Presents informational briefings.	• Oral
Level III	
• Communicates team or group tasking results, internally and externally, at peer levels.	• Level of Interaction (Audience)
• Writes, or is a major contributor to, management/technical reports or contractual documents.	• Written
• Presents informational briefings.	• Oral
Level IV	
• Communicates complex technical, programmatic, and/or management information across multiple organizational levels to drive decisions by senior leaders internally and externally.	• Level of Interaction (Audience)
• Leads efforts in documenting diverse and highly complex information, concepts, and ideas in a highly responsive and effective manner. Authors and enables authoritative reports pertaining to multiple areas of expertise, incorporating diverse viewpoints, with minimal guidance from others. Reviews communications of others for appropriate and accurate content.	• Written
• Demonstrates expert speaking skills and the adaptability to be effective in critical briefings.	• Oral
Level V	
• Determines and communicates organizational positions on major projects or policies to senior level.	• Level of Interaction (Audience)
• Prepares, reviews, and approves major reports or policies of organization for internal and external distribution. Resolves diverse viewpoints/controversial issues.	• Written
• Presents organizational briefings to convey strategic vision or organizational policies.	• Oral
Level VI	
• TBD	

Factor 1–6: Resource Management

FACTOR DESCRIPTION: This factor describes/captures personal and organizational utilization of resources to accomplish the mission. (Resources include, but are not limited to, personal time, equipment and facilities, human resources, and funds.)

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Resources are utilized effectively to accomplish mission. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I • Uses assigned resources needed to accomplish tasks. • Plans individual time and assigned resources to accomplish tasks. • Effectively accomplishes assigned tasks.	• Scope of Responsibility • Planning/Budgeting • Execution/Efficiency
Level II • Plans and utilizes appropriate resources to accomplish project goals. • Optimizes resources to accomplish projects/programs within established schedules. • Effectively accomplishes projects/programs goals within established resource guidelines.	• Scope of Responsibility • Planning/Budgeting • Execution/Efficiency
Level III • Plans and allocates resources to accomplish multiple projects/programs. • Identifies and optimizes resources to accomplish multiple projects/programs goals. • Effectively accomplishes multiple projects/programs goals within established guidelines.	• Scope of Responsibility • Planning/Budgeting • Execution/Efficiency
Level IV • Plans, allocates, and monitors resources in a complex environment with substantial instability in resources/ requirements. • Anticipates changes in workload and other resource requirements for multiple programs/projects and develops and advocates solutions in advance. • Leads others in using resources more efficiently and implements innovative ideas to stretch limited resources.	• Scope of Responsibility • Planning/Budgeting • Execution/Efficiency
Level V • Develops, acquires, and allocates resources to accomplish mission goals and strategic objectives. • Formulates organizational strategies, tactics, and budget/action plan to acquire and allocate resources. • Optimizes, controls, and manages all resources across projects/programs. Develops and integrates innovative approaches to attain goals and minimize expenditures.	• Scope of Responsibility • Planning/Budgeting • Execution/Efficiency
Level VI • TBD	

1. Occupational Family DE—Business and Technical

Factor 2–1: Problem Solving

FACTOR DESCRIPTION: This factor describes/captures personal and organizational problem-solving results.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Completed work meets projects/ programs objectives. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I • Performs activities on a task; assists supervisor or other appropriate personnel. • Resolves routine problems within established guidelines. • Independently performs assigned tasks within area of responsibility; refers situations to supervisor or other appropriate personnel when existing guidelines do not apply. • Takes initiative in determining and implementing appropriate procedures.	• Scope/Impact • Complexity/Difficulty • Independence • Creativity
Level II • Plans and conducts functional technical activities for projects/programs. • Identifies, analyzes, and resolves complex/difficult problems. • Independently identifies and resolves conventional problems which may require deviations from accepted policies or instructions. • Adapts existing plans and techniques to accomplish complex projects/programs. Recommends improvements to the design or operation of systems, equipment, or processes.	• Scope/Impact • Complexity/Difficulty • Independence • Creativity
Level III • Independently defines, directs, or leads highly challenging projects/programs. Identifies and resolves highly complex problems not susceptible to treatment by accepted methods. • Develops, integrates, and implements solutions to diverse, highly complex problems across multiple areas and disciplines. • Anticipates problems, develops sound solutions and action plans to ensure program/mission accomplishment. • Develops plans and techniques to fit new situations to improve overall program and policies. Establishes precedents in application of problem-solving techniques to enhance existing processes.	• Scope/Impact • Complexity/Difficulty • Independence • Creativity
Level IV • Plans and performs work across a broad range of highly complex activities that require substantial	• Scope/Impact

LEVEL DESCRIPTORS	DISCRIMINATORS
depth of analysis and expertise and/or organizational problem solving skills. The work significantly affects policies/major programs. Actively engages in organizational planning.	
• Resolves critical, multifaceted problems and/or develops new theories or methods that affect the work of other experts, major aspects of management programs, or a large number of people.	• Complexity/Difficulty
• Independently plans and carries out work from general objectives. Work results are considered authoritative. Expertise is recognized both internally and externally.	• Independence
• Uses judgment and ingenuity in making decisions or developing methodologies for areas with substantial uncertainty. Adapts to tasks with changing/competing requirements. Approaches to solving problems require interpretation, deviation from traditional methods, or research of trends and patterns to develop new methods, scientific knowledge, or organizational principles.	• Creativity
Level V	
• Defines, establishes, and directs organizational focus (on challenging and highly complex project/ programs). Identifies and resolves highly complex problems that cross organizational boundaries and promulgates solutions. Resolution of problems requires mastery of the field to develop new hypotheses or fundamental new concepts.	• Scope/Impact
• Assesses and provides strategic direction for resolution of mission critical problems, policies, and procedures.	• Complexity/Difficulty
• Works at senior level to define, integrate, and implement strategic direction for vital programs with long-term impact on large numbers of people. Initiates actions to resolve major organizational issues. Promulgates innovative solutions and methodologies.	• Independence
• Works strategically with senior management to establish new fundamental concepts and criteria and stimulate the development of new policies, methodologies, and techniques. Converts strategic goals into programs or policies.	• Creativity

Factor 2–2: Teamwork/Cooperation

FACTOR DESCRIPTION: This factor, applicable to all teams, describes/captures individual and organizational teamwork and cooperation.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Personal and organizational interactions exhibit and foster cooperation and teamwork. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I • Works with others to accomplish routine tasks • Contributes ideas in own area of expertise. Interacts cooperatively with others. • Regularly completes assignments in support of team goals.	• Scope of Team Effort • Contribution to Team • Effectiveness
Level II • Works with others to accomplish projects/programs. • Uses varied approaches to resolve or collaborate on projects/programs issues. Facilitates cooperative interactions with others. • Guides/supports others in executing team assignments. Proactively functions as an integral part of the team.	• Scope of Team Effort • Contribution to Team • Effectiveness
Level III • Works with others to accomplish complex projects/programs. • Applies innovative approaches to resolve unusual/difficult issues significantly impacting important policies or programs. Promotes and maintains environment for cooperation and teamwork. • Leads and guides others in formulating and executing team plans. Expertise is sought by peers.	• Scope of Team Effort • Contribution to Team • Effectiveness
Level IV • Leads team(s) working on critical aspects of technology areas or programmatic/ business management efforts. Team results significantly affect internal/external organizations and/or relationships. • Is accountable for quality and effectiveness of team efforts. Integrates efforts across disciplines. • Leads/guides team(s) on highly complex, high priority programs. Is sought out for leadership roles and for consultation on complex issues with internal/external impact.	• Scope of Team Effort • Contribution to Team • Effectiveness
Level V • Leads/guides/mentors workforce in dealing with complex problems. • Solves broad organizational issues. Implements strategic plans within and across organizational components. Ensures a cooperative teamwork environment. • Leads/guides workforce in achieving organizational goals. Participates on high-level teams. Is sought out for consultation on issues of organizational strategy.	• Scope of Team Effort • Contribution to Team • Effectiveness

Factor 2–3: Customer Relations

FACTOR DESCRIPTION: This factor describes/captures the effectiveness of personal and organizational interactions with customers (anyone to whom services or products are provided), both internal (within an assigned organization) and external (outside an assigned organization).

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Personal and organizational interactions enhance customer relations and actively promote rapport with customers. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I	
• Independently carries out routine customer requests.	• Breadth of Influence
• Participates as a team member to meet customer needs.	• Customer Needs
• Interacts with customers on routine issues with appropriate guidance.	• Customer Interaction Level
Level II	
• Guides the technical/functional efforts of individuals or team members as they interact with customers.	• Breadth of Influence
• Initiates meetings and interactions with customers to understand customer needs/expectations.	• Customer Needs
• Interacts independently with customers to communicate information and coordinate actions	• Customer Interaction Level
Level III	
• Guides and integrates functional efforts of individuals or teams in support of customer interaction. Seeks innovative approaches to satisfy customers.	• Breadth of Influence
• Establishes customer alliances, anticipates and fulfills customer needs, and translates customer needs to programs/projects.	• Customer Needs
• Interacts independently and proactively with customers to identify and define complex/difficult problems and to develop and implement strategies or techniques for resolving program/project problems (e.g., determining priorities and resolving conflict among customers' requirements).	• Customer Interaction Level
Level IV	
• Leads efforts involving extensive customer interactions and partnerships. Establishes successful working relationships with customers to address and resolve highly complex or controversial issues.	• Breadth of Influence
• Identifies and fosters new customer alliances. Anticipates customer needs to avoid potential problems and improve customer satisfaction.	• Customer Needs
• Works proactively at senior level to assure customer satisfaction on programs and issues with a high level of customer interest and concern.	• Customer Interaction Level
Level V	
• Leads and manages the organizational interactions with customers from a strategic standpoint.	• Breadth of Influence
• Works to assess and promulgate political, fiscal, and other factors affecting customer and program/project needs. Works with customer at management levels to resolve problems affecting programs/projects (e.g., problems that involve determining priorities and resolving conflicts among customers' requirements).	• Customer Needs
• Collaborates at senior level to stimulate customer alliances for program/project support. Stimulates, organizes, and leads overall customer interactions.	• Customer Interaction Level
Level VI	
• TBD	

Factor 2–4: Leadership/Supervision

FACTOR DESCRIPTION: This factor describes/captures individual and organizational leadership and/or supervision. Recruits, develops, motivates, and retains quality team members in accordance with EEO/AA and Merit Principles. Takes timely/appropriate personnel actions, communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers team members.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Leadership and/or supervision effectively promotes commitment to mission accomplishment. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I	
• Takes initiative in accomplishing assigned tasks.	• Leadership Role
• Provides inputs to others in own technical/functional area.	• Breadth of Influence
• Seeks and takes advantage of developmental opportunities.	• Mentoring/ Employee Development
Level II	
• Actively contributes as a team member/leader; provides insight and recommends changes or solutions to problems.	• Leadership Role
• Proactively guides, coordinates, and consults with others to accomplish projects.	• Breadth of Influence
• Identifies and pursues individual/team development opportunities.	• Mentoring/ Employee Development
Level III	
• Provides guidance to individuals/teams; resolves conflicts. Considered a functional/technical expert by others in the organization; is regularly sought out by others for advice and assistance.	• Leadership Role
• Defines, organizes, and assigns activities to accomplish projects/programs goals. Guides, motivates, and oversees the activities of individuals and teams with focus on projects/programs issues.	• Breadth of Influence
• Fosters individual/team development by mentoring. Pursues or creates training development programs for self and others.	• Mentoring/ Employee Development
Level IV	
• As a program area expert, resolves highly complex team problems and conflicts. Effectively seeks out and capitalizes on opportunities for teams/work units to achieve significant results that support organizational goals. Is sought out for consultation and leadership roles.	• Leadership Role
• Leads teams engaged in highly complex and critical work, with accountability for employee motivation, quality, and effectiveness and for team success.	• Breadth of Influence
• Fosters and initiates effective team development to meet current and future organizational needs. Actively seeks out opportunities for and engages in mentoring, coaching, and instruction. Pursues personal professional development.	• Mentoring/ Employee Development

LEVEL DESCRIPTORS	DISCRIMINATORS
Level V	
• Establishes and/or leads teams to carry out complex projects or programs. Resolves conflicts. Creates climate where empowerment and creativity thrive. Recognized as a technical/functional authority.	• Leadership Role
• Leads, defines, manages, and integrates efforts of several groups or teams. Ensures organizational mission and program success.	• Breadth of Influence
• Fosters the development of other team members by providing guidance or sharing expertise. Directs assignments to encourage employee development and cross-functional growth to meet organizational needs. Pursues personal professional development.	• Mentoring/ Employee Development

Factor 2–5: Communication

FACTOR DESCRIPTION: This factor describes/captures the effectiveness of oral/written communications.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Communications are clear, concise, and at appropriate level. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I	
• Communicates routine task status/results as required.	• Level of Interaction (Audience)
• Provides timely data and written analyses for input to management/technical reports or contractual documents.	• Written
• Explains status/results of assigned tasks.	• Oral
Level II	
• Communicates team or group tasking results, internally and externally, at peer levels.	• Level of Interaction (Audience)
• Writes, or is a major contributor to, management/technical reports or contractual documents.	• Written
• Presents informational briefings.	• Oral
Level III	
• Communicates team or group tasking results, internally and externally, at peer levels.	• Level of Interaction (Audience)
• Writes, or is a major contributor to, management/technical reports or contractual documents.	• Written
• Presents informational briefings.	• Oral
Level IV	
• Communicates complex technical, programmatic, and/or management information across multiple organizational levels to drive decisions by senior leaders internally and externally.	• Level of Interaction (Audience)
• Leads efforts in documenting diverse and highly complex information, concepts, and ideas in a highly responsive and effective manner. Authors and enables authoritative reports pertaining to multiple areas of expertise, incorporating diverse viewpoints, with minimal guidance from others. Reviews communications of others for appropriate and accurate content.	• Written
• Demonstrates expert speaking skills and the adaptability to be effective in critical briefings.	• Oral
Level V	
• Determines and communicates organizational positions on major projects or policies to senior level.	• Level of Interaction (Audience)
• Prepares, reviews, and approves major reports or policies of organization for internal and external distribution. Resolves diverse viewpoints/controversial issues.	• Written
• Presents organizational briefings to convey strategic vision or organizational policies.	• Oral

Factor 2–6: Resource Management

FACTOR DESCRIPTION: This factor describes/captures personal and organizational utilization of resources to accomplish the mission. (Resources include, but are not limited to, personal time, equipment and facilities, human resources, and funds.)

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Resources are utilized effectively to accomplish mission. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I • Uses assigned resources needed to accomplish tasks. • Plans individual time and assigned resources to accomplish tasks. • Effectively accomplishes assigned tasks.	• Scope of Responsibility • Planning/Budgeting • Execution/Efficiency
Level II • Plans and utilizes appropriate resources to accomplish project goals. • Optimizes resources to accomplish projects/programs within established schedules. • Effectively accomplishes projects/programs goals within established resource guidelines.	• Scope of Responsibility • Planning/Budgeting • Execution/Efficiency
Level III • Plans and allocates resources to accomplish multiple projects/programs. • Identifies and optimizes resources to accomplish multiple projects/programs goals. • Effectively accomplishes multiple projects/programs goals within established guidelines.	• Scope of Responsibility • Planning/Budgeting • Execution/Efficiency
Level IV • Plans, allocates, and monitors resources in a complex environment with substantial instability in resources/ requirements. • Anticipates changes in workload and other resource requirements for multiple programs/projects and develops and advocates solutions in advance. • Leads others in using resources more efficiently and implements innovative ideas to stretch limited resources.	• Scope of Responsibility • Planning/Budgeting • Execution/Efficiency
Level V • Develops, acquires, and allocates resources to accomplish mission goals and strategic objectives. • Formulates organizational strategies, tactics, and budget/action plan to acquire and allocate resources. • Optimizes, controls, and manages all resources across projects/programs. Develops and integrates innovative approaches to attain goals and minimize expenditures.	• Scope of Responsibility • Planning/Budgeting • Execution/Efficiency

3. Occupational Family DK—General Support

Factor 3–1: Problem Solving

FACTOR DESCRIPTION: This factor describes/captures personal and organizational problem solving.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Completed work meets project/ program objectives. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I • Conducts activities on a segment of a task. Assists supervisor or other appropriate personnel. • Applies standard rules, procedures, or operations to resolve routine problems. • Independently carries out routine tasks. • Takes initiative in selecting and implementing appropriate procedures.	• Scope/Impact • Complexity/Difficulty • Independence • Creativity
Level II • Plans and conducts administrative activities for projects. • Develops, modifies, and/or applies rules, procedures, or operations to resolve problems of moderate complexity/difficulty. • Independently plans and executes assignments; resolves problems and handles deviations. • Identifies and adapts guidelines for new or unusual situations.	• Scope/Impact • Complexity/Difficulty • Independence • Creativity
Level III • Plans and conducts complex administrative activities. • Develops rules, procedures, or operations for complex/difficult organizational tasks. • Identifies issues and determines approaches and methods to accomplish tasks. Initiates effective actions and resolves related conflicts. • Identifies issues requiring new procedures and develops appropriate guidelines.	• Scope/Impact • Complexity/Difficulty • Independence • Creativity

Factor 3–2: Teamwork/Cooperation

FACTOR DESCRIPTION: This factor describes/captures individual and organizational teamwork and cooperation.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Personal and organizational interactions exhibit and foster cooperation and teamwork. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I • Works with others to accomplish routine tasks. • Contributes ideas on routine procedures. Interacts cooperatively with others. • Regularly completes tasks in support of team goals.	• Scope of Team Effort • Contribution to Team • Effectiveness
Level II • Works with others to accomplish tasks. • Resolves administrative problems; facilitates cooperative interactions with others. • Guides others and coordinates activities in support of team goals. Proactively functions as an integral part of the team.	• Scope of Team Effort • Contribution to Team • Effectiveness
Level III • Works with others on complex issues/problems that may cross functional areas. • Applies expertise in resolving complex administrative issues. Promotes and maintains environment for cooperation/teamwork. Sets tone for internal/external cooperation. • Leads and guides others in formulating and executing plans in support of team goals.	• Scope of Team Effort • Contribution to Team • Effectiveness

Factor 3–3: Customer Relations

FACTOR DESCRIPTION: This factor describes/captures the effectiveness of personal and organizational interactions with customers (anyone to whom services or products are provided), both internal (within an assigned organization) and external (outside an assigned organization).

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Personal and organizational interactions enhance customer relations and actively promote rapport with customers. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I • Assists customer support activities. • Meets routine customer needs. • Interacts with customers on routine issues within specific guidelines.	• Breadth of Influence • Customer Needs • Customer Interaction Level
Level II • Guides the administrative efforts of individuals or team members as they interact with customers. • Independently interacts with customers to understand customer needs/expectations. • Interacts independently with customers to communicate information and coordinate actions.	• Breadth of Influence • Customer Needs • Customer Interaction Level
Level III • Identifies, defines, and guides administrative efforts in support of customer interactions; coordinates and focuses activities to support multiple customers. • Establishes customer alliances and translates needs to customer service. • Works independently with customers at all levels to define services and resolve non-routine problems.	• Breadth of Influence • Customer Needs • Customer Interaction Level

Factor 3–4: Leadership/Supervision

FACTOR DESCRIPTION: This factor describes/captures individual and organizational leadership and/or supervision. Recruits, develops, motivates, and retains quality team members in accordance with EEO/AA and Merit Principles. Takes timely/appropriate personnel actions, communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers team members.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Leadership and/or supervision effectively promotes commitment to mission accomplishment. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I • Takes initiative in accomplishing assigned tasks. Asks for assistance as appropriate. • Provides input in administrative/functional area. • Seeks and takes advantage of developmental opportunities.	• Leadership Role • Breadth of Influence • Mentoring/Employee Development
Level II • Actively contributes as team member or leader; takes initiative to accomplish assigned projects. • Guides others in accomplishing projects. • Identifies and pursues individual/team developmental opportunities.	• Leadership Role • Breadth of Influence • Mentoring/Employee Development
Level III • Provides guidance to individuals/teams; resolves conflicts. Expertise solicited by others. • Guides and accounts for results or activities of individuals, teams, or projects. • Promotes individual/team development; leads development of training programs for self and others.	• Leadership Role • Breadth of Influence • Mentoring/Employee Development

Factor 3–5: Communication

FACTOR DESCRIPTION: This factor describes/captures the effectiveness of oral/written communications.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Communications are clear, concise, and at appropriate level. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I • Communicates routine task/status results as required. • Writes timely and accurate draft documentation. • Explains status/results of assigned tasks.	• Level of Interaction (Audience) • Written • Oral
Level II • Interprets and communicates administrative procedures within immediate organization. • Prepares, coordinates, and consolidates documents, reports, or briefings. • Communicates/presents internal administrative/functional procedures and tasks internally and externally.	• Level of Interaction (Audience) • Written • Oral
Level III • Develops and advises on administrative procedures and communicates them to all levels, both internally and externally. • Prepares, reviews, and/or approves documents, reports, or briefings. • Explains and/or communicates administrative/functional procedures at all levels.	• Level of Interaction (Audience) • Written • Oral

Factor 3–6: Resource Management

FACTOR DESCRIPTION: This factor describes/captures personal and organizational utilization of resources to accomplish the mission. (Resources include, but are not limited to, personal time, equipment and facilities, human resources, and funds.)

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Available resources are utilized effectively to accomplish mission. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level.

Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I • Uses assigned resources to accomplish tasks. • Plans individual time and assigned resources to accomplish tasks. • Effectively accomplishes assigned tasks.	• Scope of Responsibility • Planning/Budgeting • Execution/Efficiency
Level II • Identifies and uses resources to accomplish projects. • Plans resources to achieve project schedules. • Effectively accomplishes projects within established resource guidelines.	• Scope of Responsibility • Planning/Budgeting • Execution/Efficiency
Level III • Plans, acquires, and allocates resources to accomplish objectives. • Coordinates resources across projects. • Optimizes resource utilization across projects.	• Scope of Responsibility • Planning/Budgeting • Execution/Efficiency

Appendix D

Intervention Model

Intervention	Expected Effects	Measures	Data Sources
1. COMPENSATION			
a. Pay banding	Increased organizational flexibility	Perceived flexibility	Attitude survey
	Reduced administrative workload, paper work reduction	Actual/perceived time savings	Personnel office data, PME results, attitude survey
	Advanced in-hire rates	Starting salaries of banded v. non-banded employees	Workforce data
	Slower pay progression at entry levels	Progression of new hires over time by band, career path	Workforce data
	Increased pay potential	Mean salaries by band, group, demographics Total payroll costs	Workforce data Personnel office data
	Increased satisfaction with advancement	Employee perceptions of advancement	Attitude survey
	Increased pay satisfaction	Pay satisfaction, internal/external equity	Attitude survey
	Improved recruitment	Offer/acceptance ratios; Percent declinations	Personnel office data
b. Conversion buy-in	Employee acceptance	Employee perceptions of equity, fairness Cost as a percent of payroll	Attitude survey Workforce data
c. Pay differentials/ adjustments	Increased incentive to accept supervisory/team leader positions	Perceived motivational power	Attitude survey
2. PERFORMANCE MANAGEMENT			

Intervention	Expected Effects	Measures	Data Sources
a. Cash awards/ bonuses	Reward/motivate performance	Perceived motivational power	Attitude survey
	To support fair and appropriate distribution of awards	Amount and number of awards by group, demographics	Workforce data
		Perceived fairness of awards	Attitude survey
		Satisfaction with monetary awards	Attitude survey
b. Performance based pay progression	Increased pay-performance link	Perceived pay-performance link	Attitude survey
		Perceived fairness of ratings	Attitude survey
	Improved performance feedback	Satisfaction with ratings	Attitude survey
		Employee trust in supervisors	Attitude survey
		Adequacy of performance feedback	Attitude survey
	Decreased turnover of high performers/ Increased turnover of low performers	Turnover by performance rating scores	Workforce data
	Differential pay progression of high/low performers	Pay progression by performance scores, career path	Workforce data
	Alignment of organizational and individual performance objectives and results	Linkage of performance objectives to strategic plans/goals	Performance objectives, strategic plans
	Increased employee involvement in performance planning and assessment	Perceived involvement	Attitude survey/ focus groups
		Performance management	Personnel regulations
c. New appraisal process	Reduced administrative burden	Employee and supervisor	Attitude survey

Intervention	Expected Effects	Measures	Data Sources
		perceptions of revised procedures	
	Improved communication	Perceived fairness of process	Focus groups
d. Performance development	Better communication of performance expectations	Feedback and coaching procedures used	Focus groups Personnel office data
		Time, funds spent on training by demographics	Training records
	Improved satisfaction and quality of workforce	Perceived workforce quality	Attitude survey
3. "WHITE COLLAR" CLASSIFICATION			
a. Improved classification systems with generic standards	Reduction in amount of time and paperwork spent on classification	Time spent on classification procedures	Personnel office data
		Reduction of paperwork/number of personnel actions (classification/ promotion)	Personnel office data
	Ease of use	Managers' perceptions of time savings, ease of use	Attitude survey
b. Classification authority delegated to managers	Increased supervisory authority/ accountability	Perceived authority	Attitude survey
	Decreased conflict between management and personnel staff	Number of classification disputes/appeals pre/post	Personnel records
		Management satisfaction with service provided by personnel office	Attitude survey
	No negative impact on internal pay equity	Internal pay equity	Attitude survey
c. Dual career	Increased flexibility	Assignment	Focus groups,

Intervention	Expected Effects	Measures	Data Sources
ladder	to assign employees	flexibility	surveys
	Improved internal mobility	Perceived internal mobility	Attitude survey
	Increased pay equity	Perceived pay equity	Attitude survey
	Flatter organization	Supervisory/non-supervisory ratios	Workforce data Attitude survey
	Improved quality of supervisory staff	employee perceptions of quality or supervisory	Attitude survey
4. MODIFIED RIF			
	Minimize loss of high performing employees with needed skills	Separated employees by demographics, performance scores	Workforce dataAttitude survey/focus group
	Contain cost and disruption	Satisfaction with RIF Process	Attitude survey/focus group
		Cost comparison of traditional vs. Modified RIF	Personnel office/budget Data
		Time to conduct RIF-personnel office data	Personnel office data
		Number of Appeals/ reinstatements	Personnel office data
5. HIRING AUTHORITY			
a. Delegated Examining	Improved ease and timeliness of hiring process	Perceived flexibility in authority to hire	Attitude survey
	Improved recruitment of employees in shortage categories	Offer/accept ratios	Personnel office data
		Percent declinations	Personnel office data
		Timeliness of job offers	Personnel office data
		GPAs of new hires,	Personnel office data

Intervention	Expected Effects	Measures	Data Sources
		educational levels	
	Reduced administrative workload/paperwork reduction	Actual/perceived skills	Attitude survey
b. Term Appointment Authority	Increased capability to expand and contract workforce	Number/percentage of conversions from modified term to permanent appointments	Workforce data Personnel office data
c. Flexible Probationary Period	Expanded employee assessment	Average conversion period to permanent status	Workforce data Personnel office data
		Number/percentage of employees completing probationary period	Workforce data Personnel office data
		Number of separations during probationary period	Workforce data Personnel office data
6. EXPANDED DEVELOPMENT OPPORTUNITIES			
a. Sabbaticals	Expanded range of professional growth and development	Number and type of opportunities taken	Workforce data
	Application of enhanced knowledge and skills to work product	Employee and supervisor perceptions	Attitude survey

Intervention	Expected Effects	Measures	Data Sources
b. Critical Skills Training	Improved organizational effectiveness	Number and type of training Placement of employees, skills imbalances corrected	Personnel office data
		Employee and supervisor perceptions	Personnel office data Attitude survey
		Application of knowledge gained from training	Attitude survey/ focus group
7. COMBINATION OF ALL INTERVENTIONS			
All	Improved organizational effectiveness	Combination of personnel measures	All data sources
	Improved management of workforce	Employee/Management job satisfaction (intrinsic/extrinsic)	Attitude survey
	Improved planning	Planning procedures	Strategic planning documents
		Perceived effectiveness of planning procedures	Attitude survey
	Improved cross functional coordination	Actual/perceived coordination	Organizational charts
	Increased product success	Customer satisfaction	Customer satisfaction surveys
	Cost of innovation	Project training/ development costs (staff salaries, contract cost, training hours per employee)	Demo project office records Contract documents
8. CONTEXT			
Regionalization	Reduced servicing ratios/ costs	HR servicing ratios	Personnel office data, workforce data
		Average cost per employee served	Personnel office data, workforce data
	No negative impact on service quality	Service quality, timeliness	Attitude survey/focus groups

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Thursday,
September 9, 2010

Part VII

The President

Proclamation 8555—Labor Day, 2010

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Presidential Documents

Title 3—

The President

Proclamation 8555 of September 3, 2010

Labor Day, 2010

By the President of the United States of America

A Proclamation

Working Americans are the foundation of our Nation's continued economic success and prosperity. From constructing the first transcontinental railroad to shaping our city skylines, they have built our country and propelled it forward. Through great innovation and perseverance, our labor force has forged America as a land of limitless possibility and a leader in the global marketplace. On Labor Day, we honor the enduring values and immeasurable contributions of working men and women today and throughout our history.

As we recognize the contributions of the American workers who have built our country, we must continue to protect their vital role and that of organized labor in our national life. Workers have not always possessed the same rights and benefits many enjoy today. Over time, they have fought for and gained fairer pay, better benefits, and safer work environments. From the factory floors during the Industrial Revolution to the shopping aisles of today's superstores, organized labor has provided millions of hard-working men and women with a voice in the workplace and an unprecedented path into our strong middle class. By advocating on behalf of our families, labor unions have helped advance the safe and equitable working conditions that every worker deserves.

Today, as we emerge from the worst recession since the Great Depression, far too many American workers remain without a job. With every work hour lost and every plant closure and layoff, families and communities struggle to make ends meet and face difficult decisions about how to stay afloat. Yet, in the face of this tremendous challenge, our workers have renewed their commitment to achieving the American dream by training and educating themselves for careers crucial to our long-term competitiveness. To rebuild our economy, my Administration is focusing on job training and investing in industries that cannot be outsourced. By focusing on recovery at home, we are saving or creating millions of jobs in America and supporting the working men and women who will drive our 21st-century economy. More remains to be done, but we have taken important steps forward toward recovery.

American workers have always been ready to roll up their sleeves, clock in, and earn an honest living. That steady determination is why I have confidence in the American economy and confidence that we can overcome the challenges we face. There is no greater example of our country's resolve and resilience than that of our workers. As we celebrate Labor Day, we honor those who have advanced our Nation's strength and prosperity—American workers.

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 September 6, 2010, as Labor Day. I call upon all public officials and people of the United States to observe this day with appropriate programs, ceremonies, and activities that acknowledge the tremendous contributions of working Americans and their families.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of September, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fifth.



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H.R. 511/P.L. 111–231
To authorize the Secretary of Agriculture to terminate certain easements held by the Secretary on land owned by the Village of Caseyville, Illinois, and to terminate associated contractual arrangements with the Village. (Aug. 16, 2010; 124 Stat. 2489)

H.R. 2097/P.L. 111–232
Star-Spangled Banner Commemorative Coin Act (Aug. 16, 2010; 124 Stat. 2490)

H.R. 3509/P.L. 111–233
Agricultural Credit Act of 2010 (Aug. 16, 2010; 124 Stat. 2493)

H.R. 4275/P.L. 111–234
To designate the annex building under construction for the Elbert P. Tuttle United States Court of Appeals Building in Atlanta, Georgia, as the ''John C. Godbold Federal Building''. (Aug. 16, 2010; 124 Stat. 2494)

H.R. 5278/P.L. 111–235
To designate the facility of the United States Postal Service located at 405 West Second Street in Dixon, Illinois, as the ''President Ronald W. Reagan Post Office Building''. (Aug. 16, 2010; 124 Stat. 2495)

H.R. 5395/P.L. 111–236
To designate the facility of the United States Postal Service located at 151 North Maitland Avenue in Maitland, Florida, as the ''Paula Hawkins Post Office Building''. (Aug. 16, 2010; 124 Stat. 2496)

H.R. 5552/P.L. 111–237
Firearms Excise Tax Improvement Act of 2010 (Aug. 16, 2010; 124 Stat. 2497)

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