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Contents

Federal Register

Vol. 76, No. 76

Wednesday, April 20, 2011

Agriculture Department
See Forest Service
See Rural Business–Cooperative Service
PROPOSED RULES
Reducing Regulatory Burden; Retrospective Review under Executive Order 13563, 22058–22059

Air Force Department
NOTICES
Meetings:
U.S. Air Force Academy Board of Visitors, 22083

Broadcasting Board of Governors
NOTICES
Meetings; Sunshine Act, 22078

Bureau of Ocean Energy Management, Regulation and Enforcement

NOTICES
Commercial Leasing for Wind Power; Call for Information and Nominations
Outer Continental Shelf Offshore New Jersey, 22130–22139
Environmental Impact Statements; Availability, etc.:
Oil and Gas Lease Sale for 2007–2012 5-Year OCS Program, 22139

Centers for Disease Control and Prevention
NOTICES
Final Guidance Publication; Issuance, 22106–22107

Coast Guard
RULES
Safety Zones:
Chicago Harbor, Navy Pier Southeast, Chicago, IL, 22035–22036
Red River, MN, 22033–22035
Special Local Regulations:
National Maritime Week Tugboat Races, Seattle, WA, 22033
PROPOSED RULES
Safety Zones:
Michigan Bankers Association Fireworks, Lake Huron, Mackinac Island, MI, 22064–22067

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Meetings:
National Advisory Council on Innovation and Entrepreneurship, 22078

Commodity Futures Trading Commission
NOTICES
Renewal of Agricultural Advisory Committee, 22082–22083

Consumer Product Safety Commission
RULES
Safety Standard for Toddler Beds, 22019–22030
Third Party Testing for Certain Children's Products; Toddler Beds:
Requirements for Accreditation of Third Party Conformity Assessment Bodies, 22030–22033

Defense Department
See Air Force Department
See Navy Department
PROPOSED RULES
Federal Acquisition Regulations:
Service Contracts Reporting Requirements, 22070–22074

Drug Enforcement Administration
NOTICES
Manufacturers of Controlled Substances; Applications, 22146
Manufacturers of Controlled Substances; Registrations, 22146–22147

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22084
Applications for New Awards:
Rehabilitation Training; Rehabilitation Long-Term Training, 22084–22090

Employment and Training Administration
NOTICES
Trade Adjustment Assistance Community College and Career Training Grants Program; Grants, 22147–22148

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board, Northern New Mexico, 22090–22091

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
Biomass Research and Development Technical Advisory Committee, 22091

Environmental Protection Agency
RULES
Approvals and Promulgations of State Implementation Plans:
State of Colorado; Interstate Transport of Pollution Revisions, etc., 22036–22038
Data Requirements for Antimicrobial Pesticides:
Notification to Secretaries of Agriculture and Health and Human Services, 22044–22045
Pesticide Tolerances:
Fluopicolide, 22045–22054
South Coast Portion of the California State Implementation Plan; Revisions:
CPV Sentinel Energy Project AB 1318 Tracking System, 22038–22044

PROPOSED RULES
National Pollutant Discharge Elimination System:
Requirements for Cooling Water Intake Structures at Existing Facilities and Phase I Facilities, 22174–22288
Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities, 22067–22070
NOTICES
Federal Facilities Compliance Agreement with the Tennessee Valley Authority, 22095–22096
Federal Plan for Certification of Applicators of Restricted Use Pesticides within EPA Region 8 Indian Country, 22096–22100
Meetings:
Science Advisory Board; Drinking Water Committee; Teleconference, 22100
Science Advisory Board; Teleconferences, 22101–22102

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness Directives:
Airbus Model A330–200 and –300 Series Airplanes, and Model A340–200 and –300 Series Airplanes, 22005–22007
Saab AB, Saab Aerosystems Model 340A (SAAB/SF340A) and SAAB 340B Airplanes Modified, etc., 22007–22009
Amendments of Class E Airspace:
Bedford, IN, 22011–22012
Cable Union, WI, 22014–22015
Carizzo Springs, Glass Ranch Airport, TX, 22011
Indianapolis Executive Airport, IN, 22013–22014
Kenton, OH, 22016–22017
Kokomo, IN, 22012–22013
Point Lookout, MO, 22010–22011
Raton, NM, 22015–22016
Terre Haute, IN, 22009–22010
PROPOSED RULES
Airworthiness Directives:
Boeing Co. Model 757 Airplanes, and Model 767–200, 767–300, and 767–300F Series Airplanes, 22059–22064
NOTICES
Meetings:
EUROCAE WG–72; RTCA Special Committee 216; Aeronautical Systems Security, 22162–22163
Joint RTCA Special Committee 135; Environmental Conditions and Test Procedures for Airborne Equipment, 22161
RTCA NextGen Advisory Committee, 22162
RTCA Special Committee 186; Automatic Dependent Surveillance, Broadcast, 22160–22161
RTCA Special Committee 220, Automatic Flight Guidance and Control, 22163–22164
RTCA Special Committee 221; Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures, 22163
RTCA Special Committee 225; Rechargeable Lithium Batteries and Battery Systems, Small and Medium Sizes, 22161–22162
Petitions for Exemptions; Summaries of Petitions Received, 22164
Requests to Release Airport Property:
Houma Terrebonne Airport, Houma, LA, 22164–22165

Federal Communications Commission
NOTICES
Meetings:
Emergency Access Advisory Committee, 22102–22103
Need for Speed Information for Consumers of Broadband Services, 22103–22104

Federal Emergency Management Agency
RULES
Changes in Flood Elevation Determinations, 22054–22057
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Chemical Stockpile Emergency Preparedness Program Evaluation and Customer Satisfaction Survey, 22116–22117
Implementation of Coastal Barrier Resources Act, 22116

Federal Energy Regulatory Commission
NOTICES
Technical Conferences:
California Independent System Operator Corp., 22091–22092
Amendments:
Perryville Gas Storage LLC, 22092–22093
Applications:
Tennessee Gas Pipeline Co., 22093–22094
Effectiveness of Exempt Wholesale Generator Status, 22094
Requests under Blanket Authorizations:
Millennium Pipeline Co., L.L.C., 22094–22095

Federal Maritime Commission
NOTICES
Agreements Filed, 22104
Ocean Transportation Intermediary Licenses; Applicants, 22104–22105
Ocean Transportation Intermediary Licenses; Reissuances, 22105–22106
Ocean Transportation Intermediary Licenses; Revocations, 22106

Federal Railroad Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22165–22166

Fish and Wildlife Service
NOTICES
Endangered and Threatened Wildlife and Plants:
5-Year Status Reviews of Three Species in Washington, Oregon, and California, 22139–22140
Environmental Assessments; Availability, etc.:
Parker River and Thacher Island National Wildlife Refuges, Essex County, MA, 22140–22141

Foreign Assets Control Office
NOTICES
Additional Designation of Entities Pursuant to Executive Order 13382, 22167–22168

Foreign Claims Settlement Commission
NOTICES
Meetings; Sunshine Act, 22147

Forest Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Black Mesa Vegetation Management Project, Divide Ranger District, Rio Grande National Forest, CO, 22075
Bussel 484, Idaho Panhandle National Forests, Shoshone County, 22076–22077
Meetings:
Gogebic Resource Advisory Committee, 22077
Okanogan and Wenatchee National Forests Resource Advisory Committee, 22077

General Services Administration
PROPOSED RULES
Federal Acquisition Regulations:
Service Contracts Reporting Requirements, 22070–22074

Health and Human Services Department
See Centers for Disease Control and Prevention
See Health Resources and Services Administration
See National Institutes of Health
PROPOSED RULES
Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas; Meeting; Correction, 22070

Health Resources and Services Administration
NOTICES
Meetings:
National Advisory Council on Migrant Health, 22107

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Emergency Communications Plan Goal 2 Performance Report, 22115–22116
National Emergency Communications Plan Tribal Report, 22114–22115
Office of Infrastructure Protection; Infrastructure Protection Stakeholder Input Project, 22113–22114

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Disaster Assistance Program Incremental Rent Transition Study, 22118–22119
Funding Availability for the Transformation Initiative; Choice Neighborhoods Research Grant Program, 22119
Manufactured Home Construction and Safety Standards Act Reporting Requirements, 22117–22118
Credit Watch Termination Initiative:
Termination of Direct Endorsement Approval, 22119–22120
Termination of Origination Approval Agreements, 22120–22122
Section 8 Housing Choice Voucher Program:
Demonstration Project of Small Area Fair Market Rents in Certain Metropolitan Areas, etc., 22122–22128

Industry and Security Bureau
RULES
Implementation of Understandings Reached at 2010 Australia Group Plenary Meeting, etc., 22017–22019

Interior Department
See Bureau of Ocean Energy Management, Regulation and Enforcement
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Reclamation Bureau
NOTICES
Hydroelectric Power Development Granby Dam Outlet, Feature of Colorado–Big Thompson Project, CO:
Intent to Accept Proposals, Select One Lessee, and Contract, 22128–22130
Meetings:
Wildland Fire Executive Council, 22130

Internal Revenue Service
PROPOSED RULES
Guidance on Reporting Interest Paid to Nonresident Aliens, 22064
NOTICES
Meetings:
Area 1 Taxpayer Advocacy Panel, 22168
Area 2 Taxpayer Advocacy Panel, 22168
Area 3 Taxpayer Advocacy Panel, 22169
Area 4 Taxpayer Advocacy Panel, 22169
Area 5 Taxpayer Advocacy Panel, 22169
Area 6 Taxpayer Advocacy Panel, 22169–22170
Area 7 Taxpayer Advocacy Panel, 22170
Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee, 22171
Taxpayer Advocacy Panel Joint Committee, 22168
Taxpayer Advocacy Panel Notice Improvement Project Committee, 22170–22171
Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Practitioner Engagement Project Committee, 22170
Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Toll Free Project Committee, 22170
Taxpayer Advocacy Panel Tax Forms and Publications Project Committee, 22171
Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee, 22172
Taxpayer Advocacy Panel Volunteer Income Tax Assistance Project Committee, 22171–22172

International Trade Administration
NOTICES
Final Results of First Antidumping Duty Administrative Review:
Lightweight Thermal Paper from Germany, 22078–22080

International Trade Commission
NOTICES
Determinations:
Certain Reduced Ignition Proclivity Cigarette Paper Wrappers and Products Containing Same, 22145–22146
Meetings; Sunshine Act, 22146

Justice Department
See Drug Enforcement Administration
See Foreign Claims Settlement Commission

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Filing of Plats of Survey:
Montana, 22141–22142
Meetings:
Northwest Colorado Resource Advisory Council, 22142

Marine Mammal Commission
NOTICES
Meetings; Sunshine Act, 22155–22156

Mine Safety and Health Administration
NOTICES
Petitions for Modification of Application of Existing Mandatory Safety Standards, 22148–22152
Petitions for Modification of Existing Mandatory Safety Standards, 22152–22154

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulations:
Service Contracts Reporting Requirements, 22070–22074

National Credit Union Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22156–22157

National Highway Traffic Safety Administration
NOTICES
Charter Renewals:
National Emergency Medical Services Advisory Council, 22166

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Prostate, Lung, Colorectal and Ovarian Cancer Screening Trial, 22108–22109
Toolbox for Assessment of Neurological and Behavioral Function, 22107–22108
Government-Owned Inventions; Availability for Licensing, 22109–22110
Meetings:
Center for Scientific Review, 22111–22113
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 22113
National Human Genome Research Institute, 22112
National Institute of Allergy and Infectious Diseases, 22112
National Institute of Dental and Craniofacial Research, 22111–22112
National Institute of Environmental Health Sciences, 22110

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area, 22057
NOTICES
Meetings:
Fisheries of South Atlantic; South Atlantic Fishery Management Council, 22082
New England Fishery Management Council, 22080–22081
North Pacific Fishery Management Council, 22081
Pacific Fishery Management Council, 22081
National Saltwater Angler Registry Program, 22082

National Park Service
NOTICES
National Register of Historic Places:
Pending Nominations and Related Actions, 22142–22143

Navy Department
NOTICES
Meetings:
Ocean Research and Resources Advisory Panel, 22083–22084

Occupational Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Powered Industrial Trucks Standard, 22154–22155

Postal Regulatory Commission
NOTICES
Postal Service Rate Adjustment, 22157–22158

Presidential Documents
PROCLAMATIONS
Special Observances:
Education and Sharing Day, U.S.A. (Proc. 8655), 21999–22000
National Park Week (Proc. 8656), 22001–22002
EXECUTIVE ORDERS
North Korea; Prohibiting Certain Transactions (EO 13570), 22289–22292
ADMINISTRATIVE ORDERS
Government Agencies and Employees:
Defense, Department of; Delegation of Functions and Authority (Memorandum of April 14, 2011), 22003

Reclamation Bureau
NOTICES
Power Development at the Pueblo Dam River Outlet, Fryingpan–Arkansas Project, CO:
Intent to Accept Proposals, Select One Lessee, and Contract, 22143–22145

Rural Business–Cooperative Service
NOTICES
Maximum Loan Amount Available for B and I Guaranteed Loans in Fiscal Year 2011, 22078

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
NASDAQ OMX PHLX LLC, 22158–22160

State Department
NOTICES
Advisory Committee on the Secretary of State's Strategic Dialogue with Civil Society; Establishment, 22160

Surface Transportation Board
NOTICES
Discontinuance Exemptions:
Manufacturers Railway Co., St. Louis County, MO, 22166–22167

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Foreign Assets Control Office
See Internal Revenue Service

Separate Parts In This Issue

Part II
Environmental Protection Agency, 22174–22288

Part III
Presidential Documents, 22289–22292

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

2 CFR

Proposed Rules:
Ch. IX.....22058

3 CFR

Proclamations:
8655.....21999
8656.....22001

Executive Orders:
13570.....22291

Administrative Orders:
Memorandum:
Memorandum of April 14, 2011.....22003

5 CFR

Proposed Rules:
Ch. LXXIII.....22058

7 CFR

Proposed Rules:
Ch. I.....22058
Ch. II.....22058
Ch. III.....22058
Ch. IV.....22058
Ch. V.....22058
Ch. VI.....22058
Ch. VII.....22058
Ch. XIV.....22058
Ch. XV.....22058
Ch. XVI.....22058
Ch. XVII.....22058
Ch. XVIII.....22058
Ch. XX.....22058
Ch. XXVI.....22058
Ch. XXVII.....22058
Ch. XXVIII.....22058
Ch. XXIX.....22058
Ch. XXX.....22058
Ch. XXXI.....22058
Ch. XXXII.....22058
Ch. XXXIII.....22058
Ch. XXXIV.....22058
Ch. XXXV.....22058
Ch. XXXVI.....22058
Ch. XXXVII.....22058
Ch. XXXVIII.....22058

9 CFR

Proposed Rules:
Ch. I.....22058
Ch. II.....22058
Ch. III.....22058

14 CFR

39 (2 documents).....22005, 22007
71 (9 documents).....22009, 22010, 22011, 22012, 22013, 22014, 22015, 22016

Proposed Rules:
39.....22059

15 CFR

774.....22017

16 CFR

1217 (2 documents).....22019, 22030

26 CFR

Proposed Rules:
1.....22064
31.....22064

33 CFR

100.....22033
165 (2 documents).....22033, 22035

Proposed Rules:
165.....22064

36 CFR

Proposed Rules:
Ch. II.....22058

40 CFR

52 (2 documents).....22036, 22038
158.....22044
161.....22044
180.....22045

Proposed Rules:
122.....22174
125.....22174
174.....22067
180.....22067

42 CFR

Proposed Rules:
5.....22070

44 CFR

65.....22054

48 CFR

Proposed Rules:
4.....22070
8.....22070
17.....22070
37.....22070
52.....22070
Ch. 4.....22058

50 CFR

679.....22057

Federal Register
Vol. 76, No. 76
Wednesday, April 20, 2011

Presidential Documents

Title 3—

The President

Proclamation 8655 of April 14, 2011

Education and Sharing Day, U.S.A., 2011

By the President of the United States of America

A Proclamation

The future of our Nation depends on our ability to instill in future generations the values that will help them write the next proud chapter of the American story—a dedication to knowledge and a sense of compassion for their fellow citizens. As we celebrate Education and Sharing Day, U.S.A., we recommit to preparing our sons and daughters to thrive with principle and purpose in the 21st century.

Over the next decade, nearly half of all new jobs will require advanced training or a college degree. Ensuring our children meet this standard will take the collective commitment of parents, teachers, and communities coming together to instill a love of learning in our young people. By doing so, we can unlock every child's potential and give them the chance to fulfill their dreams, while laying the foundation for our country's continued prosperity.

Education alone, however, cannot fully prepare our children to stand at the helm of our Nation. In an increasingly interconnected world, America remains a beacon of hope for many across the globe because of our open hearts during times of extraordinary challenge and our dedication to our common humanity. We must nurture these traits in our children to ensure America continues to be a symbol of promise to the world.

On Education and Sharing Day, U.S.A., we celebrate the example set by Rabbi Menachem Mendel Schneerson, the Lubavitcher Rebbe, who dedicated his life to improving education and fostering goodwill for all people. His legacy continues to inspire individuals to carry forward his effort to build a brighter future. Each year, Education and Sharing Day, U.S.A., reminds us of our obligation to create opportunities for a better tomorrow—life lessons we pass on to all our children.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 15, 2011, as Education and Sharing Day, U.S.A. I call upon all Americans to observe this day with appropriate ceremonies and activities.

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

[FR Doc. 2011–9728
Filed 4–19–11; 8:45 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8656 of April 15, 2011

National Park Week, 2011

By the President of the United States of America

A Proclamation

Every day, America's national parks—from the smallest historic sites to the largest natural spaces—contribute to our Nation's collective health and spirit. These places preserve our unique history and iconic symbols. They protect ecosystems and serve as reservoirs of biodiversity. They are sources of natural sounds, clean water, and fresh air. Our parks provide accessible, safe, and affordable places to appreciate the bounty of our land. They offer opportunities for wholesome outdoor recreation, which can improve the health and vitality of all Americans.

In no place is America's natural and historic legacy more evident than our extraordinary collection of 394 national parks. "*Healthy Parks, Healthy People*," the focus for this year's National Park Week, highlights the role of public lands—whether an iconic national park or a local green space—in connecting human and environmental well-being. To encourage citizens to spend time in national parks, all entrance fees will be waived during National Park Week. All Americans can visit www.NPS.gov to find nearby parks where history can be discovered and nature explored.

America is fortunate to have a long history of conservation pioneers, like President Theodore Roosevelt, who understood the value of protecting our most precious landscapes. My Administration is building on this legacy with the America's Great Outdoors Initiative, designed to create a 21st-century conservation ethic and reconnect Americans with our natural, cultural, and historic heritage. We are working to ensure more American children have access to safe and clean parks and open spaces close to their homes. We will better support the farmers, ranchers, and private landowners that help protect rural landscapes and we will manage our public lands and waters with a renewed commitment to sound stewardship and resilience. As part of this responsibility, Federal agencies are also partnering with the First Lady's "*Let's Move*!" initiative on "*Let's Move Outside*!," a program that connects young people and their families to the outdoors to encourage healthy recreation.

The National Park Service, with 84 million acres of land and 17,000 miles of trails, works with environmental groups, scientists, business innovators, and health-care providers to promote physical activity in parks. Every Federal dollar invested in our national parks generates benefits for State and local economies. Beyond park boundaries, the National Park Service's Rivers, Trails, and Conservation Assistance Program works with communities to create and enhance local parks, revitalize rivers, preserve valuable open spaces, and develop trail and greenway networks that provide close-to-home outdoor opportunities for everyone—from children to seniors—to get outside, get healthy, and have fun.

During National Park Week, we reaffirm our need to maintain connections to the natural world. Whether on the open range or in the heart of a bustling city, each of us can work to conserve our lands and reinforce the importance of setting aside beautiful places for inspiration, relaxation, and recreation for all people.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 16 through April 24, 2011, as National Park Week. I encourage all Americans to visit their national parks and be reminded of these unique blessings we share as a Nation.

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

[FR Doc. 2011–9730
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Billing code 3195–W1–P

Presidential Documents

Memorandum of April 14, 2011

Delegation of Functions and Authority Under Sections 315 and 325 of Title 32, United States Code

Memorandum for the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to you: (a) the functions and authority of the President contained in section 315 of title 32, United States Code, to permit a commissioned officer of the Regular Army or Regular Air Force to accept a commission in the Army National Guard or the Air National Guard, as the case may be, terminable at your discretion, without prejudicing his or her rank and without vacating his or her regular appointment; and (b) the functions and authority of the President contained in section 325 of title 32, United States Code, to authorize the service of an officer of the Army National Guard or the Air National Guard on active duty without relieving that officer from duty in the National Guard of his or her State, or of the Commonwealth of Puerto Rico, Guam, or the United States Virgin Islands, or the District of Columbia and to give such authorization in advance for the purpose of establishing the succession of command of a unit.

This delegation of functions and authority supersedes and replaces the July 23, 2004, delegation to the Secretary of Defense of the functions and authority of the President contained in section 325 of title 32, United States Code.

You are further authorized and directed to make necessary arrangements to fund the exercise of these functions and authority from the proper appropriation, prescribe regulations to implement these functions and authority, and to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, April 14, 2011

[FR Doc. 2011–9729
Filed 4–19–11; 8:45 am]
Billing code 5000–04–P

Rules and Regulations

Federal Register
Vol. 76, No. 76
Wednesday, April 20, 2011

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0311; Directorate Identifier 2010–NM–232–AD; Amendment 39–16668; AD 2011–09–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 and –300 Series Airplanes, and Model A340–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are superseding an existing airworthiness directive (AD) for all Model A330 and A340 series airplanes. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

At the end of an escape slide deployment test performed on the left-hand forward pax [passenger]/crew door of an A330 aeroplane, the girt bar attaching the escape slide to the fuselage was found not in a locked position and detached from the aeroplane.

* * * * *

This condition, if not corrected, could result in the slide detaching from the door after being inflated which, during an emergency, would impair the safe evacuation of occupants, possibly resulting in personal injuries.

* * * * *

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective May 5, 2011.

The Director of the Federal Register previously approved the incorporation by reference of certain documents listed in the AD as of March 19, 2002 (67 FR 6370, February 12, 2002).

We must receive comments on this AD by June 6, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On January 31, 2002, we issued AD 2002–02–07, Amendment 39–12635 (67 FR 6370, February 12, 2002). That AD required actions intended to address an unsafe condition on all Model A330 and A340 series airplanes.

Since we issued AD 2002–02–07, Airbus has received certification on two new models: Model A330–223F and -243F airplanes. We are issuing this AD to include them in the requirements of that earlier AD. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0135, dated July 5, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

At the end of an escape slide deployment test performed on the left-hand forward pax [passenger]/crew door of an A330 aeroplane, the girt bar attaching the escape slide to the fuselage was found not in a locked position and detached from the aeroplane. The investigation has shown that a component of the slide release mechanism (slider) was found unserviceable (spring function inoperative due to corrosion or missing).

This condition, if not corrected, could result in the slide detaching from the door after being inflated which, during an emergency, would impair the safe evacuation of occupants, possibly resulting in personal injuries.

DGAC [Direction Générale de l'Aviation Civile] AD F–2001–053R1 and DGAC AD F–2001–052R2 required the Functional check and lubrication of door girt bar slider and the associated corrective actions.

This [EASA] AD, which supersedes DGAC AD F–2001–053R1 and DGAC AD F–2001–052R2 retaining their requirements, is issued to extend the applicability to the newly certified models A330–223F and A330–243F, and to clarify the actions required by the superseded AD.

The required actions include repetitive detailed inspection and operational checks of the spring function of the emergency exit door slider mechanism, and applying corrosion inhibitor. Corrective actions include repairing or replacing the slider with a new part. You may obtain further information by examining the MCAI in the AD docket.

Changes to the AD

We have revised the applicability of this AD to coordinate with the applicability of the EASA airworthiness directive by specifying the model designations as identified in the U.S. Type Certificate Data Sheets. Model A340–541 and –642 airplanes that were included in the prior FAA AD are not included in this AD, because we have determined that those models are not affected by the identified unsafe condition.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another

country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0311; Directorate Identifier 2010–NM–232–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–12635 (67 FR 6370, February 12, 2002) and adding the following new AD:

2011–09–06 Airbus: Amendment 39–16668. Docket No. FAA–2011–0311; Directorate Identifier 2010–NM–232–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 5, 2011.

Affected ADs

(b) This AD supersedes AD 2002–02–07, Amendment 39–12635.

Applicability

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, and Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category; all manufacturer serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 52: Doors.

Reason

(e) The mandatory continued airworthiness information (MCAI) states:

At the end of an escape slide deployment test performed on the left-hand forward pax [passenger]/crew door of an A330 aeroplane, the girt bar attaching the escape slide to the fuselage was found not in a locked position and detached from the aeroplane.

* * * * *

This condition, if not corrected, could result in the slide detaching from the door after being inflated which, during an emergency, would impair the safe evacuation of occupants, possibly resulting in personal injuries.

* * * * *

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2002–02–07

Inspection

(g) For all airplanes except Model A330–223F and –243F airplanes: Within 18 months since date of manufacture, or within 550 flight hours after March 19, 2002 (the effective date of AD 2002–02–07), whichever occurs later: Perform a detailed inspection and an operational check of the spring function of the emergency exit door slider mechanism, in accordance with Airbus All Operators Telex (AOT) A330–52A3063 (for Model A330 series airplanes) or A340–52A4075 (for Model A340 series airplanes), as applicable, both Revision 01, both dated January 3, 2001.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An

intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If all sliders lock properly: Before further flight, apply corrosion inhibitor to the sliders, in accordance with Airbus AOT A330–52A3063 (for Model A330 series airplanes) or A340–52A4075 (for Model A340 series airplanes), as applicable, both Revision 01, both dated January 3, 2001. Thereafter, repeat the inspection and operational check at least every 18 months.

(2) If any slider does not lock properly: Before further flight, repair the slider or replace it with a new part, and apply corrosion inhibitor to the sliders; in accordance with Airbus AOT A330–52A3063 (for Model A330 series airplanes) or A340–52A4075 (for Model A340 series airplanes), as applicable, both Revision 01, both dated January 3, 2001. Thereafter, repeat the inspection and operational check at least every 18 months.

New Requirements of This AD

Inspection

(h) For Model A330–223F and –243F airplanes: Within 18 months since date of manufacture, or within 550 flight hours after the effective date of this AD, whichever occurs later: Perform a detailed inspection and an operational check of the spring function of the emergency exit door slider mechanism, in accordance with Airbus AOT A330–52A3063, Revision 01, dated January 3, 2001.

(1) If all sliders lock properly: Before further flight, apply corrosion inhibitor to the sliders, in accordance with Airbus AOT A330–52A3063, Revision 01, dated January 3, 2001. Thereafter, repeat the inspection and operational check at least every 18 months.

(2) If any slider does not lock properly: Before further flight, repair the slider or replace it with a new part, and apply corrosion inhibitor to the sliders; in accordance with Airbus AOT A330–52A3063, Revision 01, dated January 3, 2001. Thereafter, repeat the inspection and operational check at least every 18 months.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(i) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to *ATTN:* Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(j) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0135, dated July 5, 2010; and Airbus AOTs A330–52A3063 and A340–52A4075, both Revision 01, both dated January 3, 2001; for related information.

Material Incorporated by Reference

(k) You must use Airbus All Operators Telex A330–52A3063, Revision 01, dated January 3, 2001; or Airbus All Operators Telex A340–52A4075, Revision 01, dated January 3, 2001; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register previously approved the incorporation by reference of these documents on March 19, 2002 (67 FR 6370, February 12, 2002).

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on April 12, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–9278 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0042; Directorate Identifier 2009–NM–010–AD; Amendment 39–16664; AD 2011–09–02]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Model 340A (SAAB/SF340A) and SAAB 340B Airplanes Modified in Accordance With Supplemental Type Certificate (STC) ST00224WI–D, ST00146WI–D, or SA984GL–D

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires inspecting the fuselage surface for corrosion and cracking behind the external adapter plate of the antennae installation, and repair if necessary. This AD was prompted by a report of a crack found behind the external adapter plate of the antennae during inspection. Similar cracking was found on two additional airplanes, and extensive corrosion was found on one airplane. We are issuing this AD to detect and correct corrosion and cracking behind the external adapter plate of the antennae of certain damage-tolerant structure, which could result in reduced structural integrity and consequent rapid depressurization of the airplane.

DATES: This AD is effective May 25, 2011.

Examining the AD Docket

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

New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: William Griffith, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4116; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) (the "second supplemental NPRM") to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That second SNPRM was published in the **Federal Register** on January 20, 2011 (76 FR 3564). That second SNPRM proposed to require inspecting the fuselage surface for corrosion and cracking behind the external adapter plate of the antennae installation, and repair if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Explanation of Change to Applicability

We have revised the applicability of the supplemental NPRM to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD with the change described previously. We also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 201 airplanes of U.S. registry. The inspection will take about 4 work-hours per airplane, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $68,340, or $340 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–09–02 Saab AB, Saab Aerosystems: Amendment 39–16664; Docket No. FAA–2010–0042; Directorate Identifier 2009–NM–010–AD.

Effective Date

(a) This AD is effective May 25, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Saab AB, Saab Aerosystems airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD, that have been modified in accordance with Supplemental Type Certificate (STC) ST00224WI–D, ST00146WI–D, or SA984GL–D.

(1) Model 340A (SAAB/SF340A) airplanes, serial numbers 004 through 159 inclusive.

(2) Model SAAB 340B airplanes, serial numbers 160 through 459 inclusive.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53: Fuselage.

Unsafe Condition

(e) This AD was prompted by a report of a crack found behind the external adapter plate of the antennae during inspection. Similar cracking was found on two additional airplanes, and extensive corrosion was found on one airplane. We are issuing this AD to detect and correct corrosion and cracking behind the external adapter plate of the antennae of certain damage-tolerant structure, which could result in reduced structural integrity and consequent rapid depressurization of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified.

Inspection/Corrective Actions

(g) Within 600 flight cycles after the effective date of this AD: Remove the external adapter plate of the antennae installation and do a general visual inspection of the fuselage surface for corrosion and cracking behind the external adapter plate of the antennae installation. If any corrosion or cracking is found, repair before further flight. If no corrosion or cracking is found, before further flight, ensure that proper corrosion protection has been applied before reinstalling the adapter plate. Do all the actions required by this paragraph in accordance with a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Reporting Requirement

(h) At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD: Submit a report of the positive findings of the inspections required by paragraph (g) of this AD. Send the report to the Manager, Wichita ACO. The report must contain, at a minimum, the inspection results, a description of any discrepancies found, the airplane serial number, and the number of flight cycles and flight hours on the airplane since installation of the STC.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

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

Special Flight Permit

(i) Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), may be issued to operate the airplane to a location where the requirements of this AD can be accomplished, but concurrence by the Manager, Wichita ACO, FAA, is required prior to issuance of the special flight permit.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(k) For more information about this AD, contact William Griffith, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4116; fax (316) 946–4107.

Material Incorporated by Reference

(l) None.

Issued in Renton, Washington, on April 8, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–9279 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1034; Airspace Docket No. 10–AGL–22]

Amendment of Class E Airspace; Terre Haute, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Terre Haute, IN, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Union Hospital Heliport, Terre Haute, IN. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the heliport.

DATES: *Effective date:* 0901 UTC, June 30, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On January 31, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Terre Haute, IN, creating additional controlled airspace at Union Hospital Heliport (76 FR 5302) Docket No. FAA–2010–1034. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate the new COPTER RNAV (POINT-IN-SPACE) standard instrument approach procedures at Union Hospital Heliport, Terre Haute, IN. This action will enhance the safety and management of IFR operations at the heliport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it creates controlled airspace at Union Hospital Heliport, Terre Haute, IN.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

AGL IN E5 Terre Haute, IN [Amended]

Terre Haute, Terre Haute Inernational Airport/Hulman Field
(Lat. 39°27′05″ N., long. 87°18′27″ W.)
Terre Haute, Sky King Airport, IN
(Lat. 39°32′52″ N., long. 87°22′38″ W.)
Brazil, Brazil Clay County Airport, IN
(Lat. 39°28′36″ N., long. 87°05′59″ W.)
Terre Haute, Union Hospital Heliport, IN Point In Space
(Lat. 39°29′43″ N., long. 87°24′00″ W.)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Terre Haute International Airport/Hulman Field, and within a 6.3-mile radius of Sky King Airport, and within a 6.8-mile radius of Brazil Clay County Airport, and within a 6-mile radius of the Union Hospital Heliport point in space coordinates at lat. 39°29′43″ N., long. 87°24′00″ W.

Issued in Fort Worth, Texas, on March 23, 2011.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–9378 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1172; Airspace Docket No. 10–ACE–14]

Amendment of Class E Airspace; Point Lookout, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Point Lookout, MO, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at M. Graham Clark—Taney Field Airport, Point Lookout, MO. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective date: 0901 UTC, June 30, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On December 28, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Point Lookout, MO, creating additional controlled airspace at M. Graham Clark—Taney Field Airport (75 FR 81514) Docket No. FAA–2010–1172. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends title 14 Code of Federal Regulations (14 CFR) part 71 by creating Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at M. Graham Clark—Taney Field Airport, Point Lookout, MO. This action is necessary for the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it creates controlled airspace at M. Graham Clark—Taney Field Airport, Point Lookout, MO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

ACE MO E5 Point Lookout, MO [Amended]

Point Lookout, M. Graham Clark—Taney County Airport, MO
(Lat. 36°37′33″ N., long. 93°13′44″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile

radius of M. Graham Clark—Taney County Airport, and within 3.1 miles each side of the 119° bearing from the airport extending from the 6.5-mile radius to 9.7 miles southeast of the airport, and within 3.9 miles each side of the 299° bearing from the airport extending from the 6.5-mile radius to 10.6 miles southeast of the airport.

Issued in Fort Worth, Texas, on April 7, 2011.

Richard J. Kervin, Jr.,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–9381 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0877; Airspace Docket No. 10–ASW–13]

Amendment of Class E Airspace; Carizzo Springs, Glass Ranch Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for the Carizzo Springs, Glass Ranch Airport, TX, airspace area, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Faith Ranch Airport, Carizzo Springs, TX. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, June 30, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On January 31, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for the Carizzo Springs, Glass Ranch Airport, TX, airspace area, creating additional controlled airspace at Faith Ranch Airport (76 FR 5303) Docket No. FAA–2010–0877. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface in the Carrizo Springs, Glass Ranch Airport, TX, area, to accommodate new standard instrument approach procedures at Faith Ranch Airport, Carizzo Springs, TX. This action is necessary for the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace for the Carizzo Springs, Glass Ranch Airport, TX airspace area.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

ASW TX E5 Carrizo Springs, Glass Ranch Airport, TX [Amended]

Carrizo Springs, Glass Ranch Airport, TX
(Lat. 28°27′01″ N., long. 100°09′01″ W.)
Carrizo Springs, Indio-Faith Airport, TX
(Lat. 28°15′46″ N., long. 100°09′44″ W.)
Carrizo Springs, Faith Ranch Airport, TX
(Lat. 28°12′31″ N., long. 100°01′08″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Glass Ranch Airport, excluding that airspace within Restricted Area R–6316, and within a 6.5-mile radius of Indio-Faith Airport, and within a 6.4-mile radius of Faith Ranch Airport, excluding that airspace within Mexico.

Issued in Fort Worth, Texas, on April 7, 2011.

Richard J. Kervin, Jr.,

Acting Manager Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–9403 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1026; Airspace Docket No. 10–AGL–14]

Amendment of Class E Airspace; Bedford, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Bedford, IN, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Bedford Medical Center Heliport, Bedford, IN. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the heliport.

DATES: Effective date: 0901 UTC, June 30, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On January 31, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Bedford, IN, creating additional controlled airspace at Bedford Medical Center Heliport (76 FR 5301) Docket No. FAA–2010–1026. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate the new COPTER RNAV (POINT-IN-SPACE) standard instrument approach procedures at Bedford Medical Center Heliport, Bedford, IN. This action is necessary for the safety and management of IFR operations at the heliport.

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

The FAA's authority to issue rules regarding aviation safety is found in title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Bedford Medical Center Heliport, Bedford, IN.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

AGL IN E5 Bedford, IN [Amended]

Bedford, Virgil I. Grissom Municipal Airport, IN
(Lat. 38°50′24″ N., long. 86°26′43″ W.)
Bedford, Bedford Medical Center Heliport, IN
Point In Space
(Lat. 38°51′51″ N., long. 86°31′27″ W.)
Hoosier VORTAC
(Lat. 39°08′38″ N., long. 86°36′47″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Virgil I. Grissom Municipal Airport, and within 4.4 miles each side of the Hoosier VORTAC 157° radial extending from the 7-mile radius to 10 miles southeast of the airport, and within a 6-mile radius of the Bedford Medical Center Heliport point in space coordinates at lat. 38°51′51″ N., long. 86°31′27″ W.

Issued in Fort Worth, Texas, on March 24, 2011.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–9387 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0605; Airspace Docket No. 10–AGL–10]

Amendment of Class E Airspace; Kokomo, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Kokomo, IN, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Kokomo Municipal Airport and Regional Health System Heliport, Kokomo, IN. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport. Minor adjustments to geographic coordinates and an airport name change to Logansport Municipal Airport also will be made.

DATES: *Effective date:* 0901 UTC, June 30, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On January 10, 2011, the FAA published in the **Federal Register** a

supplemental notice of proposed rulemaking to expand Class E airspace to include Regional Health System Heliport, as well as amending existing Class E airspace at Kokomo Municipal Airport, Kokomo, IN. (76 FR 1378) Docket No. FAA–2010–0605. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by adding Class E airspace extending upward from 700 feet above the surface to accommodate COPTER RNAV standard instrument approach procedures at Regional Health System Heliport, Kokomo, IN, and amends existing Class E airspace extending upward from 700 feet above the surface at Kokomo Municipal Airport. Adjustments to geographic coordinates will be made, as well as the name change of Logansport Municipal Airport to Logansport/Cass County Airport. This action is necessary for the safety and management of IFR operations within the National Airspace System.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Kokomo Municipal Airport and Regional Health System Heliport, Kokomo, IN.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

AGL IN E5 Kokomo, IN [Amended]

Kokomo Municipal Airport, IN
(Lat. 40°31′41″ N., long. 86°03′32″ W.)
Grissom Air Reserve Base, IN
(Lat. 40°38′53″ N., long. 86°09′08″ W.)
Grissom Air Reserve Base ILS Localizer Northeast
(Lat. 40°37′59″ N., long. 86°10′18″ W.)
Grissom Air Reserve Base ILS Localizer Southwest
(Lat. 40°39′56″ N., long. 86°07′47″ W.)
Logansport/Cass County Airport, IN
(Lat. 40°42′41″ N., long. 86°22′22″ W.)
Peru Municipal Airport, IN
(Lat. 40°47′09″ N., long. 86°08′47″ W.)
Regional Health System Heliport, IN, Point-In-Space Coordinates
(Lat. 40°26′47″ N., long. 86°08′23″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Kokomo Municipal Airport, and within 4 miles each side of the 045° bearing from the airport extending from the 7-mile radius to 10.7 miles northeast of the airport, and within 4 miles each side of the 225° bearing from the airport extending from the 7-mile radius to 10.9 miles southwest of the airport, and within a 7-mile radius of Grissom Air Reserve Base, and within 3.8 miles each side of the Grissom Air Reserve Base ILS Localizer Northeast course extending from the 7-mile radius to 14.5 miles northeast of the airport, and within 2 miles each side of the Grissom Air Reserve Base ILS Localizer Southwest course extending from the 7-mile radius to 14.5 miles southwest of the airport, and within a 7.7-mile radius of Logansport/Cass County Airport, and within a 6.3-mile radius of Peru Municipal Airport, and within a 6-mile radius of the Regional Health System Heliport Point-In-Space coordinates at lat. 40°26′47″ N., long. 86°08′23″ W.

Issued in Fort Worth, Texas, on March 15, 2011.

Richard J. Kervin, Jr.,

Acting Manager Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–9392 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1027; Airspace Docket No. 10–AGL–15]

Amendment of Class E Airspace; Indianapolis Executive Airport, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for the Indianapolis Executive Airport, IN, area, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Clarian North Medical Center Heliport, Carmel, IN, and Methodist Hospital of Indiana Heliport, Indianapolis, IN. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the heliport.

DATES: Effective date: 0901 UTC, June 30, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On January 31, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Indianapolis Executive Airport, IN, creating additional controlled airspace at Clarian North Medical Center Heliport and Methodist Hospital of Indiana Heliport (76 FR 5306) Docket No. FAA–2010–1027. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, an error was found in the geographic coordinates for Clarion North Medical Center Heliport. This rule will make the correction to be in concert with the FAAs aeronautical database.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate the new COPTER RNAV (POINT-IN-SPACE) standard instrument approach procedures at Clarian North Medical Center Heliport, Indianapolis Executive Airport, IN. This action is necessary for the safety and management of IFR operations at the heliport. This action also corrects the geographic coordinates listed in the airspace designation and regulatory text for Clarion North Medical Center Heliport. With the exception of editorial changes and the changes described above, this action is the same as that proposed in the NPRM.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace for the Indianapolis Executive Airport, IN, airspace area.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

AGL IN E5 Indianapolis Executive Airport, IN [Amended]

Indianapolis, Indianapolis Executive Airport, IN
(Lat. 40°01′50″ N., long. 86°15′05″ W.)
Carmel, Clarian North Medical Center Heliport, IN Point In Space
(Lat. 39°56′53″ N., long. 86°09′20″ W.)
Indianapolis, Methodist Hospital of Indiana Heliport, IN Point In Space
(Lat. 39°47′00″ N., long. 86°102′7″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Indianapolis Executive Airport, and within a 6-mile radius of the Clarian North Medical Center Heliport point in space coordinates at lat. 39°56′53″ N., long. 86°092′0″ W., and within a 6-mile radius of the Methodist Hospital of Indiana Heliport point in space coordinates at lat. 39°47′00″ N., long. 86°10′27″ W., excluding that airspace within the Indianapolis, IN, Class C airspace area.

Issued in Fort Worth, Texas, on March 24, 2011.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–9404 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1169; Airspace Docket No. 10–AGL–24]

Amendment of Class E Airspace; Cable Union, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Cable Union, WI. Decommissioning of the Seely non-directional beacon (NDB) at Cable Union Airport, Cable Union, WI, has made this action necessary to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport. The geographic coordinates for the airport also will be adjusted.

DATES: Effective date: 0901 UTC, June 30, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On January 31, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Cable Union, WI, reconfiguring controlled airspace at Cable Union Airport (76 FR 5300) Docket No. FAA–2010–1169. Interested parties were invited to participate in

this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface for the Cable Union, WI area. Decommissioning of the Seely NDB and cancellation of the NDB approach at Cable Union Airport has made this action necessary for the safety and management of IFR operations at the airport. Geographic coordinates will also be adjusted in accordance with the FAA's Aeronautical Products.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Cable Union Airport, Cable Union, WI.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

* * * * *

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

* * * * *

AGL WI E5 Cable Union, WI [Amended]

Cable Union Airport, WI
(Lat. 46°11′42″ N., long. 91°14′54″ W.)
Hayward VOR/DME
(Lat. 46°01′08″ N., long. 91°26′47″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Cable Union Airport, and within 3 miles each side of the Hayward VOR/DME 038° radial extending from the 6.4-mile radius to 10 miles southwest of the airport.

Issued in Fort Worth, Texas, on March 24, 2011.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–9405 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1239; Airspace Docket No. 10–ASW–17]

Amendment of Class E Airspace; Raton, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Raton, NM, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Raton Municipal Airport/Crews Field, Raton, NM. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date*: 0901 UTC, June 30, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On January 31, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Raton, NM, creating additional controlled airspace at Raton Municipal Airport/Crews Field (76 FR 5305) Docket No. FAA–2010–1239. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new RNAV standard instrument approach procedures at Raton Municipal Airport/Crews Field, Raton, NM. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Raton Municipal Airport/ Crews Field, Raton, NM.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

ASW NM E5 Raton, NM [Amended]

Raton, Raton Municipal Airport/Crews Field, NM
(Lat. 36°44′30″ N., long. 104°30′08″ W.)
Cimarron VORTAC
(Lat. 36°29′29″ N., long. 104°52′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Raton Municipal Airport/Crews Field excluding that portion northwest of a line 4.4 miles northwest and parallel to the 050° radial of the Cimarron VORTAC, and within 1.6 miles each side of the 034° bearing from the airport extending from the 6.7-mile radius to 7.8 miles northeast of the airport, and within 3.7 miles each side of the 050° radial of the Cimarron VORTAC extending from the 6.7-mile radius to 11.4 miles southwest of the airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 37°04′21″ N., long. 103°45′12″ W., to lat. 36°48′31″ N., long. 103°41′50″ W., to lat. 36°15′44″ N., long. 104°38′43″ W., to lat. 36°10′11″ N., long. 104°55′44″ W., to lat. 36°18′21″ N., long. 105°02′23″ W., to lat. 36°21′13″ N., long. 105°04′16″ W., to lat. 36°26′41″ N., long. 105°04′22″ W., to lat. 36°39′05″ N., long. 105°00′42″ W., to lat. 36°42′52″ N., long. 104°48′55″ W., to lat. 37°01′04″ N., long. 104°19′16″ W., to lat. 37°01′50″ N., long. 104°11′29″ W., to lat. 37°00′34″ N., long. 104°08′01″ W., to the point of beginning.

Issued in Fort Worth, Texas, on March 24, 2011.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–9396 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1054; Airspace Docket No. 10–AGL–23]

Amendment of Class E Airspace; Kenton, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Kenton, OH, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Hardin County Airport, Kenton, OH. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective date: 0901 UTC, June 30, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On December 16, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Kenton, OH, creating additional controlled airspace at Hardin County Airport (75 FR 78645) Docket No. FAA–2010–1054. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, an error was found in the regulatory text noting incorrect geographic coordinates. This rule will make the correction.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends title 14 Code of Federal Regulations (14 CFR) part 71 by creating Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Hardin County Airport, Kenton, OH. This action is necessary for the safety and management of IFR operations at the airport. This action also corrects the geographic coordinates listed in the regulatory text for Kenton, OH. With the exception of editorial changes and the changes described above, this action is the same as that proposed in the NPRM.

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

The FAA's authority to issue rules regarding aviation safety is found in title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it creates controlled airspace at Hardin County Airport, Kenton, OH.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

AGL OH E5 Kenton, OH [Amended]

Kenton, Hardin County Airport, OH
(Lat. 40°36′36″ N., long. 83°38′39″ W.)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 40°43′34″ N., long. 83°33′51″ W., to lat. 40°38′16″ N., long. 83°28′39″ W., to lat. 40°30′37″ N., long. 83°30′57″ W., to lat. 40°24′00″ N., long. 83°33′37″ W., to lat. 40°13′31″ N., long. 83°40′22″ W., to lat. 40°11′47″ N., long. 83°52′11″ W., to lat. 40°16′44″ N., long. 84°01′10″ W., to lat. 40°24′31″ N., long. 84°02′39″ W., to lat. 40°31′30″ N., long. 83°56′56″ W., to lat. 40°32′13″ N., long. 83°50′20″ W., to lat. 40°34′45″ N., long. 83°47′33″ W., to lat. 40°38′56″ N., long. 83°48′49″ W., to lat. 40°43′49″ N., long. 83°42′14″ W., to the point of beginning.

Issued in Fort Worth, Texas, on March 15, 2011.

Richard J. Kervin, Jr.,

Acting Manager Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–9389 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 110106012–1013–01]

RIN 0694–AF04

Implementation of the Understandings Reached at the 2010 Australia Group (AG) Plenary Meeting and Other AG-Related Clarifications and Corrections to the EAR

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) publishes this final rule to amend the Export Administration Regulations (EAR) to implement the understandings reached at the June 2010 plenary meeting of the Australia Group (AG) and to make certain AG-related editorial clarifications and corrections to the EAR. Consistent with the June 2010 AG understandings, this rule amends the chemical manufacturing equipment entry on the Commerce Control List (CCL) of the EAR to reflect the addition of two parenthetical phrases that clarify the description of certain "materials" contained in items on the AG "Control List of Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology and Software." In addition, this rule makes AG-related clarifications and corrections to the EAR. Specifically, this rule amends the human and zoonotic pathogens and toxins entry and the animal pathogens entry on the CCL by making an update and a clarification that are consistent with the description of items on the AG "List of Biological Agents for Export Control" and the AG "List of Animal Pathogens for Export Control," respectively. Finally, this rule amends the listing for "valves" in the chemical manufacturing equipment entry on the CCL to clarify that it controls "valves" for the "production" of chemicals, as well as "valves" for the "processing" or "containment" of chemicals. The purpose of this rule is to ensure that the AG-related entries on the CCL conform with the wording in the AG Control Lists (as updated by the understandings reached at the 2010 AG Plenary) and to clarify the meaning of terms used in these entries.

DATES: This rule is effective April 20, 2011.

ADDRESSES: Send comments regarding this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (*i.e.,* RIN 0694–AF04)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Elizabeth Sangine, Director, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–3343.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement the understandings reached at the annual plenary meeting of the Australia Group (AG) that was held in Paris, France, from May 31 through June 4, 2010. The AG is a multilateral forum consisting of 40 participating countries that maintain export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The AG periodically reviews items on its control list to enhance the effectiveness of participating governments' national controls and to achieve greater harmonization among these controls.

Consistent with the understandings reached at the 2010 AG Plenary, this final rule amends Export Control Classification Number (ECCN) 2B350 (Chemical manufacturing facilities and equipment) on the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) to reflect the addition of two parenthetical phrases that describe types of "materials" contained in items on the AG "Control List of Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology and Software." Specifically, this rule adds a parenthetical phrase to ECCN 2B350.a .3, .b.3, .c.3, .d.3, .e.3, .g.3, .h.3., and .i.3 to clarify the meaning

of the term "fluoropolymers" in connection with the types of "materials" from which certain chemical manufacturing equipment is made. This parenthetical phrase describes "fluoropolymers" as "polymeric or elastomeric materials with more than 35% fluorine by weight." This rule also adds a parenthetical phrase in ECCN 2B350.i.11 (under the listing for "pumps") to clarify that the "material" "ferrosilicon" refers to "high silicon iron alloys."

In addition to the AG Plenary changes described above, this rule amends ECCN 1C351 (human and zoonotic pathogens and "toxins") and ECCN 1C352 (animal pathogens) on the CCL by updating ECCN 1C351 and clarifying ECCN 1C352 consistent with the controls described in the AG "List of Biological Agents for Export Control" and the AG "List of Animal Pathogens for Export Control," respectively. Specifically, this rule revises the listing for "Chlamydia psittaci" in ECCN 1C351.c.7 by updating the name of the bacterium to read "Chlamydophilapsittaci (formerly known as Chlamydia psittaci)." This rule also revises the listing for the "Lyssa virus" in ECCN 1C352.a.8 by adding a parenthetical phrase to indicate that the virus is also known as "Rabies."

This rule also makes two clarifications to ECCN 2B350, consistent with the controls described in the AG "Control List of Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology and Software." First, this rule amends the introductory text of ECCN 2B350.g ("valves") to clarify that the ECCN controls valves specified therein that are used in the "production" of chemicals, as well as valves that are used in the "processing" or "containment" of chemicals. Second, this rule revises the description of the material "Glass or glasslined (including vitrified or enameled coatings)" in ECCN 2B350.g.4 to read "Glass (including vitrified or enameled coating or glass lining)" to clarify the extent to which valves containing this type of material are controlled under this ECCN.

None of the changes made by this rule alters the scope of the controls in ECCNs 1C351, 1C352, or 2B350.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 12, 2010, 75 FR 50681 (August 16, 2010), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

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

2. 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 requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the **ADDRESSES** section of this rule.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (See 5 U.S.C. 553(a)(1)). Immediate implementation of these amendments is non-discretionary and fulfills the United States' international obligation to the Australia Group (AG). The AG contributes to international security and regional stability through the harmonization of export controls and seeks to ensure that exports do not contribute to the development of chemical and biological weapons. The AG consists of 40 member countries that act on a consensus basis and the amendments set forth in this rule implement agreements reached at the June 2010 plenary session of the AG and other changes that are necessary to ensure consistency with the controls maintained by the AG. Since the United States is a significant exporter of the items in this rule, implementation of this provision is necessary for the AG to achieve its purpose. Any delay in implementation will create a disruption in the movement of affected items globally because of disharmony between export control measures implemented by AG members, resulting in tension between member countries. Export controls work best when all countries implement the same export controls in a timely and coordinated manner.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.Therefore, this regulation is issued in final form.

List of Subjects in 15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

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

PART 774—[AMENDED]

■ 1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.,* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

Supplement No. 1 to Part 774—[Amended]

2. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals,

"Microorganisms" & "Toxins," ECCN 1C351 is amended by removing the name "Chlamydia psittaci", where it appears in paragraph c.7 of the "*Items*" paragraph in the List of Items Controlled section, and adding in its place the name "Chlamydophilapsittaci (formerly known as Chlamydia psittaci)".

3. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, "Microorganisms" & "Toxins," ECCN 1C352 is amended by removing the name "Lyssa virus", where it appears in paragraph a.8 of the "Items" paragraph in the List of Items Controlled section, and adding in its place the name "Lyssa virus (a.k.a. Rabies)".

4. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B350 is amended under the "*Items*" paragraph in the List of Items Controlled section:

a. By adding the parenthetical phrase "(polymeric or elastomeric materials with more than 35% fluorine by weight)" immediately following the word "Fluoropolymers", where it appears in paragraphs a.3, b.3, c.3, d.3, e.3, g.3, h.3, and i.3;

b. By removing the phrase "chemical(s) being processed or contained", where it appears in the introductory text to paragraph g, and adding in its place the phrase "chemical(s) being produced, processed, or contained";

c. By removing the phrase "Glass or glasslined (including vitrified or enameled coatings);", where it appears in paragraph g.4, and adding in its place the phrase "Glass (including vitrified or enameled coating or glass lining)"; and

d. By adding the parenthetical phrase "(high silicon iron alloys)" immediately following the word "Ferrosilicon", where it appears in paragraph i.11.

Dated: April 12, 2011.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2011–9613 Filed 4–19–11; 8:45 am]

BILLING CODE 3510–33–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1217

RIN 3041–AC79

Safety Standard for Toddler Beds

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Improvement Act of 2008 ("CPSIA") requires the United States Consumer Product Safety Commission ("Commission," "CPSC") to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be "substantially the same as" applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The Commission is issuing a safety standard for toddler beds in response to the CPSIA. The safety standard addresses entrapment in bed end structures, entrapment between the guardrail and side rail, entrapment in the mattress support system, and component failures of the bed support system and guardrails. The standard also addresses corner post extensions that can catch items worn by a child.

DATES: The rule will become effective on October 20, 2011, and apply to products manufactured or imported on or after that date. The incorporation by reference of the publications listed in this rule are approved by the Director of the Federal Register as of October 20, 2011.

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SUPPLEMENTARY INFORMATION:

A. Background: Section 104(b) of the Consumer Product Safety Improvement Act

The Consumer Product Safety Improvement Act of 2008 ("CPSIA", Pub. L. 110–314) was enacted on August 14, 2008. Section 104(b) of the CPSIA requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. The law requires that these standards are to be "substantially the same as" applicable voluntary standards or more stringent than the voluntary standards if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The term "durable infant or toddler product" is defined in section 104(f) of the CPSIA as a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years. Toddler beds are one of the products specifically identified in section 104(f)(2) of the CPSIA as a durable infant or toddler product.

In this document, the Commission is issuing a safety standard for toddler beds. The standard is largely the same as a voluntary standard developed by ASTM International (formerly the American Society for Testing and Materials), ASTM F 1821–09, *Standard Consumer Safety Specification for Toddler Beds,* but with several modifications that strengthen the standard.

In the **Federal Register** of April 28, 2010, the Commission published a notice of proposed rulemaking that proposed to incorporate by reference ASTM F 1821–09, *Standard Consumer Safety Specification for Toddler Beds,* with several modifications. 75 FR 22291. The final rule is very similar to the proposed rule. We summarize the proposed rule in section F of this preamble and discuss the final rule (including differences between the proposal and the final rule) in section G of this preamble. The information discussed in this preamble comes from CPSC staff's briefing package for the toddler bed final rule, which is available on the CPSC's Web site at *http://www.cpsc.gov/library/foia/foia11/brief/toddlerfinal.pdf.*

B. The Product

The ASTM voluntary standard defines a toddler bed as any bed sized to accommodate a full-size crib mattress having minimum dimensions of 51⅝ inches in length and 27¼ inches in width and that is intended to provide free access and egress to a child not less than 15 months of age and weighing no more than 50 pounds. The standard includes cribs that can be converted into a toddler bed using a full-size crib mattress.

CPSC staff estimates that there are currently at least 73 known manufacturers or importers supplying toddler beds and/or convertible cribs to the U.S. market. Approximately 48 suppliers are domestic manufacturers (66 percent); 13 are domestic importers (18 percent); 11 are foreign manufacturers (15 percent); and the remaining firm is a foreign supplier that imports from other countries and exports to the United States.

Based on information from a 2005 survey conducted by the American Baby Group, CPSC staff estimates annual convertible crib sales to number about 776,000 and annual sales of toddler beds to total about 819,000. Thus, a total of approximately 1.6 million units (convertible cribs and toddler beds) sold per year might be affected by the toddler bed standard.

C. Incident Data

The preamble to the proposed rule summarized the data for incidents related to toddler beds for the period 2005 to 2009. During this period of time, CPSC staff is aware of 4 fatalities and 81 nonfatal incidents (with and without injuries) related to toddler beds. The data were drawn from two databases: (1) Actual injuries and fatalities of which the Commission is aware; and (2) estimates derived from reports of emergency room treatment in a statistical sample of hospitals that makes up the National Electronic Injury Surveillance System ("NEISS"). More information concerning those incidents is provided in the preamble to the proposed rule. 75 FR 22292 (April 28, 2010).

While preparing the final rule, CPSC staff conducted a new search of CPSC's epidemiological databases and found that 41 toddler bed-related incidents were reported between June 23, 2009 and December 12, 2010. None of these were fatalities. Seventeen incidents reported an injury (primarily bumps, bruises, sprains, and lacerations). One report was of a child nearly choking on loose hardware; another report was of a child suffering a dental injury from falling on the bed; and another report was of a possible case of lead poisoning of a child from chewing paint on the toddler bed. While most of these injuries did not require any major medical intervention, one child was hospitalized for a fractured limb.

In 31 of the 41 incidents, the age of the child was reported. In four of those incidents, a child younger than 15 months was involved. The majority of the incidents (17 out of 31) reported the child's age to be between 17 months and 2 years old. It was not always clear, however, that the age reported pertained to the child who was the regular user of the toddler bed. Occasionally, an incident report stated specifically that the injured child was playing on a sibling's toddler bed; a few others reported that the injured child was playing or climbing on a toddler bed. This indicates that the reported victim's age was not always the age of the regular user of the bed.

Among the 41 incident reports, the following hazards were identified:

- Broken, loose, or detached components of the bed, such as the guardrail, hardware, or other accessories (14 incidents, 3 of which involved injuries);
- Entrapment, mostly of a limb (10 incidents, 8 of which resulted in injuries ranging from fractures and sprains to bruises);
- Product integrity issues, mostly the integrity of the mattress support (4 incidents, 1 of which also reported a finger injury to the child);
- Inadequate mattress fit issues (3 incidents, no injuries);
- Miscellaneous issues, such as a sharp surface, lead paint, bed height/clearance, guardrail inadequacy, and bed accessory involvement (9 reports, 4 of which reported associated injuries).

CPSC staff reviewed data from NEISS for injuries related to toddler beds for 2009 and 2010. A total of 32 such injuries, and no deaths, were reported through NEISS from January 1, 2009 through December 12, 2010. (The number of reported incidents was too small for NEISS to publish national injury estimates for injuries related to toddler beds.) The most frequent characteristics of the 32 toddler bed-related injuries reported through NEISS were:

- Hazard: falls out of the toddler bed to a lower level (78%);
- Injured body part: head and face (59%) and limbs (25%);
- Injury type: head injury (31%) and fractures (22%); and
- Disposition: treated and released (97%).

About 9 percent of the patients were reported to be younger than 15 months old, while about 69 percent were reported to be between 17 months and 2 years old. As was the case for incident data reported through sources other than NEISS, it was not always clear whether the patient injured was the usual user of the toddler bed.

D. The ASTM Voluntary Standard

ASTM F 1821, *Standard Consumer Safety Specification for Toddler Beds,* was first approved in 1997, and revised in 2003 and 2006. The current version, ASTM F 1821–09, was approved on April 1, 2009, and published in May 2009. ASTM has been working on revisions to the standard, but has not approved a subsequent version as of the date of this final rule.

Requirements in the ASTM F 1821–09 Standard for toddler beds include:

- Toddler beds must comply with the CPSC's regulations at 16 CFR part 1303 (ban of lead in paint); 1500.48 (sharp points); 1500.49 (sharp edges); 1500.50 through 1500.53 (use and abuse tests); and part 1501 (small parts that present choking, aspiration, or ingestion hazards), both before and after the product is tested according to the standard.
- Toddler beds must not present scissoring, shearing, or pinching hazards.
- Openings must meet specified dimensions to prevent finger entrapment.
- Openings that will permit passage of a specified block with a wedge on one end are prohibited to protect against torso entrapment.
- The distance that corner posts may extend above the upper edge of an end or side panel is limited.
- Protective components must not be removable with a specified force after torque and tension tests.
- There are requirements for marking and labeling each bed and its retail carton and for warning statements on the bed. There are requirements for the permanency of labels and warnings.
- The mattress must be supported and contained so that it does not move horizontally to cause an opening that will allow the passage of the wedge block when tested.
- There are tests for the physical integrity of the mattress support system and its attachments and the side rails.
- There are wedge block tests for openings in the guardrails and end structures to test whether they could cause entrapment.
- There is a probe test to protect against entrapment in partially bounded openings in the bed.
- Instructions must be provided with the bed.
- Warning statements are required on the bed to address entrapment and strangulation hazards.

E. Response To Comments on the Proposed Rule

In the **Federal Register** of April 28, 2010, we published a proposed rule for toddler beds (75 FR 22291). We received 13 comments on the proposed rule. Four of the comments stated general support for the proposed rule, with minor changes in wording to emphasize the hazard. The other nine comments raised specific issues that are addressed by topic below.

We describe and respond to the comments in section E of this document and also describe the final rule. To make it easier to identify the comments and our responses, the word "Comment," in parentheses, will appear before the comment's description, and the word "Response," in parentheses, will appear before our response. We also have numbered each comment to help distinguish between different comments. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value, or importance, or the order in which it was received.

1. Guardrail Designs

(Comment 1)—One commenter addressed guardrail designs for toddler beds. The commenter suggested that replacing spindles on the toddler bed guardrails with a full piece of wood or material would decrease the risk of children getting a body part entrapped in the guardrail.

(Response 1)—We acknowledge that currently, some manufacturers use solid panel guardrails on their toddler beds. However, mandating that all guardrails be solid panels may limit the utility of converting some types of cribs to toddler beds. Although limb entrapments might be reduced if guardrails were limited to solid panels, the incident data reported in the preamble to the proposed rule (75 FR at 22292) indicate that only three of the reported injuries involving entrapment between slats were fractures of limbs, and the majority of the injuries were bumps and bruises. Only one fracture directly involved a guardrail. This occurred when the occupant fell from the bed after the occupant's leg became entrapped in the guardrail slats. The other two fractures involved entrapment between slats located on the headboard and footboard. Therefore, we encourage manufacturers to consider solid panel guardrails, but decline to make this a requirement in the final rule.

2. Guardrail Height

(Comment 2)—One commenter disagreed with the guardrail height specified in the proposed rule. (The proposed rule stated that the guardrail height must be 5 inches above the top of the mattress.) The commenter suggested specifying that the guardrail must be 9 inches above the mattress support.

(Response 2)—We disagree with a guardrail height of 9 inches above the mattress support. Because the majority of full-size crib mattresses are approximately 6 inches thick, a guardrail height of 9 inches above the mattress support would provide a barrier of only 3 inches approximately, which is not sufficient to prevent children from rolling/falling off the bed. Similarly, guardrails on bunk beds are intended to prevent children from rolling/falling off the bed. ASTM F 1427–07, *Standard Consumer Safety Specification for Bunk Beds,* requires a 5-inch barrier above the top of the mattress to prevent a sleeping child from rolling and falling off the bed. Therefore, the final rule does not change the proposed guardrail height provision, except to specify that, if no maximum mattress thickness is stated, the guardrail height is to be based on a 6 inch thick mattress.

3. Guardrail Structural Integrity Testing

(Comment 3)—One commenter disagreed with the proposed test methodology for guardrail structural integrity. The commenter suggested: (1) Testing at the most onerous point instead of at three locations; (2) specifying the contact area of the force and how far from the top of the rail this force should be applied; and (3) specifying the height of the bed rail or measuring from the mattress support platform so the measurement will be consistent.

(Response 3)— We agree with the commenter's suggested test methodology for applying the test force to the guardrail. The language in the proposed rule was adopted from the portable bed rail structural integrity test, as stated in section 8.1 of ASTM F 2085–09, *Standard Consumer Safety Specification for Portable Bed Rails.* After the proposed rule had been published, an ASTM task group developed the alternative language that the commenter suggests. This suggested language is more applicable to the typical geometry of toddler bed guardrails as opposed to portable bed rails. For example, the proposed rule would require applying a horizontal force at three points along the uppermost horizontal edge of the rail (*i.e.,* in the center of the upper rail and on the sides of the rail directly above each of the outermost legs). The majority of toddler bed guardrails only have one outermost leg or free end. The other end of a toddler bed guardrail typically is secured to a corner post attaching the headboard to the guardrail. Each of the guardrail failure incidents that have been reported involved a guardrail detaching or fracturing at the corner post attachment point. We agree with the commenter that applying a single force above the rail's free end is more onerous than the proposed test and exerts the greatest force on the guardrail's attachment points. Furthermore, the commenter's suggestion provides improved test repeatability by specifying a procedural method for applying the test force to a guardrail free end with a significantly contoured geometry. The final rule uses the language suggested by the commenter instead of the proposed wording for the guardrail structural integrity test (§ 1217.2(c)(5)(i)).

(Comment 4)— Another commenter stated that there was not sufficient justification for the proposed 50-pound force requirement and suggested a 40-pound force instead. The commenter stated that the incident data only refers to two injuries from broken components and that the incidents do not mention that guardrails were involved. The commenter further stated that only a fraction of a 50-pound force would be used by a sleeping child inadvertently rolling off the bed, and that a child pulling on the guardrail from outside of the bed in play would tip most toddler beds over before reaching the proposed 50-pound force.

The commenter also requested an exemption for removable guardrails or guardrails that could be removed without the use of tools.

(Response 4)— We disagree with replacing the 50-pound force requirement with a 40-pound force requirement and disagree with the commenter's claim that there have not been any incidents involving a guardrail breaking or detaching from a toddler bed. In one reported incident, the occupant fell to the floor and received a bruise and laceration to the head. We also disagree with the commenter that 50 pounds is an excessive amount of force. We have received several detailed reports of children climbing on, or leaning against, guardrails, which resulted in subsequent structural failure of the guardrail or its means of attachment.

We tested several different makes and models of toddler beds to the 50-pound force requirement, incorporating the commenter's suggested test methodology and applying the test force 11 inches above the top of the mattress support. We used the guardrail structural integrity test suggested by the commenter and the language in the proposed rule to test five toddler beds: two plastic and three wooden beds. Two of the five toddler beds chosen for testing had been involved in incidents where the guardrail detached or broke when the occupant leaned on the guardrail. The guardrails on all five toddler beds successfully withstood the application of 40 pounds (the force suggested by the commenter). Conversely, when performing the test as stated in the proposed rule, only the guardrails on the three toddler beds that had not been involved in incidents were able to withstand application of the 50-pound force. The guardrail on one toddler bed that had been involved in an incident broke at one of its attachment points at approximately 42 pounds. The guardrail of the other bed that had been involved in an incident withstood the initial application of 50 pounds, but detached from the toddler bed within the first 3 seconds after maintaining 50 pounds. Based on this testing, we concluded that the 50-pound

force is appropriate and adequate to identify guardrails that could be susceptible to detachment. The final rule retains the 50-pound force requirement.

Finally, we disagree with exempting removable guardrails from the guardrail structural integrity test. A guardrail should be attached to a toddler bed with sufficient means to provide substantial rigidity. Guardrails that would require only the consumer's strength to install would be susceptible to the foreseeable forces that a toddler could apply to the guardrail. Such a guardrail would not be sufficient to protect a child.

4. Spindle/Slat Strength of Guardrails, Side Rails, and End Structures

(Comment 5)—Two comments addressed the testing requirements for the spindles/slats. One commenter suggested that language in the toddler bed standard regarding slat strength should match the language in the CPSC's new crib standards. A second commenter agreed with the proposal to test 25 percent of slats at 80 pound-force, but questioned the rationale for testing the remaining 75 percent of slats at 60 pound-force.

(Response 5)—We agree that the toddler bed spindle/slat strength test should be consistent with the full-size and non-full-size crib spindle/slat strength requirements in ASTM F 1169–10 and ASTM F 406–10a, respectively, referenced in the recently published mandatory requirements, 75 FR 81766 (Dec. 28, 2010), to be codified at 16 CFR part 1219 and 16 CFR part 1220, respectively. This will harmonize the spindle/slat strength requirements for cribs and toddler beds and provide consistency and clarity because many toddler beds are converted from cribs, and many toddler bed manufacturers also manufacture cribs. Therefore, the final rule modifies the spindle/slat strength test language to reflect the changes made in the full-size and non-full-size crib standards. Changing the spindle/slat strength requirement to be consistent with the requirement in the crib standard means that no slats would be tested at 60 pound-force (the crib standard requires testing 25 percent of slats at 80 pound-force and then another 25 percent of slats at 80 pound-force if needed, with no more than 50 percent of the slats tested).

5. Mattress Retention and Warning

(Comment 6)—One commenter requested that the mattress retention requirements, corresponding tests, and related warning labels be removed from the standard because they are now obsolete.

(Response 6)—We agree with the commenter that the mattress retention sections 6.1, 6.1.1, 6.1.2, test method section 7.1, and warning section 8.4.4.2, as identified in ASTM F 1821–09 and referenced in the proposed rule, are obsolete. Accordingly, we have removed those sections from the final rule. The original intent of these sections was to ensure that the mattress did not horizontally or vertically dislocate enough to allow a child access to potentially dangerous mattress support openings, which could entrap a child's torso or head, possibly resulting in a fatality. The current ASTM standard, ASTM F 1821–09, includes provisions to reduce entrapment hazards by testing for hazardous openings, not only in the mattress support system, but also in the bed's guardrails and end structures, including the headboard, footboard, and any point where these components could be joined. These requirements are more stringent than the mattress retention requirements, making the mattress retention provisions unnecessary. Accordingly, we have eliminated these requirements from the final rule.

6. Warning Labels

(Comment 7)—Two commenters recommended that the full-size crib and toddler bed standards be harmonized with respect to the required warnings because many full-size cribs convert into toddler beds and, therefore, would require the warnings specified in both standards. The commenters argued that such harmonization would eliminate redundant warning statements, making the warnings more effective. One of these commenters suggested that specifying the content, but not the exact wording of the required warnings in the proposed toddler bed rule, would be one method of harmonizing these standards.

(Response 7)—We agree that failing to harmonize warnings in the toddler bed rule and in the full-size crib standard could introduce redundant and extraneous warnings on convertible cribs, and that this might diminish the effectiveness of the warnings. For example, the strangulation warning requirements for toddler beds specified in the proposed rule are redundant with the strangulation warning requirements specified in section 8.4.1.2 of ASTM F 1169–10, *Standard Consumer Safety Specification for Full-Size Baby Cribs.* Additionally, the entrapment warning requirements for toddler beds specified in the proposed rule do not apply to full-size cribs that might convert to a toddler bed. Thus, we have revised the final rule's entrapment and strangulation warning requirements for toddler beds to apply only to toddler beds that do not convert from a crib. Toddler beds that convert from a crib must use the warnings specified in ASTM F 1169–10, incorporated by reference at 16 CFR part 1219, *Safety Standard for Full-Size Baby Cribs,* with additional text that specifies the minimum mattress thickness, as detailed below.

The proposed rule for toddler beds, shortened the warning for the minimum mattress size that appears in section 8.4.4.1 of ASTM F 1821–09 to state: "ONLY use full-size crib mattress of the recommended size," based on our understanding that section 8.3.2 of that standard already required both the bed and its retail carton to be clearly and legibly marked with the intended mattress size (75 FR at 22294 through 22295). Since then, we have discovered that section 8.3.2 of ASTM F 1821–09 only requires the retail carton to be marked with the intended mattress size. Given this, we believe that it would be reasonable to maintain a mattress size warning similar to that specified in section 8.4.4.1 of ASTM F 1821–09 in the final rule. Section 8.1.3 of the full-size crib standard, ASTM F 1169–10, specifies the exact wording of a warning statement regarding the intended mattress size. The language used in this warning is very similar to the warning content specified in 8.4.4.1 of ASTM F 1821–09.

Therefore, the final rule provides the following mattress size warning requirement:

⚠CAUTION
ENTRAPMENT HAZARD
To avoid dangerous gaps, any mattress used in this bed must be a full-size crib mattress at least 51 ⅝ in. (1310 mm) in length, 27 ¼ in. (690 mm) in width, and 4 in. (100 mm) in thickness.

Because full-size cribs that convert to toddler beds require the exact warning statement specified in section 8.1.3 of the full-size crib standard, ASTM F 1169–10, requiring the warning statement on all toddler beds would mean that convertible cribs would need two warning statements about mattress size that are largely redundant. Thus, as in the case of the entrapment and strangulation warnings, the final rule provides that the warning requirement for mattress size for toddler beds apply only to toddler beds that do not convert from a crib. To address the fact that the full-size crib standard specifies a maximum mattress thickness of 6 inches, but the toddler bed standard specifies a minimum mattress thickness of 4 inches, the final rule provides that toddler beds that convert from a crib must include additional text indicating that a minimum mattress thickness of 4 inches is required. This language would be included at the end of the warning statement specified in section 8.1.3 of the full-size crib standard, ASTM F 1169–10.

(Comment 8)—One commenter generally supported the proposed warning requirements but suggested that the statement, "*ALWAYS follow assembly instructions,*" is not useful on the product itself. The commenter suggested that it would be more appropriate for this statement to be located on the packaging and at the top of the assembly instructions.

(Response 8)—We disagree with the commenter's assessment and believe that locating this warning statement on the product would be more beneficial than locating it either on the packaging or at the top of the assembly instructions. Generally, a warning should be located where the consumer is likely to be looking when the warning is needed. The warning is intended to alert consumers of the need to follow the assembly instructions, and the target audience for the message would be consumers who otherwise would not follow such instructions. For this reason, a warning located at the top of the assembly instructions is unlikely to be noticed or read by those who need the information most. A warning located on the product itself, however, is more likely to be noticed by these consumers because all consumers must interact with the product to assemble it, even if they do not examine the assembly instructions or product packaging beforehand. The final rule does not make any changes related to the placement of this warning statement.

(Comment 9)—One commenter suggested that the warning statement specified in section 8.4.4.2 of ASTM F 1821–09 and referenced in the preamble to the proposed rule (75 FR at 22294), concerning the use of a guardrail as a means of containing the mattress, should be removed from the final rule. The commenter asserted that the warning statement, as well as the mattress retention requirements on which the warning statement is based (specified in sections 6.1, 6.1.1, and 6.1.2), are now obsolete.

(Response 9)—We agree that the warning requirement regarding the use of a guardrail to contain the mattress is obsolete. The proposed rule would specify two alternative entrapment warnings because of the requirement of a warning about guardrail use. Therefore, removing this obsolete warning statement about guardrail use eliminates the need for two alternative warning labels that address the entrapment hazard.

7. Legal Authority

(Comment 10)—A commenter objected to incorporating the ASTM standard by reference into the published regulation, arguing that the law requires that the terms of legal requirements must be freely available to the public, citing *Banks* v. *Manchester,* 128 U.S. 244, 9 S. Ct. 36, 40 (1888). The commenter also cited *Veeck* v. *Southern Building Code Congress International, Inc. ("SBCCI"),* 293 F.3d 791 (5th Cir. 2002).

(Response 10)—The cases to which the commenter refers do not apply to the rules issued under section 104 of the CPSIA. In *Banks,* the court held that a reporter authorized by the State of Ohio to publish the state's judicial opinions was not authorized by Federal law to obtain a copyright on the opinions because he was not the author of those opinions. That is not an issue here where ASTM already has copyright protection for its standards. In the *Veeck* case, Veeck posted the local building codes of two Texas towns on his Web site. The text of the building codes was created and copyrighted by a building code organization and was adopted by the towns as law. The court stated: "As *law,* the model codes enter the public domain and are not subject to the copyright holder's exclusive prerogatives. As model codes, however, the organization's works retain their protected status." *Id.* at 793 (emphasis in the original).

The building code organization had encouraged local government entities to adopt its code into law without any cost to the government entity. *Id.* at 794. In contrast, ASTM has not given its permission for the CPSC to adopt its standards. Thus, the cases cited by the commenter do not require us to publish the copyrighted ASTM standard in the Code of Federal Regulations. Because the U.S. government is not immune from suit for copyright infringement, *see Schnapper* v. *Foley,* 667 F.2d 102 (DC Cir. 1981, *cert. denied,* 102 S. Ct. 1448, the CPSC could be subject to a legal challenge if it copied the ASTM standard and published it in the **Federal Register** without permission from ASTM.

8. Validity of Data

(Comment 11)— One commenter observed that the majority of the incident data concerning fatalities involved children who were less than 15 months old (*i.e.,* the intended minimum age for toddler beds) or involved a cord that was a strangulation risk. The commenter noted that the preamble to the proposed rule had acknowledged this, but the commenter expressed concern that CPSC staff appeared to be "inflating the number of incidents and that data cited as 'related to' or 'associated with' are insufficient to rely upon in the absence of data and analysis that establishes that the products proximately caused the incident or injury complained of."

A second commenter expressed concern that although the current standard is intended to address children "not less than 15 months and weighing no more than 50 pounds," the "National Injury Estimates reported in the NPR identified victims between 4 months and 6 years." The commenter believed that this difference could affect the basis for the standard.

(Response 11)—The commenters misinterpret the discussion of incident data in the preamble to the proposed rule. The discussion was intended to provide an overall view of problems associated with toddler beds that are reported to the CPSC. The discussion of the four fatalities noted that three of the decedents were under the age intended for use of the product and explained that the product involvement in the fourth fatality was incidental. The "National Injury Estimates" are used to identify the injuries associated with toddler beds; they are not used to change the age/weight designations in the standard. Age requirements for users and placement of toddler beds in relation to window cords are addressed in the warning labels specified in the current voluntary standard; therefore, these issues are relevant in evaluating the voluntary standard. In addition, the discussion in the proposed rule used appropriate qualifying statements (such as "associated with" and "related to"). These statements are intended to qualify the types of incidents reported to the CPSC and do not "inflate" the data. This approach reflects the statutory directive of section 104 of the CPSIA to issue a consumer product safety standard for toddler beds that is substantially the same as, or more stringent than, the voluntary standard. The portions of the final rule that are more stringent than the ASTM standard are based upon human factors and engineering analyses, which concluded that the more stringent provisions would reduce further the identified risks of injury associated with toddler beds.

F. Summary of Commission-Proposed Modifications

When the Commission issued its notice of proposed rulemaking in April 2010, the Commission proposed incorporating by reference ASTM F 1821–09, *Standard Consumer Safety Specification for Toddler Beds,* with four modifications that are described below.

The Commission proposed that guardrails be a minimum height of 5 inches above the manufacturer's recommended sleeping surface. This requirement was intended to help prevent falls from the bed.

The Commission proposed to add a test for the overall stability of guardrails. The proposed test requires applying a 50-pound force to the center along the length of the guardrail and directly over each of the outermost legs of the guardrail. The test was intended to keep children from falling out of bed and to ensure that guardrails remain intact when children lean against them or use them to climb into bed. The basis for selecting a 50-pound force was that 50 pounds is the maximum weight of a child intended to use a toddler bed.

The Commission proposed modifying the ASTM standard's test for spindles/slats on guardrails, side rails, and end structures. ASTM F 1821–09 uses a torso wedge and a 25-pound force on guardrails and end structures in the most adverse orientation to ensure that slats and spindles do not break and allow an opening in which a child could become entrapped. The Commission proposed modifying this provision to test 25 percent of all slats (rather than just those on the end structure and guardrails) using an 80-pound force. The 80-pound force was selected based on tests that CPSC staff performed on 20 cribs or toddler beds. (Details of this testing are provided in the preamble to the proposed rule, 75 FR 22293 (April 28, 2010).) The Commission proposed that the remaining 75 percent of slats be tested with a 60-pound force.

The Commission also proposed changes to the warning requirements in ASTM F 1821–09. The Commission proposed: (1) Changing the warning specified in 8.4.3 of ASTM F 1821–09 to separate this into two warnings, one for entrapment and one for strangulation; (2) providing two options for entrapment warnings: one for beds where the guardrail is the means of mattress containment and one where the guardrail is not; and (3) removing provisions in 8.4.4 of ASTM F 1821–09 concerning warning statements addressing issues (but not specifying wording and layout) because these warnings would be redundant and unclear with the warnings the Commission proposed to specify.

G. Assessment of the Voluntary Standard and Description of the Final Rule

1. Section 104(b) of the CPSIA: Consultation and CPSC Staff Review

Section 104(b) of the CPSIA requires the Commission to assess the effectiveness of the voluntary standard in consultation with representatives of consumer groups, juvenile product manufacturers, and other experts. This consultation process for the toddler bed standard began in late 2009, before we published the proposed rule. Our consultations with ASTM are ongoing.

2. Description of the Final Rule, Including Changes to the ASTM Standard's Requirements

While most requirements of ASTM F 1821–09 are sufficient to reduce the risk of injury posed by toddler beds, we have determined that modifying or adding several provisions to the standard will make the requirements more stringent and further reduce the risk of injury. The following discussion describes the final rule, including changes to the ASTM requirements, and notes any changes from the proposed rule.

a. Scope, Application, and Effective Date (§ 1217.1)

The final rule states that part 1217 establishes a consumer product safety standard for toddler beds manufactured or imported on or after a date which would be six months after the date of publication of a final rule in the **Federal Register**. We received no comments on this provision and are finalizing it without change.

b. Incorporation by Reference (§ 1217.2(a) and (b))

Section 1217.2(a) provides language to incorporate by reference ASTM F 1821–09, *Standard Consumer Safety Specification for Toddler Beds.* The standard also incorporates by reference the labeling requirements in section 8 of ASTM's full-size crib standard (ASTM F 1169–10, *Standard Consumer Safety Specification for Full-Size Baby Cribs*) because CPSC's toddler bed standard requires toddler beds that convert from cribs to comply with the labeling requirements in the ASTM crib standard. Section 1217.2(a) also provides information on how to obtain a copy of the ASTM standards or to inspect a copy of the standards at the CPSC.

We received no comments on this provision. We are changing it to include the language necessary to incorporate by reference the labeling provisions of the ASTM crib standard.

c. Mattress Retention Provisions (§ 1217.2(c)(1), (4), and (6))

The final rule removes provisions concerning mattress retention (in the ASTM standard, these are performance provisions in sections 6.1 through 6.1.2; test method provisions in sections 7.1.2 through 7.1.6; warning provision in section 8.4.4.2). As explained in response to a comment in section E.5 of this preamble, the mattress retention provisions are no longer necessary because of other changes in the standard that better address entrapment protection, which was the purpose of the mattress retention provisions. This is a change from the proposed rule.

d. Guardrails (§ 1217.2(c)(2) and (5)(i))

The final rule makes several additions or modifications to ASTM F 1821–09 to strengthen the guardrail provisions. As

in the proposal, the final rule requires that the upper edge of the guardrail be at least 5 inches above the manufacturer's recommended sleeping surface. The final rule adds a sentence to clarify that if the manufacturer does not specify a mattress thickness, the guardrail height must be based on a mattress thickness of 6 inches. We chose 6 inches because many toddler beds convert from cribs, and the full-size crib standard specifies 6 inches as the maximum thickness allowed for a crib mattress. In response to a comment discussed in section E.3 of this preamble, the final rule modifies the test methodology that we had proposed. These changes, suggested by a commenter, make the test more suitable for the geometry of a guardrail (as opposed to that of a portable bed rail) and improve repeatability of the test. With these changes, the test is better suited to toddler bed guardrails and thus, will better address the risk of injury.

e. Spindle/Slat Static Load Strength (§ 1217.2(c)(3) and (5)(ii))

As discussed in section F of this preamble, we had proposed adding requirements for testing the spindles/slats on guardrails, side rails, and end rails. These provisions in the final rule are largely the same as proposed. However, we received a comment (discussed in section E.4 of this preamble) asking that spindle/slat requirements for toddler beds match such requirements for cribs, which are stated in ASTM's full-size crib standard, ASTM F 1169–10. In response to this comment, we have revised the spindle/slat requirements so that these provisions are more consistent with the requirements for cribs. Like the crib rule, the final rule requires testing 25 percent of spindles/slats at 80 pound-force and then another 25 percent of spindles/slats at 80 pound-force, if needed, with no more than 50 percent of the spindles/slats tested. The 80 pound-force is applied for a period of 2 to 5 seconds midway between the top and bottom of the spindle/slat being tested and is maintained for 10 seconds. The final rule also specifies, as provided in the crib standard, how to test toddler beds that may contain folding sides. The modifications make the standard in the final rule more stringent than ASTM F 1821–09 because ASTM F 1821–09 does not contain any requirements concerning spindle/slat strength.

f. Warning Label Requirements (§ 1217.2(c)(6))

As noted in the preamble to the proposed rule, the warning provisions in ASTM F 1821–09 are confusing and redundant, *see* 75 FR 22293–96. We proposed that the warning be separated into two warnings, one to address entrapment, and one to address strangulation.

Like the proposal, the final rule requires that specified warnings addressing entrapment and strangulation appear on toddler beds. The final rule also requires a specified warning concerning mattress size to address potential entrapment in gaps surrounding the mattress. As noted in section E.6 of this preamble, the Commission agrees with a commenter who asked that warning labels on toddler beds be harmonized with warning labels required for cribs because many toddler beds convert from cribs. Accordingly, the final rule requires toddler beds that convert from cribs to meet the warning requirements specified in the full-size crib standard, ASTM F 1169–10 (incorporated by reference at 16 CFR part 1219, *Safety Standard for Full-Size Baby Cribs*) instead of using the warnings specified in the toddler bed standard. The mattress thickness requirements are different for cribs and for toddler beds. In order to avoid requiring a convertible crib to have two warnings concerning mattress size (one to address the crib requirements and one to address the toddler bed requirements), the final rule provides that toddler beds that convert from cribs must provide the mattress size warning required by the crib standard and add a line to the warning specifying that the minimum mattress thickness is 4 inches. The modifications to ASTM F 1821–09 make the standard more stringent. Separating the strangulation and entrapment warnings should increase consumers' understanding of the connection between the relevant behaviors and hazards. In addition, the entrapment hazard warning emphasizes the group most at risk and the consequences of the hazard, as well as provides a more explicit description of how the entrapment hazard occurs.

H. Effective Date

The Administrative Procedure Act ("APA") generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). The preamble to the proposed rule indicated that the standard would become effective six months after publication of a final rule (75 FR at 22296). We did not receive any comments on the proposed six-month effective date. The final rule provides a six-month effective date (as measured from the date of publication of this final rule in the **Federal Register**).

I. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") generally requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses, and prepare an initial regulatory flexibility analysis. 5 U.S.C. 603. The RFA further requires agencies to consider comments they receive on the initial regulatory flexibility analysis and prepare a final regulatory flexibility analysis describing the impact of the final rule on small entities and identifying alternatives that could reduce that impact. *Id.* 604. This section summarizes CPSC staff's final regulatory flexibility analysis for the toddler bed standard. (CPSC staff's final regulatory flexibility analysis can be found at Tab F of the staff's briefing package.)

1. The Market

There are currently at least 73 known manufacturers or importers supplying toddler beds (including convertible cribs) to the U.S. market. Approximately 48 suppliers are domestic manufacturers (66 percent); 13 are domestic importers (18 percent); 11 are foreign manufacturers (15 percent); and the remaining firm is a foreign supplier who imports from other countries and exports to the United States.

Under U.S. Small Business Administration ("SBA") guidelines, a manufacturer of toddler beds or convertible cribs is small if it has 500 or fewer employees; an importer is considered small if it has 100 or fewer employees. Based on these guidelines, 11 of the domestic importers and 34 domestic manufacturers known to be supplying the U.S. market are small. There are an additional eight domestic manufacturers of unknown size, most (at least seven) of which are likely to be small. However, there are probably additional unknown small manufacturers and importers operating in the U.S. market as well.

The Juvenile Products Manufacturers Association ("JPMA"), the major U.S. trade association that represents juvenile product manufacturers and importers, runs a voluntary certification program for several juvenile products. Approximately 29 firms supplying toddler beds and/or convertible cribs to the U.S. market make or import products that comply with ASTM F 1821–09 (40 percent). Of the small domestic businesses, 11 manufacturers (27 percent) and 6 importers (55 percent) make or import products that are JPMA-certified as ASTM compliant.

Additionally, there are two small manufacturers that claim compliance with the ASTM standard that are not part of the JPMA Certification Program.

The most recent U.S. birth data shows that there are approximately 4.2 million births per year (this figure has been updated since publication of the proposed rule). The majority of these babies eventually use cribs for sleeping purposes, although there is some evidence that play yards are becoming a common substitute. In fact, according to a 2005 survey conducted by the American Baby Group (*2006 Baby Products Tracking Study*), 22 percent of new mothers own convertible cribs. Approximately 16 percent of convertible cribs were handed down or purchased secondhand. If these rates remained constant, this suggests annual convertible crib sales would be about 776,000 ($0.22 \times 0.84 \times 4.2$ million births per year) currently. (These estimates are intended to provide a general characterization of the market. They are not intended to provide estimates of future sales.) Of those consumers with nonconvertible cribs, some proportion of them eventually will use toddler beds when their children get older. However, consumers may choose to use a twin or larger bed (and possibly use portable bed rails) rather than a separate toddler bed. Assuming that approximately 50 percent of consumers elect to use toddler beds, and assuming that approximately 50 percent buy them new, this would mean that around 819,000 toddler beds are sold per year (0.78 percent nonconvertible cribs $\times$ 4.2 million births $\times$ 0.5 percent use toddler beds $\times$ 0.5 percent buy them new). Adding this number to the estimate of convertible cribs, yields a total of approximately 1.6 million units (convertible cribs and toddler beds) sold per year that might be affected by the toddler bed standard.

2. Impact on Small Business

There are 73 firms currently known to be marketing toddler beds and/or convertible cribs in the United States. Of these, 6 are large domestic manufacturers; 1 is a domestic manufacturer of unknown size; 2 are large domestic importers; and 12 are foreign firms. The impact on the remaining 52 small firms (34 small domestic manufacturers, 7 presumed to be small domestic manufacturers, and 11 small domestic importers) is the focus of the remainder of this analysis.

a. Small Domestic Manufacturers

For the most part, the impact of the final rule on small manufacturers will differ based on whether they currently make products that comply with the voluntary ASTM standard. If they do not, as is the case with 28 firms, the impact on them could be significant. These firms likely would have to undergo product redevelopment. As explained below, the cost of such an effort for toddler beds/convertible cribs is unknown, but could be substantial for some firms.

Product development costs include: product design, development, and marketing staff time; product testing; and focus group expenses. These costs can be very high, particularly when there are multiple products; but they can be treated as new product expenses and amortized. Other one-time costs include the retooling of manufacturing equipment, which could also be recouped gradually over the sales of numerous units. There also are expected to be increased costs of production. Producing toddler beds and convertible cribs that have greater structural integrity, stronger slats/spindles, and higher guardrails may require additional raw materials or possibly heavier materials. In addition to increasing the costs of production, this could increase shipping costs as well.

Even if these firms are able to pass on some of their increased costs to consumers, the impact still could be considerable. This is because firms manufacturing toddler beds and convertible cribs are not simply competing against other producers of toddler beds and convertible cribs. They are competing against producers of substitute products as well, firms that would not be covered under the recommended standard. Toddler beds compete with twin (or possibly larger) beds, which can be used with portable guardrails. Similarly, convertible cribs compete with adult-size beds when children are older and with standard cribs for younger children.

There is expected to be less impact on the 13 firms that are known to produce products that comply with the current voluntary standard. It is believed that at least some of these firms may be able to comply with the new requirements without modifying their products (except for labeling). The remaining firms may opt to redesign their product(s) as well, which again would result in some one-time costs, as well as a possible increase in production costs. It is also possible, however, that they may be able to select a potentially less expensive option to address some of the requirements that differ from the ASTM standard; modifying the materials used may be sufficient for many products, and the associated cost is not expected to exceed a few dollars per unit.

Two of the 28 manufacturers supplying noncompliant products would be affected differently by the final rule. They are firms that take already-manufactured toddler beds and convertible cribs, decorate them (often with original artwork), and sell them as a final product. Because these firms do not make the underlying toddler beds/convertible cribs, the impact of the final rule on them will be the same as on an importer. They would need to find a new supplier of compliant products if their current supplier does not make the necessary modifications. The new products presumably would be higher quality, as well as more expensive, because some of the original manufacturer's production costs (and possibly redevelopment costs) will be passed on to these firms.

The scenario described above assumes that only those firms that produce products which are JPMA-certified or claim ASTM compliance will pass the voluntary standard's requirements. This is not necessarily the case. We have identified many cases in which products not certified by JPMA actually comply with the relevant ASTM standard. However, there is insufficient evidence of this for toddler beds/convertible cribs to quantify this impact. To the extent that some products may already comply with non-U.S. standards, the effect of the new and modified requirements may be less substantial than outlined above. However, there is insufficient information to quantify this effect.

b. Small Domestic Importers

The majority of small domestic importers (6 out of 11) supply products that comply with the current voluntary standard. We believe that at least some of these firms will not need to make any additional product modifications to meet the final rule (except for labeling). However, those whose products do require modifications will need to find an alternate supplier if their existing one does not come into compliance. The new products presumably will be more expensive, as well as higher in quality. However, the actual price increase is unknown and is likely to vary based upon the degree of modifications required. All of the remaining five firms supplying products that do not comply with the ASTM voluntary standard would need to find suppliers whose products comply with the standard or ensure that their current supplier made the modifications necessary to comply. Depending upon the degree to which their toddler beds and convertible cribs are out of compliance with the voluntary standard, the price increase

(as well as the increases in quality and safety) could be relatively high. To the extent that some of these firms actually may comply with ASTM F 1821–09 or one or more of the new/modified requirements in the final standard, the impact of the final rule would be lower.

For the most part, the impact on importers tends to be smaller than on manufacturers. Even if importers respond to the rule by discontinuing the import of their noncomplying toddler beds and convertible cribs, either replacing them with a complying product or another juvenile product, deciding to import an alternative product would be a reasonable and realistic way to offset any lost revenue. The one exception would be firms for which convertible cribs/toddler beds and their associated products (*i.e.,* matching furniture) form the core of their product line. For these firms, a substantial price increase possibly could drive them out of business or require them to rebuild their business based on alternative products.

3. Alternatives

Under section 104 of the CPSIA, the primary alternative that would reduce the impact on small entities is to make the voluntary standard mandatory with no modifications. For small domestic manufacturers that already meet the requirements of the voluntary standard, adopting the standard without modifications may reduce their costs relative to the final rule, but only marginally. Similarly, limiting the requirements of the rule to those already in the voluntary standard probably would have little beneficial impact on small manufacturers that do not currently meet the requirements of the voluntary standard. This is because, for these firms, most of the cost increases would be associated with meeting the requirements of ASTM F 1821–09, rather than the changes associated with the final rule. The difference for importers also is likely to be minimal, whether they supply products that comply with the voluntary standard or not,

A second alternative would be to set a later effective date. This would allow suppliers additional time to modify and/or develop compliant toddler beds and convertible cribs, thereby spreading the associated costs over a longer period of time.

4. Conclusion

It is possible that the final rule could have a significant impact on a substantial number of small entities. Firms supplying products that already comply with the voluntary standard may not need to make any product modifications to meet the final rule, but this group is known to include only 42 percent of the small firms identified. Some of these firms and all other firms will need to make at least some modifications to their toddler beds and convertible cribs to comply with the final rule. The extent of these costs is unknown; but because product redevelopment likely would be necessary in many cases, it is possible that the costs could be large and have the potential to reduce firms' ability to compete with substitute products.

A few small businesses have product lines consisting entirely or primarily of toddler beds, convertible cribs, and related products (such as accompanying furniture). These firms may be affected disproportionately by any standard. If the cost of developing (or importing) a compliant product proves to be a barrier for these firms, the loss of toddler beds and convertible cribs as a product category could be significant and may not be mitigated easily by the sale of other juvenile products.

J. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement because they "have little or no potential for affecting the human environment." 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

K. Paperwork Reduction Act

This rule contains information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The preamble to the proposed rule (75 FR at 22296 through 22297) discussed the information collection burden of the proposed rule and specifically requested comments on the accuracy of our estimates. We did not receive any comments concerning the information collection burden of the proposal, and the final rule does not make any changes to that burden. We have applied to the U.S. Office of Management and Budget (OMB) for a control number for this information collection, and we will publish a notice in the **Federal Register** providing the number when we receive approval from the OMB.

L. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a "consumer product safety standard under [the CPSA]" is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the State requirement is identical to the Federal standard. (Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances.) Section 104(b)(1)(B) of the CPSIA refers to the rules to be issued under that section as "consumer product safety standards," thus implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule issued under section 104 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when it becomes effective.

M. Certification

Section 14(a) of the CPSA imposes the requirement that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program or, for children's products, on tests on a sufficient number of samples by a third party conformity assessment body accredited by the Commission to test according to the applicable requirements. As noted in the discussion above concerning preemption, section 104(b)(1)(B) of the CPSIA refers to standards issued under that section as "consumer product safety standards." By the same reasoning, such standards also would be subject to section 14 of the CPSA. Therefore, any such standard would be considered a consumer product safety rule, to which products subject to the rule must be certified.

Because toddler beds are children's products, they must be tested by a third party conformity assessment body whose accreditation has been accepted by the Commission. Elsewhere in this issue of the **Federal Register**, we have issued a notice of requirements to explain how laboratories can become accredited as third party conformity assessment bodies to test to the new toddler bed standard. (Toddler beds also must comply with all other applicable CPSC requirements, such as the lead content requirements of section 101 of the CPSIA, the phthalate content requirements in section 108 of the CPSIA, the tracking label requirement in

section 14(a)(5) of the CPSA, and the consumer registration form requirements in section 104 of the CPSIA.)

List of Subjects in 16 CFR Part 1217

Consumer protection, Infants and children, Incorporation by reference, Law enforcement, Safety, Toddler beds.

For the reasons stated above, and under the authority of 5 U.S.C. 553, and sections 3 and 104 of Public Law 110–314, 122 Stat. 3016 (August 14, 2008), the Consumer Product Safety Commission amends Title 16 of the Code of Federal Regulations by adding part 1217 to read as follows:

PART 1217—SAFETY STANDARD FOR TODDLER BEDS

Sec.

1217.1 Scope, application, and effective date.
1217.2 Requirements for toddler beds.

Authority: Sections 3 and 104 of Pub. L. 110–314, 122 Stat. 3016 (August 14, 2008).

§ 1217.1 Scope, application, and effective date.

This part 1217 establishes a consumer product safety standard for toddler beds manufactured or imported on or after October 20, 2011.

§ 1217.2 Requirements for toddler beds.

(a) The Director of the Federal Register approves the incorporations by reference listed in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these ASTM standards from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA, phone: 610–832–9585; *http://www.astm.org/.* You may inspect copies at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal regulations/ibr_locations.html.*

(b) Except as provided in paragraph (c) of this section, each toddler bed as defined in ASTM F 1821–09, *Standard Consumer Safety Specification for Toddler Beds,* approved April 1, 2009, shall comply with all applicable provisions of ASTM F 1821–09.

(c) Comply with ASTM F 1821–09 with the following additions or exclusions.

(1) Do not comply with sections 6.1 through 6.1.2 of ASTM F 1821–09.

(2) Instead of complying with section 6.5 of ASTM F 1821–09, comply with the following:

(i) 6.5 *Guardrails:*

(ii) 6.5.1 For products with guardrails, there shall be no opening in the guardrail structure below the lowest surface of the uppermost member of the guardrail and above the mattress support structure that will permit complete passage of the wedge block shown in Figure 2 when tested in accordance with 7.4.

(iii) 6.5.2 The upper edge of the guardrails shall be at least 5 in. (130 mm) above the sleeping surface when a mattress of a thickness that is the maximum specified by the manufacturer's instructions is used. If no maximum mattress thickness is specified, the guardrail height shall be based on a mattress thickness of 6 in. (152 mm).

(iv) 6.5.3 When tested in accordance with 7.9, the guardrail shall not break, detach, or create a condition that would present any of the hazards described in Section 5. Guardrails that do not have any free ends, that is, they are attached to both the headboard and the footboard, are exempt from this test. For guardrails with two free ends, perform this test at each free end.

(3) In addition to complying with section 6.7 of ASTM F 1821–09 comply with the following:

(i) 6.8 *Spindle/Slat Static Load Strength:*

(A) 6.8.1 Toddler beds that contain wooden or metal spindles/slats shall meet the performance requirements outlined in section 6.8.2 or 6.8.3.

(B) 6.8.2 Except as provided in section 6.8.3, after testing in accordance with the procedure in 7.10, there shall be no complete breakage of a spindle/slat or complete separation of a spindle/slat from the guardrails, side rails, or end structures.

(C) 6.8.3 Toddler beds that convert from a full-size crib, also known as convertible cribs, shall meet the requirements specified in section 6.7 of ASTM F 1169–10 *Safety Standard for Full-Size Baby Cribs,* approved June 1, 2010, instead of the requirements of 6.8.2. See 16 CFR Part 1219 for complete requirements for full-size cribs.

(ii) [Reserved]

(4) Do not comply with sections 7.1.2 through 7.1.6 of ASTM F 1821–09,

(5) In addition to complying with section 7.8.5 of ASTM F 1821–09, comply with the following:

(i) 7.9 *Test Method for Guardrail Structural Integrity:*

(A) 7.9.1 Firmly secure the toddler bed on a stationary flat surface using clamps. Gradually over a period of 5 s apply a 50 lbf (222.4 N) to the guardrail from the inside of the toddler bed, outward and perpendicular to the place of the rail, and hold for 10 s. The force is to be applied to the geometric center of a $3 \times 6 \times \frac{1}{2}$ in. ($7.62 \times 15.24 \times 1.27$ cm) piece of plywood with the long end parallel to the floor (see Fig. 11).

(B) 7.9.2 For guardrails with a rectangular shape, the plywood shall be placed with the upper long edge of the plywood even with a line drawn parallel to the rail, which is 11 inches (27.94 cm) from the mattress support and the short edge even with the free short edge of the rail.

(C) 7.9.3 For contoured guardrails that are not rectangular, the plywood shall be placed with the upper long edge of the plywood even with a line drawn parallel to the rail which is 11 inches (27.94 cm) from the mattress support and the short edge placed so that the downward slope of the free rail edge intersects the corner of the plywood.

(ii) 7.10 *Spindle/Slat Testing for Guardrails, Side Rails, and End Structures:*

(A) 7.10.1 The spindle/slat static force test shall be performed with the spindle/slat assemblies removed from the bed and supported only on the rail corners through a contact area not more than 3 square inches (7.6 cm^2) when measured from the end of the rail in a direction parallel to the longitudinal axis of the rail. Besides the corners, the upper and lower horizontal rails of both linear and contoured rails shall be free to deflect under the applied force. For toddler beds incorporating folding or moveable sides for purposes of easier access to the occupant, storage and/or transport, each side segment (portion of side separated by hinges for folding) shall be tested separately as described above.

(B) 7.10.2 Gradually, over a period of not less than 2 s nor greater than 5 s, apply an 80 lbf (355.8 N) perpendicular to the plane of the side at the midpoint, between the top and bottom of the spindle/slat being tested. This force shall be applied through a force measuring device and contact area $1 \pm \frac{1}{16}$ in. (25.4 ± 1.6 mm) wide by a length at least equal to the width of the spindle/slat being tested at the point of application. This force shall be maintained for 10 s. The force measuring device must be capable of recording the force at breakage, if breakage occurs during this test. This force measuring device must be capable of a maximum measurement resolution of 0.25 lbf (1.11 N).

(C) 7.10.3 Test, according to 7.10.2, 25% (rounding up to the nearest percentage, if necessary) of all spindles/

slats. Spindles/slats that offer the least resistance to bending based upon their geometry shall be selected to be tested within this grouping of 25% except that adjacent spindles/slats shall not be tested.

(D) 7.10.4 Upon completion of testing as defined in 7.10.2 and 7.10.3, no spindle/slat shall have failed at an applied force less than or equal to 60 lbf. If no more than one spindle/slat fails and that failure occurs only as the result of an applied force greater than 60 lbf, then an additional 25% of spindles/slats shall be tested per 7.10.2 and 7.10.3. During testing of this second 25%, any spindle/slat failure (at or below 80 lbf) shall constitute failure of the test.

(E) 7.10.5 End vertical rails that are joined between the slat assembly top and bottom rails are not considered slats and do not require testing under 7.10.

(6) Instead of complying with sections 8.4.2 through 8.4.4.5 of ASTM F 1821–09, comply with the following:

(i) 8.4.2 The safety alert symbol "⚠" and the word "WARNING" or "CAUTION" must be at least 0.2 in. (5 mm) high, and the remainder of the text shall be characters whose upper case shall be at least 0.1 in. (2.5 mm) high, sans serif.

(ii) 8.4.3 Except as provided in 8.4.4 and 8.4.5, the following warnings must appear on all toddler beds, exactly as depicted.

⚠ WARNING

INFANTS HAVE DIED IN TODDLER BEDS FROM ENTRAPMENT.
Openings in and between bed parts can entrap head and neck of a small child.
NEVER use bed with children younger than 15 months.
ALWAYS follow assembly instructions.

⚠ WARNING

STRANGULATION HAZARD
NEVER place bed near windows where cords from blinds or drapes may strangle a child.
NEVER suspend strings over bed.
NEVER place items with a string, cord, or ribbon, such as hood strings or pacifier cords, around a child's neck. These items may catch on bed parts.

⚠ CAUTION

ENTRAPMENT HAZARD
To avoid dangerous gaps, any mattress used in this bed shall be a full-size crib mattress at least 51 5/8 in. (1310 mm) in length, 27 1/4 in. (690 mm) in width, and 4 in. (100 mm) in thickness.

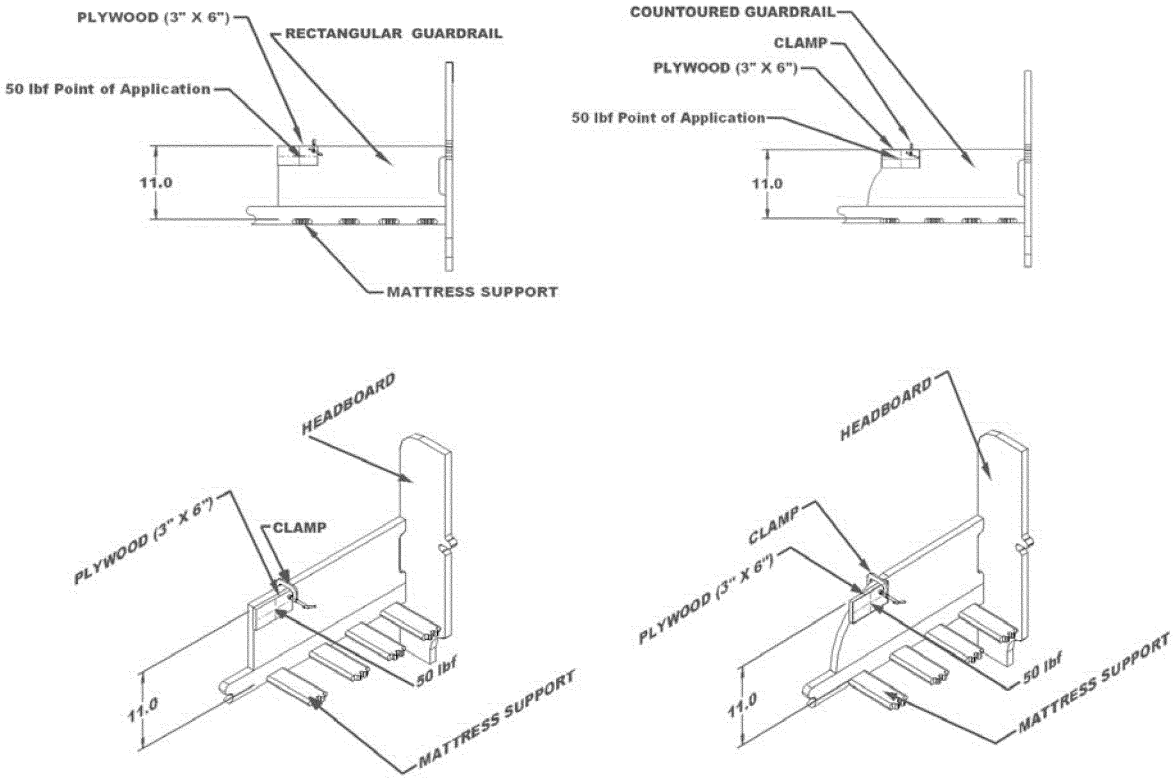

FIGURE 11 -- Guardrail Structural Integrity Test

Dated: April 14, 2011.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2011–9421 Filed 4–19–11; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. CPSC–2009–0064]

16 CFR Part 1217

Third Party Testing for Certain Children's Products; Toddler Beds: Requirements for Accreditation of Third Party Conformity Assessment Bodies

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of requirements.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is issuing a notice of requirements that provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing pursuant to the CPSC regulation relating to toddler beds. The Commission is issuing this notice of requirements pursuant to section 14(a)(3)(B)(vi) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2063(a)(3)(B)(vi)).

DATES: *Effective Date:* The requirements for accreditation of third party conformity assessment bodies to assess conformity with 16 CFR part 1217 are effective April 20, 2011.

FOR FURTHER INFORMATION CONTACT: Robert "Jay" Howell, Assistant Executive Director for Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *rhowell@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 14(a)(3)(B)(vi) of the CPSA, as added by section 102(a)(2) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110–314, directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies to assess children's products for conformity with "other children's product safety rules." Section 14(f)(1) of the CPSA defines "children's product safety rule" as "a consumer product safety rule under [the CPSA] or similar rule, regulation, standard, or ban under any other Act enforced by the Commission, including a rule declaring a consumer product to be a banned hazardous product or substance." Under section 14(a)(3)(A) of the CPSA, each manufacturer (including the importer) or private labeler of products subject to those regulations must have products that are manufactured more than 90 days after the **Federal Register** publication date of a notice of the requirements for accreditation, tested by a third party conformity assessment body accredited to do so, and must issue a certificate of compliance with the applicable regulations based on that testing. Section 14(a)(2) of the CPSA, as added by section 102(a)(2) of the CPSIA, requires that certification be based on testing of sufficient samples of the

product, or samples that are identical in all material respects to the product. The Commission also emphasizes that, irrespective of certification, the product in question must comply with applicable CPSC requirements (*see, e.g.,* section 14(h) of the CPSA, as added by section 102(b) of the CPSIA).

This notice provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing pursuant to the safety standard for toddler beds, which appears elsewhere in this issue of the **Federal Register**. The standard for toddler beds will be codified at 16 CFR part 1217. The standard contains the test methods that conformity assessment bodies will use to assess toddler beds. The Commission is recognizing limited circumstances in which it will accept certifications based on product testing conducted before the toddler bed standard becomes effective in six months. The details regarding those limited circumstances can be found in part IV of this document below.

Although section 14(a)(3)(B)(vi) of the CPSA directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies to assess conformity with "all other children's product safety rules," this notice of requirements is limited to the regulation identified immediately above.

The CPSC also recognizes that section 14(a)(3)(B)(vi) of the CPSA is captioned: "All Other Children's Product Safety Rules," but the body of the statutory requirement refers only to "other children's product safety rules." Nevertheless, section 14(a)(3)(B)(vi) of the CPSA could be construed to require a notice of requirements for "all" other children's product safety rules, rather than as a notice of requirements for "some" or "certain" children's product safety rules. However, whether a particular rule represents a "children's product safety rule" may be subject to interpretation, and Commission staff is continuing to evaluate which rules, regulations, standards, or bans constitute "children's product safety rules." The CPSC intends to issue additional notices of requirements for other rules that the Commission determines to be "children's product safety rules."

This notice of requirements applies to all third party conformity assessment bodies as described in section 14(f)(2) of the CPSA. Generally speaking, such third party conformity assessment bodies are: (1) Third party conformity assessment bodies that are not owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body for certification purposes; (2) "firewalled" conformity assessment bodies (those that are owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body for certification purposes and that seek accreditation under the additional statutory criteria for "firewalled" conformity assessment bodies); and (3) third party conformity assessment bodies owned or controlled, in whole or in part, by a government.

The Commission requires baseline accreditation of each category of third party conformity assessment body to the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) Standard 17025:2005, "*General Requirements for the Competence of Testing and Calibration Laboratories.*" The accreditation must be by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation—Mutual Recognition Arrangement (ILAC–MRA), and the scope of the accreditation must include testing for any of the test methods identified earlier in part I of this document for which the third party conformity assessment body seeks to be accredited.

(A description of the history and content of the ILAC–MRA approach and of the requirements of the ISO/IEC 17025:2005 laboratory accreditation standard is provided in the CPSC staff briefing memorandum, "Third Party Conformity Assessment Body Accreditation Requirements for Testing Compliance With 16 CFR Part 1501 (Small Parts Regulations)," dated November 2008, and available on the CPSC's Web site at *http://www.cpsc.gov/library/foia/foia09/brief/smallparts.pdf.*)

The Commission has established an electronic accreditation registration and listing system that can be accessed via its Web site at *http://www.cpsc.gov/about/cpsia/labaccred.html.*

As stated in part I of this document, the Commission, elsewhere in this issue of the **Federal Register**, is issuing a new standard for toddler beds that will be codified at 16 CFR part 1217. This notice of requirements is effective on April 20, 2011. The final rule announcing the Safety Standard for Toddler Beds is effective on October 20, 2011. The effect of these twin publications is that each manufacturer (including the importer) or private labeler of a product subject to 16 CFR part 1217 must have any such product manufactured on or after October 20, 2011, tested by a third party conformity assessment body accredited to do so and must issue a certificate of compliance with 16 CFR part 1217 based on that testing.

This notice of requirements is exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553 (*see* section 14(a)(3)(G) of the CPSA, as added by section 102(a)(2) of the CPSIA (15 U.S.C. 2063(a)(3)(G))).

II. Accreditation Requirements

A. Baseline Third Party Conformity Assessment Body Accreditation Requirements

For a third party conformity assessment body to be accredited to test children's products for conformity with the test methods identified earlier in part I of this document, it must be accredited by an ILAC–MRA signatory accrediting body, and the accreditation must be registered with, and accepted by, the Commission. A listing of ILAC–MRA signatory accrediting bodies is available on the Internet at *http://ilac.org/membersbycategory.html.* The accreditation must be to ISO Standard ISO/IEC 17025:2005, "General Requirements for the Competence of Testing and Calibration Laboratories," and the scope of the accreditation must expressly include testing to the test method for toddler beds included in 16 CFR part 1217, Safety Standard for Toddler Beds. A true copy, in English, of the accreditation and scope documents demonstrating compliance with these requirements must be registered with the Commission electronically. The additional requirements for accreditation of firewalled and governmental conformity assessment bodies are described in parts II.B and II.C of this document below.

The Commission will maintain on its Web site an up-to-date listing of third party conformity assessment bodies whose accreditations it has accepted and the scope of each accreditation. Once the Commission adds a third party conformity assessment body to that list, the third party conformity assessment body may commence testing of toddler beds to support certification by the manufacturer or private labeler of compliance with the test methods identified earlier in part I of this document.

B. Additional Accreditation Requirements for Firewalled Conformity Assessment Bodies

In addition to the baseline accreditation requirements in part II.A of this document, firewalled conformity assessment bodies seeking accredited

status must submit to the Commission copies, in English, of their training documents showing how employees are trained to notify the Commission immediately and confidentially of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the third party conformity assessment body's test results. This additional requirement applies to any third party conformity assessment body in which a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body owns an interest of 10 percent or more. While the Commission is not addressing common parentage of a third party conformity assessment body and a children's product manufacturer at this time, it will be vigilant to determine whether this issue needs to be addressed in the future.

As required by section 14(f)(2)(D) of the CPSA, the Commission must formally accept, by order, the accreditation application of a third party conformity assessment body before the third party conformity assessment body can become an accredited firewalled conformity assessment body. The Commission's order must also find that accrediting the firewalled conformity assessment body would provide equal or greater consumer safety protection than the manufacturer's or private labeler's use of an independent conformity assessment body.

C. Additional Accreditation Requirements for Governmental Conformity Assessment Bodies

In addition to the baseline accreditation requirements of part II.A of this document above, the CPSIA permits accreditation of a third party conformity assessment body owned or controlled, in whole or in part, by a government if:

- To the extent practicable, manufacturers or private labelers located in any nation are permitted to choose conformity assessment bodies that are not owned or controlled by the government of that nation;
- The third party conformity assessment body's testing results are not subject to undue influence by any other person, including another governmental entity;
- The third party conformity assessment body is not accorded more favorable treatment than other third party conformity assessment bodies in the same nation who have been accredited;
- The third party conformity assessment body's testing results are accorded no greater weight by other governmental authorities than those of other accredited third party conformity assessment bodies; and
- The third party conformity assessment body does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the third party conformity assessment body's conformity assessments.

The Commission will accept the accreditation of a governmental third party conformity assessment body if it meets the baseline accreditation requirements of part II.A of this document and meets the additional conditions stated here. To obtain this assurance, CPSC staff will engage the governmental entities relevant to the accreditation request.

III. How does a third party conformity assessment body apply for acceptance of its accreditation?

The Commission has established an electronic accreditation acceptance and registration system accessed via the Commission's Web site at *http://www.cpsc.gov/about/cpsia/labaccred.html.* The applicant provides, in English, basic identifying information concerning its location, the type of accreditation it is seeking, and electronic copies of its ILAC–MRA accreditation certificate and scope statement, and firewalled third party conformity assessment body training document(s), if relevant.

Commission staff will review the submission for accuracy and completeness. In the case of baseline third party conformity assessment bodies and government-owned or government-operated conformity assessment bodies, when that review and any necessary discussions with the applicant are completed satisfactorily, the third party conformity assessment body in question is added to the CPSC's list of accredited third party conformity assessment bodies at *http://www.cpsc.gov/about/cpsia/labaccred.html.* In the case of a firewalled conformity assessment body seeking accredited status, when the staff's review is complete, the staff transmits its recommendation on accreditation to the Commission for consideration. (A third party conformity assessment body that ultimately may seek acceptance as a firewalled third party conformity assessment body may initially request acceptance as a third party conformity assessment body accredited for testing of children's products other than those of its owners.) If the Commission accepts a staff recommendation to accredit a firewalled conformity assessment body, the firewalled conformity assessment body then will be added to the CPSC's list of accepted third party conformity assessment bodies. In each case, the Commission will notify the third party conformity assessment body electronically of acceptance of its accreditation. All information to support an accreditation acceptance request must be provided in the English language.

Once the Commission adds a third party conformity assessment body to the list, the third party conformity assessment body then may begin testing of children's products to support certification of compliance with the regulation identified earlier in part I of this document for which it has been accredited.

IV. Acceptance of Children's Product Certifications Based on Third Party Conformity Assessment Body Testing to the New Safety Standard for Toddler Beds Prior to Their Effective Date

Elsewhere in this issue of the **Federal Register**, the Commission is publishing a new safety standard for toddler beds, which will be codified at 16 CFR part 1217. The effect of this notice of requirements and the final rule is that each manufacturer (including the importer) or private labeler of a product subject to 16 CFR part 1217 must have any such product manufactured on or after October 20, 2011, tested by a third party conformity assessment body accredited to do so and must issue a certificate of compliance with 16 CFR part 1217 based on that testing.

To ease the transition to the new standards and avoid a "bottlenecking" of products at conformity assessment bodies at or near the effective date of 16 CFR part 1217, the Commission will accept certifications based on testing that occurred prior to the effective date of the new standard in certain prescribed circumstances. However, any such testing must comport with all CPSC requirements, including:

1. The product [1] was tested by a third party conformity assessment body that was ISO/IEC 17025 accredited by a signatory to the ILAC–MRA at the time of the test. For firewalled conformity assessment bodies, the firewalled conformity assessment body must be one that the Commission has accredited by order at or before the time the

[1] The CPSIA requires that certification be based on testing of sufficient samples of the product or samples that are identical in all material respects to the product.

product was tested, even if the order did not include the test methods specified in this notice. If the third party conformity assessment body has not been accredited as a firewalled conformity assessment body by a Commission order, the Commission will not accept a certificate of compliance based on testing performed by the third party conformity assessment body before it is accredited, by Commission order, as a firewalled conformity assessment body;

2. The third party conformity assessment body's application is accepted by the CPSC by October 20, 2011, as established by the Commission;

3. The test results show compliance with 16 CFR part 1217;

4. The product was tested on or after April 20, 2011 and before October 20, 2011; and

5. The third party conformity assessment body's accreditation remains in effect through the effective date for mandatory third party testing and manufacturer/private labeler certification for the subject product's respective regulation.

Dated: April 14, 2011.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2011–9422 Filed 4–19–11; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0258]

National Maritime Week Tugboat Races, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Special Local Regulation for the annual National Maritime Week Tugboat Races in Elliott Bay, WA from 12 p.m. through 4:30 p.m. on May 14, 2011. This action is necessary to ensure the safety of all participants and spectators from the inherent dangers associated with these types of races which includes large wakes. During the enforcement period, no person or vessel may enter or remain in the regulated area except for participants in the event, supporting personnel, vessels registered with the event organizer, and personnel or vessels authorized by the Coast Guard Patrol Commander.

DATES: The regulations in 33 CFR 100.1306 will be enforced from 12 p.m. through 4:30 p.m. on May 14, 2011.

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

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Special Local Regulation for the annual National Maritime Week Tugboat Races, Seattle, WA in 33 CFR 100.1306 on May 14, 2011 from 12:00 p.m. through 4:30 p.m. This regulation can be found in the April 27, 1996 issue of the **Federal Register** (61 FR 16710).

A regulated area is established on that portion of Elliott Bay along the Seattle waterfront in Puget Sound bounded by a line beginning at: 47°37′36″ N, 122°22′42″ W; thence to 47°37′24.5″ N, 122°22′58.5″ W; thence to 47°36′08″ N, 122°20′53″ W; thence to 47°36′21″ N, 122°20′31″ W; thence returning to the origin. This regulated area resembles a rectangle measuring approximately 3,900 yards along the shoreline between Pier 57 and Pier 89, and extending approximately 650 yards into Elliott Bay. Temporary floating markers will be placed by the race sponsors to delineate the regulated area. [Datum: NAD 1983]

No person or vessel may enter or remain in the regulated area except for participants in the event, supporting personnel, vessels registered with the event organizer, and personnel or vessels authorized by the Coast Guard Patrol Commander.

The Coast Guard will establish a patrol consisting of active and auxiliary Coast Guard vessels and personnel in the regulated area described above. The patrol shall be under the direction of a Coast Guard officer or petty officer designated by the Captain of the Port as the Coast Guard Patrol Commander. The Patrol Commander may forbid and control the movement of vessels in this regulated area.

A succession of sharp, short blasts from whistle or horn from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and comply with the orders of the patrol vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.1306 and 5 U.S.C. 552(a). If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: April 7, 2011.

S.J. Ferguson,

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

[FR Doc. 2011–9532 Filed 4–19–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0263]

RIN 1625–AAOO

Safety Zone; Red River Safety Zone, Red River, MN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard Captain of the Port, Marine Safety Unit Duluth, MN is establishing a temporary safety zone on the Red River, MN. This safety zone is being established to ensure the safety of the public. The safety zone will prevent individuals from entering all navigable waters of the Red River in the State of Minnesota north of a line drawn across latitude 46°20′00″ N, including those portions of the river in Wilkin, Clay, Norman, Polk, Marshall and Kittson counties, to the United States-Canada international border.

DATES: This rule is effective in the CFR from April 20, 2011 until July 15, 2011. This rule is effective with actual notice for purposes of enforcement from April 7, 2011 until 5 p.m. on July 15, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0263 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0263 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 Aaron L. Gross, Chief

of Port Operations, Marine Safety Unit Duluth, Coast Guard; telephone 218–720–5286 ext 111, e-mail *Aaron.L.Gross@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 doing so would be contrary to the public interest due to the emergency nature under which this safety zone is being established and would hinder the protection of the public.

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**. Good cause for making this rule effective less than 30 days after publication exists because delaying the execution of the rule would be contrary to the public interest due to the emergency nature under which this safety zone is being established and would hinder the protection of the public.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of the public from hazards involved with the flooding of the Red River. Restricted access to the Red River by the public will help ensure the safety of persons and property along the Red River.

Discussion of Rule

Flooding conditions along the Red River have created serious dangers to the boating public. The strong currents and floating debris associated with the flooding of the Red River necessitate the Coast Guard limiting access to the portions of the river affected by this rule in order to protect the public. This rule is effective from 5 p.m. on April 7, 2011 until 5 p.m. on July 15, 2011. The Captain of the Port Duluth may stop enforcement of this safety zone before 5 p.m. on July 15, 2011 if river conditions change such that enforcement of the safety zone is no longer necessary for the public's safety. The Captain of the Port Duluth will notify the public via a Broadcast Notice to Mariners.

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.

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 or anchor in the portions of the Red River affected by this safety zone. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons because few small business entities operate on the affected portion of the river and because this rule will be in effect only until the Red River is deemed safe to transit.

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 the establishment of a safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0263 to read as follows:

§ 165.T09–0263 Safety zone; Red River Safety Zone, Red River, MN.

(a) *Location.* The following area is a temporary safety zone: all navigable waters of the Red River in the State of Minnesota north of a line drawn across latitude 46°20'00" N, including those portions of the river in Wilkin, Clay, Norman, Polk, Marshall and Kittson counties, to the United States—Canada international border.

(b) *Effective period.* This rule is effective from 5 p.m. on April 7, 2011 until 5 p.m. on July 15, 2011. If the river conditions change such that enforcement of the Safety Zone is unnecessary prior to 5 p.m. on July 15, 2011, the Captain of the Port Duluth will notify the public via a Broadcast Notice to Mariners.

(c) *Regulations.*

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

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

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

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

Dated: April 7, 2011.

K.R. Bryan,

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

[FR Doc. 2011–9582 Filed 4–19–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0189]

RIN 1625–AA00

Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier Southeast Safety Zone in Chicago Harbor during various periods from May 28, 2011 until June 29, 2011. This action is necessary and intended to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after various fireworks events. Enforcement of this safety zone will establish restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after various fireworks events. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port, Sector Lake Michigan.

DATES: The regulations in 33 CFR 165.931 will be effective from 10 p.m. on May 28, 2011 to 10:30 p.m. on June 29, 2011.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email BM1 Adam Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at 414–747–7154, e-mail *Adam.D.Kraft@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL listed in 33 CFR 165.931 for the following events:

Navy Pier Fireworks; on May 28, 2011 from 10 p.m. through 10:30 p.m.; on June 1, 2011 from 9:15 p.m. through 9:45 p.m.; on June 4, 2011 from 10 p.m. through 10:30 p.m.; on June 8, 2011 from 9:15 p.m. through 9:45 p.m.; on June 11, 2011 from 10 p.m. through 10:30 p.m.; on June 15, 2011 from 9:15 p.m. through 9:45 p.m.; on June 18, 2011 from 10 p.m. through 10:30 p.m.; on June 22, 2011 from 9:15 p.m. through 9:45 p.m.; on June 25, 2011 from 10 p.m. through 10:30 p.m.; and on June 29, 2011 from 9:15 p.m. through 9:45 p.m.

All vessels must obtain permission from the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.931 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port, Sector Lake Michigan, will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. If the Captain of the Port, Sector Lake Michigan, determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16.

Dated: April 7, 2011.

S.R. Schenk,

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

[FR Doc. 2011–9531 Filed 4–19–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2007–1036; FRL–9297–1]

Approval and Promulgation of State Implementation Plans; State of Colorado; Interstate Transport of Pollution Revisions for the 1997 8-Hour Ozone and 1997 $PM_{2.5}$ NAAQS: "Interference With Visibility" Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving the Colorado Interstate Transport State Implementation Plan (SIP) revision, submitted on March 31, 2010, addressing the requirements of Clean Air Act (CAA) section 110(a)(2)(D)(i)(II) for the 1997 ozone National Ambient Air Quality Standards (NAAQS), and the requirements of CAA section 110(a)(2)(D)(i)(I) and (II) for the 1997 $PM_{2.5}$ NAAQS. Specifically, in this **Federal Register** action EPA is fully approving those portions of the Colorado March 31, 2010 submission that address the section 110(a)(2)(D)(i)(II) requirement prohibiting a state's emissions from interfering with any other state's required measures to protect visibility for the 1997 ozone and $PM_{2.5}$ NAAQS. This action is being taken under section 110 of the CAA.

DATES: *Effective Date:* This final rule is effective May 20, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2007–1036. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–6144, *dygowski.laurel@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

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

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

(iv) The words *Colorado* and *State* mean the State of Colorado.

Table of Contents

I. Background Information
II. Final Action
III. Statutory and Executive Orders Review

I. Background Information

On July 18, 1997, EPA promulgated new NAAQS for 8-hour ozone and for fine particulate matter ($PM_{2.5}$). This action is being taken in response to the promulgation of the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions.

Section 110(a)(2)(D)(i) of the CAA requires that a SIP must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in any other state; (2) interfere with maintenance of the NAAQS by any other state; (3) interfere with any other state's required measures to prevent significant deterioration of air quality; or (4) interfere with any other state's required measures to protect visibility.

On June 11, 2008, the State of Colorado submitted to EPA an Interstate Transport SIP addressing all four elements of the interstate transport requirements of CAA section 110(a)(2)(D)(i) for the 1997 ozone and

$PM_{2.5}$ NAAQS. In response to EPA's concerns regarding the June 11, 2008 submission, the State later submitted two superceding interstate transport SIP revisions: (a) A June 18, 2009 submission addressing the requirements of elements (1) and (2) of section 110(a)(2)(D)(i) for the 1997 ozone NAAQS; and (b) a March 31, 2010 submission addressing the requirements of elements (3) and (4) for the 1997 8-hour ozone NAAQS and of elements (1) through (4) for the 1997 $PM_{2.5}$ NAAQS.

On February 14, 2011, EPA published a notice of proposed rulemaking (NPR) for the State of Colorado. The NPR proposed approval of the sections of the Colorado Interstate Transport SIP submitted March 31, 2010 that address the section 110(a)(2)(D)(i)(II) "interference with visibility protection" requirement for the 1997 ozone and $PM_{2.5}$ NAAQS.

II. Final Action

EPA is partially approving the sections of the Colorado Interstate Transport SIP submitted March 31, 2010 that address the section 110(a)(2)(D)(i)(II) "interference with visibility protection" requirement for the 1997 ozone and $PM_{2.5}$ NAAQS. On January 13, 2010, the Colorado Air Quality Control Commission (AQCC) adopted interstate transport SIP revisions addressing the requirements of CAA section 110(a)(2)(D)(i)(II) for the 1997 ozone NAAQS, and the requirements of CAA section 110(a)(2)(D)(i)(I) and (II) for the 1997 $PM_{2.5}$ NAAQS. Colorado submitted these revisions to EPA on March 31, 2010. In this **Federal Register** action EPA is proposing to approve the sections of the March 31, 2010 submissions that address element (4), "interference with visibility protection," of section 110(a)(2)(D)(i).

As noted earlier, in this rulemaking EPA is evaluating only the Colorado SIP revisions of the March 31, 2010 submission that address the requirements of element (4), prohibiting sources in Colorado from emitting pollutants from interfering with any other state's measures to protect visibility, for the 1997 ozone and $PM_{2.5}$ NAAQS. EPA has already taken final action on elements (1) and (2) for ozone (see 75 FR 31306 and 75 FR 71029, respectively). EPA will be taking action on elements (1)–(3) for $PM_{2.5}$ and element (3) for ozone in a separate action.

III. Statutory and Executive Orders Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves 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. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 20, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Sulfur oxides.

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

Dated: April 6, 2011.

Carol Rushin,

Deputy Regional Administrator, Region 8.

40 CFR part 52 is amended to read 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 G—Colorado

■ 2. Section 52.352 is revised to read as follows:

§ 52.352 Interstate transport.

Addition to the Colorado State Implementation Plan of the Colorado Interstate Transport SIP regarding the 1997 8-Hour Ozone Standard for the "significant contribution", the "interfere with maintenance", and "interference with visibility protection" requirements, submitted by the Governor's designee on June 18, 2009 and March 31, 2010.

[FR Doc. 2011–9580 Filed 4–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–1078; FRL–9293–6]

Revision to the South Coast Portion of the California State Implementation Plan, CPV Sentinel Energy Project AB 1318 Tracking System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a source-specific State Implementation Plan (SIP) revision for the South Coast Air Quality Management District (District) portion of the California SIP. This source-specific SIP revision is known as the CPV Sentinel Energy Project AB 1318 Tracking System. The SIP revision consists of enabling language and the AB 1318 Tracking System to revise the District's SIP approved New Source Review (NSR) program. The SIP revision allows the District to transfer offsetting emission reductions for particulate matter less than 10 microns in diameter (PM_{10}) and one of its precursors, sulfur oxides (SO_X), to the CPV Sentinel Energy Project, which will be a natural gas fired power plant.

DATES: This final rule is effective on May 20, 2011.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, (415) 972–3524, *yannayon.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we", "us", and "our" refer to EPA.

Table of Contents

I. Background
II. Evaluation of Source-Specific SIP Revision
  A. What action is EPA finalizing?
  B. Public Comments and Responses to Comments
III. EPA Action
IV. Statutory and Executive Order Reviews
  A. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review 13563
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132, Federalism
  F. Executive Order 13175, Coordination With Indian Tribal Governments
  G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks
  H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer and Advancement Act
  J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

I. Background

The proposed Sentinel Energy Project is designed to be a nominally rated 850 megawatt electrical generating facility covering approximately 37 acres within Riverside County, adjacent to Palm Springs, California. EPA's proposal for this action contained a detailed description of the project and the Clean Air Act's (CAA) requirements for offsets during New Source Review permitting. 76 FR 2294 (January 13, 2011) With our proposal to approve this SIP revision, EPA attached the complete list of PM_{10} and SO_X offsetting emission reductions that are being transferred in the AB 1318 Tracking System to our Technical Support Document (TSD). Documentation for each of the offsetting emission reductions listed in the attachment to the TSD was included in the docket for the proposal in hard copy at EPA's offices as well as other locations. For additional background information please see the January 13, 2011 proposed notice for this action. (76 FR 2294)

II. Evaluation of Source-Specific SIP Revision

A. What is the rule that EPA is finalizing?

EPA is finalizing a SIP revision for the South Coast portion of the California SIP. The SIP revision will be codified in 40 CFR 52.220 by incorporating by reference the Offset Requirements for the Proposed CPV Sentinel Power Plant, including the CPV Sentinel Energy Project AB 1318 Tracking System, as adopted by the District.

The SIP revision provides a federally approved and enforceable mechanism for the District to transfer PM_{10} and SO_X offsetting emissions reductions from the District's internal bank to the Sentinel Energy Project and to track those emissions credits through the AB 1318 Tracking System.

B. Public Comment and Final Action

In response to our January 13, 2011 proposed rule, we received four comments, one each from the South Coast Air Quality Management District (District), Michael Carroll of Latham & Watkins LLP, the Natural Resources Defense Council (NRDC), and the Law Offices of Angela Johnson-Mezaros on behalf of California Communities Against Toxics and Communities for a Better Environment (jointly referred to herein as "CCAT"). Copies of each comment letter have been added to the docket and are accessible at *regulations.gov.* The comment from the District supported EPA's analysis and proposed source-specific SIP revision and provided an errata sheet correcting minor typos and the amount of SO_X offsets available in the AB1318 Tracking System (reduced the quantity by 92 lbs). The comment from Latham & Watkins was also supportive of our proposed action. The comment from NRDC generally opposed the SIP revision but did not provide any specific grounds for its opposition or raise any specific issues. To the extent that NRDC generally opposes the SIP revision, our response to its general opposition is included below with our response to CCAT's more specific comments. We have summarized CCAT's comments (based on the structure of their comment letter) and provide our response to each comment below.

Comment I: CCAT comments that EPA did not allow meaningful public participation on the SIP revision for several reasons and that approval of the SIP revision based on the available information would be arbitrary and capricious.

Comment I.A: CCAT contends the regulatory text of the SIP revision is too

vague and incomplete to be federally enforceable. CCAT contends that the SIP revision consists of preambular or background language and that the list of emissions credits being transferred is not included in the SIP revision.

Response I.A: CCAT is incorrect on both points. EPA's proposed approval quoted the text of the proposed source-specific revision in the section of the proposal entitled "What is in the SIP Revision?" (76 FR at 2295) and also posted the text in the docket at Index No. I–B. Upon finalizing the approval, EPA will codify this revision at 40 CFR 52.220. The SIP revision, therefore, consists of the regulatory text that was quoted in EPA's proposed rule. Before quoting the language in the proposed approval, we identified the language stating: "The text of the proposed source-specific SIP revision is * * *" 76 FR at 2295. This is the language that will be incorporated by reference in 40 CFR 52.220. Therefore it is not preambular or background language as stated by CCAT. The SIP revision language was available to the public. This comment contains other conclusory statements such as characterizing the SIP revision as being too vague to be enforceable because it does not provide an enforceable mechanism for generating emissions credits. These additional statements are generally repeated elsewhere in the comment letter with more specificity. We have responded to the more detailed comments rather than the very general and conclusory statements in this section of the comment letter.

The full list of the credits that will be transferred is incorporated by reference into the SIP revision. Incorporation by reference of materials such as the list of the emissions credits being transferred is permissible and there is no requirement for EPA to include the list of credits in the regulatory text that will be published in the Code of Federal Regulations. See Use of Incorporation by Reference as a Mechanism for Shortening Federal Register Notices, from Gerald H. Yamada, Principal Deputy General Counsel to Regulatory Policy Group, dated Jan. 12, 1995. See also 1 CFR part 51.

The comment also contends that the SIP revision is insufficient because it does not contain a "mechanism for generating and validating the credits". The SIP revision does not purport to provide a mechanism for generating credits. This SIP revision provides an enforceable mechanism for the District to transfer previously generated emissions credits and incorporates the list of those emissions credits. The Sentinel Energy Project is a source that is not authorized to receive emissions credits from the District's internal accounts in the absence of this SIP revision because it is not a source category or type of project listed in Rule 1304 as exempt or in Rule 1309.1 as a priority reserve source. Thus, the general assertions submitted by CCAT that the public did not have adequate notice for a variety of reasons does not provide any basis for EPA to alter its proposed approval of this SIP revision.

Comment I.B: CCAT contends the **Federal Register** Notice and TSD are unclear and provide an inconsistent description of the proposed SIP revision.

Response I.B: EPA disagrees with the comment and notes that CCAT has not provided any specific examples in which the proposal and TSD are vague or inconsistent. CCAT also contends that AB 1318 is of minor relevance to this action. EPA agrees with this comment. EPA did not propose approval of this action based on the State legislation and has discussed that action only as background. EPA proposed to approve this SIP revision because it complies with the requirements of the CAA.

Within this comment, CCAT also asserts that EPA's record for proposing approval of the District's SIP revision provides an inadequate justification. CCAT contends that EPA's record is deficient because it does not acknowledge or explain that the proposed SIP revision purportedly does three separate things: first, codify in Federal law an entirely new method for the SCAQMD to generate emission credits; second, apply that generation method to specific reductions dating back to 1999; and third, transfer the credits out of the SCAMQD's internal bank. See CCAT Letter at 3.

CCAT's first contention is that EPA does not explain or acknowledge that it is codifying into Federal law a new method for the District to generate emissions credits. The problem with CCAT's comment is that EPA is not codifying a new method for the District to generate emissions credits.[1] The emissions credits the District is transferring pursuant to its AB 1318 Tracking System are emission credits that existed in the District's internal accounts. The AB 1318 Tracking System contains the District's accounting of these specific credits and a mechanism for transferring these emissions credits from the District's internal account to Sentinel. The SIP revision does not establish a new method for the District to generate emission credits. EPA reviewed the submitted documentation demonstrating that a sufficient number of these specific emissions credits being transferred meet the Federal integrity criteria required by section 173 of the CAA.

CCAT's second contention is that the District is now generating credits from emissions reductions that occurred up to two decades ago and also that the District's internal bank accounts have negative balances. While some of the emissions credits that the District is transferring arose from events in 1999, most occurred after 2003, therefore characterizing 1999 as being two decades ago may be technically correct but somewhat misleading. CCAT also states that no evidence of the actual dates of when the reductions occurred is contained in the public record. This is incorrect. The support documentation, which is voluminous and was available for review in hard copy, explicitly contains this information. In any event, we have reviewed the documentation for the emissions reductions, including those associated with events that occurred in 1999 and consider those 1999 emissions credits to meet the requirements of section 173 of the CAA.

CCAT also contends the District has "negative balances" in its internal accounts. For the purposes of this SIP revision, the balance of the District's internal accounts is not relevant, since EPA examined each of the specific emission reduction actions that are the basis for the credits being transferred pursuant to this SIP revision and found a sufficient quantity—compared to the amount needed for the CPV Sentinel Energy Project, to meet the CAA offset requirements.

CCAT, NRDC and associated groups raised the same issue in a Petition to the Administrator in December 2010. In responding to the Petition, the Administrator examined the emission credits in the District's internal accounts following passage of SB 827. SB 827 was a companion bill to AB 1318 which directed the District to transfer emissions credits from their internal accounts to exempt sources covered by Rule 1304 and priority reserve sources covered by Rule 1309.1 beginning in January 2011. A copy of the Administrator's petition response letter

[1] On February 4, 2011, the District adopted Rule 1315—Federal New Source Review Tracking System—which does provide a general rule for the District to credit and debit emissions credits in its internal accounts. The District has submitted Rule 1315 to EPA as a SIP revision. EPA will be acting on the Rule 1315 submittal in a separate Notice of Proposed Rulemaking and will provide a 30 day comment period with that action. Some of CCAT's comments on this proposal may be more properly directed to any action that EPA proposes to take on District Rule 1315.

is attached to and incorporated into this Response to Comments because the same general issues arise with respect to AB 1318 and SB 827. The Administrator's letter details the Agency's determination that the District may use emissions reductions from previously shutdown sources, including minor source orphan shutdowns, to fund its internal accounts. The Administrator's letter also disagrees with assertions that the District's internal accounts have negative balances. Thus, for all of the reasons set forth in the Administrator's letter, EPA disagrees with CCAT that this SIP revision constitutes codifying a new system of generating emissions credits, that the District's internal accounts have negative balances or that the emission credits are invalid because they were created more than two decades ago.

CCAT's third contention is that this SIP revision allows the District to transfer ownership of emission credits out of the District's internal bank. EPA agrees with this contention but CCAT has not raised any specific reason that such a transfer is contrary to the requirements of the CAA and this comment does not provide any basis for EPA to alter its proposal to approve the SIP revision providing a Federal mechanism to enforce the transfer of ownership of these emission credits. The District's decision to transfer valid emission credits is a policy decision.

CCAT states that the project description of the SIP revision is confusing because it does not "admit" that EPA is approving a revision to SIP-approved Rules 1303 and 1309.1. CCAT's assertion that this action constitutes a revision of either Rule 1303 or 1309.1 is incorrect. Instead, as stated in the actual SIP revision, the action is providing an additional federally enforceable mechanism for the District to transfer emission credits from its internal bank to the Sentinel project. But the District has not revised and EPA is not approving a revision to Rules 1303 and 1309.1.

Comment I.C: CCAT asserts that EPA did not include critical documents in the docket for this proposed rulemaking.

Response I.C: CCAT appears to be criticizing the fact that scanned copies of voluminous records documenting the validity of each pound of emissions credits being transferred from the District bank to Sentinel were not provided in electronic form on the regulations.gov Web site. These documents consist of the "Offset Source Calculation/Verification Form" and supporting documentation for each form. The District's submittal consisted of a CD, with 62 separate documents, comprising more than 1,000 pages. The forms show a facility's name, the type of equipment that had been operated, the emission inventory data for the two years prior to shut down, the date when the facility's permit was inactivated, verification of the shutdown and various emissions calculations using this data. EPA's proposed approval of the SIP revision relied on these documents to demonstrate that a sufficient number of the emissions credits the District transferred met the integrity criteria in Section 173 of the CAA.

Our proposed approval of this SIP revision stated that we had attached a "complete list of PM_{10} and SO_x offsetting emissions reductions" to our Technical Support Document and that "[d]ocumentation for each of these offsetting emission reductions is included in the docket for this proposal." EPA's proposed approval also stated: "While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section." (76 FR 2294) Therefore, the proposed approval provided notice to the public to contact EPA to inspect the documentation for each offsetting emission reduction listed in the attachment to our Technical Support Document.

EPA is not required to post all of the documents in its docket for a proposed rulemaking to the regulations.gov Web site, otherwise known as the "EDOCKET". The hard copy documents in the Region's office are the official docket for the rulemaking. We post many documents from the official docket to the EDOCKET for the convenience of the public but there is no requirement to post all of the documents. EPA did not post the voluminous Offset Source Calculation/Verification Forms on the EDOCKET although a hard copy was readily available in our offices. A copy of the documents was also available at the District and CARB offices.

CCAT also contends that EPA was required to specifically list the Offset Source Calculation/Verification Forms in the index to the docket. There is no legal requirement for EPA to provide an index to the docket. We frequently provide an index as a courtesy to the public. If we provide an index, we are not required to identify every background or supporting document provided in a submitted SIP revision.

Because EPA cannot anticipate every question the public may have on our proposed rulemakings, EPA's **Federal Register** notice proposing to approve this SIP revision contained contact information for EPA staff who would be knowledgeable about the proposal and could provide copies of the specific documents in our docket. CCAT did not try to contact any EPA staff to obtain a copy of the Offset Source Calculation/Verification Forms or request EPA to provide further specificity in the docket index. Finally, the same records were provided to CCAT by the District long before our proposed approval was published. (South Coast Public Records Response #61991 and #61991B)

In summary, CCAT has not provided any authority indicating that the Offset Source Calculation/Verification Forms were required to be identified in the index we posted on the EDOCKET or posted electronically in the EDOCKET. These documents were available in hard copy at the District's office, at the offices of the California Air Resources Board as part of the SIP submission and EPA's office in San Francisco.

CCAT suggests that EPA may be treating some of the information in the records as confidential. The suggestion is incorrect. None of the information in the record for this SIP revision approval is confidential and all of the information on which EPA based its proposed approval has been available to the public. EPA does acknowledge that some information, such as the individual evaluation record for each emission reduction, was only available in hard copy. However, if CCAT had requested copies of these records, EPA would have made them available in our office for review, as the **Federal Register** stated, or we could have mailed a CD with the documents, since they were too large to send by e-mail.

Comment II: CCAT asserts that EPA's approval of the SIP revision would be arbitrary and capricious because EPA fails to explain the basis for its decision.

Response II: CCAT in this comment points to a background paragraph in EPA's TSD and argues that EPA's proposal to approve this SIP revision constitutes approving a "new but equivalent" process for generating offsets. EPA disagrees. The "new but equivalent" method referred to in the **Federal Register** notice was not a new process for generating credits, but instead an additional way for a source to comply with the Rule 1303 requirements that offsets be provided pursuant to Rule 1309 or by allocations from the Priority Reserve in accordance

with the provisions of Rule 1309.1. That is the intent of a source-specific SIP revision: to revise the existing SIP to account for an action that only applies to a single source. See, *e.g.* 76 FR 2263 (January 8, 2011) CCAT also cites a *NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009). However, nothing in the decision or in this SIP revision can provide a basis for CCAT to challenge EPA's action in 1996 on Regulation XIII. The time for challenging EPA's action in 1996 has past and our action in this SIP revision does not change or revise Regulation XIII.

Comment III: CCAT asserts that the SIP revision is a violation of CAA section 173(c) and 40 CFR 51.165(a)(3)(ii)(C)(1)(i)–(ii).

Comment III (1): CCAT contends the District's emission credits are not real because the District's internal accounts are "balanced in the aggregate" and there is a "negative balance".

Response III (1): EPA disagrees that the District's internal accounts are balanced in the aggregate. Instead, a more accurate description is that the District demonstrates that their local NSR program provides at least as many offsets "in the aggregate" as would otherwise be required under a strictly Federal NSR program, on a project by project basis. The emissions credits that are the subject of this action represent "real" emissions reductions that occurred from sources in the District. The District provided comprehensive documentation for each emission credit, including documentation of when the source was shutdown, verification that it was actually shutdown, actual emission inventory data for each source for the two years prior to shutdown, and other supporting information. The emission credits transferred to the AB 1318 Tracking System were individually subtracted from the District's internal accounts and are not included in the District's annual "in the aggregate" equivalency demonstration. CCAT also alleges that the District's accounts have a negative balance. This allegation has been thoroughly addressed in EPA Administrator Jackson's letter dated September 23, 2010, which we are incorporating by reference into this response. Administrator Jackson's letter sets forth the background during which EPA requested the District to remove pre-1990 emission credits for which the District did not have adequate documentation from its internal accounts. However, the District could replace those subtractions with previously uncounted emissions reductions from minor source orphan shutdowns. See p. 7–8. Therefore, the District's internal bank is adequately funded and does not have "negative balances." The support cited by CCAT for the proposition that the District's balances are insufficient is an opinion in CCAT's State court litigation pertaining to the California Environmental Quality Act (CEQA), which is not relevant to EPA's evaluation of this SIP revision. Finally, CCAT contends that there is insufficient documentation to demonstrate the emission reductions occurred. EPA disagrees. The District's documentation provides the name and location of the source that made the reduction, when the source was shutdown, verification that it was actually shutdown, the amount of the reduction, including documentation of actual emission inventory data for each source for the two years prior to shutdown, and other supporting information.

Comment III (2): CCAT contends that the emission reductions are not quantifiable.

Response III (2): EPA disagrees. The District provided documents with the SIP revision showing precisely how many pounds of pollutant had been reduced or eliminated to support each emission credit. These amounts were based on actual emission inventory data or production records for each source. This issue was also raised in conjunction with SB 827 and the Administrator's letter dated September 23, 2011 contains our further response.

Comment III (3): CCAT alleges that the emissions reductions are not surplus.

Response III (3): EPA disagrees. Emission credits would need to be adjusted to ensure they are surplus to any new or modified standards for PM_{10} and/or SO_x emissions from power plants, aggregate operations, spray booths, etc. The District has not promulgated new rules or standards that would apply to these types of sources, and thus no adjustments to the credits were required.

Comment III (4): CCAT contends that the emission reductions are not enforceable, citing the Ninth Circuit's decision in *El Comite para el Bienestar de Earlimart* v. *Warmerdam,* 539 F.3d 1062 (9th Cir. 2008).

Response III (4): EPA disagrees. In this action the emission reductions will be enforceable because EPA's SIP revision has incorporated by reference the transfer of a specific amount of emission credits. In Warmerdam, EPA had not incorporated by reference certain letters between CARB and EPA into the SIP. Here, the language that EPA is placing into the SIP clearly incorporates by reference all the individual emission reductions being transferred to the Sentinel Energy Project. While ultimately the Director of the Federal Register Office must determine that incorporation by reference complies with the requirements of 1 CFR 51.7, this type of material is generally within the type accepted for such treatment. See Use of Incorporation by Reference as a Mechanism for Shortening Federal Register Notices, from Gerald H. Yamada, Principal Deputy General Counsel to Regulatory Policy Group, dated Jan. 12, 1995. CCAT can enforce the District's transfer of the emission credits and can also confirm that the permit from which the emission credit was created has been inactivated or review the conditions of a permit revised to create the emission reductions.

Comment III (5): CCAT asserts that some of the emissions reductions are not creditable.

Response III (5): EPA disagrees. Emission reductions are considered creditable if they have not been relied upon to demonstrate attainment, RFP or any other permit action. The District accounts for the use credits from their internal accounts by adding the average annual quantity of ERCs used over the last eight years to the projected inventory for years 2014 and 2020, *i.e.,* the AQMP assumes that these emissions are in the air. By including such emissions in the inventory, the attainment plan has not relied on these emission reductions, thus they remain creditable for other purposes, such as NSR offsets. In addition, these emission reductions are being transferred from the Districts internal offset account and are therefore not available for any other permit action.

Comment IV: CCAT contends that EPA cannot approve the District's transfer of the emission credits to the Sentinel Energy Project because the emission reductions have been relied upon in other permitting actions and for demonstrating attainment.

Comment IV.A.1: CCAT asserts that the offsets being transferred do not meet the requirements of Federal law because the District's internal accounts have negative balances.

Response IV.A.1: This portion of CCAT's comment letter is a repetition of prior comments. With respect to the purported negative balance, EPA has responded previously. We repeat that the District does not have a negative balance. As fully set forth in the Administrator's petition response letter dated September 23, 2010, EPA requested the District to remove any pre-1990 emission credits for which the District did not have adequate documentation. The District did so and

then added in credits from minor source orphan shutdowns that it had not previously counted. EPA has determined that funding the District's bank with minor source orphan shutdowns complies with the CAA. The District's balance of credits for each pollutant is positive when credits from minor orphan shutdowns are included.

Comment IV.A.2: CCAT also contends that the emissions credits being transferred that were based on shut-down equipment may not be used if they were shut down before the base year for the SIP planning process.

Response IV.A.2: CCAT contends that the District has relied on the emission reduction credits generated from shutdown sources which occurred before the 2002 baseline in the 2007 AQMP. EPA disagrees. As explained in Response III (5), the District adds in a portion of the pre-baseline banked emission credits into the inventory for each future year. The amount added for each pollutant is determined based on historical usage of offsets in the basin. Since the baseline inventory is adjusted to account for an adequate number of pre-baseline emission reductions due to shutdowns, the District is complying with the requirements of 40 CFR 51.165(a)(3)(ii)(C)(1)(ii) and may use such reductions as current offsets.

Comment IV.A.3: CCAT contends that "crediting these purported emission reductions to the SCAQMD's Offset Accounts Violates CCA [sic] section 110(l)".

Response IV.A.3: Under section 110(l) of the CAA, EPA may not approve any SIP revision that would interfere with attainment, reasonable further progress (RFP) or any other CAA requirement.

In our proposed approval, EPA stated that this revision will not interfere with attainment or RFP because the emission credits in the AB 1318 Tracking System are not relied on for attainment or RFP in the District's most recent attainment demonstrations. We also indicated that this revision did not interfere with any other CAA requirement. In addition, we stated that the District supplied a copy of its air quality analysis for the CPV Sentinel Energy Project which shows that operation of the facility will not interfere with the ability of the District to reach attainment.[2] CCAT has provided no specific information to refute this discussion regarding CAA 110(l) from our proposal.

Comment IV.A.3.i: CCAT again contends that the emission reductions have been relied upon by the District in past permitting actions and in its 2007 AQMP, therefore not making them available for the Sentinel Energy Project.

Response IV.A.3.i: Please see earlier responses on these same points in responses III(5) and IV.A.2.

Comment IV.A.3.ii: CCAT contends that it is inadequate for EPA to meet its burden for rational decision-making regarding compliance with section 110(l) by not being aware of interference the proposed action would have with other CAA requirements.

Response IV.A.3.ii: EPA disagrees. The TSD (pages 5–6) discusses how the project complies with the CAA requirements that this SIP action is subject to, and this statement is simply affirming that there are no other CAA requirements for which the action is subject.

Comment IV.A.3.iii: CCAT contends that EPA fails to describe the "new but equivalent mechanism * * * for satisfying the offset requirements of CAA § 173", and that the record does not provide any proof, facts or analysis that EPA engaged in a rational consideration of all facts for its decision.

Response IV.A.3.iii: EPA disagrees. The TSD (pages 5–6) provides a discussion of all five of the CAA § 173 offset integrity criteria, and explains the rationale for EPA's conclusion that the proposed offsets meet these criteria. The "new but equivalent mechanism" EPA was referring to in the FR notice was not for generating credits, but instead refers to the ability of the source to provide emission reduction credits for their project which were not provided pursuant to Rule 1309 or allocations from Rule 1309.1.

Comment IV.A.3.iii: CCAT contends that in an analysis undertaken by the California Energy Commission, staff concluded that the Sentinel facility would contribute to existing exceedences in the area, and supplied the text from the CEC analysis.

Response IV.A.3.iii: The submitted CEC modeling does not evaluate the impacts of the project on the District's ability to attain the PM_{10} standard, which is the required evaluation criteria, but instead models a worst case scenario assuming the highest background concentrations, the highest PM_{10} emission rate from the plant and the worst meteorological conditions would all occur at the same time and at the same location. CEC staff acknowledges that all of these worst case conditions are "not likely to occur." In addition, the modeling did not take into account the reductions expected from other District control measures or the offsets provided for this project. The air quality analysis prepared by the District is consistent with EPA guidance for determining the impacts of projects on an area's ability to attain a NAAQS.

Comment IV.A.3.iv: CCAT contends that EPA must analyze this submission together with the District's recently approved Rule 1315.

Response IV.A.3.iv: EPA disagrees. We note that the District has submitted and EPA will be taking action in the future on District Rule 1315. Rule 1315 provides in regulatory language the District methodology for debiting and crediting offsets for sources that qualify under Rules 1304 and 1309.1. Rule 1315 is not the subject of, nor is it related to this rulemaking in anyway. The merits of Rule 1315 will be considered in a separate action which will be subject to public notice and comment.

CCAT has not provided any specific comments showing that the factual statements in our proposed approval were incorrect or insufficient. CCAT merely repeats general and conclusory allegations of violations of section 110(l). That provision is not a general bar to revising a SIP. Accordingly, section 110(l) does not prevent us from taking final action to approve this source-specific SIP revision independent of action on Rule 1315.

Comment V.: CCAT contends that through this source-specific SIP revision EPA has re-opened its 1996 approval of the California SIP's creation of a SCAQMD internal bank, and how the credits in the bank are generated, tracked and validated.

Response V: EPA approved Regulation XIII in 1996. Regulation XIII comprised the District's comprehensive new source review program, including two provisions that allowed the District to provide offsets from its internal bank of emission credits to certain exempt and priority reserve sources which would otherwise be required to obtain offsets for meeting Federal CAA requirements. Our approval of Regulation XIII was not challenged following our rulemaking action in 1996.

CCAT's contention that our approval of this source-specific SIP revision re-opens our 1996 approval of Regulation XIII is without merit. This source-specific SIP revision allows the District to transfer certain emissions credits to one stationary source, the Sentinel Energy Project. The action does not modify or revise any provision of Regulation XIII. CCAT notes that it has litigation in the Court of Appeals regarding its belief that District Rule 1309 applies to the District's internal bank. This source-specific SIP revision is unrelated. In this action, we have found that the specific amount of emission credits the District is

[2] *Air Quality Demonstration: SIP Revision for CPV Sentinel Energy Project.*

transferring to Sentinel meet the integrity criteria of Federal law in the amounts calculated to offset Sentinel's emissions increases.

CCAT's comment also contends that this action is establishing "an alternate generation system." We disagree, as noted previously.

Comment V.1.: CCAT lastly alleges that the source-specific SIP revision violates CAA section 172(e).

Response V.1.: CCAT has not explained how this source-specific SIP revision triggers the requirements in section 172(e) that apply to the Administrator following promulgation of a national ambient air quality standard. CCAT states that any emission credits that are not "generated" according to Rule 1309 "must accrue to the benefit of air quality" apparently based on section 172(e). EPA does not agree that section 172(e) establishes such an obligation.

III. EPA Action

This source-specific SIP revision complies with all relevant CAA requirements and is consistent with EPA's guidance for NSR. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this source-specific SIP revision into the California SIP.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review 13563

This action will approve the source-specific SIP revision known as the CPV Sentinel Energy Project AB 1318 Tracking System into the California SIP. This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

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 under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does 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 CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA 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 approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve 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

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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.

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 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This 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.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 4, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(384) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(384) New and amended regulations for the following APCD's were submitted on September 10, 2010 by the Governor's designee.

(i) Incorporation by Reference

(A) South Coast Air Quality Management District

(*1*) Resolution No. 10–20, dated July 9, 2010.

(*2*) "Revision to the State Implementation Plan for the South Coast Air Quality Management District, State of California: Sulfur Oxides and Particulate Matter Offset Requirements for the Proposed CPV Sentinel Power Plant to be Located in Desert Hot Springs, California, Including AB 1318 Offset Tracking System", which is incorporated by reference in Resolution No. 10–20, dated July 9, 2010.

(*3*) "CPV Sentinel Energy Project AB 1318 Tracking System", which is incorporated by reference in Resolution No. 10–20, dated July 9, 2010.

* * * * *

[FR Doc. 2011–9460 Filed 4–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 158 and 161

[EPA–HQ–OPP–2008–0110; FRL–8861–7]

RIN 2070–AD30

Data Requirements for Antimicrobial Pesticides; Notification to the Secretaries of Agriculture and Health and Human Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretaries of Agriculture and Health and Human Services.

SUMMARY: This document notifies the public that the Administrator of EPA has forwarded to the Secretary of Agriculture and the Secretary of Health and Human Services a draft final rule under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA is codifying a separate listing of data requirements in the Code of Federal Regulations for the registration of antimicrobial pesticide products. These data requirements reflect current scientific knowledge and current Agency regulatory practices. Besides providing the regulated community with clearer and more transparent information, the updated data requirements further enhance EPA's ability to make regulatory decisions about the human health and environmental fate and effects of antimicrobial pesticide products.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0110. All documents in the docket are listed in the docket index available in *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Field and External Affairs Division, (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460–0001; *telephone number:* (703) 305–6304; *e-mail address: boyle.kathryn@epa.gov,* or contact Scott Drewes, same address; telephone number (703) 347–0107; *e-mail address: drewes.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

This action is directed to the public in general. It simply announces the submission of a draft final rule to the U.S. Department of Agriculture (USDA) and the Department of Health and Human Services (HHS) and does not otherwise affect any specific entities. This action may, however, be of particular interest if you are a producer of pesticide products (NAICS 32532), antifoulants (NAICS 32551), antimicrobial pesticides (NAICS 32561), wood preservatives (NAICS 32519), importers of such products, or any person or company who seeks to register an antimicrobial, antifoulant coating, ballast water treatment, wood preservative pesticide, or to obtain a tolerance for such a pesticide. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding this action, consult one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

II. What action is EPA taking?

Section 25(a)(2) of FIFRA requires the Administrator to provide the Secretary of Agriculture with a copy of any final regulation at least 30 days before signing it for publication in the **Federal Register**. Similarly, section 21(b) of FIFRA provides that the Administrator must provide the Secretary of Health and Human Services with a copy of any draft final rule pertaining to a public health pesticide at least 30 days before signing it for publication in the **Federal Register**. The draft final rule is not available to the public until after it has been signed by EPA. If either Secretary comments in writing regarding the draft final rule within 15 days after receiving it, the Administrator shall include the comments of the Secretary, if requested by the Secretary, and the Administrator's response to those comments in the final rule when published in the **Federal Register**. If the Secretary does not comment in writing within 15 days after receiving the draft final rule, the Administrator may sign the final rule for publication in the **Federal Register** anytime after the 15–day period.

III. Do any statutory and executive order reviews apply to this notification?

No. This document is not a rule; it is merely a notification of submission to the Secretaries of Agriculture and Health and Human Services. As such, none of the regulatory assessment requirements apply to this document.

IV. Will this Notification be Subject to the Congressional Review Act?

No. This action is not a rule for purposes of the Congressional Review Act (CRA), 5 U.S.C. 804(3), and will not be submitted to Congress and the Comptroller General. EPA will submit the final rule to Congress and the Comptroller General as required by the CRA.

List of Subjects

40 CFR Part 158

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 161

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 7, 2011.

Steven Bradbury,

Director, Office of Pesticide Programs.

[FR Doc. 2011–9292 Filed 4–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0481; FRL–8859–9]

Fluopicolide; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the fungicide, fluopicolide [2,6-dichloro-*N*-[[3-chloro-5-(trifluoromethyl)-2-pyridinyl]methyl]benzamide], including its metabolites and degradates. Compliance with the tolerance levels specified is to be determined by measuring only fluopicolide in or on the commodity. The fluopicolide metabolite, 2,6-dichlorobenzamide (BAM), is regulated with its own set of tolerances. This regulation establishes tolerances for residues of fluopicolide and its metabolites in or on multiple commodities which are identified and discussed later in this document. Valent U.S.A. Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 20, 2011. Objections and requests for hearings must be received on or before June 20, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0481. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Janet Whitehurst, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6129; e-mail address: *whitehurst.janet@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*. To access the harmonized test guidelines referenced in this document electronically, please go *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines."

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0481 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 20, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2006–0481, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of February 4, 2010 (75 FR 5790) (FRL–8807–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 9F7617 and 9F7568 by Valent U.S.A, 1600 Riviera Ave., Walnut Creek, CA 94596–8025). The petitions requested that 40 CFR 180.627 be amended by establishing tolerances for residues of the fungicide, fluopicolide, and its metabolites, in or on *Brassica,* leafy greens, subgroup 5B at 20 parts per million (ppm) (9F7617). Additionally, Valent U.S.A. has proposed establishing tolerances for residues of the fluopicolide metabolite, BAM on cattle, goat, horse and sheep meat at 0.02 ppm; cattle, goat, horse and sheep fat at 0.05 ppm; cattle, goat, horse and sheep meat byproducts at 0.05 ppm; and milk at 0.01 ppm (9F7568). These notices referenced a summary of the petitions prepared by Valent U.S.A., the registrant, which is available in the docket, *http://www.regulations.gov.*

Valent U.S.A. previously submitted petition 5F7016 to the Agency for consideration of uses on tuberous and corm vegetables and tolerance for indirect or inadvertent tolerances resulting from rotation to wheat. The Interregional Research Project No 4 (IR–4) submitted petition 7E7172 which included uses on root and tuber vegetables. In the **Federal Register** of May 28, 2008 (73 FR 30492) (FRL–8363–7), and the **Federal Register** of June 27, 2007 (72 FR 35237) (FRL–8133–4), EPA issued notices pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of these petitions. The Agency reviewed the submitted petitions and concluded that due to data deficiencies, commodities that had associated animal feed items were not, at that time, supported by adequate data. Therefore, while the Agency approved the majority of new uses requested in the petition 5F7016, the Agency did act on the request for uses on potato, sugar beets and carrots, and on the request to allow rotation to wheat.

Valent U.S.A. subsequently submitted additional data to address deficiencies cited in the Agency reviews for the petition 5F7016, including supporting data for the animal metabolism study, a BAM feeding study, confirmatory analytical method and documentation that a BAM reference standard is available; and requests that 40 CFR 180.627 be amended by establishing tolerances for residues of the fungicide fluopicolide in or on vegetable, tuberous and corm subgroup 1C at 0.02 ppm; potato, processed potato waste at 0.05 ppm; vegetable root, subgroup 1A at 0.15 ppm. The petitioner also requested the establishment of tolerances for indirect or inadvertent residues of fluopicolide in or on wheat, forage at 0.20 ppm; wheat, grain at 0.02 ppm; wheat, hay at 0.50 ppm; wheat, milled byproducts at 0.07 ppm; wheat, straw at 0.50 ppm; wheat, aspirated grain fractions at 0.07 ppm. Concurrently with establishing the crop subgroup 1A tolerance, the petitioner proposed to delete the current tolerance on the "vegetable root, subgroup 1A, except sugar beet and carrot" since the new 1A unrestricted tolerance will cover the existing commodity tolerances as well as tolerances needed for the new uses on sugar beets and carrots. Additionally, concurrently with establishing the crop supgroup 1C "vegetable, tuberous and corm subgroup," the petitioner proposed to delete the current tolerance on "vegetable, tuberous and corm (except potato) subgroup 1D tolerance, since the new 1C subgroup tolerance will cover the existing commodity tolerances listed under 1C as well as the tolerance needed for the new use on potatoes.

There were no comments received in response to these notices of filings.

Based upon review of the data supporting the petition, EPA has modified the tolerances proposed for vegetable, brassica (cole) leafy subgroup 5B. The appropriate tolerance for vegetable brassica (cole) leafy subgroup 5B is 18 ppm. The reason for this change is explained in Unit IV.D. EPA has not established the requested BAM tolerances because the relevant data showed that no new tolerances for BAM are required for animal commodities. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe."

Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.* * *"

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fluopicolide and separately for the fluopicolide metabolite, BAM, including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fluopicolide and separately, the fluopicolide metabolite BAM follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data for fluopicolide and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The toxicological database indicates that technical grade fluopicolide has relatively low acute toxicity. Fluopicolide is not a dermal sensitizer, primary eye irritant, or primary skin irritant. The subchronic and chronic toxicity studies showed that the primary effects of fluopicolide are in the liver. Kidney and thyroid toxicity were observed in rats only. Fluopicolide is not neurotoxic, carcinogenic, nor mutagenic. Developmental toxicity in the rabbit occurred only at doses that caused severe maternal toxicity (including death). In the rat, developmental effects were seen only at high dose levels (700 milligrams/kilogram/day (mg/kg/day)) in the presence of maternal toxicity. Similarly, offspring effects (body weight, kidney) occurred only at levels causing toxicity in parents of the multi-generation reproductive toxicity study. There is no evidence of increased quantitative susceptibility of rat or rabbit fetuses to *in utero* or postnatal exposure to fluopicolide. No toxic effects were observed in studies in which fluopicolide was administered by the dermal routes of exposure. The toxicological profile for fluopicolide suggests that increased durations of exposure do not significantly increase the severity of observed effects. The rabbit developmental and rat chronic/cancer studies were therefore considered for all exposure scenarios.

Specific information on the studies received and the nature of the adverse effects caused by fluopicolide as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document *Fluopicolide and its Metabolite, 2,6–Dichlorobenzamide (BAM). Human Health Risk Assessment to Support New Section 3 Uses on Brassica Leafy Greens Subgroup 5B, Potatoes, Sugar Beets, Carrots and to Allow Rotation to Wheat* in the docket ID number EPA–HQ–OPP–2006–0481.

BAM (AE C653711) is a common metabolite and/or environmental degradate of fluopicolide as well as the herbicide dichlobenil. Because the toxicological endpoints for BAM and fluopicolide are different, a separate human health risk assessment is required which addresses risks from exposure to BAM residues. The BAM risk assessment considers residues resulting from both fluopicolide and dichlobenil uses. However, BAM residues generated from fluopicolide uses are expected to be significantly lower than BAM residues from dichlobenil uses.

EPA has evaluated the available toxicity data for BAM and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The BAM toxicity database indicates that BAM has moderate acute toxicity via the oral route of exposure. In subchronic and chronic toxicity studies, the primary oral effects seen in the rat and dog were body weight changes. Adverse liver effects were also observed. There is no evidence that BAM is either mutagenic or clastogenic nor is there evidence of endocrine mediated toxicity. BAM is considered to be neurotoxic. In the absence of carcinogenicity study data for a second species, the Agency has assumed that BAM's carcinogenic potential is similar to that of dichlobenil, the parent compound having the greatest carcinogenicity potential. Dichlobenil is classified as "Group C, possible human carcinogen." Quantification of cancer risk for BAM is based on the reference dose (RfD) approach which requires comparison of the chronic exposure to the RfD. Using this methodology will adequately account for all chronic toxic effects, including carcinogenicity, likely to result from exposure to BAM. Specific information regarding the metabolite of fluopicolide can be found in the document entitled *2,6-Dichlorobenzamide (BAM) as a Metabolite/Degradate of Fluopicolide and Dichlobenil. Human Health Risk Assessment for Proposed Uses of Fluopicolide on Tuberous and Corm Vegetables, Leafy Vegetables (except brassica), Fruiting Vegetables, Cucurbit Vegetables, Grapes, Turf, and Ornamentals, and for Indirect or Inadvertent Residues on the Rotational Crop Wheat (PC Codes: 027402 BAM and 027412 (fluopicolide), Petition No: 5F7016* at regulations.gov*).* Both referenced documents are available in the docket established for this action, which is described under **ADDRESSES**, and is identified as docket ID number EPA–HQ–OPP–2006–0481. A quantitative reassessment of the BAM risk for the new uses associated with the petitions 9F7617 and 9F7568 was not conducted because the new uses do not add significantly to the BAM dietary exposure; therefore, the conclusions from the most recently conducted BAM human health risk assessment remain unchanged.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as

a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

The selected toxicological endpoints used for fluopicolide are presented below.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUOPICOLIDE FOR USE IN DIETARY AND OCCUPATIONAL HUMAN HEALTH RISK ASSESSMENTS

Exposure/scenario	Point of departure	Uncertainty/ FQPA safety factors	RfD, PAD, level of concern for risk assessment	Study and toxicological effects
Acute Dietary (all populations)	An endpoint attributable to a single dose was not identified from the available data.			
Chronic Dietary (all populations)	Maternal NOAEL = 20 mg/kg/day.	UF_A = 10x UF_H = 10x FQPA SF = 1X	Chronic RfD = 0.2 mg/kg/day cPAD = 0.2 mg/kg/day.	Developmental Toxicity Study in Rabbits LOAEL (maternal) = 60 mg/kg/day based on death, abortions/premature deliveries, decreased food consumption and body weight gain. Co-critical: Chronic/Oncogenicity Study in Rats NOAEL = 31.5 mg/kg/day. LOAEL = 109.4 mg/kg/day based on decreased body weight gain and increased thyroid weight and increased incidence of thyroid lesions.
Incidental Oral Intermediate-Term (1–6 months)	Maternal NOAEL = 20 mg/kg/day.	UF_A = 10x UF_H = 10x FQPA SF = 1X	MOE = 100 (occupational). MOE = 100 (residential).	Developmental Toxicity Study in Rabbits LOAEL (maternal) = 60 mg/kg/day based on death, abortions/premature deliveries, decreased food consumption and body weight gain
Dermal Short-, Intermediate- and Long-Term (1–30 days, 1–6 months, and > 6 months)	Maternal NOAEL = 20 mg/kg/day.	UF_A = 10x UF_H = 10x FQPA SF = 1X 37% dermal absorption.	MOE = 100 (occupational). MOE = 100 (residential).	Developmental Toxicity Study in Rabbits LOAEL (maternal) = 60 mg/kg/day based on death, abortions/premature deliveries, decreased food consumption and body weight gain. Co-critical: Chronic/Oncogenicity Study in Rats NOAEL = 31.5 mg/kg/day. LOAEL = 109.4 mg/kg/day based on decreased body weight gain and increased thyroid weight and increased incidence of thyroid lesions.
Inhalation Short-, Intermediate- and Long-term (1–30 days, 1–6 months, and > 6 months)	Maternal NOAEL = 20 mg/kg/day.	UF_A = 10x UF_H = 10x FQPA SF = 1X (inhalation and oral toxicity are assumed to be equivalent).	MOE = 100 (occupational). MOE = 100 (residential).	Developmental Toxicity Study in Rabbits LOAEL (maternal) = 60 mg/kg/day based on death, abortions/premature deliveries, decreased food consumption and body weight gain. Co-critical: Chronic/Oncogenicity Study in Rats NOAEL = 31.5 mg/kg/day. LOAEL = 109.4 mg/kg/day based on decreased body weight gain and increased thyroid weight and increased incidence of thyroid lesions.
Cancer (oral, dermal, inhalation)	Classification: "Not Likely to be Carcinogenic to Humans."			

FQPA SF = FQPA Safety Factor.
LOC = level of concern.
LOAEL = lowest observed adverse effect level.
MOE = margin of exposure.
N/A = not applicable.
NOAEL = no observed adverse effect level.
PAD = population adjusted dose (a = acute, c = chronic).
Point of Departure (POD) = A data point or an estimated point that is derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures.
RfD = reference dose.
UF = uncertainty factor.
UF_A = extrapolation from animal to human (interspecies).
UF_H = potential variation in sensitivity among members of the human population (intraspecies).

A summary of the toxicological endpoints for BAM used for human risk assessment can be found at regulations.gov in the document entitled *Fluopicolide and its Metabolite, 2,6-Dichlorobenzamide (BAM). Amended Human Health Risk Assessment to Support New Section 3 Uses on Brassica Leafy Greens Subgroup 5B, Potatoes, Sugar Beets, Carrots and to Allow Rotation to Wheat* in docket ID number EPA–HQ–OPP–2006–0481.

The selected toxicological endpoints used for BAM are presented below.

TABLE 2—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR 2,6–DICHLOROBENZAMIDE (BAM) FOR USE IN DIETARY, RESIDENTIAL, AND OCCUPATIONAL HUMAN HEALTH RISK ASSESSMENTS

Exposure scenario	Point of departure	Uncertainty/ FQPA safety factors	RfD, PAD, level of concern for risk assessment	Study and toxicological effects
Acute Dietary (General population, including infants and children)	LOAEL = 100 mg/kg/day.	UF_A = 10X UF_H = 10X FQPA SF[4 5] = 10X (includes UF_L and UF_{DB}).	aRfD = aPAD = 0.1 mg/kg/day.	Dose-range finding assay for *in vivo* mouse erythrocyte micronucleus assay. LOAEL = 100 mg/kg/day based on lethargy after a single oral dose.
Acute Dietary (Females 13–49 years of age)	NOAEL = 30 mg/kg/day.	UF_A = 10X UF_H = 10X FQPA SF[4] = 10X (includes UF_{DB}).	aRfD = aPAD = 0.03 mg/kg/day.	Developmental toxicity (rabbit) Offspring LOAEL = 90 mg/kg/day based on increased incidences of late abortion and skeletal (bipartite interparietal bone) and visceral (postcaval lung lobe agenesis) anomalies
Chronic Dietary (All populations)	NOAEL = 4.5 mg/kg/day.	UF_A = 10X UF_H = 10X FQPA SF[4] = 10X (includes UF_{DB}).	cRfD = cPAD = 0.0045 mg/kg/day.	Chronic toxicity (dog) LOAEL = 12.5 mg/kg/day based on decreased body weight and body weight gain.
Incidental Oral Short- and Intermediate-Term (1–30 days and 1–6 months)	NOAEL = 14 mg/kg/day.	UF_A = 10X UF_H = 10X FQPA SF[4] = 10X (includes UF_{DB}).	Residential LOC for MOE = 1000.	90-day oral (rat) LOAEL = 49 mg/kg/day based on decreased body weight gain (M) and reduced skeletal muscle tone (day 4 only in males; days 91 and 92 only in females).
Dermal Short-, Intermediate-, and Long-Term (1–30 days, 1–6 months, and > 6 months)	NOAEL = 25 mg/kg/day.	UF_A = 10X UF_H = 10X FQPA SF = 1X (residential uses only).	Residential and Occupational LOC for MOE = 100.	5-day dermal *using dichlobenil*[6] (mouse; literature study[1]). LOAEL = 50 mg/kg/day based on olfactory epithelial damage.
Inhalation Short-, Intermediate-, and Long-Term (1–30 days, 1–6 months, and > 6 months)	NOAEL = 3.1 mg/kg/day[2]	UF_A = 10X UF_H = 10X FQPA SF = 1X (residential uses only).	Residential and Occupational LOC for MOE = 100.	28-day inhalation *using dichlobenil*[6] (rat) LOAEL = 5.5 mg/kg/day[3] based on nasal degeneration.
Cancer	Classification: Formally unclassified; parent herbicide dichlobenil classified as "Group C, possible human carcinogen" with RfD approach utilized for quantification of human risk.			

FQPA SF = FQPA Safety Factor.
LOAEL = lowest observed adverse effect level.
LOC = level of concern.
NOAEL = no observed adverse effect level.
MOE = margin of exposure.
N/A = Not Applicable.
PAD = population adjusted dose.
RfD = reference dose (a = acute, c = chronic).
UF = uncertainty factor.
UF_A = extrapolation from animal to human (interspecies).
UF_{DB} = to account for the absence of key data.
UF_H = potential variation in sensitivity among members of the human population (intraspecies).
UF_L = use of a LOAEL to extrapolate a NOAEL.

[1] *Deamer NJ, O'Callaghan JP, Genter MB.* (1994). Olfactory toxicity resulting from dermal application of 2,6-dichlorobenzonitrile (dichlobenil) in the C57Bl mouse. Neurotoxicology 15(2):287–93.

[2] Calculated as follows: (NOAEL) × (m^3/1000 L) × (10.26 L/hr) × 6 hr/day × (1/0.236 kg), where NOAEL = 12 mg/m^3 from 28-day inhalation toxicity study (Sprague Dawley rat).

[3] Calculated as follows: (LOAEL) × (m^3/1000 L) × (10.26 L/hr) × 6 hr/day × (1/0.236 kg), where LOAEL = 21 mg/m^3 from 28-day inhalation toxicity study (Sprague Dawley rat).

[4] The FQPA SF has been retained in the form of a UF_{DB} for the lack of neurotoxicity data, including olfactory toxicity data.

[5] The FQPA SF has been retained in the form of a UF_L and UF_{DB} for the use of a LOAEL to extrapolate a NOAEL and for the lack of olfactory toxicity data.

[6] In the absence of route-specific data, endpoints for all dermal and inhalation exposure scenarios were identical to those for dichlobenil (parent), since olfactory toxicity has been observed following i.p. administration of BAM in mice [*Brittebo EB, Eriksson C, Feil V, Bakke J, Brandt I.* (1991). Toxicity of 2,6-dichlorothiobenzamide (chlorthiamid) and 2,6-dichlorobenzamide in the olfactory nasal mucosa of mice. *Fundam Appl Toxicol* 17(1):92–102].

A summary of the toxicological endpoints for BAM used for human risk assessment can be found at regulations.gov in the document entitled *2,6-Dichlorobenzamide BAM as a Metabolite/Degradate of Fluopicolide and Dichlobenil. Human Health Risk Assessment for Proposed Uses of Fluopicolide on Tuberous and Corm Vegetables, Leafy Vegetables (except brassica), Fruiting Vegetables, Cucurbit Vegetables, Grapes, Turf, and Ornamentals, and for Indirect or Inadvertent Residues on the Rotational Crop Wheat (PC Codes: 027402 BAM and 027412 Fluopicolide, Petition No: 5F7016 (71 FR 34345) (FRL–8071–4)* in docket ID number EPA–HQ–OPP–2006–0481).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluopicolide and its metabolites, EPA considered exposure under the petitioned-for tolerances as well as all existing fluopicolide tolerances in 40 CFR 180.40. EPA assessed dietary exposures from fluopicolide and separately, its metabolite, BAM in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for fluopicolide; therefore, a quantitative acute dietary exposure assessment is unnecessary.

A conservative acute dietary exposure assessment for the metabolite of fluopicolide, BAM, was conducted. Maximum residues of BAM from fluopicolide field trials on tuberous and corm vegetables, leafy vegetables (except brassica), fruiting vegetables, cucurbit vegetables, grapes (domestic and imported), (except potato), and from dichlobenil field trials on food commodities with established/pending tolerances (40 CFR 180.231) were included in the assessments. The assessments used 100 percent crop treated (PCT) except for apples, blueberries, cherries, cranberries, peaches, pears, and raspberries.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the food consumption data from the U.S. Department of Agriculture 1994–1996 and 1998 Continuing Survey of Food Intake by Individuals. As to residue levels in food, two chronic assessments were conducted: One assessment for parent fluopicolide (including residues of concern other than the metabolite BAM) and one assessment for BAM. As to residue levels in food, EPA assumed for the parent fluopicolide assessment that all foods for which there are tolerances were treated and contain tolerance-level residues. A conservative chronic dietary exposure assessment for the metabolite of fluopicolide, BAM, was conducted as described in Unit III.C.1.i. for the acute assessment.

iii. *Cancer.* Fluopicolide is not likely to be carcinogenic to humans; therefore, a cancer risk assessment was not conducted for the parent fluopicolide. The carcinogenic potential of BAM has been evaluated in only one species, the rat. That study showed an increased incidence of hepatocellular adenomas in high-dose females that was marginally statistically significant. To be conservative, EPA has assumed that BAM's potential for carcinogenicity is similar to the parent having the greatest carcinogenic potential. As noted, fluopicolide has been classified as not likely to be carcinogenic to humans; dichlobenil is classified as "Group C, possible human carcinogen" with the reference dose (RfD) approach utilized for quantification of human risk. Accordingly, EPA has assessed BAM's cancer risk by comparing BAM exposure to the dichlobenil RfD. For this assessment, EPA relied on BAM chronic exposure assessment as described in Unit III.C.1.ii.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for fluopicolide. Tolerance level residues or maximum field trial residues and 100% CT were assumed for all food commodities.

EPA used anticipated residues and PCT information for the acute and chronic dietary risk assessments for BAM. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such Data Call-Ins (DCIs) as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which may be applied in a particular area.

The assessments assumed 100 PCT for fluopicolide and dichlobenil, except for the following dichlobenil-treated crops:

a. For the acute assessment: Apples (2.5%), blueberries (2.5%), cherries (2.5%), peaches (2.5%), pears (2.5%), and raspberries (5%).

b. For the chronic assessment: Apples (1%), blueberries (1%), cherries (1%), cranberries (45%), peaches (1%), pears (1%), and raspberries (5%).

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fluopicolide in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of

fluopicolide. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the surface water concentrations estimated using the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS); and Screening Concentrations in Ground Water (SCI–GROW) models, the estimated environmental concentrations (EECs) of fluopicolide for acute exposures are estimated to be 25.50 parts per billion (ppb) for surface water and 0.5 ppb for ground water.

The EECs for chronic exposures (non-cancer) assessments are estimated to be 24.14 ppb for surface water and 0.5 ppb for ground water.

The EECs for chronic exposures (cancer) assessments are estimated to be 22.36 ppb for surface water. The EECs for acute and chronic assessments are estimated to be 0.5 ppb in ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the chronic dietary risk assessment, the water concentration of value 24.14 ppb was used to access the contribution to drinking water.

Considering residues of BAM in drinking water from uses of dichlobenil and fluopicolide, the uses on dichlobenil will result in the highest residues in drinking water. Therefore, the results from dichlobenil (from the use of nutsedge at 10 lb dichlobenil active ingredient/Acre (ai)/(A)) are used in this assessment, *i.e.,* 56.2 ppb was used as the value of BAM residues in drinking water in the dietary assessment for both the acute and chronic assessment.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fluopicolide is currently registered for the following uses that could result in residential exposures: Residential turf grass and ornamental plants. EPA assessed residential exposure using the following assumptions: Residential handlers may receive short–term dermal and inhalation exposure to fluopicolide when mixing, loading, and applying the formulations. Residential post-application exposure via the dermal route is likely for adults and children entering treated lawns. Toddlers may also experience exposure via incidental non-dietary ingestion (*i.e.,* hand-to-mouth, object-to-mouth (turfgrass), and soil ingestion) during post-application activities on treated turf. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found fluopicolide or the fluopicolide metabolite, BAM to share a common mechanism of toxicity with any other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fluopicolide and BAM do not have a common mechanism of toxicity with other substances. Residues of BAM resulting from both the use of fluopicolide as well as from dichlobenil were evaluated to support the requested new uses. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and posnatal sensitivity.* For fluopicolide, there is no evidence of quantitative susceptibility following *in utero* and/or postnatal exposure in the rabbit and rat developmental toxicity studies or in the 2-generation rat reproduction study. Qualitative susceptibility was observed in the rat developmental toxicity study. Fetal effects (reduced growth and skeletal defects) and late-term abortions were observed. There is low concern for this qualitative susceptibility, because the fetal effects, and late-term abortions have been well characterized and only occurred at a dose level near the limit dose. Protection of the maternal effects also protects for any effects that may occur during development. There are no residual uncertainties concerning prenatal and postnatal toxicity for fluopicolide.

For BAM, there is no evidence of quantitative susceptibility following *in utero* and/or postnatal expsoure in the rabbit developmental toxicity study or in the 3-generation rat reproduction study. Qualitative susceptibility was not observed in the 3-generation reproduction study. Qualitative susceptibility was observed in the rabbit developmental toxicity study. Fetal effects (skeletal and visceral anomalies) and late-term abortions were observed. There is low concern for this qualitative susceptibility, because the fetal effects and late-term abortions have been well-characterized and occurred at dose levels where significant maternal toxicity (severe body weight gain decrements and decreased food consumption) was observed. Protection of the maternal effects also protects for any effects that may occur during development. There are no residual uncertainties concerning prenatal and postnatal toxicity for BAM.

3. *Conclusion.* As to fluopicolide, EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA SF to 1X. That decision is based on the following findings:

i. The toxicity database for fluopicolide is largely complete, lacking only an immunotoxicity study. EPA has evaluated the available toxicity data for fluopicolide and determined that an additional database uncertainty factor is not needed to account for potential immunotoxicity. The most sensitive endpoint in the database was decreased food consumption, decreased body weight gain, abortions/premature deliveries, and death. No definitive cross-species target organ was identified for fluopicolide; however, liver toxicity, kidney toxicity, and thyroid toxicity were observed in the database. No treatment-related changes indicative of potential immunotoxicity were seen in hematology parameters, organ weights (thymus, spleen), gross necropsy (enlarged lymph nodes), or histopathology (spleen, thymus, lymph nodes) when tested up to the limit dose in mice and rats. Therefore, EPA does not believe that conducting a special harmonized test guideline series 870.7800 immunotoxicity study will result in a NOAEL less than 20 mg/kg/day, which is presently used as the

point of departure for chronic risk assessment.

ii. There is no indication that fluopicolide is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. The degree of concern for prenatal and/or postnatal toxicity is low.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. Conservative ground water and surface water modeling estimates were used. Similarly conservative residential SOPs were used to assess post-application exposure to children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by fluopicolide.

EPA has retained the 10X FQPA SF for BAM for those exposure scenarios that do not rely on dichlobenil toxicity data. These scenarios are acute dietary for the general population (including infants and children) and females 13–49 years of age; chronic dietary; and incidental oral non-dietary. Although EPA has developmental, reproduction, and subchronic and chronic toxicity studies for the metabolite BAM, and a structure activity analysis indicates EPA has identified its principal toxicological effects and level of toxicity, EPA is retaining the FQPA 10X SF due to remaining questions regarding the systemic neurotoxic potential of BAM, including olfactory toxicity via the oral route of exposure and the use of a LOAEL in assessing acute dietary risk for the general population. For the dermal and inhalation routes of exposures, for which the Agency is relying on dichlobenil toxicity data, EPA has reduced the FQPA SF for BAM toxicity to 1X, based on a comparison of toxicity via the intraperitoneal route of exposure showing that higher doses of BAM are needed to induce levels of olfactory toxicity that are similar to those caused by dichlobenil. Olfactory toxicity, the most sensitive endpoint, was the endpoint chosen for these exposure scenarios. Other factors EPA considered in the FQPA SF decisions for BAM include the following:

a. To compensate for deficiencies in the toxicology database for BAM, EPA performed a comparative analysis of the toxicity of BAM and the parent compounds, dichlobenil and fluopicolide, using the available animal data and DEREK analysis (Deductive Estimation of Risk from Existing Knowledge). DEREK is a toxicology application that uses structure-activity relationships to predict a broad range of toxicological properties based on a comprehensive analysis of a compound's molecular structure. Based on the available animal data and DEREK analyses, BAM does not appear to cause different organ-specific toxicities compared to fluopicolide and dichlobenil. The kidney and liver toxicities are common to all three compounds. With respect to relative toxicity, conclusions from the evaluation of the animal studies appear to confirm that both fluopicolide and dichlobenil appear to be more or equally toxic compared to BAM. A full discussion of EPA's comparative toxicity analysis of BAM, dichlobenil and fluopicolide can be found at *http://www.regulations.gov* in the document *Comparative Toxicity Using Derek Analysis for Dichlobenil, Fluopicolide and BAM* in docket ID number EPA–HQ–OPP–2007–0604. Based on the results of the available animal data and the DEREK analysis, EPA concludes that the safety factors discussed in the previous paragraph are adequate.

b. There is no evidence that BAM results in increased susceptibility of *in utero* rabbits in the prenatal developmental toxicity study.

c. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were refined using reliable PCT information and anticipated residue values calculated from residue field trial results. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to BAM in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by BAM.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, fluopicolide is not expected to pose an acute risk.

The acute dietary exposure estimates for BAM at the 99.9th percentile of the exposure distribution are 11% of the aPAD for the general U.S. population and 28% aPAD for all infants 1 year old, the most highly exposed group.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluopicolide from food and water will utilize 13% of the cPAD for children 1–2 years of age the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of fluopicolide is not expected.

The chronic dietary exposure estimates for BAM are 29% of the chronic cPAD for the general U.S. population and 93% cPAD for all infants (< 1 year old), the most highly exposed group, which is not of concern to the Agency.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fluopicolide is proposed for registration for use(s) that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for fluopicolide. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food, water, and residential exposures result in aggregate MOEs greater than the LOC of 100 for all population groups, and the aggregate short-term risk estimates for fluopicolide are below the Agency's level of concern. Short-term exposures for fluopicolide's metabolite BAM, may occur as a result of activities on treated turf. Incidental oral exposures related to turf activities have been combined with chronic dietary exposure estimates to assess short-term aggregate exposure for BAM. Since aggregate MOEs for BAM are greater than the LOC, they represent risk estimates that are below the Agency's level of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered

to be a background exposure level). Fluopicolide is proposed for registration for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for fluopicolide. The intermediate-term aggregate risk for fluopicolide and BAM is the same as calculated above for the short-term aggregate risk.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, fluopicolide is not expected to pose a cancer risk to humans. The chronic risk assessment for BAM is protective of any potential cancer risk. Fluopicolide has been classified as "not likely to be carcinogenic to humans."

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fluopicolide and its metabolite, BAM residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (Liquid Chromatography/Tandum Mass Spectrometry (LC/MS/MS) method) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

A Codex tolerance for fluopicolide has been established at 0.2 ppm for the straw and fodder (dry) of cereal grains. However, this level is lower than residues values seen in wheat straw in U.S. field trials. Since the Codex MRL would not cover residues of fluopicolide in wheat straw resulting from the allowed use pattern in the U.S., the Agency has used the NAFTA MRL calculator to determine an appropriate tolerance level. There are no other Codex, Canadian, or Mexican MRLs which have been established for the other uses which are the subject of this action.

C. Revisions to Petitioned-for Tolerances

The proposed tolerance for vegetable, brassica (cole) leafy subgroup 5B should be changed from 20 ppb to 18 ppb. This tolerance was determined considering residue/processing data and, as applicable, recent agency guidance ("NAFTA Guidance Document for Guidance for Setting Pesticide Tolerances Based on Field Trial Data," Regulatory Proposal PRO2005–04, U.S. EPA and Health Canada, Pest Management Regulatory Agency, 2005.

The Agency has considered the submitted BAM animal feeding study, has calculated maximum reasonably balanced diets for livestock commodities based on existing and new uses of fluopicolide and concludes that BAM tolerances are not required to support the requested new uses.

V. Conclusion

Therefore, tolerances are established for residues of fluopicolide, in or on vegetable, tuberous and corm subgroup 1C at 0.02 ppm; potato, processed potato waste at 0.05 ppm; vegetable root, subgroup 1A at 0.15 ppm; vegetable, brassica leafy greens subgroup 5B at 18 ppm; wheat, forage at 0.20 ppm; wheat, grain at 0.02 ppm; wheat, hay at 0.50 ppm; wheat, milled byproducts at 0.07 ppm; wheat, straw at 0.50 ppm; wheat, aspirated grain fractions at 0.07 ppm. Since the established tolerances for subgroup "1A, except sugar beets and carrots," and crop subgroup 1D (vegetable, tuberous and corm, except potato) are subsumed by the new unrestricted crop subgroup 1A tolerance and the subgroup 1C (vegetable, tuberous and corm) tolerance, the Agency will delete these tolerances concurrently with establishing the tolerances above.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the national government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology

Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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 this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 8, 2011.

G. Jeffrey Herndon,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.627 is amended by:
■ i. Removing the entries "Vegetable root, subgroup 1A, except sugar beet and carrot" and "Vegetable, tuberous and corm (except potato) subgroup 1D" from the table in paragraph (a).
■ ii. Revising (a) introductory text.
■ iii. Adding alphabetically commodities to the table in paragraph (a).
■ iv. Revising paragraph (d) to read as follows:

§ 180.627 Fluopicolide; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide fluopicolide [2,6-dichloro-*N*-[[3-chloro-5-(trifluoromethyl)-2-pyridinyl]methyl]benzamide], including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified below is to be determined by measuring only fluopicolide [2,6-dichloro-*N*-[[3-chloro-5-(trifluoromethyl)-2-pyridinyl]methyl]benzamide] in or on the commodity.

Commodity	Parts per million
* * * * *	
Potato, processed waste	0.05
* * * * *	
Vegetable, brassica (cole) leafy subgroup 5B	18
* * * * *	
Vegetable root, subgroup 1A	0.15
Vegetable, tuberous and corm subgroup 1C	0.02

* * * * *

(d) *Indirect or inadvertent residues.* Tolerances are established for residues of the fungicide fluopicolide [2,6-dichloro-*N*-[[3-chloro-5-(trifluoromethyl)-2-pyridinyl]methyl]benzamide], including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified below is to be determined by measuring only fluopicolide [2,6-dichloro-*N*-[[3-chloro-5-(trifluoromethyl)-2-pyridinyl]methyl]benzamide] in or on the commodity.

Commodity	Parts per million
Wheat, aspirated grain fractions	0.07
Wheat, forage	0.20
Wheat, grain	0.02
Wheat, hay	0.50
Wheat, milled byproducts	0.07
Wheat, straw	0.50

[FR Doc. 2011–9435 Filed 4–19–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

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

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

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

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Idaho:					
Ada (FEMA Docket No.: B–1143).	Unincorporated areas of Ada County (10–10–0170P).	May 27, 2010; June 3, 2010; *The Idaho Statesman*.	The Honorable Fred Tilman, Chairman, Ada County Board of Commissioners, 200 West Front Street, Boise, ID 83702.	September 1, 2010	160001
Valley (FEMA Docket No.: B–1143).	Unincorporated areas of Valley County (10–10–0010P).	April 15, 2010; April 22, 2010; *The Star-News*.	The Honorable Jerry Winkle, Chairman, Valley County Board of Commissioners, P.O. Box 1350, Cascade, ID 83611.	August 21, 2010	160220
Indiana:					
Hamilton (FEMA Docket No.: B–1143).	City of Noblesville (10–05–3162P).	April 15, 2010; April 22, 2010; *The Indianapolis Star*.	The Honorable John Ditslear, Mayor, City of Noblesville, 16 South 10th Street, Suite 150, Noblesville, IN 46060.	August 20, 2010	180082
Tippecanoe (FEMA Docket No.: B–1143).	City of Lafayette (10–05–3321P).	May 27, 2010; June 3, 2010; *Journal and Courier*.	The Honorable Tony Roswarski, Mayor, City of Lafayette, 20 North 6th Street, Lafayette, IN 47901.	May 18, 2010	180253
Iowa:					
Black Hawk (FEMA Docket No.: B–1143).	City of Cedar Falls (10–07–0506P).	July 8, 2010; July 15, 2010; *The Waterloo Courier*.	The Honorable Jon Crews, Mayor, City of Cedar Falls, 220 Clay Street, Cedar Falls, IA 50613.	November 12, 2010 ...	190017
Polk (FEMA Docket No.: B–1143).	City of Des Moines (09–07–1717P).	May 27, 2010; June 3, 2010; *Des Moines Register*.	The Honorable Franklin Cownie, Mayor, City of Des Moines, 675 Harwood Drive, Des Moines, IA 50312.	October 1, 2010	190227
Kansas: Johnson (FEMA Docket No.: B–1143).	City of Overland Park (09–07–1710P).	June 30, 2010; July 7, 2010; *Sun Publications*.	The Honorable Carl Gerlach, Mayor, City of Overland Park, 8500 Santa Fe Drive, Overland Park, KS 66212.	June 17, 2010	200174
Maine:					
Cumberland (FEMA Docket No.: B–1143).	Town of Harpswell (09–01–1532P).	July 12, 2010; July 19, 2010; *The Times Record*.	The Honorable James S. Henderson, Chairman, Board of Selectmen, P.O. Box 39, Harpswell, ME 04079.	June 24, 2010	230169
York (FEMA Docket No.: B–1143).	Town of Hollis (10–01–0538P).	July 13, 2010; July 20, 2010; *The Smart Shopper*.	Mr. Stuart B. Gannett, Sr., Chairman, Board of Selectmen, 34 Town Farm Road, P.O. Box 9, Hollis, ME 04042.	November 17, 2010 ...	230150
Massachusetts: Barnstable (FEMA Docket No.: B–1143).	Town of Falmouth (09–01–1590P).	May 21, 2010; May 28, 2010; *Falmouth Enterprise*.	Mr. Robert L. Whritenour, Jr., Town of Falmouth Manager, 59 Town Hall Square, Falmouth, MA 02540.	August 26, 2010	255211
Michigan:					
Macomb (FEMA Docket No.: B–1143).	Township of Washington (10–05–4289P).	July 7, 2010; July 14, 2010; *The Romeo Observer*.	Mr. Dan O'Leary, Board Supervisor, 57900 Van Dyke Road, Washington, MI 48094.	June 29, 2010	260447
Oakland (FEMA Docket No.: B–1143).	City of Novi (10–05–0812P)	May 6, 2010; May 13, 2010; *The Novi News*.	The Honorable David Landry, Mayor, City of Novi, 45175 West Ten Mile Road, Novi, MI 48375.	May 24, 2010	260175
Missouri: Cole (FEMA Docket No.: B–1143).	City of Jefferson City (10–07–0593P).	August 19, 2010; August 26, 2010; *News Tribune*.	The Honorable John Landwehr, Mayor, City of Jefferson City, 320 East McCarty Street, Jefferson City, MO 65101.	December 24, 2010 ...	290108

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Nebraska: Lancaster (FEMA Docket No.: B–1143).	City of Lincoln (10–07–0761P).	June 3, 2010; June 10, 2010; *The Lincoln Journal Star*.	The Honorable Chris Beutler, Mayor, City of Lincoln, 555 South 10th Street, Suite 301, Lincoln, NE 68508.	October 8, 2010	315273
New Hampshire:					
Hillsborough (FEMA Docket No.: B–1143).	Town of Pelham (09–01–1526P).	June 18, 2010; June 25, 2010; *The Lowell Sun*.	The Honorable Douglas Viger, Chairman, Board of Selectmen, 6 Village Green, Pelham, NH 03076.	July 6, 2010	330100
Hillsborough (FEMA Docket No.: B–1143).	Town of Pelham (09–01–1526P).	June 21, 2010; June 28, 2010; *The Pelham-Windham News*.	The Honorable Douglas Viger, Chairman, Board of Selectmen, 6 Village Green, Pelham, NH 03076.	July 6, 2010	330100
Vermont:					
Windham (FEMA Docket No.: B–1143).	Town of Wilmington (10–01–0925P).	June 14, 2010; June 21, 2010; *Brattleboro Reformer*.	The Honorable Thomas P. Consolino, Chair, Selectboard, P.O. Box 217, Wilmington, VT 05363.	June 2, 2010	500142
Windham (FEMA Docket No.: B–1143).	Town of Wilmington (10–01–0925P).	June 17, 2010; June 24, 2010; *The Deerfield Valley News*.	The Honorable Thomas P. Consolino, Chair, Selectboard, P.O. Box 217, Wilmington, VT 05363.	June 2, 2010	500142
Virginia: Independent City of Fairfax (FEMA Docket No.: B–1143).	City of Fairfax (10–03–0412P).	June 14, 2010; June 21, 2010; *The Washington Times*.	The Honorable Robert F. Lederer, Mayor, City of Fairfax, Fairfax City Hall, 10455 Armstrong Street, Fairfax, VA 22030.	October 19, 2010	515524
Wisconsin:					
Dane (FEMA Docket No.: B–1143).	Village of Black Earth (10–05–1272P).	May 20, 2010; May 27, 2010; *The News-Sickle-Arrow*.	The Honorable Patrick Troge, President, Village of Black Earth, 1525 Riverview Drive, Black Earth, WI 53515.	September 24, 2010 ..	550079
Dane (FEMA Docket No.: B–1143).	Unincorporated areas of Dane County (10–05–1272P).	May 20, 2010; May 27, 2010; *The Wisconsin State Journal*.	Ms. Kathleen Falk, County Executive, 210 Martin Luther King Jr. Boulevard, Room 116, City-County Building, Madison, WI 53703.	September 24, 2010 ..	550077
Green Lake (FEMA Docket No.: B–1143).	Village of Marquette (10–05–1858P).	April 8, 2010; April 15,2010; *The Berlin Journal Newspaper*.	Mr. Howard Sell, District 6, County Board Supervisor, N3415 Highway 72, Markesan, WI 53946.	March 29, 2010	550170
Jefferson (FEMA Docket No.: B–1143).	Unincorporated areas of Jefferson County (10–05–0806P).	April 29, 2010; May 6, 2010; *Daily Jefferson County Union*.	Ms. Sharon L. Schmeling. Chairperson, Jefferson County Board, 320 South Main Street, Room 201, Jefferson, WI 53549.	September 3, 2010	550191
Waukesha (FEMA Docket No.: B–1143).	Unincorporated areas of Waukesha County (10–05–0806P).	April 29, 2010; May 6, 2010; *Lake County Reporter & Milwaukee Journal Sentinel*.	Mr. Daniel P. Vrakas, County Executive, 515 West Moreland Boulevard, Room 230, Waukesha, WI 53188.	September 3, 2010	550476
Waukesha (FEMA Docket No.: B–1143).	Unincorporated areas of Waukesha County (10–05–0802P).	April 29, 2010, May 6, 2010, *Lake County Reporter & Milwaukee Journal Sentinel*.	Mr. Daniel P. Vrakas, County Executive, 515 West Moreland Boulevard, Room 230, Waukesha, WI 53188.	September 3, 2010	550476
St. Croix (FEMA Docket No.: B–1143).	Unincorporated ares of St. Croix County (10–05–1230P).	May 27, 2010; June 3, 2010; *The River Falls Journal*.	Mr. Daryl Standafer, Chairman, St. Croix County, 1101 Carmichael Road, Hudson, WI 54016.	October 1, 2010	555578
St. Croix (FEMA Docket No.: B–1143).	City of River Falls (10–05–1230P).	May 27, 2010; June 3, 2010; *The River Falls Journal*.	The Honorable Don Richards, Mayor, City of River Falls, 106 North Wasson Lane, River Falls, WI 54022.	October 1, 2010	550330

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

Dated: April 11, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–9558 Filed 4–19–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA376

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the B season allowance of the 2011 total allowable catch (TAC) of Pacific cod allocated to catcher vessels using trawl gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 15, 2011, through 1200 hrs, A.l.t., June 10, 2011. Comments must be received at the following address no later than 4:30 p.m., A.l.t., May 2, 2011.

ADDRESSES: Send comments to James W. Balsiger, Regional Administrator, Alaska Region, NMFS, *Attn:* Ellen Sebastian. You may submit comments, identified by RIN 0648–XA376, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. Comment will generally be posted 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: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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.

NMFS closed directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI under § 679.20(d)(1)(iii) on April 14, 2011 (76 FR 20891).

As of April 13, 2011, NMFS has determined that approximately 2,000 metric tons remain in the directed fishing allowance of Pacific cod allocated to catcher vessels using trawl gear in the BSAI. Therefore, in accordance with §§ 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the B season allowance of the 2011 TAC of Pacific cod allocated to catcher vessels using trawl gear in the BSAI, NMFS is terminating the previous closure and is reopening directed fishing Pacific cod by catcher vessels using trawl gear in the BSAI. The Administrator, Alaska Region, NMFS, (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of Pacific cod by catcher vessels using trawl gear in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

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 opening of directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 13, 2011.

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.

Without this inseason adjustment, NMFS could not allow the B season allowance of the 2011 TAC of Pacific cod allocated to catcher vessels using trawl gear in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until May 2, 2011.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: April 14, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–9583 Filed 4–15–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 76
Wednesday, April 20, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

2 CFR Chapter IX

5 CFR Chapter LXXIII

7 CFR Subtitle A and Chapters I Through VII, XIV Through XVIII, XX, XXVI Through XXXVIII, XLI, and XLII

9 CFR Chapters I Through III

36 CFR Chapter II

48 CFR Chapter 4

Reducing Regulatory Burden; Retrospective Review Under Executive Order 13563

AGENCY: Office of the Secretary, USDA.

ACTION: Request for Information (RFI).

SUMMARY: In accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," the Department of Agriculture (USDA) is reviewing its existing regulations to evaluate their continued effectiveness in addressing the circumstances for which they were promulgated. As part of this review, USDA invites public comment to assist in analyzing its existing significant regulations to determine whether they should be modified, streamlined, expanded, or repealed.

The focus of USDA's initial review is to identify areas where it can simplify and reduce the reporting burden on the public for entry and access to USDA programs, while simultaneously reducing its administrative and operating costs by sharing similar data across participating agencies.

DATES: Comments and information are requested on or before May 20, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this notice. All submissions must refer to "Retrospective Review" to ensure proper delivery.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov.* USDA strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, and ensures timely receipt by USDA. Commenters should follow the instructions provided on that site to submit comments electronically.

E-mail Submission of Comments. Comments may be submitted by E-mail: *reg.review@obpa.usda.gov.* E-mail submission of comments must include the term "Retrospective Review" in the subject line of the message.

Submission of Comments by Mail. Paper, disk, or CD–ROM submissions should be submitted to Julie Hetrick, Office of Budget and Program Analysis, USDA, Jamie L. Whitten Building, Room 101–A, 1400 Independence Ave., SW., Washington, DC 20250.

Submission of Comments by Hand Delivery/Courier: Julie Hetrick, Office of Budget and Program Analysis, USDA, Jamie L. Whitten Building, Room 101–A, 1400 Independence Ave., SW., Washington, DC 20250.

Background: To read background information on Executive Order 13563, go to *http://www.regulations.gov/exchange/topic/eo-13563.*

FOR FURTHER INFORMATION CONTACT: Julie Hetrick, Office of Budget and Program Analysis, Jamie L. Whitten Building, Room 101–A, USDA, 1400 Independence Ave., SW., Washington, DC 20250; Voice: (202) 720–1269.

SUPPLEMENTARY INFORMATION:

I. Executive Order 13563

On January 18, 2011, the President issued Executive Order 13563, "Improving Regulation and Regulatory Review," to ensure that Federal regulations use the best available tools to promote innovation that will reduce costs and burden while allowing public participation and an open exchange of ideas. These principles will enhance and strengthen Federal regulations to allow them to achieve their regulatory objectives, most important among them, protecting public health, welfare, safety, and the environment. In consideration of these principles, and as directed by the Executive Order, Federal agencies and departments need to periodically review and consider existing regulations that may be outmoded, ineffective, insufficient, or excessively burdensome and to modify, streamline, expand, or repeal them in accordance with what has been learned. As part of this retrospective review of regulations, and as USDA develops a preliminary plan to periodically review the regulatory programs of its mission areas, USDA is seeking public comment on how best to remove obstacles created by current regulations and ways to improve them to help USDA agencies advance the mission of the Department.

II. Request for Information

USDA is contemplating focusing its initial retrospective review under Executive Order 13563 in the following areas: Rural Development, Farm Service Agency, Natural Resources Conservation Service, and the Food Safety and Inspection Service. Each area has identified potential issues for review. USDA is particularly interested in public comments that speak to these areas and the issues identified below.

A. Rural Development

To better serve its customers, Rural Development (RD) is considering a review of its regulations in order to determine whether certain application procedures can be streamlined. RD is particularly interested in hearing from the public on how best to streamline certain application procedures to reflect the size and risk of certain types of loans and grants, including required audits, paperwork, and forms, and other ways to reduce excessive burdens.

B. Farm and Foreign Agricultural Services

The Farm and Foreign Agricultural Services (FFAS) mission area is considering a review of process improvements that could be achieved through the consolidation of information required to participate in farm programs administered by the Farm Service Agency and the Federal Crop Insurance Program administered by the Risk Management Agency. FFAS is interested in hearing from the public on how best to simplify and standardize, to the extent practical, acreage reporting processes, program dates, and data definitions across the various USDA programs and agencies. FFAS also welcomes comments on how best to develop procedures, processes, and standards that will allow producers to use information from their farm-management and precision-ag systems

for reporting production, planted and harvested acreage, and other key information needed to participate in USDA programs. These process changes may allow for program data that is common across agencies to be collected once and utilized or redistributed to agency programs in which the producer chooses to participate. It also may provide a single Web site for producers to report commodity information if they so choose, or access their previously reported information.

C. Natural Resources Conservation Service

The Natural Resources Conservation Service (NRCS) is considering a review of its regulations consistent with its other ongoing streamlining efforts to improve the processes that deliver technical and financial assistance to program users. To inform this process, NRCS welcomes comments on approaches that will allow NRCS to enhance its delivery of technical assistance and streamline the application process and participation in financial assistance programs. NRCS is specifically interested in comments on such approaches as allowing customers to apply for programs or services online 24/7, reducing the number of office visits required through the use of mobile technologies, accelerating payments to clients after a practice is applied, and simplifying conservation plan documents.

D. Food Safety and Inspection Service

The Food Safety and Inspection Service (FSIS) is considering a review of its regulations to identify potential improvements in information collection procedures to increase the quality of data available to inform and support regulatory decision making. For example, FSIS is considering collecting additional information about establishment verification testing, such as testing for pathogens. FSIS is also considering potential means to decrease the recordkeeping burden on industry, by possibly reducing label submission requirements. In addition, FSIS is also considering how its new Public Health Information System could potentially be used to share data and reduce data reporting requirements. To aid this effort, FSIS invites the public to comment on how best to improve data quality and minimize the recordkeeping burden on industry.

III. Questions for Commenters

In providing comments, the public is encouraged to respond to the questions as they pertain to the four areas identified above:

(1) Are there regulations or reporting requirements that have become outdated and, if so, how can they be modernized to accomplish their regulatory objectives better?

(2) Do agencies currently collect information that they do not need or use effectively to achieve regulatory objectives?

(3) Is there information that agencies should begin collecting to achieve regulatory objectives?

(4) Are there regulations, reporting requirements, or regulatory submission or application processes that are unnecessarily complicated, or that could be streamlined to achieve regulatory objectives in ways that are more efficient?

(5) Are there regulations, submission and application processes, or reporting requirements that have been overtaken by technological developments? Can new technologies be used to modify, streamline, or do away with existing regulatory or reporting requirements?

This is a non-exhaustive list that is meant to assist in the formulation of comments and is not intended to limit the issues that commenters may choose to address. Although we are contemplating on focusing our initial review on the four areas identified above, we welcome comments from the public on any of USDA's regulations and ways to improve them to help USDA agencies advance the mission of the Department consistent with the Executive Order. We encourage the public to comment on those rules that have been in effect for a sufficient amount of time to warrant meaningful evaluation. USDA notes that this RFI is issued solely for information and program-planning purposes. While responses to this RFI do not bind USDA to any further actions related to the response, all submissions will be made publicly available on *http://www.regulations.gov.*

Signed in Washington, DC, on April 12, 2011.

Thomas J. Vilsack,

Secretary of Agriculture.

[FR Doc. 2011–9522 Filed 4–19–11; 8:45 am]

BILLING CODE 3410–90–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0382; Directorate Identifier 2010–NM–063–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 757 Airplanes, and Model 767–200, 767–300, and 767–300F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to the products listed above. The existing AD currently requires revising the Limitations section of the airplane flight manual (AFM) to advise the flight crew of procedures to follow to ensure that a fuel filter impending bypass condition due to gross fuel contamination is detected in a timely manner. Since we issued that AD, a new design change has been developed that will correct an error in the operating program software (OPS) of the engine indication and crew alerting system (EICAS). This proposed AD would require installing new OPS (Version 7) of the EICAS in the EICAS computers. This proposed AD would also require various concurrent actions, depending on the airplane configuration, including installing a certain EICAS OPS version, making wiring changes, replacing the audio accessory unit, replacing certain handsets and EICAS computers, changing EICAS computer connector keying, and loading Operational Program Configuration (OPC) software. This proposed AD also retains the existing AD provision that relieves certain airplanes (those equipped with certain EICAS OPS versions) from the proposed requirements. Accomplishment of the new proposed actions would terminate the requirements of the existing AD. We are proposing this AD to prevent malfunction and thrust loss on both engines, which could result in a forced off-airport landing.

DATES: We must receive comments on this proposed AD by June 6, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–

30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, *Attention:* Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Christopher Shams, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–917–6753; fax 425–917–6590; *e-mail: christopher.shams@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0382; Directorate Identifier 2010–NM–063–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On April 14, 2008, we issued AD 2008–09–07, Amendment 39–15488 (73 FR 21811, April 23, 2008), for all Boeing Model 757 airplanes and Model 767–200, 767–300, and 767–300F series airplanes. That AD requires revising the Limitations section of the airplane flight manual (AFM) to advise the flight crew of procedures to follow to ensure that a fuel filter impending bypass condition due to gross fuel contamination is detected in a timely manner. That AD was prompted by an error in Version 6 of the operating program software (OPS) of the engine indication and crew alerting system (EICAS). The error prevents the display of an advisory message to the flight crew of a left engine fuel filter contamination and imminent bypass condition, which may indicate an imminent multiple engine thrust loss or engine malfunction event due to fuel contamination. We issued that AD to prevent malfunction and thrust loss on both engines, which could result in a forced off-airport landing.

Actions Since Existing AD Was Issued

AD 2008–09–07 requires interim crew actions, via AFM limitations, to mitigate the unsafe condition introduced by Version 6 of the OPS. Since we issued that AD, Boeing has developed OPS Version 7, which corrects an error in the OPS of the EICAS and will allow removal of the required AFM limitations.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletins 757–31–0192 (for Model 757 airplanes) and 767–31–0267 (for Model 767–200, –300, –300F series airplanes), both dated September 11, 2009. The service bulletins describe procedures for installing new EICAS OPS in the left and right EICAS computers.

Service Bulletin 757–31–0192 specifies the concurrent accomplishment of the actions specified in Boeing Service Bulletins 757–31–0104 (for Model 757–200 series airplanes) and 757–31–0105 (for Model 757–300 series airplanes), both dated December 5, 2002, which describe procedures for changing the EICAS OPS.

Service Bulletin 767–31–0267 specifies the concurrent accomplishment of the actions specified in the service bulletins identified in the following table.

SERVICE BULLETINS CONCURRENT WITH BOEING SPECIAL ATTENTION SERVICE BULLETIN 767–31–0267

Procedures	Service Bulletin	Affected airplanes
Changing wires from the audio accessory unit (AAU) on the E2–5 shelf to the bell chime module in the warning electronics unit (WEU) (P51).	Boeing Service Bulletin 767–23–0159, Revision 2, dated January 11, 2007.	Model 767–200 and –300 series airplanes.
Replacing the AAU	Boeing Special Attention Service Bulletin 767–23–0160, dated May 31, 2001.	Model 767–300 series airplanes.
	Boeing Service Bulletin 767–23–0167, dated February 28, 2002.	Model 767–300 series airplanes.
Replacing the pilots' handset on the P8 panel, replacing 5 attendant handsets, and replacing the AAU on the E2–5 shelf in the main equipment center, as applicable.	Boeing Service Bulletin 767–23–0164, dated May 31, 2001.	Model 767–200 and 767–300 series airplanes.

SERVICE BULLETINS CONCURRENT WITH BOEING SPECIAL ATTENTION SERVICE BULLETIN 767–31–0267—Continued

Procedures	Service Bulletin	Affected airplanes
Replacing the left and right EICAS computers in the E8 rack, making wire changes in the E8 shelf, changing the left and right EICAS computer connector keying on the E8 shelf, loading OPC software into both left and right EICAS computers.	Boeing Service Bulletin 767–31–0091, Revision 4, dated July 7, 2005.	Model 767–200, 767–300, and 767–300F series airplanes.
	Boeing Service Bulletin 767–31–0098, Revision 2, including Appendices A, B, and C, dated October 21, 1999.	Model 767–200 and 767–300 series airplanes.
	Boeing Service Bulletin 767–31–0099, Revision 3, including Appendices A, B, and C, dated February 8, 2001.	Model 767–300 series airplanes.
	Boeing Service Bulletin 767–31–0100, Revision 2, including Appendices A, B, and C, dated July 29, 1999.	Model 767–200 and 767–300 series airplanes.
	Boeing Service Bulletin 767–31–0101, including Appendices A, B, and C, dated July 6, 2000.	Model 767–200 and 767–300 series airplanes.
Installing new EICAS OPS and EICAS OPC software, as applicable.	Boeing Service Bulletin 767–31–0114, Revision 1, dated June 8, 2000.	Model 767–200, 767–300, and 767–300F series airplanes.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would continue to require the AFM limitations specified in AD 2008–09–07. This proposed AD would also require the actions specified in the service information described previously, which would terminate the AFM limitations. This proposed AD also includes a provision that provides relief from the proposed requirements for airplanes with EICAS OPS versions other than Version 6.

Change to Existing AD

This proposed AD would retain the requirements of AD 2008–09–07. Since that AD was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2008–09–07	Corresponding requirement in this proposed AD
paragraph (f)	paragraph (g)
paragraph (g)	paragraph (h)

Costs of Compliance

We estimate that this proposed AD affects 1,078 airplanes of U.S. registry. We estimate the costs to comply with the following proposed requirements:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
AFM revision (retained from AD 2008–09–07	1 work-hour × $85 per hour = $85	$0	$85	$91,630
EICAS OPS installation (new proposed action).	1 work-hour × $85 per hour = $85	0	85	91,630

We have no definitive data for the number of U.S.-registered airplanes subject to the proposed concurrent requirements in this proposed AD, but we provide the following estimated per-airplane costs to comply with the concurrent requirements.

ESTIMATED COSTS FOR CONCURRENT ACTIONS

Action Service Bulletin	Service Bulletin	Labor cost	Parts cost	Cost per product
EICAS OPS installation	757–31–0104, 757–31–0105	1–2 work-hours × $85 per hour = $85–$170.	Negligible	$85–$170
Wiring change	767–23–0159	5 work-hours × $85 per hour = $425.	$501	926
AAU/handset replacement	767–23–0160, 767–23–0167, 767–23–0164.	1 work-hour × $85 per hour = $85.	Negligible	85

ESTIMATED COSTS FOR CONCURRENT ACTIONS—Continued

Action Service Bulletin	Service Bulletin	Labor cost	Parts cost	Cost per product
EICAS computer replacement, wiring change, OPC installation.	767–31–0091, 767–31–0098, 767–31–0099, 767–31–0100, 767–31–0101.	5–24 work-hours × $85 per hour = $425–$2,040.	Negligible	425–2,040
EICAS OPS/OPC installation	767–31–0114	1 work-hour × $85 per hour = $85.	Negligible	85

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2008–09–07, Amendment 39–15488 (73 FR 21811, April 23, 2008), and adding the following new AD:

The Boeing Company: Docket No. FAA–2011–0382; Directorate Identifier 2010–NM–063–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 5, 2011.

Affected ADs

(b) This AD supersedes AD 2008–09–07, Amendment 39–15488.

Applicability

(c) This AD applies to all The Boeing Company 757–200, 757–200PF, 757–200CB, 757–300, 767–200, 767–300, and 767–300F series airplanes; certificated in any category.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 31, Instruments.

Unsafe Condition

(e) This AD was prompted by an error in the operating program software (OPS) of the engine indication and crew alerting system (EICAS). The error prevents the display of an advisory message to the flight crew of a left engine fuel filter contamination and imminent bypass condition, which may indicate an imminent multiple engine thrust loss or engine malfunction event due to fuel contamination. We are issuing this AD to prevent malfunction and thrust loss on both engines, which could result in a forced off-airport landing.

Compliance

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

Restatement of Requirements of AD 2008–09–07, With No Changes

Revision of Airplane Flight Manual (AFM)

(g) Except as provided by paragraphs (h) and (i) of this AD: Within 30 days after May 8, 2008 (the effective date of AD 2008–09–07), revise the Limitations section of the applicable AFM to include the following. This may be done by inserting a copy of this AD into the AFM.

If the STATUS cue shows while on the ground after engine start or during flight, select the status page on the secondary EICAS display, and verify the "L ENG FUEL FILT" message is not shown. If the "L ENG FUEL FILT" message is not shown on the status page, the secondary engine parameters may be reselected on the secondary EICAS display, or the display may be blanked. If the "L ENG FUEL FILT" message is shown on the status display, accomplish the ENGINE FUEL FILTER non-normal checklist as published in the Boeing Quick Reference Handbook. If on the ground, check the Dispatch Deviations Guide (DDG), or operator equivalent.

In the event that the status level "L ENG FUEL FILT" and advisory level "R ENG FUEL FILT" messages are simultaneously shown, an impending fuel filter bypass condition exists on both engines. With both messages shown, airplane fuel system contamination may be present and may result in erratic engine operation or flameout.

Further flight crew action in response to either or both the "L ENG FUEL FILT" status-level message and the "R ENG FUEL FILT" advisory level messages being shown are not established by Boeing or the FAA. Any further flight crew action should be determined by individual operator policy.

Boeing policy on flight crew use of status-level messages has not changed. After engine start, any condition having an adverse effect on safe continuation of the flight appears as an EICAS alert message (Warning, Caution, or Advisory). If other status-level messages are shown as a consequence of complying with these temporary operating instructions, the flight crew should respond in accordance with the appropriate operator policy.

Dispatch of the airplane with an inoperative EICAS display unit is prohibited.

Exception to AFM Limitations Requirement

(h) If all affected airplanes in an operator's fleet have been verified by the operator to have EICAS computer part number S242N701–1001 and only EICAS OPS versions other than Version 6 software that are FAA approved for that airplane, then accomplishment of the actions specified in paragraph (g) of this AD is not required.

New Requirements of This AD

EICAS OPS Installation

(i) Except as provided by paragraph (k) of this AD: Within 90 days after the effective date of this AD, install EICAS OPS Version 7 in the left and right EICAS computers, in accordance with the applicable service information specified in paragraph (i)(1) or (i)(2) of this AD. Accomplishment of the applicable requirements of paragraphs (i) and (j) of this AD terminates the requirements of paragraph (g) of this AD, provided that those actions have been accomplished on all airplanes operated within an operator's fleet.

(1) For Model 757 airplanes: Use Boeing Special Attention Service Bulletin 757–31–0192, dated September 11, 2009.

(2) For Model 767–200, –300, and –300F series airplanes: Use Boeing Special Attention Service Bulletin 767–31–0267, dated September 11, 2009.

Concurrent Requirements

(j) For airplanes subject to the requirements of paragraph (i) of this AD: Before or concurrently with accomplishment of the requirements of paragraph (i) of this AD, do the applicable actions specified in paragraphs (j)(1) through (j)(12) of this AD.

(1) For Model 757–200, 757–200CB, 757–200PF series airplanes, as identified in Boeing Service Bulletin 757–31–0104, dated December 5, 2002: Install EICAS OPS Version 5, in accordance with Boeing Service Bulletin 757–31–0104, dated December 5, 2002.

(2) For Model 757–300 series airplanes, as identified in Boeing Service Bulletin 757–31–0105, dated December 5, 2002: Install EICAS OPS Version 5, in accordance with Boeing Service Bulletin 757–31–0105, dated December 5, 2002.

(3) For Model 767–200 and –300 airplanes, as identified in Boeing Service Bulletin 767–23–0159, Revision 2, dated January 11, 2007: Change wires from the audio accessory unit (AAU) on the E2–5 shelf to the bell chime module in the warning electronics unit (WEU) (P51), in accordance with Boeing Service Bulletin 767–23–0159, Revision 2, dated January 11, 2007.

(4) For Model 767–300 series airplanes, as identified in Boeing Special Attention Service Bulletin 767–23–0160, dated May 31, 2001: Replace the AAU with a new or serviceable unit, in accordance with Boeing Special Attention Service Bulletin 767–23–0160, dated May 31, 2001.

(5) For Model 767–300 series airplanes, as identified in Boeing Service Bulletin 767–23–0167, dated February 28, 2002: Replace the AAU with a new or serviceable unit, in accordance with Boeing Service Bulletin 767–23–0167, dated February 28, 2002.

(6) For Model 767–200 and 767–300 series airplanes, as identified in Boeing Service Bulletin 767–23–0164, dated May 31, 2001: Replace the pilots' handset on the P8 panel, replace 5 attendant handsets, and replace the AAU on the E2–5 shelf in the main equipment center, as applicable; in accordance with Boeing Service Bulletin 767–23–0164, dated May 31, 2001.

(7) For Model 767–200, 767–300, and 767–300F series airplanes, as identified in Boeing Service Bulletin 767–31–0091, Revision 4, dated July 7, 2005: Replace the left and right EICAS computers in the E8 rack, make wire changes in the E8 shelf, change the left and right EICAS computer connector keying on the E8 shelf, load OPC software into both left and right EICAS computers; in accordance with Boeing Service Bulletin 767–31–0091, Revision 4, dated July 7, 2005. These actions are also required by AD 2004–10–05.

(8) For Model 767–200 and 767–300 series airplanes, as identified in Boeing Service Bulletin 767–31–0098, Revision 2, dated October 21, 1999: Replace the left and right EICAS computers in the E8 rack, make wire changes in the E8 shelf, change the left and right EICAS computer connector keying on the E8 shelf, load OPC software into both left and right EICAS computers; in accordance with Boeing Service Bulletin 767–31–0098, Revision 2, dated October 21, 1999. These actions are also required by AD 2004–10–05.

(9) For Model 767–300 series airplanes, as identified in Boeing Service Bulletin 767–31–0099, Revision 3, dated February 8, 2001: Replace the left and right EICAS computers in the E8 rack, make wire changes in the E8 shelf, change the left and right EICAS computer connector keying on the E8 shelf, load OPC software into both left and right EICAS computers; in accordance with Boeing Service Bulletin 767–31–0099, Revision 3, dated February 8, 2001. These actions are also required by AD 2004–10–05.

(10) For Model 767–200 and 767–300 series airplanes, as identified in Boeing Service Bulletin 767–31–0100, Revision 2, dated July 29, 1999: Replace the left and right EICAS computers in the E8 rack, make wire changes in the E8 shelf, change the left and right EICAS computer connector keying on the E8 shelf, load OPC software into both left and right EICAS computers; in accordance with Boeing Service Bulletin 767–31–0100, Revision 2, dated July 29, 1999. These actions are also required by AD 2004–10–05.

(11) For Model 767–200 and 767–300 series airplanes, as identified in Boeing Service Bulletin 767–31–0101, dated July 6, 2000: Replace the left and right EICAS computers in the E8 rack, make wire changes in the E8 shelf, change the left and right EICAS computer connector keying on the E8 shelf, load OPC software into both left and right EICAS computers; in accordance with Boeing Service Bulletin 767–31–0101, dated July 6, 2000. These actions are also required by AD 2004–10–05.

(12) For Model 767–200, 767–300, and 767–300F series airplanes, as identified in Boeing Service Bulletin 767–31–0114, Revision 1, dated June 8, 2000: Install EICAS OPS Version 2 and EICAS OPC software, as applicable, in accordance with Boeing Service Bulletin 767–31–0114, Revision 1, dated June 8, 2000.

Exception to OPS Installation Requirement

(k) For any airplane verified by the operator to have EICAS computer part number S242N701–1001 and only EICAS OPS versions other than Version 6 software that are FAA approved for that airplane, the actions specified in paragraphs (i) and (j) of this AD are not required.

Parts Installation

(l) As of the effective date of this AD, no person may install EICAS OPS Version 6 software on any airplane.

Credit for Actions Accomplished in Accordance With Previous Service Information

(m) Accomplishment before the effective date of this AD of the actions specified in a service bulletin identified in table 1 of this AD is acceptable for compliance with the applicable requirements of paragraph (j) of this AD, except as noted.

TABLE 1—CREDIT SERVICE BULLETINS

Boeing Service Bulletin	Revision	Date	Airplanes excluded from compliance approval
767–23–0159	1	December 5, 2002	No exceptions.
767–31–0091	1	February 4, 1999	Acceptable except for airplanes VN634, VN635, VH171, VN172, VF251, and VN198.
767–31–0091	2	February 24, 2000	Acceptable except for airplane VN198.
767–31–0091	3	April 27, 2000	No exceptions.
767–31–0098	Original	August 27, 1998	Acceptable except for airplanes VB051 through VB054, VN307 through VN314, VN676, and VK046 through VK054.
767–31–0098	1	February 4, 1999	Acceptable except for airplanes VB051 through VB054, VN307 through VN314, VN676, and VK046 through VK054.
767–31–0099	Original	August 6, 1998	Acceptable only for airplanes VL871 through VL873.
767–31–0099	1	February 4, 1999	Acceptable only for airplanes VL871 through VL873.
767–31–0099	2	June 17, 1999	Acceptable only for airplanes VL871 through VL873.
767–31–0100	Original	August 20, 1998	No exceptions.
767–31–0100	1	February 4, 1999	No exceptions.

TABLE 1—CREDIT SERVICE BULLETINS—Continued

Boeing Service Bulletin	Revision	Date	Airplanes excluded from compliance approval
767–31–0114	Original	March 18, 1999	Acceptable except for airplanes VL891 through VL910, VR201 through VR206, and VW701 through VW721.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be e-mailed to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

Related Information

(o) For more information about this AD, contact Christopher Shams, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–917–6753; fax 425–917–6590; e-mail *christopher.shams@faa.gov.*

(p) For service information identified in this AD, contact Boeing Commercial Airplanes, *Attention:* Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom;@boeing.com*; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 13, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–9524 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[REG–146097–09]

RIN 1545–BJ01

Guidance on Reporting Interest Paid to Nonresident Aliens; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document contains a rescheduled notice of public hearing on a notice of proposed rulemaking (REG–146097–09) that was published in the **Federal Register** on Friday, January 7, 2011 (76 FR 1105) providing guidance on the reporting requirements for interest on deposits maintained at U.S. offices of certain financial institutions and paid to nonresident alien individuals.

DATES: The public hearing is being rescheduled from Monday, April 25, 2011 to Wednesday, May 18, 2011, at 10 a.m.

ADDRESSES: The public hearing is being held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC: PA: LPD: PR (REG–146097–09), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC: PA: LPD: PR (REG–146097–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic outlines of oral comments via the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kathryn Holman at (202) 622–3840; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard A. Hurst at *Richard.A.Hurst@irscounsel.treas.gov* or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–146097–09) that was published in the **Federal Register** on Friday, January 7, 2011 (76 FR 1105).

Persons, who wish to present oral comments at the hearing that submitted written comments, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by Friday, April 8, 2011.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue, NW., entrance, 1111 Constitution Avenue, NW., Washington, DC.

Because of access restrictions, the IRS will not admit visitors 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 document.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2011–9609 Filed 4–19–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0265]

RIN 1625–AA00

Safety Zone; Michigan Bankers Association Fireworks, Lake Huron, Mackinac Island, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in the Captain of the Port Sault Sainte Marie zone. This proposed rule is intended to establish a safety zone that will restrict vessels from certain portions of water areas within Sector Sault Sainte Marie Captain of the Port zone, as defined by 33 CFR 3–45.45. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: Comments and related material must be received by the Coast Guard on or before May 20, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0265 using any one of the following methods:

(1) *Federal Rulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail BMC Gregory Ford, Prevention Department, Coast Guard, Sector Sault Sainte Marie, MI, telephone (906) 635–3222, e-mail *Gregory.C.Ford@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0265), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2011–0265" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–2065" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for one by using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

From June 21, 2011 through June 24, 2011, the Michigan Bankers Association's will celebrate its 125th anniversary. The celebration will take place on and around on Mackinac Island. On the evening of June 24, 2011, the celebration will include a fireworks display to be launched from a water location. The Captain of the Port Sault Sainte Marie has determined that the fireworks event poses various hazards to the public, including obstructions to the navigable channel, explosive dangers associated with fireworks, and debris falling into the water. To minimize these and other hazards, this proposed rule will establish a temporary safety zone around the fireworks display.

Discussion of Proposed Rule

This proposed rule and temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup and launching of fireworks in conjunction with the Michigan Bankers Association Fireworks display. The temporary safety zone will include all waters of Lake Huron within a 500-foot radius from the fireworks launch site, approximately 460 yards south of Biddle Point, at position 45°50′32.82″ N, 084°37′03.18″ W: [DATUM: NAD 83].

All persons and vessels will be required to comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone will be prohibited except when authorized by the Captain of the Port Sector Sault Sainte Marie or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

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

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule 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 proposed 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 and operators of vessels intending to transit or anchor in a portion of Lake Huron, Mackinac Island, Michigan between 9 p.m. and 11 p.m. on June 23, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only two hours on one night. Also, vessel traffic can safely pass outside the safety zone during the event. In the event that this proposed safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Sault Sainte Marie to transit through the safety zone. The Coast Guard will give notice that the regulation is in effect to the public via a Broadcast to Mariners.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact BMC Gregory Ford, Prevention Department, Coast Guard Sector Sault Sainte Marie, MI at (906) 635–3222. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed 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 proposed 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 proposed rule will not result in such an expenditure, we do discuss the effects of it elsewhere in this preamble.

Taking of Private Property

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed 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 proposed 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 proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of a safety zone, and therefore, paragraph (34)(g) of figure 2–1 applies. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T09–0265 to read as follows:

§ 165.T09–0265 Safety Zone; Michigan Bankers Association Fireworks, Lake Huron, Mackinac Island, MI.

(a) *Location.* The following area is a temporary safety zone: All waters of Lake Huron within a 500-foot radius from the fireworks launch site, approximately 460 yards south of Biddle Point, at position 45°50′32.82″ N, 084°37′03.18″ W: [DATUM: NAD 83].

(b) *Effective and Enforcement period.* This regulation is effective and will be enforced from 9 p.m. until 11 p.m. on June 23, 2011.

(1) The Captain of the Port, Sector Sault Sainte Marie may suspend at any time the enforcement of the safety zone established under this section.

(2) The Captain of the Port, Sector Sault Sainte Marie, will notify the public of the enforcement and suspension of enforcement of the safety zone established by this section via any means that will provide as much notice as possible to the public. These means might include some or all of those listed in 33 CFR 165.7(a). The primary method of notification, however, will be through Broadcast Notice to Mariners and local Notice to Mariners.

(c) *Definitions.* The following definitions apply to this section:

(1) Designated representative means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Sault Sainte Marie to monitor these safety zones, permit entry into these safety zones, give legally enforceable orders to persons or vessels within these safety zones, or take other actions authorized by the Captain of the Port.

(2) Public vessel means a vessel owned, chartered, or operated by the United States or by a State or political subdivision thereof.

(d) *Regulations.* (1) The general regulations in 33 CFR § 165.23 apply.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port Sault Sainte Marie or a designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) When the safety zone established by this section is being enforced, all vessels must obtain permission from the Captain of the Port Sault Sainte Marie or his designated representative to enter, move within, or exit that safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or his designated representative. While within the safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

(e) *Exemption.* Public vessels, as defined in paragraph (c) of this section, are exempt from the requirements in this section.

Dated: April 8, 2011.

J.C. McGuiness,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2011–9534 Filed 4–19–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 174 and 180

[EPA–HQ–OPP–2011–0082; FRL–8869–7]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before May 20, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) for the petition of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at their Division: Biopesticides and Pollution Prevention Division (7511P) or Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

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

1. Submitting CBI. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

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

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

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

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

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

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

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

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to

evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions. Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerances

1. *PP* 0F7807. (EPA–HQ–OPP–2011–0179). BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528, request to establish tolerances in 40 CFR part 180 for residues of the fungicide metconazole, 5-[(4chlorophenyl)-methyl]-2,2-dimethyl-1-(1H-1,2,4-triazol-1-ylmethyl)cyclopentanol, measured as the sum of cis- and trans-isomers, in or on sugarcane, cane at 0.06 parts per million (ppm); and sugarcane, molasses at 0.08 ppm. Independently validated analytical methods have been submitted for analyzing parent metconazole residues with appropriate sensitivity in the raw crop and processed commodities for sugarcane for which tolerances are being requested. *Contact:* Tamue L. Gibson, (703) 305–9096, Registration Division (7505P), *e-mail address: gibson.tamue@epa.gov.*

2. *PP* 1F7825. (EPA–HQ–OPP–2006–0075). Gowan Company, 370 S. Main Street, Yuma, AZ 85364, request to establish tolerances in 40 CFR part 180 for residues of the insecticide fenazaquin, 4-tert-butylphenethyl quinazolin-4-yl ether, in or on fruit, pome group at 0.35 ppm; cucurbit group at 0.25 ppm; almond, hulls at 4.5 ppm; apple, wet pomace at 0.6 ppm; berry fruit group at 0.6 ppm; vegetable, fruiting group at 0.25 ppm; grape at 0.9 ppm; hop at 2.0 ppm; mint at 6.0 ppm; stone fruit group at 1.5 ppm; strawberry at 1.5 ppm; tree nut group at 0.02 ppm; alfalfa, forage at 4.5 ppm; alfalfa, hay at 8.0 ppm; avocado at 0.15 ppm; citrus fruit group at 0.3 ppm; citrus, oil at 2.5 ppm; cotton, seed (undelinted) at 0.5 ppm; cotton, gin byproducts at 12.0 ppm; bean, shelled dry subgroup at 0.2 ppm; bean, edible podded subgroup at 0.3 ppm; beans and pea, succulent subgroup at 0.02 ppm; corn, field, grain at 0.15 ppm; corn, field, forage at 9.0 ppm; corn, field, stover at 30 ppm; corn, field, aspirated grain fractions at 9.0 ppm; corn, field, refined oil at 0.6 ppm; corn, sweet at 0.04 ppm; and corn, sweet, forage at 9.0 ppm. An analytical method—liquid chromatography/tandem mass spectrometry (LC/MS/MS) with positive-ion electrospray ionization/MS/MS is available for enforcement purposes. The method had a limit of quantitation (LOQ) of 0.01 ppm and a limit of detection (LOD) of 0.003 ppm. *Contact:* Dan Peacock, Registration Division (7505P), (703) 3055407, *e-mail address: peacock.dan@epa.gov.*

3. *PP* 1F7836. (EPA–HQ–OPP–2011–0283). Dow AgroSciences, LLC, 9330 Zionsville Road, Indianapolis, IN, 46268, request to reestablish and make permanent tolerances in 40 CFR part 180 for the combined residues of the herbicide cyhalofop (cyhalofop-butyl, R-(+)-n-butyl-2-(4(4-cyano-2-fluorophenoxy)-phenoxy)propionate, plus cyhalofop acid, R-(+)-2-(4(4-cyano-2-fluorophenoxy)-phenoxy)propionic acid) and the di-acid metabolite, (2R)-4-[4-(1-carboxyethoxy)phenoxy]-3-fluorobenzoic acid, in or on rice, grain at 0.35 ppm; and rice, wild, grain at 0.35 ppm. An adequate analytical method is available for enforcement purposes; the method has been developed and validated to determine the residues of cyhalofop-butyl, cyhalofop (acid form) and the di-acid metabolite in rice grain, straw and processed products. The method was based on capillary gas chromatography (GC) with mass selective detection. Level of detection was 0.005 ppm or 0.006 ppm depending on the analyte and matrix. *Contact:* James Stone, Registration Division (7505P), (703) 305–7391, *e-mail address: stone.james@epa.gov.*

Amended Tolerance

PP 1F7840. (EPA–HQ–OPP–2011–0307). E.I. du Pont de Nemours & Company, 1007 Market Street, Wilmington, DE 19898, request to amend 40 CFR 180.364(a) to establish a tolerance for the combined residues of the herbicide glyphosate, *N* (phosphonomethyl)glycine, and its metabolite, *N*-acetyl-glyphosate (expressed as glyphosate) on canola, seed. An analytical method was developed, and validated, for the determination of glyphosate and degradate residues in transgenic crop and crop fraction matrices. The method was validated at 0.050 milligrams/kilograms (mg/kg) and 0.50 mg/kg or higher fortification level using a LC/MS/MS system operating with an electrospray interface (ESI) in positive ion mode detection. An analytical method was developed, and validated, for the determination of glyphosate, *N*-acetylglyphosate, AMPA, and N-acetyl AMPA in animal matrices including milk, eggs, muscle, kidney, liver, and fat. The method was validated at the respective LOQ and 10×LOQ level for each matrix using a LC/MS/MS system operating with an ESI in positive or negative ion mode detection. *Contact:* Erik Kraft, Registration Division (7505P), (703) 308–9358, *e-mail address: kraft.erik@epa.gov.*

New Tolerance Exemptions

1. *PP* 0E7814. (EPA–HQ–OPP–2011–0276). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W., Princeton, NJ 08540 on behalf of Arkion Life Sciences, 551 Mews Drive, Suite J, New Castle, DE 19720, request to establish an exemption from the requirement of tolerances for residues of the biochemical pesticide 9,10 anthraquinone, in or on corn, field, seed; and corn, sweet, seed. An analytical method is available. Sample analysis for residues of anthraquinone, 1-hydroxyanthraquinone, and 2-hydroxyanthraquinone was conducted by Cornell Analytical Laboratories, Geneva, NY. The procedure used was "Residue Analysis of Anthraquinone on Corn (field) including Kernels plus Cob with Husks Removed (K+CWHR), Forage, Grain, and Stover by LC/MS Detection", Version #1. *Contact:* Chris Pfeifer, Biopesticides and Pollution Prevention Division (7511P), (703) 308–0031, *e-mail address: pfeifer.chris@epa.gov.*

2. *PP* 1E7834. (EPA–HQ–OPP–2011–0327). Akzo Nobel Surface Chemistry, LLC, 909 Mueller Avenue, Chattanooga, TN 37406, request to establish an exemption from the requirement of a tolerance for 2-propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid and sodium 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonate (1:1), peroxydisulfuric acid ([HO)S(O)2]202) sodium salt (1:2)initiated (CAS Reg. No. 1246766–57–3) when used as a pesticide inert ingredient as a dispersant in pesticide formulations under 40 CFR 180.960 in or on all raw agricultural commodities. An analytical method is generally not required when all criteria for polymer exemption per 40 CFR 723.250 are met. In addition, Akzo Nobel is petitioning for an exemption from the requirement of a tolerance without any numerical limitations.

Contact: Mark Dow, Registration Division (7505P), (703) 305–5533, *e-mail address: dow.mark@epa.gov.*

3. *PP* 0F7729. (EPA–HQ–OPP–2010–0096). DSM Food Specialties B.V., Alexander Fleminglaan 1, 2613 AX Delft, The Netherlands, c/o Keller and Heckman, LLP, 1001 G. Street, NW., Washington, DC 20001 request to establish an exemption from the requirement of a tolerance for residues of the biochemical pesticide natamycin, (6,11,28-Trioxatricyclo[22.3.1.0^{5,7}]octacosa-8,14,16,18,20-pentaene-25-carboxylic acid, 22-[(3-amino-3,6-dideoxy-β-D-mannopyranosyl)oxy]-1,3,26-trihydroxy-12-methyl-10oxo-, (1R,3S,5R,7R,8E,12R,14E,16E,18E, 20E,22R,24S,25R,26S) (CAS Reg. No. 7681–93–8), in or on mushrooms. An analytical method is available to EPA for the detection and measurement of the pesticide residues. *Contact:* Cheryl Greene, Biopesticides and Pollution Prevention Division (7511P), (703) 308–0352, *e-mail address: greene.cheryl@epa.gov.*

Amended Tolerance Exemption

PP 1E7830. (EPA–HQ–OPP–2007–0158). Interregional Research Project Number 4 (IR–4), Rutgers University, 500 College Road East, Suite 201W, Princeton, NJ 08540 on behalf of the Arizona Cotton Research and Protection Council, 3721 East Wier Avenue, Phoenix, AZ 85040–2933, request to amend 40 CFR 180.1206 to establish a permanent exemption from the requirement of a tolerance for *Aspergillus flavus* AF36 on pistachio. The petitioner believes no analytical method is needed because an exemption from the requirement of a tolerance for residues of the microbial pesticide *A. flavus* AF36 in/on pistachios, without any numerical limitation is being requested for pistachios. *Contact:* Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511P), (703) 308–8097, *e-mail address: bacchus.shanaz@epa.gov.*

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 11, 2011.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–9447 Filed 4–19–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 5

Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas; Notice of Meeting

Correction

Proposed Rule document 2011–9081 was inadvertently published in the Rules section of the issue of April 14, 2011, beginning on page 20867. It should have appeared in the Proposed Rules section.

[FR Doc. 2011–9600 Filed 4–19–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 8, 17, 37, and 52

[FAR Case 2010–010; Docket 2010–0010, Sequence 1]

RIN 9000–AM06

Federal Acquisition Regulation; Service Contracts Reporting Requirements

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 743 of Division C of the Consolidated Appropriations Act, 2010. This proposed rule amends the FAR to require service contractors for executive agencies, except the Department of Defense (DoD), covered by the Federal Activities Inventory Reform (FAIR) Act of 1998, to submit information annually in support of agency-level inventories for service contracts.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before June 20, 2011 to be considered in the formation of a final rule.

ADDRESSES: Submit comments in response to FAR Case 2010–010, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2010–010" under the heading "Enter Keyword or ID and selecting "Search". Select the link "Submit a Comment" that corresponds with FAR Case 2010–010 at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2010–010" on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, FAR Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2010–010, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Clare McFadden, Procurement Analyst, at (202) 501–0044 for clarification of content. Please cite FAR Case 2010–010. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

I. Background

Section 743 of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117) requires executive agencies covered by the Federal Activities Inventory Reform (FAIR) Act (Pub. L. 105–270), except DoD, to submit to the Office of Management and Budget (OMB) annually an inventory of activities performed by service contractors. DoD is exempt from this reporting requirement because 10 U.S.C. 2462 and 10 U.S.C. 2330a(c) already requires DoD to develop an annual service contract inventory.

House Report 111–366 notes, in connection with section 743, that, "(i)n the absence of complete and reliable information on the extent of their reliance on service contractors, Federal agencies are not well-equipped to determine whether they have the right balance of contractor and in-house resources needed to accomplish their missions. This section requires agencies to review the contents of the inventory and report on actions taken."

Section 743 mandates that, for each service contract, the agency-level inventory report must include the following information—

(1) A description of the services purchased by the executive agency and

the role the services played in achieving objectives, regardless of whether such a purchase was made through a contract or task order;

(2) The organizational component of the executive agency administering the contract, and the organizational component of the agency whose requirements are being met through contractor performance of the service;

(3) The total dollar amount obligated for services under the contract and the funding source for the contract;

(4) The total dollar amount invoiced for services under the contract;

(5) The contract type and date of award;

(6) The name of the contractor and place of performance;

(7) The number and work location of contractor and subcontractor employees, expressed as full-time equivalents for direct labor, compensated under the contract;

(8) Whether the contract is a personal services contract; and

(9) Whether the contract was awarded on a noncompetitive basis, regardless of date of award.

Additionally, the Office of Federal Procurement Policy's November 5, 2010, guidance, entitled Service Contract Inventories (*http://www.whitehouse.gov/omb/procurement_index_memo*), requires agencies to include contract actions funded by that agency, including contract actions made on behalf of the agency by other agencies. Similarly, agencies should exclude contract actions that they have made on another agency's behalf with the other agency's funding. This guidance provided a framework to help agencies prepare service contract inventories for Fiscal Year (FY) 2010. To maximize the management benefits associated with a service contract inventory and ensure consistency across agencies, FY 2010 inventories followed the format provided in the guidance and included only the data elements identified in section 743(a)(3) that are currently reported in the Federal Procurement Data System—Next Generation (FPDS–NG). However, certain data elements, namely the total amount invoiced for services and number of direct labor hours expended on services performed during the previous Government fiscal year, which will be used to calculate the number of contractor manpower full-time equivalents, must be collected from service contractors.

The service contractor inventory requirements in section 743 create significant management responsibilities to support the appropriate rebalancing of work performed by Federal employees and contractors. To implement this requirement in the FAR, OMB directed DoD, GSA, and NASA to use a phased-in approach similar to that proposed in the President's Budget for FY 2011. A phased-in approach will help agencies more effectively manage the challenges associated with launching and maintaining an inventory.

In accordance with Section 743, this rule proposes to amend the FAR to create a new FAR subpart 4.16, entitled Service Contracts Inventory, to address responsibilities for collection, management, and reporting of this information, and a new clause, 52.204–XX, Service Contract Reporting Requirements, to incorporate into covered solicitations and contracts. An Alternate clause will be used for orders placed on indefinite-delivery contracts.

Agencies placing orders on these existing contracts after the effective date of a resulting final rule will be required to report this information if the order meets the thresholds established in FAR 4.1603 (*e.g.,* at or above the simplified acquisition threshold (SAT) for cost-reimbursement, time-and-materials, and labor-hour contracts, and fixed-price contracts at or above $5 million in FY 2011 and phased-in thresholds thereafter).

Under this proposed rule, contractors must submit the following four data elements for each covered contract or order for a given year by October 31st annually:

(1) Contract number and, as applicable, task order number.

(2) The total dollar amount invoiced for services performed during the previous fiscal year under the contract.

(3) The number of contractor direct labor hours expended on the services performed during the previous fiscal year.

(4) Data reported by subcontractors.

Subcontractor information is also required under Section 743. To implement this requirement in the FAR, in a manner that is least burdensome, OMB directed collection of this information from first-tier subcontractors (similar to the subcontractor reporting requirement in FAR subpart 4.14, Reporting Executive Compensation and First-Tier Subcontract Awards). Prime contractors would be required to obtain from each first-tier subcontractor performing under a covered contract the following information by October 15th annually:

(1) Subcontract number (including subcontractor name, and, if available, Data Universal Numbering System (DUNS) number associated with the subcontract number).

(2) Number of first-tier subcontractor direct-labor hours expended on services performed during the previous Government fiscal year.

The proposed reporting requirement applies only to solicitations, contracts, and orders for services, to first-tier subcontracts at or above the established thresholds.

II. Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this new requirement does impose some additional requirements on small businesses that provide services to Executive agencies, other than DoD.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. The analysis is summarized as follows:

The statute requires agencies covered by the FAIR Act, except DoD, to submit annual agency inventories of their service contracts. The inventory must address nine data items for each service contract (see "I. Background"). DoD, GSA, and NASA attempted to minimize the information-collection requirement for contractors by requiring agencies to obtain as much of the data as possible from existing sources such as the Federal Procurement Data System (FPDS). For each service contract or order, contractors would be expected to report annually—

(1) Contract number and, as applicable, task order number;

(2) The total dollar amount invoiced for services performed during the previous Government fiscal year under the contract;

(3) The number of contractor direct labor hours expended on the services performed during the previous Government fiscal year; and

(4) Data reported by first-tier subcontractors.

Consistent with the thresholds for prime contracts, first-tier subcontractors with subcontracts valued at or above the thresholds established for new contracts (*e.g.,* $5 million for new fixed-price contracts in FY 2011 and at or above the simplified acquisition threshold for cost-reimbursement, time-and-materials, and labor-hour contracts) would be expected to report the following data elements to the prime contractor by October 15th annually:

(1) Subcontract number (including the subcontractor name and if available, the DUNS number).

(2) Number of first-tier subcontractor direct labor hours expended on services performed during the previous Government fiscal year.

To further minimize the impact, OMB elected to implement the contractor reporting requirements over a period of four years beginning with larger dollar obligations for new fixed-price contracts (*i.e.,* $5 million for FY 2011) that goes down to a $500,000 contract reporting threshold for FY 2014. A lower threshold was selected for cost-reimbursement, time-and-materials, and labor-hour contracts (*i.e.,* at or above the SAT) because contractors already track the required information to invoice the Government.

The reporting requirement would apply to Government contractors, other than DoD contractors, that supply services to executive agencies during a Government fiscal year (beginning in FY 2011) and over the specified reporting thresholds.

Each contractor would be required to report annually on the services provided during the previous Government fiscal year. The information would be input to a new Service Contract Reporting Portal (currently under development). This information will be collected through this portal, and no hard-copy reporting is required. When providing a proper invoice to the Government for cost-reimbursement, time-and-materials, and labor-hour contracts, the information on the number of direct labor hours worked is already compiled by contractors, so the information collected should be minimal for these types of contracts. The direct costs to small business firms to comply with this rule are primarily for data collection and input associated with the single annual report.

To minimize the burden on small businesses, the following alternatives were considered and included in the proposed FAR rule:

- Minimizing the inventory data elements collected by using existing systems, such as FPDS.
- Minimizing the reporting to once a year.
- Enabling electronic reporting by the contractor into the new portal.
- Requiring contractors to provide only the number of direct labor hours and developing the system to automatically generate the number of full-time equivalents.
- Limiting the reporting requirement to first-tier subcontractors for services in lieu of all subcontractors.
- Establishing a phased-in approach based on contract type and estimated total dollar amount, from 2011 to 2014 based on thresholds, to minimize the collection of information.

The Regulatory Secretariat will be submitting a copy of the Initial Regulatory Flexibility Analysis (IRFA) to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the affected regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 2010–010) in all correspondence.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies because the proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat has submitted a request for approval of a new information collection requirement: 9000–0179, Service Contractor Reporting Requirements, FAR Case 2010–010, Proposed Rule, to the Office of Management and Budget.

Annual Reporting Burden:

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Because this is a new information collection requirement, historical data is not available. Further, the ceiling amount for certain service contracts to include the reporting requirement will be phased in over several years. Data from FY 2009 was used to determine the burden, with the most recent year for which data is available used as a baseline for the number of affected service contracts. DOD awards were excluded.

If this reporting requirement had been in place during FY 2009, it would have covered 17,120 fixed-price service contracts over $5 million and 6,725 cost-reimbursement, time-and-materials, and labor-hour service contracts above the simplified acquisition threshold. Therefore, the total number of contracts on which reports would have been submitted is 23,845. Only one report is required for each contract annually, and we estimate that it will take approximately 2 hours to prepare and submit the report. The annual reporting burden is estimated as follows:

Respondents	23,845
Responses/respondent	× 1
Total annual Responses	23,845
Preparation hours per response	× 2
Total response burden hours	47,690

List of Subjects in 48 CFR Parts 4, 8, 17, 37, and 52

Government procurement.

Dated: April 14, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 4, 8, 17, 37, and 52 as set forth below:

1. The authority citation for 48 CFR parts 4, 8, 17, 37, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

2. Add subpart 4.16 to read as follows:

Subpart 4.16—Service Contracts Inventory

Sec.

4.1600 Scope of subpart.
4.1601 Definitions.
4.1602 Applicability.
4.1603 Contractor reporting requirements.
4.1604 Contracting officer responsibilities.
4.1605 Contract clause.

Subpart 4.16—Service Contracts Inventory

4.1600 Scope of subpart.

This subpart implements section 743 of Division C of the Consolidated Appropriations Act, 2010, (Pub. L. 111–117), which requires agencies to report annually to the Office of Management and Budget (OMB) on activities performed by service contractors. Section 743 applies to executive agencies, other than the Department of Defense (DoD), covered by the Federal Activities Inventory Reform Act (Pub. L. 105–270) (FAIR Act). The information reported in the inventory will be publicly accessible.

4.1601 Definitions.

FAIR Act agencies, as used in this subpart, means the agencies required under the FAIR Act to submit inventories annually of the activities performed by Government personnel.

First-tier subcontract means a subcontract awarded directly by a contractor to furnish supplies or services (including construction) for performance of a prime contract, but excludes supplier agreements with vendors, such as long-term arrangements for materials or supplies that would normally be applied to a contractor's general and administrative expenses or indirect cost.

Service contract is defined in 37.101.

4.1602 Applicability.

(a) This subpart applies to—

(1) All FAIR Act agencies, except DoD;

(2) Solicitations, contracts, and orders for services that meet or exceed the thresholds at 4.1603; and

(3) Contractors and first-tier subcontractors.

(b) Procedures for compiling and submitting agency service contract inventories are governed by section 743(a)(3) of Division C of Pub. L. 111–117 and Office of Federal Procurement Policy (OFPP) guidance. The guidance is available at the following Web site: *http://www.whitehouse.gov/omb/procurement-service-contract-inventories.*

(c) This subpart addresses requirements for obtaining information from, and reporting by, agency service contractors.

4.1603 Contractor reporting requirements.

(a) *Thresholds.* (1) Except as exempted by OFPP guidance, service contractor reporting shall be required for contracts and first-tier subcontracts based on type of contract and estimated total value. For indefinite-delivery contracts, reporting shall be determined based on the type and estimated total value of the orders issued under the contract. Indefinite-delivery contracts include, but are not limited to, contracts such as indefinite-delivery indefinite-quantity (IDIQ) contracts, Federal Supply Schedule contracts (FSSs), Governmentwide acquisition contracts (GWACs), and multi-agency contracts.

(2) Reporting is required for contracts and orders according to the following thresholds:

(i) All cost-reimbursement, time-and-materials, and labor-hour service contracts and orders with an estimated total value above the simplified acquisition threshold.

(ii) All fixed-price contracts awarded or orders issued according to the following thresholds:

(A) Awarded or issued in Fiscal Year (FY) 2011, on or after [DATE] with an estimated total value of $5 million or greater.

(B) Awarded or issued in FY 2012, with an estimated total value of $2.5 million or greater.

(C) Awarded or issued in FY 2013, with an estimated total value of $1 million or greater.

(D) Awarded or issued in FY 2014 and subsequent years, with an estimated total value of $500,000 or greater.

(3) For all first-tier subcontractors performing work under a covered contract, subcontract reporting is required based on the thresholds as prescribed in paragraphs (a)(2)(i) and (ii) of this section.

(b) *Agency reporting responsibilities.* (1) Agencies shall ensure that contractors comply with the reporting requirements of 52.204–XX, Service Contract Reporting Requirements.

(2) Agencies are required to compile annually an inventory of service contracts performed for, or on behalf of, the agency during the prior fiscal year in order to determine the extent of the agency's reliance on service contractors. Agencies shall submit a service contract inventory to OMB by December 30 annually. Then, each agency must post the inventory on its Web site and publish a **Federal Register** Notice of Availability by January 30 annually.

(3) Most of the required information is already collected in the Federal Procurement Data System (FPDS). Information not collected in FPDS will be provided by the contractor, as specified in 52.204–XX, Service Contract Reporting Requirements. Contracts reported using the generic DUNS number allowed at 4.605(b)(2) will interfere with the contractor's ability to comply with this reporting requirement, because the data will not pre-populate from FPDS.

4.1604 Contracting officer responsibilities.

(a) The contracting officer shall ensure that the contract reporting clause is included in solicitations, contracts, and orders as prescribed in 4.1605 and that the contractor complies with the reporting requirements in 52.204–XX, Service Contract Reporting Requirements. For indefinite-delivery contracts, the contracting officer who awarded the contract shall ensure that 52.204–XX, Service Contract Reporting Requirements, is included in the contract. The contracting officer at the order level shall verify the clause's inclusion in the contract and ensure that each contractor awarded an order against the contract is submitting the report in a timely manner.

(b) The contracting officer shall make the contractor's failure to comply with the reporting requirements a part of the contractor's performance information under subpart 42.15.

4.1605 Contract clause.

The contracting officer shall insert the clause at 52.204–XX, Service Contract Reporting Requirements, in solicitations and contracts for services that meet or exceed the thresholds at 4.1603. The contracting officer shall use the clause with its Alternate I in indefinite-delivery contracts where one or more orders issued thereunder are expected to each meet or exceed the thresholds at 4.1603. This clause is not required in classified solicitations, contracts, or orders.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

3. Amend section 8.404 by adding paragraph (f) to read as follows:

8.404 Use of Federal Supply Schedules.

* * * * *

(f) Ensure that service contractor reporting requirements will be met in accordance with subpart 4.16, Service Contracts Inventory.

PART 17—SPECIAL CONTRACTING METHODS

4. Revise section 17.504 to read as follows:

17.504 Reporting requirements.

(a) The senior procurement executive for each executive agency shall submit to the Director of OMB an annual report on interagency acquisitions, as directed by OMB.

(b) The contracting officer shall ensure that service contractor reporting requirements will be met in accordance with subpart 4.16, Service Contracts Inventory.

PART 37—SERVICE CONTRACTING

5. Amend 37.103 by adding paragraph (e) to read as follows:

37.103 Contracting officer responsibility.

* * * * *

(e) Ensure that service contractor reporting requirements will be met in accordance with subpart 4.16, Service Contracts Inventory.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Add section 52.204–XX to read as follows:

52.204–XX Service Contract Reporting Requirements.

As prescribed in 4.1605, insert the following clause:

Service Contract Reporting Requirements (Date)

(a) The Contractor shall report, in accordance with paragraph (b) of this section, annually by October 31st for services performed under this contract during the preceding Government fiscal year (October 1–September 30).

(b) The Contractor shall report the following information:

(1) Contract number and, as applicable, order number.

(2) The total dollar amount invoiced for services performed during the previous Government fiscal year under the contract.

(3) The number of Contractor direct labor hours expended on the services performed during the previous Government fiscal year.

(4) Data reported by subcontractors under paragraph (d) of this clause.

(c) The information required in paragraph (b) of this section shall be submitted to the online Service Contract Reporting Portal and will be publicly available at *http://www.acquisition.gov.*

(d)(1) The Contractor shall require each first-tier subcontractor performing under this contract, with contracts valued at or above the thresholds set forth in 4.1603(a)(2), to provide the following detailed information to the Contractor by October 15th:

(i) Subcontractor DUNS number, or if DUNS number is unavailable, subcontractor name.

(ii) The number of first-tier subcontractor direct-labor hours expended on the services performed during the previous Government fiscal year.

(2) The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 743 of Division C of the Consolidated Appropriations Act, 2010.

(End of clause)

Alternate I (DATE). As prescribed in 4.1605, substitute the following paragraphs (a), (b), and (d) for paragraphs (a), (b), and (d) of the basic clause.

(a) The Contractor shall report, in accordance with paragraph (b) of this Alternate I, by October 31st annually for services performed during the preceding Government fiscal year (October 1–September 30) under this contract for orders that exceed the thresholds established in 4.1603(a)(2).

(b) The Contractor shall report the following information:

(1) Contract number and, as applicable, order number.

(2) The total dollar amount invoiced for services performed during the previous Government fiscal year under the order.

(3) The number of Contractor direct labor hours expended on the services performed during the previous Government fiscal year.

(4) Data reported by subcontractors under paragraph (d) of this clause.

(d)(1) The Contractor shall require each first-tier subcontractor with contracts valued at or above the thresholds set forth in 4.1603(a)(2) performing services under this contract to provide the following detailed information to the Contractor by October 15th:

(i) Subcontractor DUNS number, or if DUNS number is unavailable, subcontract name.

(ii) The number of first-tier subcontractor direct-labor hours expended on the services performed during the previous Government fiscal year.

(2) The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 743 of Division C of the Consolidated Appropriations Act, 2010.

[FR Doc. 2011–9515 Filed 4–19–11; 8:45 am]

BILLING CODE 6820–EP–P

Notices

Federal Register
Vol. 76, No. 76
Wednesday, April 20, 2011

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

Divide Ranger District, Rio Grande National Forest; CO; Black Mesa Vegetation Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Divide Ranger District, Rio Grande National Forest, proposes to salvage timber stands killed or infested by spruce beetles; reduce fuel loading, particularly adjacent to private lands; cut potential hazard trees along private property, roads, and other infrastructure; and regenerate forested acres, as needed, to move toward the long-term desired conditions described in the Forest Plan.

DATES: Comments concerning the scope of the analysis must be received by May 20, 2011. The draft environmental impact statement is expected in March 2012 and the final environmental impact statement is expected in July 2012.

ADDRESSES: Send written comments to Diana McGinn, Team Leader, San Luis Valley Public Land Center, 1803 W. Hwy. 160, Monte Vista, CO 81144. Comments may also be sent via e-mail to *comments-rocky-mountain-rio-grande-divide@fs.fed.us,* or via facsimile to 719–852–6250, with subject Black Mesa Vegetation Management Project Public Comment.

FOR FURTHER INFORMATION CONTACT: Diana McGinn at 719–852–6241 or visit the Forest Web site *http://www.fs.usda.gov/riogrande* under "*Land & Resource Management*", then "*Projects*" on the left side of the Web page.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need for the Black Mesa Vegetation Management Project is move toward achieving long-term desired conditions described in the Forest Plan for this area following extensive tree mortality caused by epidemic levels of spruce beetles. Actions taken to meet these goals would include: (1) Harvesting dead and dying trees to provide wood products, while reducing the continuous extent of large fuels, particularly around private lands; and (2) removing trees that create a potential safety hazard in areas of concentrated public use or that have the potential to damage public or private property as they fall.

Proposed Action

The Rio Grande National Forest proposes to harvest and regenerate timber stands killed by or infested with spruce beetles in an area located approximately 15 miles west of Creede, Colorado. The project would use the existing transportation system except for the construction of approximately 3.6 miles of new temporary road. All new roads or other roads currently closed would be rehabilitated and closed following use. Tree planting would follow harvest operations in areas with inadequate existing regeneration or where aspen sprouting is unlikely, in order to maintain diverse forest cover over the long-term.

Responsible Official

Divide District Ranger/Field Office Manager at 13308 W. Hwy. 160, Del Norte, CO, 81132.

Nature of Decision To Be Made

An environmental impact statement (EIS) that discloses the environmental consequences of implementing the proposed action and alternatives to the proposed action, including No Action, will be prepared. A separate Record of Decision (ROD) will explain the Responsible Official's decision regarding whether or not to implement some level of timber harvest and other proposed activities on all, part, or none of the area analyzed, given the consideration of multiple-use goals and objectives.

Preliminary Issues

The effect of proposed activities on habitat structural needs of the local population of Canada Lynx, a Threatened species, and their primary prey, the snowshoe hare.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The Forest invites public comment and participation for this project by publication of this notice. Comments are also invited by: publication in the quarterly Schedule of Proposed Actions (SOPA); public notice regarding this project in the newspaper of record, the Valley Courier; letters to potentially interested individuals, Tribal governments, elected officials, and State and other Federal Agencies. One or more scoping meetings with adjacent landowners and other interested individuals or agencies will be scheduled individually and/or announced in the Valley Courier. Information will also be posted on the Rio Grande National Forest Web site as this project progresses. Comments received during these scoping efforts will be considered in this EIS.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the scoping period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, and will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however anonymous comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents.

Dated: April 13, 2011.

Thomas Malecek,

District Ranger/Field Office Manager.

[FR Doc. 2011–9555 Filed 4–19–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Bussel 484, Idaho Panhandle National Forests, Idaho, Shoshone County

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The USDA Forest Service will prepare a supplemental environmental impact statement (SEIS) for the Bussel 484 Project. The Notice of Availability of the Draft EIS for the Bussel 484 Project was published in the **Federal Register** (73 FR 12413) on March 7, 2008, and the notice for the Final EIS (73 FR 24279) was published on May 2, 2008. The Record of Decision (ROD) for this project was signed on May 21, 2008. It was administratively appealed to the Regional Forester per 36 CFR part 215. The Regional Forester affirmed the decision on July 31, 2008. A complaint was filed in the United States District Court for the District of Idaho on April 9, 2009. On August 6, 2010 the United States District Court for the District of Idaho set aside the Bussel 484 decision and remanded it to the Forest Service. The proposed action is unchanged from the final EIS. A supplemental EIS will be prepared to address analysis for wildlife, fire management direction, recently designated critical habitat for bull trout, and newly designated Sensitive species.

DATES: Scoping is not required for supplements to environmental impact statements (40 CFR 1502.9(c)(4)). There was extensive public involvement in the development of the proposed action, the 2008 Draft EIS, and the 2008 Final EIS. The Forest Service is not inviting comments at this time. The draft supplemental EIS is expected May 2011, and the final supplemental EIS is expected July 2011. The comment period for the draft SEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

ADDRESSES: St. Joe Ranger District, 222 South 7th Street, Suite 1, St. Maries, Idaho 83861.

FOR FURTHER INFORMATION CONTACT: Wade Sims, District Ranger, USDA Forest Service, St. Joe Ranger District, 208–245–2531. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Forest Supervisor selected Alternative B with modifications as documented in the May 2008 Bussel 484 Record of Decision (ROD). The ROD authorized approximately 2,137 acres of timber harvest, fuel treatment resulting from the timber harvest, tree planting in regeneration harvest units, pocket gopher control, 575 acres of precommercial thinning which also included 309 acres of white pine pruning, approximately 4.5 miles of system road construction on National Forest System lands, 0.2 miles of road construction across lands owned by Potlatch Corporation as part of a cost-share agreement, 0.5 miles of temporary road construction, 5.4 miles of road reconstruction, installing effective motorized vehicle restriction devices thorughout the project area, removing a gate, 0.2 miles of new trail construction for motorized vehicles less than 50 inches wide, the conversion of Bussel Creek Trail 258 to non-motorized use, designation of Lines Creek Historical Trail for motorized vehicles less than 50 inches wide, repair and designation of 2.9 miles of the Norton Railroad Grade for motorized vehicles less than 50 inches wide, storage or decommissioning of approximately 32 miles of existing road, planting native trees and shrubs along riparian areas, large woody debris placement in stream channels, elimination of two human-created fish migration barriers, and reallocation of approximately 120 acres of Management Area 9 to Management Area 1. The supplemental EIS will contain additional information about wildlife, fire management direction, recently designated critical habitat for bull trout, and newly designated Sensitive species.

The mailing list for this project will include those individuals, agencies and organizations on the mailing list for the March 2008 Draft EIS. The comment period for the draft SEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. The Idaho Panhandle National Forests Supervisor will make a decision on this project after considering comments, environmental consequences, and applicable laws, regulations, and policies.

Purpose and Need for Action

The project is needed to maintain or improve resilience of the vegetative resources to disturbances such as insects, disease, and fire; provide wood products for local communities; work toward full support of designated beneficial uses in the Bussel Creek Watershed; and manage access to provide for multiple uses.

Proposed Action

The proposed action as described in the FEIS includes timber harvest and associated fuels treatment on approximately 2,137 acres; approximately 5.1 miles of system road construction, 0.5 miles of temporary road construction, and 6.7 miles of road reconstruction to facilitate the timber harvest; repairing the Norton Creek Railroad Grade then designating it open to vehicles less than 50 inches wide; 29 miles of road decommissioning and storage; 367 acres of planting after timber harvest; 367 acres of pocket gopher control; 821 acres of precommercial thinning and pruning; changes in access management including installing effective restrictive devices on some roads, removing a gate, constructing 0.2 miles of new trail for ATV use, converting Bussel Creek Trail 258 to non-motorized use, designating Lines Creek Historical Trail for motorized vehicles less than 50 inches wide; planting some portions of riparian areas; placing large woody debris in streams; and correcting two fish migration barriers.

Responsible Official

The Forest Supervisor of the Idaho Panhandle National Forests is the Responsible Official.

Nature of Decision To Be Made

The decison for the Bussel 484 Project will identify the land management activities to be implemented in the project area including acres, types, and locations of vegetative treatments including timber harvest, fuel treatments, planting, and precommercial thinning; acres of pocket gopher control to protect regeneration; miles and locations of road construction, reconstruction, storage, and decommissioning; changes for public motorized access; areas and locations to place large woody debris in streams, and methods to correct fish migration barriers. The SEIS is intended to provide additional evaluation of wildife, the Idaho Panhandle National Forests' fire management direction, recently designated critical habitat for bull trout, and newly designated Sensitive species and provide that information to the public.

Scoping Process

Scoping is not required for supplements to environmental impact statements (40 CFR 1502.9(c)(4)). There was extensive public involvement in the development of the proposed action, the 2008 Draft EIS, and the 2008 Final EIS. The Forest Service is not inviting comments at this time.

Comment Requested

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early state, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's positions and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: April 13, 2011.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. 2011–9539 Filed 4–19–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Okanogan and Wenatchee National Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wenatchee-Okanogan Resource Advisory Committee will meet on May 10, May 12, and May 17 at the Okanogan-Wenatchee National Forest Headquarters Office, 215 Melody Lane, Wenatchee, WA. These meetings will begin at 9 a.m. and continue until 3 p.m. On May 10, committee members will review Kittitas County and Yakima County projects, on May 12, committee members will review Okanogan County projects, and on May 17, committee members will review Chelan County projects proposed for Resource Advisory Committee consideration under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

All Wenatchee-Okanogan Resource Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Robin DeMario, Public Affairs Specialist, Okanogan-Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, (509) 664–9200.

Dated: April 14, 2011.

Rebecca Lockett Heath,

Okanogan-Wenatchee National Forest, Forest Supervisor.

[FR Doc. 2011–9538 Filed 4–19–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Gogebic Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Gogebic Resource Advisory Committee will meet in Marenisco, Michigan. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343)(the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and make recommendations on Title II Projects submitted by the public.

DATES: The meeting will be held on May 19, 2011, and will begin at 9:30 a.m. (CST).

ADDRESSES: The meeting will be held at the Marenisco Town Hall, Marenisco, Michigan. Written comments may be submitted as described under Supplementary Information.

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 Ottawa National Forest, E6248 U.S. Hwy. 2, Ironwood, MI 49938. Please call ahead to 906–932–1330 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Lisa Klaus, RAC coordinator, USDA, Ottawa National Forest, E6248 U.S. Hwy. 2, Ironwood, MI, (906) 932–1330, ext. 328; e-mail *lklaus@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or procedings may be made by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Review and approval of previous meeting minutes. (2) Review and make recommendations for Title II Projects submitted by the public. (3) Public comment. Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by May 1, 2011, to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Lisa Klaus, Ottawa National Forest, E6248 US Hwy. 2, Ironwood, MI 49938. Comments may also be sent via e-mail to *lklaus@fs.fed.us* or via facsimile to 906–932–0122.

Dated: April 14, 2011.

Keith B Lannom,

Designated Federal Officer.

[FR Doc. 2011–9556 Filed 4–19–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Maximum Loan Amount Available for B&I Guaranteed Loans in Fiscal Year 2011

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: 7 CFR 4279.119(a)(1) allows the Rural Development Administrator, at the Administrator's discretion, to grant an exception to the $10 million limit for Business and Industry (B&I) guaranteed loans of $25 million or less under certain circumstances. Due to the limited program funds that will be available for Fiscal Year 2011 for the B&I Guaranteed Loan Program, the Administrator has decided not to grant exceptions to the $10 million limit during FY 2011 in an effort to make guaranteed loan funds go farther and to provide financing assistance to as many projects as possible. Limiting guaranteed loans to $10 million or less will allow the Agency to guarantee more loans and target smaller loans/projects impacting more small businesses and will assist the Agency to conserve scarce funding dollars at a time when there is unprecedented interest in the program. Any applications or pre-applications that have been received as of the date of publication of this notice will be given full consideration.

DATES: *Effective Date:* April 20, 2011.

FOR FURTHER INFORMATION CONTACT: Brenda Griffin, e-mail *brenda.griffin@wdc.usda.gov,* Rural Development, Business Programs, Business and Industry Division, STOP 3224, 1400 Independence Avenue, SW., Washington, DC 20250–3224, telephone (202) 720–6802.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 as amended by Executive Order 13258.

Dated: March 28, 2011.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2011–9480 Filed 4–19–11; 8:45 am]

BILLING CODE 3410–XY–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Thursday, April 14, 2011; 3:45 p.m.–4 p.m.

PLACE: Radio Free Asia Headquarters, 2025 M St., NW., Washington, DC 20036.

SUBJECT: Notice of Closed Meeting of the Broadcasting Board of Governors.

SUMMARY: At the time and location listed above, the Broadcasting Board of Governors (BBG) determined to conduct a meeting closed to the public pursuant to 5 U.S.C. 552b(c)(6). The meeting was closed to protect privacy concerns during the consideration of potential appointees to serve as the Director of the Voice of America. Although discussion of the matter in an open setting was considered, the potential consequences of disclosing the identities and circumstances of individuals considered for appointment compelled the Board to close the meeting to public observation. The Board also determined that shorter than usual notice for a meeting was required by official agency business and the delayed availability of required information.

Members Vote To Close the Meeting

Walter Isaacson—Yes.

Victor Ashe—No.

Susan McCue—Yes.

Michael Meehan—Yes.

Dennis Mulhaupt—Yes.

Dana Perino—Yes.

S. Enders Wimbush—Yes.

Attendance

Walter Isaacson, BBG Chairman.

Victor Ashe, BBG Member.

Susan McCue, BBG Member.

Michael Meehan, BBG Member.

Dennis Mulhaupt, BBG Member.

Dana Perino, BBG Member.

S. Enders Wimbush, BBG Member.

Jeffrey Trimble, BBG Executive Director.

Richard Lobo, Director of the International Broadcasting Bureau.

Maryjean Buhler, BBG Chief Financial Officer.

Paul Kollmer-Dorsey, BBG Deputy General Counsel.

Lynne Weil, Senior Advisor to the Under Secretary for Public Diplomacy and Public Affairs.

Oanh Tran, BBG Special Projects Officer.

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Paul Kollmer-Dorsey at (202) 203–4545.

Paul Kollmer-Dorsey,

Deputy General Counsel.

[FR Doc. 2011–9714 Filed 4–18–11; 4:15 pm]

BILLING CODE 8610–01–P

DEPARTMENT OF COMMERCE

Meeting of the National Advisory Council on Innovation and Entrepreneurship

AGENCY: U.S. Department of Commerce.

ACTION: Notice of an open conference call.

SUMMARY: The National Advisory Council on Innovation and Entrepreneurship will hold a phone conference on Monday, May 3, 2011. The meeting will be conducted from 2 p.m. to 3 p.m. and will be opened to the public via listen only conference call. The Council was chartered on November 10, 2009, to advise the Secretary of Commerce on matters relating to innovation and entrepreneurship in the United States.

DATES: May 3, 2011.

Time: 2 p.m.–3 p.m. (EST)

ADDRESSES: Public participation via a listen in conference number can be reached at 888–942–9574, and passcode, 6315042.

SUPPLEMENTARY INFORMATION: Agenda will be to discuss the Council's draft report on access to capital. Any member of the public may submit pertinent written comments concerning the Council's affairs at any time before and after the meeting. Comments may be submitted to Bilal Mahmood at the contact information indicated below.

Copies of Board meeting minutes will be available within 90 days of the meeting.

FOR FURTHER INFORMATION CONTACT: Bilal Mahmood, Office of Innovation and Entrepreneurship, Room 7019, 1401 Constitution Avenue, NW., Washington, DC, 20230, telephone: 202–482–3688, e-mail: *bmahmood@eda.doc.gov.* Please reference, "NACIE May 3, 2011" in the subject line of your e-mail.

Dated: April 14, 2011.

Paul J. Corson,

Office of Innovation and Entrepreneurship, U.S. Department of Commerce.

[FR Doc. 2011–9482 Filed 4–19–11; 8:45 am]

BILLING CODE 3510–03–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–840]

Lightweight Thermal Paper From Germany: Notice of Final Results of the First Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 23, 2009, the Department of Commerce ("the Department") published the notice of initiation of this antidumping duty administrative review naming Mitsubishi HiTec Paper Flensburg GmbH, Mitsubishi HiTec Paper Bielefeld GmbH and Mitsubishi International Corporation ("collectively, Mitsubishi") and Papierfabrik August Koehler AG ("Koehler") as respondents. As a result of petitioner's withdrawal of its request for review, we rescinded this review, in part, with respect to Mitsubishi.[1] On December 14, 2010, the Department published the preliminary results of the first administrative review for the antidumping duty order on lightweight thermal paper from Germany.[2] The review covers one manufacturer/exporter: Koehler. The period of review (POR) is November 20, 2008, through October 31, 2009.

As a result of our analysis of the comments received, the final results differ from the preliminary results for Koehler. The final weighted-average dumping margin for this company is listed below in the "Final Results of Review" section of this notice.

DATES: *Effective Date:* April 20, 2011.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–3692 and (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 2010, the Department published the preliminary results of the first administrative review of the antidumping duty order on lightweight thermal paper from Germany. *See Preliminary Results.*

Petitioner submitted a case brief on January 27, 2011. Koehler submitted a rebuttal brief on February 4, 2011.[3]

Scope of the Order

The scope of this order includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter (g/m^2) (with a tolerance of ± 4.0 g/m^2) or less; irrespective of dimensions;[4] with or without a base coat[5] on one or both sides; with thermal active coating(s)[6] on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat;[7] and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to this order may be classified in the *Harmonized Tariff Schedule of the United States* ("*HTSUS*") under subheadings 3703.10.60, 4811.59.20, 4811.90.8020, 4811.90.8040, 4811.90.9010, 4811.90.9090, 4820.10.20, and 4823.40.00.[8] Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum, dated concurrent with this notice and which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the Issues and Decision Memorandum, is attached to this notice as an Appendix. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/*, and is on file in the Central Records Unit, main Commerce Building, Room 7046. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes From the Preliminary Results

As a result of the Department's analysis of comments received, we have made a certain change to the calculations of the company-specific weighted-average margin for Koehler. Specifically, we have revised our treatment of the monthly rebates reported in the field REBATE1H. In the *Preliminary Results,* the Department preliminarily accepted these rebates. However, based upon further review of the information on the record and the comments received, we find that the monthly rebates ("monatsbonus") reported by Koehler are not supported by record evidence. Accordingly, we have disallowed the monthly rebates reported in field REBATE1H, for these final results. *See* the Issues and Decision Memorandum, dated April 13, 2011.

Final Results of Review

We determine that the following weighted-average margins exist for the period November 20, 2008, through October 31, 2009:

Manufacturer/exporter	Weighted-average margin (percent)
Papierfabrik August Koehler AG	3.77

Duty Assessment

We have been enjoined from liquidating entries of the subject merchandise produced and exported by Koehler. Therefore, we do not intend to issue liquidation instructions to U.S. Customs and Border Protection (CBP) for such entries covered by this administrative review, until the preliminary injunction issued on February 5, 2009, is lifted.

Upon lifting of the injunction, the Department shall determine and CBP shall assess antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. If any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.,* at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries.

To determine whether the duty assessment rates covering the period

[1] *See Lightweight Thermal Paper from Germany: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 11135 (March 10, 2010).

[2] *See Lightweight Thermal Paper From Germany: Notice of Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 77831 (December 14, 2010) ("*Preliminary Results*").

[3] Koehler submitted a timely rebuttal brief on February 3, 2011; however, the Department rejected this brief because it contained new factual information.

[4] LWTP is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both jumbo and converted rolls (as well as LWTP in any other form, presentation, or dimension) are covered by the scope of these orders.

[5] A base coat, when applied, is typically made of clay and/or latex and like materials and is intended to cover the rough surface of the paper substrate and to provide insulating value.

[6] A thermal active coating is typically made of sensitizer, dye, and co-reactant.

[7] A top coat, when applied, is typically made of polyvinyl acetone, polyvinyl alcohol, and/or like materials and is intended to provide environmental protection, an improved surface for press printing, and/or wear protection for the thermal print head.

[8] HTSUS subheading 4811.90.8000 was a classification used for LWTP until January 1, 2007. Effective that date, subheading 4811.90.8000 was replaced with 4811.90.8020 (for gift wrap, a non-subject product) and 4811.90.8040 (for "other" including LWTP). HTSUS subheading 4811.90.9000 was a classification for LWTP until July 1, 2005. Effective that date, subheading 4811.90.9000 was replaced with 4811.90.9010 (for tissue paper, a non-subject product) and 4811.90.9090 (for "other," including LWTP). *See* Memorandum to the File, dated February 9, 2011, regarding the addition of HTSUS numbers: 4811.90.8020 and 4811.90.9010, per the request of the National Import Specialist of Customs and Border Protection.

were *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), for each respondent we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer or customer and dividing this amount by the total entered value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis,* and the respondent has reported reliable entered values, we apply the assessment rate to the entered value of the importer's/customer's entries during the review period. Where an importer (or customer)- specific *ad valorem* rate is greater than *de minimis* and we do not have reliable entered values, we calculate a per-unit assessment rate by aggregating the dumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

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). This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following antidumping duty deposit rates will be effective upon publication of the final results of this administrative review for all shipments of lightweight thermal paper from Germany entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Tariff Act of 1930, as amended (the Act): (1) If the exporter is not a firm covered in this review, but was covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate established for the most recent period; (2) if the exporter is not a firm covered in this review, a prior review, or the 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 subject merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate will be 6.50 percent, the all-others rate established in the LTFV investigation. *See Antidumping Duty Orders: Lightweight Thermal Paper from Germany and the People's Republic of China,* 73 FR 70959 (November 24, 2008). These cash deposit requirements 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 and/or countervailing 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 and/or countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and/or countervailing duties reimbursed.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(5). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 13, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I

List of Comments in the Issues and Decision Memorandum

Comment 1: Whether Koehler's Sales of the KT 48 F20 Product in Germany Constituted a Fictitious Market.

Comment 2: Whether Koehler's Home Market Sales of the KT 48 F20 Product Were Outside the Ordinary Course of Trade.

Comment 3: Whether the Department Should Disallow Certain Post-Sale Price Adjustments Reported in the REBATE1H Field.

Comment 4: Whether the Department Should Reallocate Monthly Rebates (REBATE1H) on a Customer-Specific Basis.

[FR Doc. 2011–9574 Filed 4–19–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA377

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Advisory Panel in May, 2011 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, May 5, 2011 at 8 a.m.

ADDRESSES: This meeting will be held at the Radisson Hotel, 180 Water Street, Plymouth, MA 02360; telephone: (508) 747–4900; fax: (508) 747–8937.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The advisors will discuss recommendations for alternatives being developed in Framework 23 to the Scallop Fishery Management Plan (FMP). Framework 23 is considering alternatives to potentially require a turtle excluder dredge, revise the yellowtail flounder accountability measures (AMs) proposed in Amendment 15, and possibly modify the limited access general category management program for the Northern Gulf of Maine (NGOM) area. The action may also include measures to develop alternatives to modify the current vessel monitoring system (VMS) regulations to improve scallop fleet operations (e.g. how days-at-sea are charged and how a

vessel declares into and out of the fishery). The advisors may discuss other business at this meeting.

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

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: April 14, 2011.

William D. Chappell,

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

[FR Doc. 2011–9526 Filed 4–19–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA378

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a meeting of its Coastal Pelagic Species Management Team (CPSMT) that is open to the public.

DATES: The meeting will be held Thursday, May 5, 2011 through Friday, May 6, 2011. Business will begin the first day at 1 p.m. and at 8 a.m. the following day. The meeting will conclude each day at 5 p.m. or until business for the day is completed.

ADDRESSES: The meeting will be held in the Green Room of the National Marine Fisheries Service's Southwest Fisheries Science Center; 8604 La Jolla Shores Drive, La Jolla, CA 92037.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to develop a report to provide advice to the Pacific Council's Ecosystem Plan Development Team, in advance of the June Council meeting. Other topics may be discussed as time allows, at the discretion of the CPSMT Chair. These topics may include the mackerel Stock Assessment Review (STAR) panel meeting, CPS assessment cycle planning, a report on the April Council meeting, ecological considerations in CPS management, benchmarks for market squid, consideration of the Pacific sardine harvest control rule, and future meeting planning.

Although non-emergency issues not contained in the meeting agenda may come before the STAR Panel for discussion, those issues may not be the subject of formal action during this meeting. CPSMT 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 STAR Panel's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: April 14, 2011.

William D. Chappell,

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

[FR Doc. 2011–9527 Filed 4–19–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA380

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting of the (CPT).

SUMMARY: The North Pacific Fishery Management Council's (NPFMC) Crab Plan Team (CPT) will meet in Juneau, AK.

DATES: The meeting will be held May 9, 2011 through May 13, 2011, from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at the Ted Stevens Marine Research Institute, 17109 Point Lena Road, Juneau, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Stram; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Plan Team will discuss: Election of officers, catch accounting for groundfish bycatch estimation, criteria for establishing time frames for B_{MSY} estimation. Uncertainty provisions of Annual Catch Limit final rule, Bristol Bay Red King Crab (BBRKC) Essential Fish Habitat discussion paper, Draft assessment reviews of Snow crab, Tanner crab, BBRKC, Pribilof Island Red King Crab, Pribilof Island Blue King Crab, and Saint Matthew Blue King Crab. Final assessments (including Overfishing Fishing Limits and Acceptable Biological Catch recommendations) for Adak Red King Crab, Norton Sound Red King Crab, Aleutian Island Golden King Crab, Tanner crab rebuilding alternatives, NPFMC model workshop, Research Priorities.

The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/.*

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: April 15, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–9530 Filed 4–19–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA379

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council will hold a meeting of its Law Enforcement Advisory Panel via conference call. See **SUPPLEMENTARY INFORMATION**.

DATES: Members of the Law Enforcement Advisory Panel will meet via conference call from 2 p.m.–4 p.m. on May 10, 2011.

ADDRESSES: A listening station will be established at the Council office, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; e-mail: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The LEAP will discuss nominations for selection of a Law Enforcement Officer of the Year Award and develop recommendations to the Council.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the conference call.

Note: The specific end time for the conference call is subject to change.

Dated: April 14, 2011.

William D. Chappell,

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

[FR Doc. 2011–9529 Filed 4–19–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA368

National Saltwater Angler Registry Program

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

ACTION: Notice.

SUMMARY: NMFS has designated the states of Pennsylvania and New Hampshire as exempted states for anglers, spear fishers and for-hire fishing vessels.

DATES: The designation of the states as exempted states is effective on April 20, 2011.

ADDRESSES: Gordon C. Colvin, Fishery Biologist, NMFS ST–12453, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Gordon C. Colvin, Fishery Biologist; (301) 713–2367 x175; e-mail: *Gordon.Colvin@noaa.gov.*

SUPPLEMENTARY INFORMATION: The final rule implementing the National Saltwater Angler Registry Program, 50 CFR part 600, subpart P, was published in the **Federal Register** on December 30, 2008. The final rule requires persons who are angling, spear fishing or operating a for-hire fishing vessel in the U.S. Exclusive Economic Zone or for anadromous species to register annually with NOAA. However, persons who are licensed or registered by, or state residents who are not required to register or hold a license issued by, a state that is designated as an exempted state are not required to register with NOAA. The final rule sets forth the requirements for states to be designated as exempted states. Generally, exempted states must agree to provide to NMFS names, addresses, dates of birth and telephone numbers of the persons licensed or registered under a qualifying state license and/or registry program, or to provide catch and effort data from a qualifying regional survey of recreational fishing, and enter into a Memorandum of Agreement with NMFS to formalize the data reporting agreement.

NMFS has received proposals for providing license/registry data from the states listed below, has determined that the states' programs qualify for exempted state designation under the provisions of the final rule, and has entered into Memoranda of Agreement with each of the states. Therefore, pursuant to 50 CFR 600.1415(b)(3), notice is hereby given that the following states are designated as exempted states under 50 CFR 600.1415: Pennsylvania and New Hampshire. Persons who hold a valid fishing license or registration issued by these exempted states for angling, spear fishing or operating a for-hire fishing vessel in tidal waters are not required to register with NOAA under 50 CFR 600.1405(b). Persons who are residents of these exempted states who are not required to hold a fishing license, or to be registered to fish under the laws of these exempted states, also are not required to register with NOAA.

Dated: April 14, 2011.

Eric C. Schwaab,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–9628 Filed 4–19–11; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Renewal of the Agricultural Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Federal Advisory Committee Renewal.

SUMMARY: The Commodity Futures Trading Commission has determined to renew the charter of its Global Markets Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Martin B. White, Committee Management Officer, at 202–418–5129, or Thuy Dinh, at 202–418–5128. Written comments should be submitted to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Electronic comments may be submitted to the Commission's Committee Management Officer, Martin White at *mwhite@cftc.gov* until a Designated Federal Officer is appointed.

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission ("Commission") has determined to renew its Agricultural Advisory Committee. The Commission has determined that renewing the advisory committee is in the public interest in connection with the duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1–25, as amended. The Agricultural Advisory Committee has been renewed through January 31, 2012. Pursuant to section 14(a)(2) of the Federal Advisory

Committee Act, the committee may again be renewed at that time.

The committee's objectives and scope of activities shall be to conduct public meetings and submit reports and recommendations to assist the Commission in assessing issues affecting agricultural producers, processors, lenders and others interested in or affected by the agricultural commodities markets. The Committee shall also facilitate communications between the Commission and the diverse agricultural and agriculture-related organizations which will be represented on the Committee.

The renewal charter of the committee is filed with the Commission; the Senate Committee on Agriculture, Nutrition and Forestry; the House Committee on Agriculture; the Library of Congress; and the General Services Administration's Committee Management Secretariat concurrently with the publication of the notice of renewal in the **Federal Register**. A copy of the renewal charter also will be posted on the Commission's Web site at *http://www.cftc.gov*.

Issued in Washington, DC, on April 14, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2011–9550 Filed 4–19–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Academy Board of Visitors Notice of Meeting

AGENCY: U.S. Air Force Academy Board of Visitors.

ACTION: Meeting notice.

SUMMARY: Pursuant to 10 U.S.C. 9355, the U.S. Air Force Academy (USAFA) Board of Visitors (BoV) will meet in the Capitol Building Main Visitor Center Conference Rooms 208/209 in Washington, DC on 13 May 2011. The meeting session will begin at 10:30 a.m. The purpose of this meeting is to review morale and discipline, social climate, curriculum, instruction, infrastructure, fiscal affairs, academic methods, and other matters relating to the Academy. Specific topics for this meeting include an update on the "Don't Ask Don't Tell" way ahead; an Air Force perspective on Diversity; an Ethics briefing; and Air Force Academy fiscal issues in relation to the reduction of Department of Defense and Air Force budgets.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Administrative Assistant to the Secretary of the Air Force has determined that a portion of this meeting shall be closed to the public. The Administrative Assistant to the Secretary of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that the public interest requires that one portion of this meeting be closed to the public because it will involve matters covered by subsection (c)(6) of 5 U.S.C. 552b.

Public attendance at the open portions of this USAFA BoV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act (FACA) and the procedures described in this paragraph. Written statements must address the following details: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and provide any necessary background information. Written statements can be submitted to the Designated Federal Officer (DFO) at the Air Force Pentagon address detailed below at any time. However, if a written statement is not received at least 10 days before the first day of the meeting which is the subject of this notice, then it may not be provided to, or considered by, the BoV until its next open meeting. The DFO will review all timely submissions with the BoV Chairperson and ensure they are provided to members of the BoV before the meeting that is the subject of this notice. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during open portions of this BoV meeting shall be made available upon request.

If, after review of timely submitted written comments, the BoV Chairperson and DFO deem appropriate, they may choose to invite the submitter of the written comments to orally present their issue during an open portion of the BoV meeting that is the subject of this notice. Members of the BoV may also petition the Chairperson to allow specific persons to make oral presentations before the BoV. Per 41 CFR 102–3.140(d), any oral presentations before the BoV shall be in accordance with agency guidelines provided pursuant to a written invitation and this paragraph. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the DFO and Chairperson.

FOR FURTHER INFORMATION CONTACT: Or to attend this BoV meeting, contact Capt Stephen Quesenberry, USAFA Programs Manager, Directorate of Force Development, Manpower, Personnel, and Services, AF/A1DOA, 2221 S. Clark St, Ste 500, Arlington, VA, 22202, (703) 604–8142.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2011–9536 Filed 4–19–11; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Ocean Research and Resources Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Ocean Research and Resources Advisory Panel (ORRAP) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held on Monday, May 2, 2011, from 3 p.m. to 5 p.m. Members of the public should submit their comments in advance of the meeting to the meeting Point of Contact.

ADDRESSES: The meeting will be held at the Consortium for Ocean Leadership, 1201 New York Avenue, NW., 4th Floor, Washington DC 20005.

FOR FURTHER INFORMATION CONTACT: Dr. Charles L. Vincent, Office of Naval Research, 875 North Randolph Street Suite 1425, Arlington, VA 22203–1995, telephone 703–696–4118.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The meeting will include discussions on ocean research, resource management, and other current issues in the ocean science and management communities; including, the review and development of Strategic Action Plans for the National Ocean Council. There is a possibility that this meeting may be cancelled. If so, this would be posted on the ORRAP Web site at *http://www.nopp.org/committees/orrap/*.

Dated: April 14, 2011.

D.J. Werner,

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

[FR Doc. 2011–9548 Filed 4–19–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before May 20, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. 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 the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: April 15, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title of Collection: A Study of Implementation and Outcomes in Upward Bound and Other TRIO Programs.

OMB Control Number: 1850–NEW.

Agency Form Number(s): N/A.

Frequency of Responses: Once.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 1,040.

Total Estimated Annual Burden Hours: 1,066.

Abstract: The Study of Implementation and Outcomes in Upward Bound and Other Higher Education Preparation and Support Service (HEPSS but more commonly referred to as TRIO) Programs will examine the feasibility of a promising practices study of Upward Bound that uses a rigorous quasi-experimental design. The design and feasibility report will develop a set of design options for conducting a study of Upward Bound and examine their applicability to studies of other TRIO programs. If a rigorous evaluation design proves feasible, the U.S. Department of Education will conduct a study of the relationship between promising Upward Bound implementation strategies and student outcomes. This submission includes the justification and plan for the data collection of information and statistical methods for the design and feasibility study. It also provides an overview of the design and feasibility study.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4471. 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 the Internet address *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. 2011–9579 Filed 4–19–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Rehabilitation Training: Rehabilitation Long-Term Training

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information: Rehabilitation Training: Rehabilitation Long-Term Training notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.129 B, L, P, and Q.

Note: This notice invites applications for four separate competitions. For funding information regarding each of the four competitions, refer to the chart under *Award Information* in section II of this notice.

DATES: *Applications Available:* April 20, 2011.

Deadline for Transmittal of Applications: June 6, 2011. *Deadline for Intergovernmental Review:* August 3, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Rehabilitation Long-Term Training program (Training Program) provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in areas of personnel shortages in rehabilitation as identified by the Secretary;

(2) Projects that provide a specified series of courses or program of study leading to the award of a certificate in areas of personnel shortages in rehabilitation as identified by the Secretary; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

Priorities: This notice includes two absolute priorities, one competitive preference priority, and one invitational priority. In order to receive funding under any of the competitions announced in this notice, an applicant must meet *Absolute Priority 1.* An

applicant for funding under CFDA No. 84.129B (Rehabilitation Counseling) also must meet *Absolute Priority 2.*

Absolute Priority 1: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from 34 CFR 386.1. For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from these competitions, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Rehabilitation Long-Term Training programs designed to provide academic training in areas of personnel shortages.

Under 34 CFR 75.105(c)(3), for each competition, we consider only applications that propose to provide training in the priority areas of personnel shortages listed in the following chart.

CFDA No.	Priority area
84.129B	Rehabilitation Counseling.
84.129L	Undergraduate Education in the Rehabilitation Services.
84.129P	Specialized Personnel for Rehabilitation of Individuals who are Blind or Have Vision Impairments.
84.129Q	Rehabilitation of Individuals Who are Deaf or Hard of Hearing.

Absolute Priority 2 (CFDA No. 84.129B): This priority is from the notice of final priority for this program, published in the **Federal Register** on January 15, 2003 (68 FR 2166). For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from the competition for CFDA No. 84.129B, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), for this competition, we consider only applications that meet this absolute priority and *Absolute Priority 1.*

This priority is:

Partnership with the State Vocational Rehabilitation Agency (84.129B—Rehabilitation Counseling).

This priority supports projects that will increase the knowledge of students of the role and responsibilities of the vocational rehabilitation (VR) counselor and of the benefits of counseling in State VR agencies. This priority focuses attention on and intends to strengthen the unique role of rehabilitation educators and State VR agencies in the preparation of qualified VR counselors by increasing or creating ongoing collaboration between institutions of higher education and State VR agencies.

Projects funded under this priority must include within the degree program information about and experience in the State VR system. Projects must include partnering activities for students with the State VR agency including experiential activities, such as formal internships or practicum agreements. In addition, experiential activities for students with community-based rehabilitation service providers are encouraged.

Projects must include an evaluation of the impact of project activities.

Competitive Preference Priority: This competitive preference priority is from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486). For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets this priority.

This priority is:

Building Evidence of Effectiveness.

Projects that propose evaluation plans that are likely to produce valid and reliable evidence in the following priority area:

Identifying and improving practices, strategies, and policies that may contribute to improving outcomes.

Under this priority, at a minimum, the outcome of interest is to be measured multiple times before and after the treatment for project participants and, where feasible, for a comparison group of non-participants.

Invitational Priority: For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an invitational priority. Under 34 CFR 75.105 (c) (1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Demonstrating Evidence of a High-Quality Plan for a Successful Long-Term Rehabilitation Training Program.

The Department invites applicants to provide detailed plans on how they will ensure the quality of VR training funded by this grant and improve employment outcomes for students. We encourage applicants to include the following in their applications—

(a) A detailed recruitment plan that discusses how the applicant will recruit students into its VR training program and how it will address enrollment shortages;

(b) A comprehensive plan that details how many students the applicant plans to enroll in its training program and fund using these grant funds and how the applicant will ensure that students not only stay enrolled in the program but graduate with a degree in a specific area of study related to VR;

(c) A detailed plan on how the applicant will assist students in finding employment in a State VR Agency or other VR employment that is considered "acceptable" under the provisions of the RSA Scholar Payback Program; and

(d) An explanation of how the applicant plans to track students after graduation or termination from its training program and collect the employment information required for the annual RSA Scholar Payback Program report.

Fourth and Fifth Years of the Project:

In deciding whether to continue funding any Long-Term Training program for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of the RSA project officer who will monitor the reported annual performance of the grantee's training program and measure it against the projections stated in the grantee's application. This includes the number of students actually enrolled in the grantee's training program and the number of students who successfully enter employment with State VR Agencies.

(b) The timeliness and effectiveness with which all requirements of the grant award have been or are being met by the grantee, including the submission of annual performance reports and annual RSA Scholar Payback Program reports, and adherence to fiduciary responsibilities related to the budget submitted in the application; and

(c) The quality, relevance, and usefulness of the grantee's training program and activities and the degree to which the training program and activities and their outcomes have contributed to significantly improving the quality of VR professionals ready for employment with State VR Agencies. This will be measured by the percentage of students entering employment deemed acceptable for fulfilling the payback obligation.

Grantees must also provide assurances that they will abide by all of the administrative and performance reporting requirements associated with the RSA Payback report and will retain all the necessary documentation including the Scholars Agreement and Exit forms and any other documentation necessary to ensure students understand their financial liabilities under this program (34 CFR part 386).

Note: While applicants may not hire staff or select trainees based on race or national origin/ethnicity, they may conduct outreach activities to increase the pool of eligible minority candidates. RSA may disqualify and not consider for funding any applicant that indicates that it will hire or train a certain number or percentage of minority candidates.

Program Authority: 29 U.S.C. 772.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, and 99. (b) The regulations for this program in 34 CFR parts 385 and 386. (c) The notice of final priority for this program, published in the **Federal Register** on January 15, 2003 (68 FR 2166). (d) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Awards: Discretionary grants.

Estimated Available Funds: The Administration has requested $33,251,000 for the Training Program for FY 2011, of which we intend to use an estimated $1,150,000 for these competitions. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process before the end of the current fiscal year if Congress appropriates funds for this program.

Note: Please refer to the "Maximum Award" column of the chart in this section for the estimated dollar amounts for individual competitions.

Contingent upon the availability of funds and the quality of applications for the competitions announced in this notice, we may make additional awards in FY 2011 from the lists of unfunded applicants from individual competitions.

Estimated Range of Awards: $75,000–$150,000.

Estimated Average Size of Awards: $100,000.

Maximum Award: See chart.

Estimated Number of Awards: See chart.

Project Period: Up to 60 months.

REHABILITATION LONG-TERM TRAINING PROGRAM APPLICATION NOTICE FOR FISCAL YEAR 2011

CFDA No.	*Priority area*	*Maximum award (per budget year)*	*Estimated number of awards*
84.129B	Rehabilitation Counseling	150,000	5
84.129L	Undergraduate Education in the Rehabilitation Services	100,000	1
84.129P	Specialized Personnel for Rehabilitation of Individuals who are Blind or Have Vision Impairments ...	100,000	1
84.129Q	Rehabilitation of Individuals Who are Deaf or Hard of Hearing	100,000	2

We will reject any application that proposes a budget exceeding the maximum amount for each individual competition for a single budget period of 12 months. For projects funded under 84.129B, the maximum amount for a single budget period of 12 months is $150,000. For all other competitions in this notice, the maximum amount is $100,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The Department is not bound by any estimates in this notice. The Secretary may decide to increase or decrease the number of grants awarded in each specific priority area based on factors such as the quality of the applications received.

III. Eligibility Information

1. *Eligible Applicants:* States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

2. *Cost Sharing or Matching:* Cost sharing of at least 10 percent of the total cost of the project is required of grantees under the Rehabilitation Long-Term Training program. The Secretary may waive part of the non-Federal share of the cost of the project after negotiations if the applicant demonstrates that it does not have sufficient resources to contribute the entire match (34 CFR 386.30).

Note: Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of the limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

IV. Application and Submission Information

1. *Address to Request Application Package:* ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, *toll free:* 1–877–433–7827. *Fax:* (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, *toll free:* 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify the competition as follows: CFDA number 84.129 B, L, P, or Q.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for these competitions.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to the equivalent of no more than 45 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times: Applications Available:* April 20, 2011.

Deadline for Transmittal of Applications: June 6, 2011.

Applications for grants under these competitions must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice. Deadline for Intergovernmental Review: August 3, 2011.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for these competitions.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under these competitions must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Rehabilitation Training: Rehabilitation Long-Term Training competitions—CFDA numbers 84.129 B, L, P, and Q must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Rehabilitation Training: Rehabilitation Long-Term Training competitions at *http://www.Grants.gov.* You must search for the downloadable application package for these competitions by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.129, not 84.129B).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for

submitting an application through Grants.gov that are included in the application package for these competitions to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must attach any narrative sections of your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: RoseAnn Ashby, U.S. Department of Education, 400 Maryland Avenue, SW., room 5055, PCP, Washington, DC 20202–2800. *Fax:* (202) 245–7591.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.129 B, L, P, or Q), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.129 B, L, P, or Q), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for these competitions are from 34 CFR 75.210 and 34 CFR 386.20 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals.

The goal of the Rehabilitation Services Administration's (RSA) Rehabilitation Training: Rehabilitation Long-Term Training program is to increase the number of qualified VR personnel, including counselors and other professional staff, working in State VR or related agencies. At least 75 percent of all grant funds must be used for direct payment of student scholarships.

Grantees are required to track current and former RSA scholars and maintain accurate information on them from the time they are enrolled in the program until they successfully meet their payback requirements. Specifically, each grantee is required to maintain information on the cumulative support granted to RSA scholars, scholar debt in years, program completion date and reason for exit for each scholar, dates each scholar's work begins and is completed to meet his or her payback agreement, type of employment scholars attain, all current contact information for scholars including home address, and the place of employment of individual scholars.

Grantees are required to report annually to RSA on these data elements using the RSA Grantee Reporting Form, OMB number 1820–0617, an electronic reporting system supported by the RSA Management Information System (RSA MIS). The RSA Grantee Reporting Form collects specific data, including the number of RSA scholars entering the rehabilitation workforce, the rehabilitation field each scholar enters, and the type of employment setting each scholar chooses (e.g., State agency, nonprofit service provider, or practice group). This form allows RSA to measure results against the goal of increasing the number of qualified VR personnel working in State VR and related agencies.

All Rehabilitation Long-Term Training grantees must also submit information in their annual report that details their relationship with State VR agencies including any information demonstrating articulation agreements, internships for RSA scholars, or employment of program graduates in the State VR agency. Grantees must also include evidence that they are recruiting, admitting and graduating students who intend to secure employment with State VR agencies and provide evidence that they understand students must pay back their scholarship through acceptable employment.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application." This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities

receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: RoseAnn Ashby, U.S. Department of Education, Rehabilitation Services Administration, 400 Maryland Avenue, SW., room 5055, PCP, Washington, DC 20202–2800. *Telephone:* (202) 245–7258 or by *e-mail: roseann.ashby@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Service Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. *Telephone:* (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

Dated: April 15, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–9625 Filed 4–19–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, May 11, 2011, 9 a.m.–5 p.m.;

Thursday, May 12, 2011, 9 a.m.–5 p.m.

ADDRESSES: Santa Claran Hotel, 464 North Riverside Drive, Espanola, New Mexico 87532.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or *E-mail: msantistevan@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Wednesday, May 11, 2011

9 a.m. Welcome and Introductions
9:15 a.m. Welcome by Governor Walter Dasheno, Santa Clara Pueblo
9:30 a.m. Los Alamos National Laboratory (LANL) Site Manager's Perspective
- "50 Year Plan for Stewardship"
- "State of the Laboratory"

10:45 a.m. Break
11 a.m. New Mexico Environment Department (NMED), Secretary F. David Martin
- Status of Consent Order
- NMED Issues of Concern
- RCRA Permit Renewal
- Top Three Issues

12 p.m. Lunch Break
1 p.m. Environmental Protection Agency (EPA), Rich Mayer
- Federal Facilities Compliance Act
- National Pollutant Discharge Elimination System Permit
- Waste Isolation Pilot Plant (WIPP)
- Other EPA Regulatory Activities at LANL

2 p.m. NNMCAB Strategic Planning
- Discuss May 24th NNMCAB Sponsored Forum/Assignments
- Discuss Future Presentation Requests and Topics for Recommendations
- Open Forum for Members

3:15 p.m. Break
3:30 p.m. Follow-up and Implementation of NNMCAB Recommendations Report from DOE and LANL, Fred de Sousa
4:30 p.m. Wrap-up Discussion
5 p.m. Adjourn

Thursday, May 12, 2011

9 a.m. Call to Order by Co-Deputy Designated Federal Officers (DDFOs), Ed Worth and Lee Bishop
Establishment of a Quorum: Roll Call and Excused Absences, Lorelei Novak
Welcome and Introductions, Ralph Phelps
Welcome to the City of Espanola, Mayor Alice Lucero
Approval of Agenda and March 30, 2011 Meeting Minutes
9:30 a.m. Public Comment Period
10 a.m. Old Business
- Written Reports
- Report on Environmental Justice Conference
- Other Items

10:30 a.m. Break
10:45 a.m. New Business
11 a.m. Matters from Co-DDFOs
11:15 a.m. Presentation on WIPP
12:15 p.m. Lunch Break
1:30 p.m. Presentation on the Basics of Radiation, Dr. Mike McNaughton
3 p.m. Break
3:15 p.m. Presentation on the Basics of Hazard, Risk and Safety at Los Alamos National Laboratory
4:30 p.m. Public Comment Period
4:45 p.m. Wrap up and Comments
5 p.m. Adjourn

Public Participation: The EM SSAB, Northern New Mexico, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org/.*

Issued at Washington, DC on April 14, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–9563 Filed 4–19–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Efficiency and Renewable Energy

Biomass Research and Development Technical Advisory Committee

AGENCY: Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register**.

DATES: May 19, 2011, 9 a.m.–2:15 p.m.; May 20, 2011, 8:30 a.m.–12 p.m.

ADDRESSES: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Laura McCann, Designated Federal Officer, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; *Telephone:* (202) 586–7766; *E-mail: laura.mccann@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of Committee: To provide advice and guidance that promotes research and development leading to the production of biobased fuels and biobased products.

Tentative Agenda: Agenda will include the following:

- Update on USDA Biomass R&D Activities
- Update on DOE Biomass R&D Activities
- Presentation from EPA on Renewable Fuel Standards
- Panel on Catalyst-based Conversation Technologies
- Presentation on DOE and USDA Loan Guarantee Programs

Public Participation: The Committee welcomes the attendance of the public at its advisory committee meetings. Individuals who wish to make oral statements regarding any of the items on the agenda should contact Laura McCann at the telephone number or email listed above. Requests must be received at least five business days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Chair is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying at the following Web site: *http://biomassboard.gov/committee/meetings.html.*

Issued at Washington, DC on April 14, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–9564 Filed 4–19–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–2256–000]

California Independent System, Operator Corporation; Supplemental Notice of Agenda and Discussion Topics for Staff Technical Conference

This notice establishes the agenda and topics for discussion at the technical conference to be held on April 28, 2011 to discuss issues related to California Independent System Operator Corporation's (CAISO) Capacity Procurement Mechanism (CPM) compensation methodology and exceptional dispatch mitigation provisions.[1] The technical conference will be held from 9 a.m. to 4 p.m. (EDT) in the Commission Meeting Room at the Commission's headquarters, 888 First Street, NE., Washington, DC. The technical conference will be led by Commission staff. All interested parties are invited to attend, and registration is not required.

The topics and related questions to be discussed during this conference are attached. The purpose of the technical conference is to provide Commission staff and interested parties an opportunity to discuss the CPM compensation methodology and exceptional dispatch mitigation in detail with CAISO. No formal presentations will be made other than an opening presentation by CAISO; however, parties will be encouraged to participate in the discussion along with Commission staff. Parties may also file questions or potential discussion topics in the docket prior to the technical conference. Any such filings will be for discussion purposes only. All parties are invited to file written comments following the technical conference.

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to www.ferc.gov's Calendar of Events and locating this event in the calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100. Parties attending the conference via webcast will have the opportunity to submit questions during the conference via e-mail at *Kathryn.ohare@ferc.gov.*

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For more information on this conference, please contact Katheryn Hoke at *Katheryn.hoke@ferc.gov* or (202) 502–8404, or Colleen Farrell at *Colleen.farrell@ferc.gov* or (202) 502–6751.

Dated: April 13, 2011.

Kimberly D. Bose,

Secretary.

Agenda for the CAISO CPM Compensation Methodology and Exceptional Dispatch Mitigation Technical Conference

April 28, 2011

Opening Remarks

9 a.m.–9:15 a.m. Greeting and Opening Remarks

9:15 a.m.–10 a.m. Opening presentation presented by CAISO

Discussion

Each of the following discussions will be led by Commission Staff, with questions on each topic to be raised by staff and interested parties in attendance. No party should expect to make any formal presentation during these discussions; however, parties should plan to participate in topics of specific interest. Staff's objective is to

[1] *Cal. Indep. Sys. Operator Corp.,* 134 FERC ¶ 61,211 at P2 (2011).

obtain new information on each of these topics that is not yet in the record for this proceeding. Please note that although we have allotted the entire morning session to discussion of the CPM compensation methodology, we will move on to discussion of exceptional dispatch mitigation as soon as the compensation discussion is concluded.

10 a.m.–12:30 p.m. Discussion on the CPM Compensation Methodology

—Whether the proposed going-forward formula for CPM compensation continues to be appropriate.

—Whether and how CPM compensation should change in response to changes in supply and demand so that the CPM continues to ensure appropriate compensation to non-resource adequacy resources that provide reliability services similar to those provided by resource adequacy resources.

—Whether and how CPM compensation should respond to localized scarcity conditions; please evaluate the challenges and benefits of implementing CPM scarcity pricing.

—Given that resource adequacy resources are currently procured through bilateral contracting, whether and how CPM compensation should replicate bilateral market results.

—Please discuss the feasibility and appropriateness of using a mechanism such as a demand curve to allow the price of CPM capacity to rise during times of supply shortages.

—Other than a demand-curve based compensation mechanism, how could the CPM compensation methodology be modified to better respond to changing market conditions (*i.e.,* fluctuations in supply and demand over time); please discuss the challenges and benefits of any such approach.

—Whether different categories of CPM designations, including resources selected on the basis of specific operating characteristics and resources designated as at risk of retirement, should be compensated differently.

—What role the CPM should play in sending price signals for demand response.

—How demand response will play a role in the CPM and/or exceptional dispatch consistent with Order No. 719 (*e.g.* criteria for selecting demand response resources for CPM designations or exceptional dispatch instructions).

12:30 p.m.–1:15 p.m. Lunch break

1:15 p.m.–3:45 p.m. Discussion on Exceptional Dispatch Mitigation

—Whether and how CAISO's efforts towards reducing the frequency and volume of exceptional dispatches have affected the potential for exceptionally dispatched resources to exercise market power.

—Whether CAISO's non-competitive path assessment remains a reliable indicator of the need for exceptional dispatch mitigation in light of protesters' assertions that the competitive path assessment over-classifies paths as non-competitive.

—Whether or how changes over the past two years, such as an increase in the number of resources available in the delta dispatch, have resulted in a reduction in the ability of any single resource to exercise market power in relation to the delta dispatch restrictions.

—Whether there is data or, alternatively, detailed specific theoretical scenarios, that demonstrate with some type of regularity or predictability the potential for resources that are exceptionally dispatched in relation to non-competitive constraints or delta dispatch to exercise market power.

3:45 p.m.–4 p.m. Closing Remarks

[FR Doc. 2011–9516 Filed 4–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–159–000]

Perryville Gas Storage LLC; Notice of Amendment

Take notice that on March 30, 2011, Perryville Gas Storage LLC (Perryville), Three Riverway, Suite 1350, Houston, Texas 77056, filed in the above referenced docket an application under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for an order amending the certificate of public convenience and necessity issued in Docket No. CP09–418–000 to authorize Perryville to make certain changes to its certificated project, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Perryville proposes to increase its working gas capacity in each cavern by 2.5 billion cubic feet (Bcf) each. Perryville also proposes to drill three freshwater supply wells, six brine disposal wells, and eight monitor wells. Perryville additionally seeks reaffirmation of its previously granted authorization to charge market-based rates for its storage and hub services, as well as the various waivers granted in the order issuing certificate.

Any questions concerning this application may be directed to J. Gordon Pennington, Attorney at Law, 2707 N. Kensington St., Arlington, VA 22207, at (703) 533–7638 or by e-mail at *Pennington5@verzion.net*.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive 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.

Comment Date: May 4, 2011.

Dated: April 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–9517 Filed 4–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP11–161–000; PF10–23–000]

Tennessee Gas Pipeline Company; Notice of Application

On March 31, 2011, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission (Commission) an application under section 7(c) of the Natural Gas Act (NGA), as amended, and part 157 of the Commission's regulations to construct, install, modify, operate, and maintain certain pipeline and compressor facilities to be located in Pennsylvania and New Jersey (the Northeast Upgrade Project). The Project involves (1) Installing approximately 39.5 miles of five 30-inch pipeline loop segments in Pennsylvania and New Jersey, (2) installing an additional 22,310 horsepower of compression at two existing compressor stations located in Pennsylvania; (3) restaging an existing compressor station and installing filter separators at three existing compressor stations in Pennsylvania and one existing compressor station in New Jersey; and (4) upgrading an existing meter station in New Jersey. In addition to the certificate authority requested in its application, Tennessee seeks authorization, pursuant to section 7(b) of the NGA, to abandon facilities that will be retired in conjunction with the replacement of certain metering facilities, as more fully described in Tennessee's application. Tennessee proposes to construct the Northeast Upgrade Project facilities to increase pipeline capacity to provide up to an additional 636,000 dekatherms per day of firm natural gas transportation service into northeast U.S. markets.

Questions regarding the application may be directed to Jacquelyne Rocan, Senior Counsel, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, *phone:* (713) 420–4544, fax: (713) 420–1601, *e-mail: jacquelyne.rocan@elpaso.com,* or Thomas Joyce, Manager, Rates and Regulatory Affairs, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, *phone:* (713) 420–3299, *fax:* (713) 420–1605, *e-mail: tom.joyce@elpaso.com.*

On July 20, 2010, the Commission staff granted Tennessee's request to use the pre-filing process and assigned Docket No. PF10–23–000 for this proceeding during the pre-filing review of the Northeast Upgrade Project. Now, as of the filing of Tennessee's application on March 31, 2011, the pre-filing process for this project has ended. From this time forward, Tennessee's proceeding will be conducted in Docket No. CP11–161–000, as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project should submit an original and

two copies of their comments to the Secretary of the Commission. Environmental cementers will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental cementers will not be required to serve copies of filed documents on all other parties. However, the nonparty commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. This filing is accessible on-line at *http://www.ferc.gov* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive 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) or TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 4, 2011.

Dated: April 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–9518 Filed 4–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
LSP Energy, Inc	EG11–43–000
Milford Wind Corridor Phase II, LLC	EG11–44–000
Elk Wind Energy LLC	EG11–45–000
Grande Prairie Generation, Inc	EG11–46–000
Mountain View Power Partner IV, LLC	EG11–47–000
Cedar Point Wind, LLC	EG11–48–000
Gratiot County Wind LLC	EG11–49–000
Cambria CoGen Company	EG11–50–000
CPV Batesville, LLC	EG11–51–000
Mount Miller Wind Energy Limited Partner	FC11–3–000
Grande Prairie Generation, Inc	FC11–4–000

Take notice that during the month of March 2011, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: April 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–9519 Filed 4–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–184–000]

Millennium Pipeline Company, L.L.C.; Notice of Request Under Blanket Authorization

Take notice that on April 8, 2011, Millennium Pipeline Company, L.L.C. (Millennium), One Blue Hill Plaza, Seventh Floor, P.O. Box 1565, Pearl River, New York 10965, filed in Docket No. CP11–184–000, an application pursuant to sections 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to construct, own, and operate the Corning Flow Reversal Project at Millennium's Corning compressor station in Steuben County, New York, under Millennium's blanket certificate issued in Docket No. CP98–155–000,[1] all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Millennium proposes to modify facilities interconnecting Millennium's system with the system of Empire Pipeline, Inc. (Empire) by replacing two existing valves and adding six new valves and piping at Millennium's Corning compressor station in Steuben County. Millennium also proposes to increase the maximum allowable operating pressure (MAOP) of the Corning compressor station discharge piping from 1200 psig to 1350 psig. Millennium states that the increased MAOP is necessary to permit it to occasionally reverse the flow of natural gas on its system to transport natural gas from either its 30-inch diameter mainline system or its A5–West pipeline via the Corning compressor station onto the facilities of Empire, which operate at an MAOP of 1300 psig. Millennium further states that the activity associated with the Corning Flow Reversal Project will not increase Millennium's mainline capacity. Finally, Millennium estimates that the proposed modifications would cost $3,400,000 to construct.

Any questions concerning this application may be directed to Gary A. Kruse, Vice President-General Counsel and Secretary, Millennium Pipeline Company, L.L.C., One Blue Hill Plaza, Seventh Floor, P.O. Box 1565, Pearl River, New York 10965, telephone (845) 620–1300, facsimile (845) 620–1320, E-mail: *kruse@millenniumpipeline.com* or to Thomas E. Holmberg, Baker Botts L.L.P., 1299 Pennsylvania Avenue, NW., Washington, DC 20004, telephone (202) 639–7700, facsimile (202) 585–1016, or via E-mail: *thomas.holmberg@bakerbotts.com.*

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR

[1] 100 FERC ¶ 62,172 (1982).

385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Dated: April 14, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–9560 Filed 4–19–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID Number EPA–HQ–OECA–2010–0710; FRL–9298–2]

Clean Air Act: Opportunity To Comment, Activities Required by Federal Facilities Compliance Agreement With the Tennessee Valley Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has entered into a federal facilities compliance agreement with the Tennessee Valley Authority (TVA), Docket No. CAA–04–2010–1760 (Compliance Agreement) to resolve alleged violations of the Clean Air Act and its implementing regulations at the eleven facilities that TVA owns and operates in Alabama, Kentucky, and Tennessee. EPA is hereby providing public notice of this Compliance Agreement and providing an opportunity for interested persons to comment on the Compliance Agreement.

DATES: Comments are due on or before May 20, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OECA–2010–0710, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: docket.oeca@epa.gov,* Attention Docket ID No. EPA–HQ–OECA–2010–0710.
- *Mail:* Enforcement and Compliance Docket Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OECA–2010–0710.
- *Hand Delivery:* Enforcement and Compliance Docket Information Center 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. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OECA–2010–0710. 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 www.regulations.gov or *docket.oeca@epa.gov,* Attention Docket ID No. EPA–HQ–OECA–2010–0710. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the 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 Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

FOR FURTHER INFORMATION CONTACT: Jason Dressler, South Air Enforcement Section (9T25), Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303; telephone number: 404–562–9208; e-mail address: *dressler.jason@epa.gov.*

Summary of the Proposed Action for Comment

EPA alleges in the Compliance Agreement and the companion Consent Agreement and Final Order (CAFO), Docket No. CAA–04–2010–1528(b), that TVA failed to comply with certain requirements of the Clean Air Act intended to protect air quality. TVA is also concurrently entering into a federal consent decree (Consent Decree) with the State of Alabama, the Commonwealth of Kentucky, the State of North Carolina, the State of Tennessee and three non-governmental organizations, the National Parks Conservation Association, the Sierra Club, and Our Children's Earth Foundation, pertaining to such alleged violations of the Clean Air Act. Pursuant to the proposed Consent Decree, TVA will perform substantially the same relief as required by the Compliance Agreement. Neither the CAFO nor the Consent Decree are subject to this notice for public comment. EPA is only requesting public comment regarding the Compliance Agreement, Docket No. CAA–04–2010–1760.

EPA alleges that TVA violated the Prevention of Significant Deterioration, Nonattainment New Source Review, New Source Performance Standards, and Title V provisions of the Clean Air

Act, 42 U.S.C. 7470–7492, 7501–7515, 7411, 7661–7661f, and related state and federal implementing regulations at the following coal-fired power plants: The Allen Fossil Plant located in Shelby County, Memphis, Tennessee; the Bull Run Fossil Plant, located in Anderson County, Clinton, Tennessee; the Colbert Fossil Plant, located in Colbert County, Tuscumbia, Alabama; the Cumberland Fossil Plant, located in Stewart County, Cumberland City, Tennessee; the John Sevier Fossil Plant, located in Hawkins County, Rogersville, Tennessee; the Kingston Fossil Plant, located in Roane County, Kingston, Tennessee; the Paradise Fossil Plant, located in Muhlenburg County, Drakesboro, Kentucky; and the Shawnee Fossil Plant, located in McCracken County, Paducah, Kentucky.

The alleged violations arise from the construction of modifications at units at these plants and operation of such units in violation of the requirements of the Act. EPA alleges that TVA failed to obtain appropriate permits prior to making major modifications and failed to install and apply required pollution control devices to reduce emissions of various air pollutants from units at the plants identified above. The CAFO assesses a civil penalty of $8 million to resolve these alleged violations. In addition to the $8 million proposed civil penalty TVA will pay to EPA, pursuant to the Consent Decree TVA will pay $500,000 to Alabama, $500,000 to Kentucky, and $1 million to Tennessee to resolve alleged violations of the Clean Air Act and related state and federal implementing regulations.

The Compliance Agreement addresses units at the eight plants identified above as well units at the following three plants that were not alleged to be in violation of the Clean Air Act or related state and federal implementing regulations: the Gallatin Fossil Plant located in Sumner County, Gallatin, Tennessee; the Johnsonville Fossil Plant located in Humphreys County, near Waverly, Tennessee; and the Widows Creek Fossil Plant located in Jackson County, near Stevenson, Alabama. The Compliance Agreement requires installation, upgrading, and continuous operation of pollution control devices on a number of the 59 units at the 11 plants addressed in this Compliance Agreement. The Compliance Agreement also requires TVA to permanently shut down and cease to operate two units at the John Sevier plant, six units at the Widows Creek plant, and all ten units at the Johnsonville plant. Further, the Compliance Agreement imposes emissions caps that limit the total amount of nitrogen oxides and sulfur dioxide that can be collectively emitted by all 59 units at these plants. And, the Compliance Agreement imposes obligations that will reduce emissions of particulate matter.

The Compliance Agreement requires TVA to spend $290 million for environmental mitigation projects in its service territory to mitigate the alleged adverse effects of its past alleged violations. Pursuant to the Consent Decree, TVA will fund an additional $60 million in environmental mitigation projects in Alabama, Kentucky, North Carolina, and Tennessee.

Dated: April 15, 2011.

Adam M. Kushner,

Director, Office of Civil Enforcement.

[FR Doc. 2011–9581 Filed 4–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0792; FRL–8855–8]

Federal Plan for Certification of Applicators of Restricted Use Pesticides Within EPA Region 8 Indian Country; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing its intention to implement a Federal program to certify applicators of restricted use pesticides in areas of Region 8 Indian country. The program will be administered by EPA Region 8 (EPA R8) located in Denver, Colorado. EPA is soliciting comments on EPA's intent to implement a Federal certification program in areas of R8 Indian country where no other EPA-approved plan applies and on its *Proposed Federal Plan for Certification of Applicators of Restricted Use Pesticides within EPA Region 8 Indian Country* (Plan). A separate proposal and public comment period for a Federal certification plan to address use of restricted use pesticides in Indian country outside R8 is forthcoming.

DATES: Comments must be received on or before June 6, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0792, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket EPA–HQ–OPP–2010–0792. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Judy Bloom, Environmental Protection Agency, Region 8, 1595 Wynkoop Street (8P–P3T), Denver, Colorado 80202–1129; telephone number: (303) 312–6395; e-mail address: *bloom.judy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This notice applies to individuals and businesses who are seeking certification to apply restricted use pesticides (RUPs) as defined by EPA in Region 8 Indian country where no EPA-approved plan applies. Areas of Region 8 Indian country that currently have EPA-approved plans include the Indian country of the Cheyenne River Sioux Tribe, and the Mandan, Hidatsa, and Arikara Nation (or Three Affiliated Tribes). This action may, however, be of interest to those involved in agriculture and anyone involved with the distribution and application of pesticides for agricultural purposes. Others involved with pesticides in a non-agricultural setting may also be affected. In addition, it may be of interest to others, such as those persons who are or may be required to conduct testing of chemical substances. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

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

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

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

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

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

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

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

C. Additional Sources

In addition to the sources listed in this unit, you may obtain copies of the Plan, other related documents, or additional information by contacting:

1. Judy Bloom at the address listed under **FOR FURTHER INFORMATION CONTACT**.

2. Nicole Zinn, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–7076; e-mail address: *zinn.nicole@epa.gov.*

II. What action is the Agency taking?

EPA is announcing its intention to implement a Federal program to certify applicators of RUPs in areas of R8 Indian country and seeks public comment. This Federal certification Plan describes the process by which EPA R8 will implement a program for the certification of applicators of RUPs in R8 Indian country based upon the certification requirements enumerated at 40 CFR part 171. The Plan, in its entirety, is included in the docket.

III. Introduction

A. What is the background for this plan?

Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, 7 U.S.C. 136 *et seq.,* the Administrator of EPA has the authority to classify all registered pesticide uses as either "restricted use" or "general use." Under FIFRA, pesticides (or the particular use or uses of a pesticide) that may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, including injury to the applicator, shall be classified for "restricted use." Section 3(d)(1)(C), 7 U.S.C. 136a(d)(1)(C). If the classification is made because of hazards to the applicator, the pesticide may only be applied by or under the direct supervision of a certified applicator. 7 U.S.C. 136a(d)(1)(C)(i), 136j(a)(2)(F). If the classification is made because of potential unreasonable adverse effects on the environment, the pesticide may only be applied by or under the direct supervision of a certified applicator or subject to such other restrictions as the Administrator may provide by regulation. 7 U.S.C. 136a(d)(1)(C)(ii), 136j(a)(2)(F). To be certified, an individual must be determined to be competent with respect to the use and handling of pesticides covered by the certification. 7 U.S.C. 136i(a).

It was the intent of Congress that persons desiring to use restricted use pesticides should be able to obtain certification under programs approved by EPA, as reflected in sections 11 and 23 of FIFRA. 7 U.S.C. 136i, 136u. The regulations addressing Tribal and State development and submission of certification plans to EPA are contained at 40 CFR part 171. It is EPA's position that Tribal and State plans are generally best suited to the needs of that particular Tribe or State and its citizens. Tribes and States, however, are not required to develop their own plans. Where EPA has not approved a State or Tribal certification plan, the Agency is authorized to implement an EPA plan for the Federal certification of applicators of restricted use pesticides pursuant to sections 11 and 23 of FIFRA. 7 U.S.C. 136i, 136u; 40 CFR 171.11.

EPA, Region 8 (EPA R8) has drafted a Plan for those areas of EPA R8 Indian country where no other EPA-approved plan applies.

B. What is the statutory authority for this plan?

The plan will be implemented under the authority of section 11(a)(1) of

FIFRA, as amended by the Food Quality Protection Act of August 3, 1996, and regulations in 40 CFR 171.11. Additional enforcement authorities are found in sections 8, 9, 12 and 23 of FIFRA.

C. Summary of the Plan

1. *Applicability.* EPA intends to implement this Federal certification plan in "Indian country," as defined in 18 U.S.C. 1151, where no EPA-approved plan applies. "Indian country" is defined in 18 U.S.C. 1151 as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

(b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(c) All Indian allotments, the Indian titles to which have been extinguished, including rights-of-way running through the same.

Consistent with the statutory definition of Indian country, as well as Federal case law interpreting this statutory language, EPA treats lands held by the Federal government in trust for Indian Tribes that exist outside of formal reservations as informal reservations and, thus, as Indian country. Indian country associated with EPA R8 refers to land defined as Indian country at 18 U.S.C. 1151 that is located in the States of Utah, Montana, Wyoming, Colorado, North Dakota, and South Dakota. For a list of Federally recognized Tribes in EPA R8, see *http://www.epa.gov/region8/tribes/govern.html.*

2. *Provisions of plan.*—i. *Why is Region 8 developing a Plan?* The Region 8 Plan will allow the certification of applicators and legal use of RUPs in R8 Indian country where there are currently no mechanisms in place for such certification. RUPs cannot be legally used in Indian country unless EPA has explicitly approved a non-Federal plan for such area or issued a Federal certification plan for such area. To date, EPA has not approved any State plan for the certification of applicators of restricted use pesticides in any area of Indian country. Under 40 CFR 171.10(a)(1), Indian Tribes may choose to utilize State certification programs for their areas, subject to the requirements of that provision. There only three areas of Indian country in R8 for which there are approved non-Federal plans.

ii. *To whom will the Plan apply?* The Plan will only apply to persons who intend to apply RUPs in those areas of R8 that are Indian country excluding the areas of R8 Indian country that currently have EPA-approved plans including the Indian country of the Cheyenne River Sioux Tribe, and the Mandan, Hidatsa, and Arikara Nation (or Three Affiliated Tribes). This includes Indian country within the States of Colorado, Montana, South Dakota, North Dakota, Utah and Wyoming. For a list of Federally recognized Tribes in EPA R8, see *http://www.epa.gov/region8/tribes/govern.html.*

In the event that the Federal applicator certification regulations at 40 CFR 171.11 are revised, EPA R8 will revisit the Plan to determine if modification of this Plan is necessary. Currently, a national plan for certification of RUP applicators in Indian country is under development and EPA R8 will review the R8 Plan to determine if the EPA R8 Plan should be modified or continue to be implemented, when the national plan is final.

iii. *Certification procedures.* To become certified to use RUPs in R8 Indian country, applicators must submit an application form to the EPA R8 Office as well as proof of a valid Federal, State, or Tribal certification. The Form is available at *http://www.regulations.gov* under docket identification number EPA–HQ–OPP–2010–0723.

In lieu of submitting proof of a valid Federal, State or Tribal certification, private applicators also have the option of showing documentation that they have physically attended and completed an approved training course and self-study evaluation. This "no-test option" for private applicators is required to be available by FIFRA for Federal certifications. Federal certification under this option is valid for four years from the date of issuance, unless suspended or revoked.

Under 40 CFR 171.11(e), currently a Federal certificate expires 2 years after the date of issuance for commercial applicators and three years for private applicators, or until the expiration date of the original Federal, State, or Tribal certificate, whichever occurs first. A proposed rule is currently under development that will allow a Federal certification based on a valid Federal, State or Tribal certification, to expire when the original certificate expires, unless the certificate is suspended or revoked. Once the amendment is finalized, the Agency will utilize the expiration date of the original valid certification.

EPA is proposing that the certification must be from a State or Tribe with a contiguous boundary to the area of Indian country. An exception will be included that the EPA Region has discretion to allow Federal certification under the plan based on a valid certification from another nearby State or Tribe.

iv. *Commercial applicator categories.* EPA proposes to recognize the categories authorized in the original certificate, and commercial applicators will be authorized to apply RUPs in Indian country for uses covered in their underlying Federal, State or Tribal certificate. EPA is considering language that would exclude categories for sodium cyanide capsules used with ejector devices for livestock predator control and for sodium fluoroacetate used in livestock protection collars. Under this Plan, a Federal certificate would only include the sodium cyanide capsules and sodium fluoroacetate livestock protection collars categories if the relevant Indian Tribe for the area of Indian country at issue obtains its own registration for this product and conducts its own monitoring and supervision.

5. *Implementation.* EPA will administer routine maintenance activities associated with implementation of this Plan and will conduct inspections and take enforcement actions as appropriate. States, Tribes, and other Federal agencies that issued a certification upon which this Federal certification is based are not approved or authorized by EPA to assure compliance in Indian country with the Federal certification provided by this Plan.

EPA may, if appropriate, deny, modify, suspend, or revoke the Federal certificate under this Plan. The applicant or Federal certificate holder has the right to request a hearing if EPA decides to modify, suspend, or revoke the Federal certificate. If EPA decides to deny, revoke, suspend or modify a Federal certificate, EPA will notify the agency that issued the original certificate upon which the Federal certificate was based.

If the Federal, State, or Tribal certificate upon which the Federal certificate is based is revoked, EPA R8 will begin procedures to revoke the Federal certification. EPA may also begin procedures to suspend or modify a Federal certificate if the Federal, State, or Tribal certificate upon which it is based is suspended or modified.

EPA will allow, during the 6 month period after publication of the final Plan, applicators to apply RUPs under the Plan in R8 Indian country only for the categories for which they already have a valid State, Tribal or Federal

certificate [1] if they submit a complete application to EPA R8 showing proof of a valid State, Tribal, or Federal certification.[2]

Beginning 6 months after publication of the final Plan, applicators who are covered under this Plan and have not received a written Federal certification from EPA R8 are prohibited from applying RUPs in R8 Indian country.

IV. Specific Comments Are Sought

EPA is seeking comment on the entire plan but would specifically like comment on the following issues:

1. *Federal certification for applicators with certificates from contiguous States or Tribes.* EPA has proposed only issuing Federal certification to applicators with certificates from contiguous States or Tribes. This approach provides greater assurance that the applicator has training relevant to use on the contiguous Indian country (*e.g.,* understanding of endangered species issues, geography, climate, crops, and pest pressure). However, this could present problems because the applicators wishing to apply in Indian country will have fewer options to obtain a certificate. To address this concern, EPA is proposing to limit the Federal certification for applicators with certificates from contiguous States or Tribes, but also include an exception that would allow the Region to accept a certificate from another State or Tribe as determined by the Region on a case-by-case basis. Should EPA proceed with this approach? What, if any, other options should EPA consider and why?

2. *Notification to Tribes.* The Tribal Pesticide Program Council (TPPC) has requested that a notification provision be included in the Plan. This provision would require that applicators of RUPs notify the relevant Tribe before each application that is made in R8 Indian country. The Agency has questions as to whether this approach can be practically implemented without causing undue burden to applicators, the Tribes and the Agency.

We are interested in obtaining comment regarding the relative value of this approach as an actual requirement. On the one hand, requiring notification to Tribes prior to application could provide Tribes some benefit in knowing where and when RUP applications occur. EPA is concerned, however, that requiring notifications may impose resource burdens on Tribes to receive and review such notifications. The TPPC suggested a possibility that EPA could receive these notifications and post them publically for Tribes to access. However, EPA is not likely to have the capacity or resources to receive these notifications. EPA also notes that Tribes wishing to receive prior notification may wish to consider including relevant notification requirements under Tribal law. The Plan notes that applicators certified under the Plan are responsible for complying with any applicable Tribal requirements.

One alternative approach being considered is that EPA could post a list of Federal certifications issued under this Plan. As a matter of convenience, EPA could arrange the list by State such that certifications issues for all Indian country located in a particular State would be grouped together. This approach would provide EPA and Tribes easy access to the list of applicators who may legally apply RUPs within Indian country. EPA would like to know if this option would be useful to Tribes.

Another approach being considered is to have the Tribes provide a contact person to the Web site so that applicators would know who to contact to learn of any applicable Tribal requirements for a particular Tribe. Would this option be useful for Tribes? Would it be burdensome?

V. Consultation With Region 8 Tribal Governments

In the absence of an EPA-approved certification program in areas of R8 Indian country, EPA, consistent with its statutory responsibilities and the Federal government's trust responsibility to Federally recognized Tribes, has worked with the Region 8 Tribes, on a government-to-government basis, to appropriately develop a certification program that will help ensure the protection of human health and the environment in R8 Indian country. EPA has consulted with the Region 8 Tribes on conference calls, face-to-face meetings, and mailings to ensure development of a Federal plan that effectively meets the needs of the Region 8 Tribes and restricted use pesticide applicators in R8 Indian country.

EPA drafted the R8 Federal plan in consultation with the Region 8 Tribes consistent with, among other things, the following policies, orders and guidance: EPA Policy for the Administration of Environmental Programs on Indian Reservations, November 8, 1984; EPA/State/Tribal Relations (Anti-Checkerboarding Policy), EPA Administrator William K. Reilly, July 10, 1991; EPA Region 8 Policy for Environmental Protection in Indian country, March 14, 1996; Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy, January 17, 2001; Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, November 6, 2000 which was reaffirmed by Presidential memorandum, Tribal Consultation, November 5, 2009; and the Proposed EPA Policy on Consultation and Coordination with Indian Tribes, June 9, 2010.[3]

VI. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA) (44 U.S.C.3501 *et seq.*), the information collection activities described in this document and the revised Information Collection Request (ICR), OMB Control No. 2070–0029, are currently going through the renewal/amendment process and will be reviewed by the Office of Management and Budget. As part of this process, EPA is proposing to implement a revised form designed specifically for pesticide applicators who wish to be certified in Indian country. EPA estimates the paperwork burden associated with completing this form to be 10 minutes per response. Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The information collection activities and the form will be included in a separate public docket.

List of Subjects

Environmental protection, Education, Pests and pesticides.

[1] Please see Section IX of the Plan and Unit III.C.2.d of this notice for commercial applicator categories recognized under the Plan, as there are proposed exceptions for sodium cyanide capsules used with ejector devices and sodium fluoroacetate used in livestock protection collars.

[2] Although predicated in part on the applicator's existing valid certification, any use permitted under this Plan is allowed and will be enforced only under Federal authority.

[3] The most current version of the draft policy was published in the **Federal Register** for comment on December 15, 2010 (75 FR 78198; FRL–9239–4).

Dated: April 12, 2011.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2011–9562 Filed 4–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9297–5]

Notification of a Public Teleconference of the Science Advisory Board; Drinking Water Committee Augmented for the Review of the Effectiveness of Partial Lead Service Line Replacements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the SAB Drinking Water Committee Augmented for the Review of the Effectiveness of Partial Lead Service Line Replacements (hereafter referred to as the "DWC Lead Review Panel") to discuss its draft advisory report entitled "SAB Evaluation of the Effectiveness of Partial Lead Service Line Replacements."

DATES: The SAB DWC Lead Review Panel will conduct a public teleconference on May 16, 2011. The teleconference will begin at 1 p.m. and end at 5 p.m. (Eastern Time).

ADDRESSES: The teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning the public teleconference may contact Mr. Aaron Yeow, Designated Federal Officer (DFO), via telephone at (202) 564–2050 or e-mail at *yeow.aaron@epa.gov.* General information concerning the EPA Science Advisory Board can be found on the EPA Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that the SAB DWC Lead Review Panel, a subcommittee of the SAB, will hold a public meeting to discuss a draft advisory report. The SAB DWC Lead Review Panel and the SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: Exposure to lead through drinking water results primarily from the corrosion of lead pipes and plumbing materials. EPA's Office of Water (OW) promulgated the Lead and Copper Rule (LCR) to minimize the amount of lead in drinking water. The LCR requires water systems that are not able to limit lead corrosion through treatment to replace the portion of the lead service line that it owns. When a water system replaces only a portion of the lead service line (the portion it owns), this is referred to as a partial lead service line replacement. OW has requested the SAB to review and provide advice on recent studies examining the effectiveness of partial lead service line replacements. OW sought advice from the SAB DWC Lead Review Panel on March 30–31, 2011 [see **Federal Register** Notice dated March 10, 2011 (76 FR 13181–13182)]. Materials from the March 30–31, 2011 meeting are posted on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/MeetingCal/575DA9AD713DB98B852578410068B1C4?OpenDocument.*

The purpose of the upcoming teleconference is for the SAB DWC Lead Review Panel to discuss its draft advisory report. A meeting agenda and the draft SAB review report will be posted at the above noted SAB Web site in advance of the meeting.

Availability of Meeting Materials: Agendas and materials in support of the teleconference will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance of the teleconference.

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. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for SAB panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the Designated Federal Officer directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at a teleconference will be limited to three minutes. Interested parties should contact Mr. Aaron Yeow, DFO, in writing (preferably via e-mail) at the contact information noted above by May 12, 2011, to be placed on the list of public speakers for the teleconference.

Written Statements: Written statements should be supplied to the DFO via e-mail at the contact information noted above by May 12, 2011 for the teleconference so that the information may be made available to the Panel members for their consideration. Written statements should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Aaron Yeow at (202) 564–2050 or *yeow.aaron@epa.gov.* To request accommodation of a disability, please contact Mr. Yeow preferably at least ten days prior to the teleconference to give EPA as much time as possible to process your request.

Dated: April 13, 2011.

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Staff Office.

[FR Doc. 2011–9566 Filed 4–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9297–7]

Science Advisory Board Staff Office; Notification of a Public Teleconference of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the chartered SAB on May 18, 2011 to conduct a quality review of a draft SAB report entitled "SAB Review of EPA's Approach for Developing Lead Dust Hazard Standards for Residences (November 2010 Draft) and Approach for Developing Lead Dust Hazard Standards for Public and Commercial Buildings (November 2010 Draft)."

DATES: The public teleconference will be held on May 18, 2011 from 12 p.m. to 3 p.m. (Eastern Time).

ADDRESSES: The public teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning the public teleconference may contact Mr. Aaron Yeow, Designated Federal Officer (DFO), via telephone at (202) 564–2050 or e-mail at *yeow.aaron@epa.gov.* General information concerning the EPA Science Advisory Board can be found on the EPA Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that the SAB will hold a public teleconference to conduct a quality review of a draft report entitled "SAB Review of EPA's Approach for Developing Lead Dust Hazard Standards for Residences (November 2010 Draft) and Approach for Developing Lead Dust Hazard Standards for Public and Commercial Buildings (November 2010 Draft)." The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: The SAB was asked to review and provide advice to EPA on EPA's "Approach for Developing Lead Dust Hazard Standards for Residences (November 2010 Draft)" and "Approach for Developing Lead Dust Hazard Standards for Public and Commercial Buildings (November 2010 Draft)", which describe the approaches that EPA will use to support possible revision of existing residential lead-based paint dust hazard standards and the development of lead-based paint dust hazard standards for public and commercial buildings. To conduct this review, the SAB Staff Office requested public nominations of experts (75 FR 6030–6031) and formed the ad hoc SAB Lead Review Panel. The Panel held a public meeting on July 6–7, 2010 (75 FR 31433–31434) to provide early consultative advice to EPA. The Panel held a public meeting on December 6–7, 2010 (75 FR 69069) and a follow-up public teleconference on February 22, 2011 (76 FR 4660–4661) to peer review EPA's draft document. The SAB will conduct a quality review of the Panel's draft report, "SAB Review of EPA's Approach for Developing Lead Dust Hazard Standards for Residences (November 2010 Draft) and Approach for Developing Lead Dust Hazard Standards for Public and Commercial Buildings (November 2010 Draft)." Background information about this SAB advisory activity can be found on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Lead%20Paint%20Hazard%20Standards?OpenDocument.*

Availability of Meeting Materials: The agenda and other materials in support of the teleconference will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance of the teleconference.

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. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for SAB panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the Designated Federal Officer directly. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a teleconference will be limited to three minutes. Interested parties should contact Mr. Aaron Yeow, DFO, in writing (preferably via e-mail) at the contact information noted above by May 11, 2011 to be placed on the list of public speakers for the teleconference. *Written Statements:* Written statements should be supplied to the DFO via e-mail at the contact information noted above by May 11, 2011 for the teleconference so that the information may be made available to the Panel members for their consideration. Written statements should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Aaron Yeow at (202) 564–2050 or *yeow.aaron@epa.gov.* To request accommodation of a disability, please contact Mr. Yeow preferably at least ten days prior to the teleconference to give EPA as much time as possible to process your request.

Dated: April 13, 2011.

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Staff Office.

[FR Doc. 2011–9576 Filed 4–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9297–6]

Science Advisory Board Staff Office; Notification of a Public Teleconference of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the chartered SAB on May 17, 2011 to conduct a quality review of a draft SAB report entitled "Review of EPA's draft Approaches for Deriving Numeric Nutrient Criteria for Florida's Estuaries, Coastal Waters, and Southern Inland Flowing Waters."

DATES: The public teleconference will be held on May 17, 2011 from 12 p.m. to 4 p.m. (Eastern Time).

ADDRESSES: The public teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning the public teleconference may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), EPA Science Advisory Board via telephone/voice mail (202) 564–2155; fax (202) 202–565–2098 or via e-mail at *armitage.thomas@epa.gov*. General information concerning the EPA Science Advisory Board can be found on the EPA Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that the SAB will hold a public teleconference to conduct a quality review of a draft report entitled "Review of EPA's draft Approaches for Deriving Numeric Nutrient Criteria for Florida's Estuaries, Coastal Waters, and Southern Inland Flowing Waters." The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: The SAB was asked to review and provide advice to EPA on proposed approaches for developing nutrient criteria for estuarine, coastal and South Florida waters, as described in the draft EPA document, "Methods and Approaches for Deriving Numeric Criteria for Nitrogen/Phosphorus Pollution in Florida's Estuaries, Coastal Waters, and Southern Inland Flowing Waters." To conduct this review, the SAB Staff Office requested public nominations of experts (75 FR 35026) and formed the ad hoc SAB Nutrient Criteria Review Panel. The Panel held a public meeting on December 13–14 (75 FR 66759) and a follow-up public teleconference on February 7, 2011 (76 FR 3133) to review EPA's draft document. The SAB will conduct a quality review of the Panel's draft report, "Review of EPA's draft Approaches for Deriving Numeric Nutrient Criteria for Florida's Estuaries, Coastal Waters, and Southern Inland Flowing Waters." Background information about this SAB advisory activity can be found on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/FL%20Estuaries%20TSD?OpenDocument.*

Availability of Meeting Materials: The agenda and other materials in support of the teleconference will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance of the teleconference.

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. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for SAB panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the Designated Federal Officer directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at a teleconference will be limited to three minutes. Those interested in being placed on the public speakers list for the May 17, 2011 teleconference should contact Dr. Armitage at the contact information provided above no later than May 10, 2011. *Written Statements:* Written statements should be supplied to the DFO via e-mail at the contact information noted above by May 10, 2011 for the teleconference so that the information may be made available to the Panel members for their consideration. Written statements should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Thomas Armitage (202) 564–2155 or *armitage.thomas@epa.gov*. To request accommodation of a disability, please contact Dr. Armitage preferably at least ten days prior to the teleconference to give EPA as much time as possible to process your request.

Dated: April 13, 2011.

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Staff Office.

[FR Doc. 2011–9578 Filed 4–19–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 11–677]

Emergency Access Advisory Committee; Announcement of Date of Next Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the date of the Emergency Access Advisory Committee's (Committee or EAAC) next meeting. The meeting of the EAAC will focus on results from the national survey and planning for a written report on the data obtained from the survey.

DATES: The Committee's next meeting will take place on Friday, May 6, 2011, 10:30 a.m. to 4:30 p.m. (EST), at the headquarters of the Federal Communications Commission (FCC).

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., 1st Floor, 1–South Conference Room, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Cheryl King, Consumer and Governmental Affairs Bureau, 202–418–2284 (voice) or 202–418–0416 (TTY), *e-mail: Cheryl.King@fcc.gov* and/or Patrick Donovan, Public Safety and Homeland Security Bureau, 202–418–

2413, (*e-mail*): *Patrick.Donovan@fcc.gov.*

SUPPLEMENTARY INFORMATION: On December 7, 2010, in document DA 10–2318, Chairman Julius Genachowski announced the establishment, and appointment of members and Co-Chairpersons, of the EAAC, an advisory committee required by the Twenty-first Century Communications and Video Accessibility Act of 2010, Public Law 111–260 (CVAA), which directs that an advisory committee be established for the purpose of achieving equal access to emergency services by individuals with disabilities as part of our nation's migration to a national Internet protocol-enabled emergency network, also known as the next generation 9–1–1 system ("NG 9–1–1").

The purpose of the EAAC is to determine the most effective and efficient technologies and methods by which to enable access to NG9–1–1 emergency services by individuals with disabilities. In order to fulfill this mission, the CVAA directs that within one year after the EAAC's members are appointed, the Committee shall conduct a national survey, with the input of groups represented by the Committee's membership, after which the Committee shall develop and submit to the Commission recommendations to implement such technologies and methods. The meeting of the EAAC on May 6, 2011 will discuss the results of the national survey and focus on planning for a written report on the data obtained from the survey.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

Karen Peltz Strauss,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2011–9621 Filed 4–19–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 09–158; DA 11–661]

The Consumer and Governmental Affairs Bureau Seeks Comment on "Need for Speed" Information for Consumers of Broadband Services

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission, via the Consumer and Governmental Affairs Bureau (Bureau), seeks input on the information necessary for consumers to make informed choices among competing broadband Internet access services. According to the most recently available data, many consumers lack information about their broadband connection's performance and its ability to support different services and activities online. This document seeks comment about the speed and performance required for the range of Internet applications consumers intend to use, and how to communicate that information to consumers.

DATES: Comments are due on or before May 26, 2011. Reply comments are due on or before June 16, 2011.

ADDRESSES: You may submit comments identified by [CG Docket No. 09–158], and by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS): *http://www.fcc.gov/cgb/ecfs2/.* Filers should follow the instructions provided on the Web site for submitting comments. For ECFS Filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket, which in this instance is CG Docket No. 09–158.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. The filing hours are 8 a.m. to 7 p.m.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, or via e-mail to *fcc@bcpiweb.com.*

FOR FURTHER INFORMATION CONTACT: Ellen Satterwhite, Consumer and Governmental Affairs Bureau, at (202) 418–3626 (voice), or e-mail at *Ellen.Satterwhite@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, DA 11–661, released April 11, 2011 in CG Docket No. 09–158. The full text of document DA 11–661 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS (insert [CG Docket No. 09–158] into the Proceeding block) and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, *telephone:* (800) 378–3160, *fax:* (202) 488–5563, or via its Web site, *http://www.bcpiweb.com.*

Pursuant to 47 CFR 1.1200 *et seq.,* this matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Synopsis

In document DA 11–661, the Bureau seeks input on the information necessary for consumers to make informed choices among competing broadband Internet access services. In particular, document DA 11–661 seeks comment about the speed and performance required for the range of Internet applications consumers intend to use, and how to communicate that information to consumers. According to data collected by the Commission, many consumers lack information about their connection's performance and its ability to support different services and activities online. The lack of such information hampers consumers' ability to compare tiers of service offered by and among providers.

Consumers rely on Internet-based applications and services that place a wide range of demands on broadband network, and consumers' experiences can be impacted by a broadband service's speed, latency, and jitter. Document DA 11–661 seeks input on the information that is most useful to consumers assessing which broadband service to purchase. This is part of the Commission's ongoing effort to ensure that consumers have access to the information they need about the communications services they purchase and use.

The Bureau seeks comment on the service characteristics that consumers need to consider to determine broadband performance requirements and the most effective way to ensure consumers are informed about their broadband performance needs.

Federal Communications Commission.

Mark Stone,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2011–9624 Filed 4–19–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreement 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 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.: 011689–012.

Title: Zim/CSCL Slot Charter Agreement.

Parties: Zim Integrated Shipping Services, Ltd.; China Shipping Container Line Co., Ltd.; and China Shipping Container Lines (Hong Kong) Co., Ltd.

Filing Party: Tara L. Leiter, Esq.; Blank Rome LLP; 1600 New Hampshire Avenue, NW.; Washington, DC 20037.

Synopsis: The amendment increases CSCL's allocation on Zim's Asia/U.S. East Coast service and revises the terms by which the parties may terminate the agreement.

Agreement No.: 012034–003.

Title: Hamburg Sud/Maersk Line Vessel Sharing Agreement.

Parties: Hamburg-Sud and A.P. Moeller-Maersk A/S.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment would revise the amount of capacity provided by Maersk Line and revise the space allocations accordingly.

Agreement No.: 012125.

Title: Maersk/Evergreen Slot Exchange Agreement.

Parties: A.P. Moller-Maersk A/S and Evergreen Line Joint Service Agreement.

Filing Parties: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The agreement authorizes the parties to exchange slots on their respective services from Japan and Taiwan to ports in California.

Agreement No.: 201048–007.

Title: Lease and Operating Agreement between Philadelphia Regional Port Authority and Delaware River Stevedores, Inc.

Parties: Philadelphia Regional Port Authority and Delaware River Stevedores, Inc.

Filing Party: Paul D. Coleman, Esq.; Hoppel, Mayer & Coleman; 1050 Connecticut Avenue, NW., Tenth Floor; Washington, DC 20036.

Synopsis: The amendment provides for the assessment of dockage and wharfage charges for loading and unloading non-military passenger autos at the Port.

By Order of the Federal Maritime Commission.

Dated: April 15, 2011.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2011–9622 Filed 4–19–11; 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 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by e-mail at *OTI@fmc.gov.*

A & M Ocean Machinery, Inc. (NVO & OFF), 9725 Fontainebleau Blvd., #103, Miami, FL 33172, Officers: Alexandra Parra, Vice President/Secretary (Qualifying Individual), Daniel Gelpi, President, Application Type: Add NVO Service

ADM Logistics, Inc. (NVO & OFF), 4666 Faries Parkway, Decatur, IL 62526, Officers: Craig E. Huss, Director/President (Qualifying Individual), William J. Patterson, Vice President, Application Type: New NVO & OFF License

Amass International Group (New York) Inc. (NVO), Cargo Bldg. 75, North Hangar Road, JFK Intl Air, Suite 200, Jamaica, NY 11430, Officers: Jia (James) H. Bai, Director/Secretary/Treasurer/CFO (Qualifying Individual), Shangen (Garrisun)Ge, President/CEO/Director, Application Type: New NVO License

Ameritrans Freight International (USA), LLC (NVO & OFF), 13723 Harvest Glen Way, Germantown, MD 20874, Officer: Anthony N. Mwangi, Member (Qualifying Individual), Application Type: New NVO & OFF License

ATC Logistics, Inc. (NVO & OFF), 14350 Garfield Avenue, #800, Paramount, CA 90723, Officers: Paul Kang, President/Secretary (Qualifying Individual), Oh S. Kwon, CFO, Application Type: Trade Name Change

Blaser & Mericle Inc. dba Blaser Express (NVO & OFF), 16021 Puritas Avenue, Cleveland, OH 44135, Officers: George Vislosky, Jr., President, Janice M. Forys, Treasurer (Qualifying Individuals), Application Type: Add NVO Service

Delmar International (N.Y.) Inc. dba Delmar International dba Delmar International (USA)(NVO & OFF), 147–55 175th Street, Jamaica, NY 11434, Officers: Ricky K. Ho, Vice President, (Qualifying Individual), Harrison Cutler, Chairman, Application Type: Trade Name Change

Den Helder Inc. (NVO & OFF), 35E 42nd Street, #A1, Bayonne, NJ 07002, Officers: Salil Parkar, Director/CEO (Qualifying Individual), Mrunalini R. Chavarkar, VP/Treasurer/Secretary, Application Type: New NVO & OFF License

Express Forwarding, LLC (NVO & OFF), 922 East E. Street, #B, Wilmington, CA 90744, Officer: Teresa Huang, President (Qualifying Individual), Application Type: Business Structure Change

Foothills Logistics, Inc. (NVO), 2045 John Crosland Jr. Way, Charlotte, NC 28208, Officers: William A. Pottow, Vice President (Qualifying Individual), Janine A. Antonio, President, Application Type: New NVO License

Freight Pro Logistics, Inc. (NVO), 4500 Woodson Road, St. Louis, MO 63134, Officers: Stevie C. Chan, Secretary (Qualifying Individual), Brian Ziha, President, Application Type: New NVO License

Global Shipping & Freight International, Inc. (NVO & OFF), 4815 E. Busch Blvd., Suite 207, Tampa, FL 33617, Officer: Wissam Bahloul, President (Qualifying Individual), Application Type: Add OFF Service

Globaltransol L.L.C. (NVO & OFF), 124 Kukuk Lane, Kingston, NY 12401, Officer: Eric K. Gnakadja, President (Qualifying Individual), Application Type: Add NVO Service

Golden Padlock LLC (NVO & OFF), 17008 Evergreen Place, Suite D, City of Industry, CA 91745, Officer: Zhong (Simon) M. Huang, Member Manager (Qualifying Individual), Lanie Pan, Member Manager, Application Type: New NVO & OFF License

Green Cargo LLC (OFF), 2301 Collins Avenue, #320, Miami Beach, FL 33139, Officer: Patricia Kokaly, Manager/Agent (Qualifying Individual), Application Type: New NVO License

Harvest Shipping, Inc. (NVO & OFF), 14956 Janetdale Street, La Puente, CA 91744, Officer: Peggy P. Shiu, President/CFO/Secretary (Qualifying Individual), Application Type: New NVO & OFF License

Keryx Logistix Corp (NVO & OFF), 5513 NW 72 Avenue, Miami, FL 33166, Officer: Angela Duran, President/Secretary (Qualifying Individual), Application Type: New NVO & OFF License

Kinetix International Logistics, LLC (OFF), 5400 Shawnee Road, #105, Alexandria, VA 22312, Officers: Shayne L. Berlo, Executive Vice President (Qualifying Individual), Grace Bishar, CEO/COO/Secretary/Treasurer, Application Type: New OFF License

LJ International Freight Corp. (NVO), 19 Princeton Drive, Dix Hills, NY 11746, Officer: Danny D. Choi, President/Secretary/Treasurer (Qualifying Individual), Application Type: New NVO License

Miami Warehouse Logistics, Inc. (NVO & OFF), 9251 NW 100th Street, Miami, FL 33178, Officer: Alexis Roldos, President/Secretary (Qualifying Individual), Application Type: Add OFF Service

Mike Mohsen Darabi dba Donya Trading Group (NVO & OFF), 1185 Campbell Avenue, San Jose, CA 95126, Officer: Mike M. Darabi, Sole Proprietor (Qualifying Individual), Application Type: New NVO & OFF License

Mode Transportation, LLC (NVO & OFF), 17330 Preston Road, Suite 200C, Dallas, TX 75252–6035, Officers: Michael F. Hampel, VP for International Operations (Qualifying Individual), David P. Yeager, CEO, Application Type: Business Structure Change

Rapid Express I Corporation (NVO & OFF), 2258 NW 94th Avenue, Doral, FL 33172, Officers: Rene Parajon, Vice President (Qualifying Individual), Mirta Parajon, President/Director, Application Type: New NVO & OFF License

Seven Seas Shipping Incorporated (OFF), 3310 Lilac Avenue, Trevose, PA 19053, Officers: Mona M. Eitagi, Secretary/Treasurer (Qualifying Individual), Application Type: New OFF License

Specialized Overseas Shipping, Incorporated (NVO & OFF), 6425 Tireman Street, Detroit, MI 48204, Officers: Ali Kain, President/Secretary/Treasurer (Qualifying Individual), Meriam Beydoun, Vice President, Application Type: QI Change

T.V.L. Global Logistics Corp. (NVO & OFF), 9550 Flair Drive, #501, El Monte, CA 91731, Officers: Karen C. Luc, Assistant Secretary (Qualifying Individual), Chuang-Hsing Chueh, President, Application Type: New NVO & OFF License

Transatlantic Products and Shipping Services, Incorporated (NVO), 3904 Shirley Drive, Atlanta, GA 30336, Officers: Jimmy Scott, Secretary (Qualifying Individual), Benjamin Aye-Addo, Vice Chief Executive Officer/CFO, Application Type: New NVO License

Transmate Logistics Corp. dba TLC Express Lines (NVO), 222 E. Redondo Beach Blvd., #F, Gardena, CA 90248, Officers: Min H. Park, Director/President/CFO/Secretary (Qualifying Individual), Jung Park, Shareholder, Application Type: QI Change

VMA Global Logistics, Inc. (NVO & OFF), ILA Building 4th Floor, Kennedy Avenue, #409, San Juan, PR 00920, Officers: Migda E. Luciano, Treasurer (Qualifying Individual), Johanna Rodriguez, President, Application Type: New NVO & OFF License

W&L International Express, Inc. (NVO & OFF), 399 Wall Street, Suite L, Glendale Heights, IL 60139, Officer: Long Wang, President (Qualifying Individual), Application Type: Add OFF Service

World Logistics USA, Inc. (OFF), 173 Route 526, Allentown, NJ 08501, Officers: Wladyslaw Kopec, President (Qualifying Individual), Anthony P. Marco, Secretary/Vice President, Application Type: New OFF License

Dated: April 15, 2011.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2011–9617 Filed 4–19–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
015847F	Straightline Logistics, Inc., One Cross Island Plaza, Suite 210, Rosedale, NY 11422	February 13, 2011.
017279N	Unicom Trans, Inc., 15500 S. Western Avenue, Gardena, CA 90249	February 23, 2011.
018125NF	Echo-Translink Systems (ETS), dba Echo Worldwide, 12356 Northup Way, Suite 112, Bellevue, WA 98006.	February 28, 2011.
022184N	Santiago Cargo Express, Corp., 9–16 37th Avenue, Long Island City, NY 11101	February 25, 2011.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–9596 Filed 4–19–11; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following licenses are being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License Number: 019156N.
Name: La Primavera Cargo Express Corp.
Address: 1388–92 Jesup Avenue, Bronx, NY 10452.
Order Published: FR: 3/23/11 (Volume 76, No. 56, Pg. 16422).

License Number: 020923NF.
Name: Fast Logistics, Inc.
Address: 3350 SW 3rd Avenue, Suite 207, Fort Lauderdale, FL 33315.
Order Published: FR: 3/23/11 (Volume 76, No. 56, Pg. 16422).

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–9615 Filed 4–19–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 003069NF.
Name: A. H. Carter & Associates, Inc.
Address: 25706 74th Avenue S., Kent, WA 98032.
Date Revoked: March 26, 2011.
Reason: Failed to maintain valid bonds.

License Number: 4422F.
Name: C & C Group, Inc.
Address: 1928 NE 82nd Avenue, Miami, FL 33126.
Date Revoked: March 24, 2011.
Reason: Failed to maintain a valid bond.

License Number: 15083F.
Name: Gandhi International Shipping, Inc.
Address: 2358 W. Devon Avenue, Chicago, IL 60659.
Date Revoked: March 31, 2011.
Reason: Failed to maintain a valid bond.

License Number: 16470F.
Name: South Beach Maritime Company.
Address: 8626 NW 55th Place, Coral Springs, FL 33067.
Date Revoked: March 9, 2011.
Reason: Failed to maintain a valid bond.

License Number: 16604N.
Name: Pisces Shipping, Inc. dba Pisces Container Lines.
Address: 175 North Highland Avenue, Elmhurst, IL 60126.
Date Revoked: March 3, 2011.
Reason: Failed to maintain a valid bond.

License Number: 16909N.
Name: Trans Port Agencies, Inc.
Address: 1790 Yardley-Langhorne Road, Suite 202, Yardley, PA 19067.
Date Revoked: March 26, 2011.
Reason: Failed to maintain a valid bond.

License Number: 018088N.
Name: ILS–International Logistics Solutions, Inc.
Address: 1345 East Chandler Road, Building 1, Suite 205, Phoenix, AZ 85048.
Date Revoked: March 19, 2011.
Reason: Failed to maintain a valid bond.

License Number: 018929N.
Name: Love Box, LLC.
Address: 32756 Hanford Court, Union City, CA 94587.
Date Revoked: March 11, 2011.
Reason: Failed to maintain a valid bond.

License Number: 019369N.
Name: Independent Transport Line, LLC dba ITL.
Address: 10050 Northwest Freeway, Suite 175, Houston, TX 77092.
Date Revoked: March 9, 2011.
Reason: Failed to maintain a valid bond.

License Number: 020724NF.
Name: Solusco Worldwide, Inc. dba SGL Worldwide Inc.
Address: 750 Arthur Avenue, Elk Grove Village, IL 60007.
Date Revoked: March 22, 2011.
Reason: Failed to maintain valid bonds.

License Number: 021929N.
Name: American Royal International, Inc.
Address: 1021 Washington Street, San Carlos, CA 94070.
Date Revoked: February 9, 2011.
Reason: Failed to maintain a valid bond.

License Number: 022322N.
Name: O.T.S. Logistics, Inc.
Address: 18726 South Western Avenue, Suite 212, Gardena, CA 90248.
Date Revoked: March 10, 2011.
Reason: Failed to maintain a valid bond.

License Number: 022453F.
Name: Joker Logistics USA, Inc.
Address: 11301 Metro Airport Center Drive, Suite 170, Romulus, MI 48174.
Date Revoked: March 12, 2011.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–9616 Filed 4–19–11; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–033]

Issuance of Final Guidance Publication

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC),

Department of Health and Human Services (HHS).

ACTION: Notice of issuance of final guidance publication.

SUMMARY: The National Institute for Occupational Safety and Health of the Centers for Disease Control and Prevention (CDC) announces the availability of the following publication: NIOSH Current Intelligence Bulletin 63: Occupational Exposure to Titanium Dioxide.

ADDRESSES: This document may be obtained by the following methods:

Mail: NIOSH, Robert A. Taft Laboratories, MS–C19, 4676 Columbia Parkway, Cincinnati, OH 45226.

E-mail: pubstaft@cdc.gov.

Web site: http://wwwn.cdc.gov/pubs/niosh.aspx.

Facsimile: (513) 533–8285.

Telephone: (513) 533–8471.

FOR FURTHER INFORMATION CONTACT: Faye Rice, NIOSH, Robert A. Taft Laboratories, MS–C32, 4676 Columbia Parkway, Cincinnati, OH 45226, telephone (513) 533–8335.

Dated: April 11, 2011.

John M. Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2011–9426 Filed 4–19–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Migrant Health.

Dates and Times: May 13, 2011, 2 p.m. to 5 p.m., May 14, 2011, 8:30 a.m. to 5 p.m. May 15, 2011, 8:30 a.m. to 2 p.m.

Place: Delray Beach Residence Inn, 1111 East Atlantic Avenue, Delray Beach, Florida 33483. *Telephone:* 561–276–7441. *Fax:* 561–276–7445.

Status: The meeting will be open to the public.

Purpose: The purpose of the meeting is to discuss services and issues related to the health of migrant and seasonal farmworkers and their families and to formulate recommendations for the Secretary of Health and Human Services.

Agenda: The agenda includes an overview of the Council's general business activities. The Council will also hear presentations from experts on farmworker issues, including the status of farmworker health at the local and national levels.

Agenda items are subject to change as priorities indicate.

For Further Information Contact: Marcia Gomez, M.D., Office of Special Population Health, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Maryland 20857; telephone (301) 594–4897.

Dated: April 13, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–9549 Filed 4–19–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; NIH Toolbox for Assessment of Neurological and Behavioral Function

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute on Aging (NIA), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 11, 2011 (Vol. 76, No. 7, p. 1621) and allowed 60-days for public comment. No comments were received.

Proposed Collection: Title: NIH Toolbox for Assessment of Neurological and Behavioral Function. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The overall goal of the Toolbox project is to develop unified, integrated methods and measures of four domains of neurological and behavioral functioning (cognitive, emotional, motor and sensory) for use in large longitudinal or epidemiological studies where functioning is monitored over time. The current phase ("Norming"), will involve a large sample of 12,900 for the purpose of establishing comparative norms. The targeted population will be non-institutionalized U.S. residents, aged 3–85 years, with 70% English-speaking and 30% Spanish-speaking. *Frequency of Response:* Once or twice (depending on subsample). *Affected Public:* Individuals. *Type of Respondents:* U.S. residents (persons aged 3–85 years). The annual reporting burden is as follows: *Estimated Number of Respondents:* 12,900; *Estimated Number of Responses per Respondent:* 1–2; *Average Burden Hours per Response:* 1.96; and *Estimated Total Annual Burden Hours Requested:* 29,700. The annualized cost to respondents is estimated at: $414,375. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Type of respondents	Number of respondents	Frequency of response	Average burden hours per response	Annual hour burden	Hourly wage rate	Cost to respond
U.S. Residents	12,900	1–2	1.96 (118 minutes)	29,700	$25.00	$414,375

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) 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) 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) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including 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 Attention: NIH Desk Officer, Office of

Management and Budget, at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Eddie Billingslea, PhD, Division of Neuroscience, National Institute on Aging, NIH, DHHS, 7201 Wisconsin Avenue, Suite 350, Bethesda, Maryland 20892–9205 or call non-toll-free number 301–496–9350 or e-mail your request, including your address to: *billingsleae@nia.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: April 11, 2011.

Taryn Ayoub,

Project Clearance Liaison, National Institute on Aging, National Institutes of Health.

[FR Doc. 2011–9511 Filed 4–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Prostate, Lung, Colorectal and Ovarian Cancer Screening Trial (PLCO) (NCI)

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Prostate, Lung, Colorectal and Ovarian Cancer Screening Trial (PLCO) (NCI). *Type of Information Collection Request:* Revision (OMB #: 0925–0407, current expiry date 10/31/2011). *Need and Use of Information Collection:* This trial is designed to determine if screening for prostate, lung, colorectal and ovarian cancer can reduce mortality from these cancers which currently cause an estimated 254,570 deaths annually in the U.S. The design is a two-armed randomized trial of men and women aged 55 to 74 at entry. OMB first approved this study in 1993 and has approved it every 3 years since then through 2011. During the first approval period a pilot study was conducted to evaluate recruitment methods and data collection procedures. Recruitment was completed in 2001 and data collection continues through 2014. When participants enrolled in the trial they agreed to be followed for at least 13 years from the time of enrollment. The current number of respondents in the study is 122,655; this is down from the initial total due to deaths. The primary endpoint of the trial is cancer specific mortality for each of the four cancer sites (prostate, lung, colorectal, and ovary). In addition, cancer incidence, stage shift, and case survival are to be monitored to help understand and explain results. Biologic prognostic characteristics of the cancers will be measured and correlated with mortality to determine the mortality predictive value of these intermediate endpoints. Basic demographic data, risk factor data for the four cancer sites and screening history data, as collected from all subjects at baseline, will be used to assure comparability between the screening and control groups and make appropriate adjustments in analysis. Further, demographic and risk factor information may be used to analyze the differential effectiveness of screening in high versus low risk individuals.

Frequency of Response: Annually.

Affected Public: Individuals.

Type of Respondents: Adult men and women. The annual reporting burden is provided for each study component as shown in the Table 1 below. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

TABLE 1—ESTIMATES OF ANNUAL BURDEN HOURS

Type of respondents	Survey instrument	Number of respondents	Frequency of response	Average time per response (minutes/hour)	Annual burden hours
Male and Female Participants	ASU	92,941	1.00	5/60 (0.08)	7,745
	HSQ	2,000	1.00	5/60 (0.08)	167
	SQX	92,941	1.00	30/60 (0.50)	46,471
Total					54,383

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on 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.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Christine D. Berg, Chief, Early Detection Research Group, National Cancer Institute, NIH, EPN Building, Room 3100, 6130 Executive Boulevard, Bethesda, MD 20892, or call non-toll-free number 301–496–8544 or e-mail your request, including your address to: *bergc@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: April 13, 2011.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2011–9509 Filed 4–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

NAG–1 Transgenic Mouse Model

Description of Technology: The nonsteroidal anti-inflammatory drug-activated gene-1 (NAG–1) encodes a protein that has anti-inflammatory, proapoptotic, and antitumor properties. It plays a pivotal role in antitumorigenesis induced by chemopreventive compounds. Transgenic mice expressing human NAG–1 have been developed by the NIH investigator and collaborator.

The NAG–1 transgenic mice are shown to develop few tumors in response to carcinogenic stimuli than wild type mice. They are also leaner with less fat than their wild type counterparts. As such, these mice can be used to investigate the development of cancers, and they could be of value in studying obesity and the relationship to cancer risk, and inflammation.

Inventors: Thomas E. Eling (NIEHS), *et al.*

Publications:

1. Baek SJ, Okazaki R, Lee SH, Martinez J, Kim JS, Yamaguchi K, Mishina Y, Martin DW, Shoieb A, McEntee MF, Eling TE. Nonsteroidal anti-inflammatory drug activated gene-1 overexpression in transgenic mice suppresses intestinal neoplasia. Gastroenterology. 2006 Nov;131(5):1553–1560. [PubMed: 17101328]
2. Cekanova M, Lee SH, Donnell RL, Sukhthankar M, Eling TE, Fischer SM, Baek SJ. Nonsteroidal anti-inflammatory drug-activated gene-1 expression inhibits urethane-induced pulmonary tumorigenesis in transgenic mice. Cancer Prev Res (Phila). 2009 May;2(5):450–458. [PubMed: 19401523]

Patent Status: HHS Reference No. E–093–2011/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing under a Biological Materials License Agreement.

Licensing Contact: Betty B. Tong, PhD; 301–594–6565; *tongb@mail.nih.gov.*

Collaborative Research Opportunity: The NIEHS is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Elizabeth M. Denholm, NIEHS Office of Technology Transfer, *denholme@niehs.nih.gov*, 919–541–0981, for more information.

Altered miRNA Expression as Diagnostics and Therapeutics for Adrenocortical Carcinomas

Description of Technology: This technology describes that altered human miRNA expression such as miRNA–483 and miRNA 100 can accurately predict if a patient's adrenal cortex tumor is benign or malignant. Adrenocortical carcinomas (ACC) are rare but aggressive cancers and typically have a poor prognosis. Currently, there are limited options for molecular diagnosis to distinguish malignant tumors from benign tumors of this type. As a result there are few treatment strategies for ACC.

Additionally, preliminary results suggest that altering the expression of this miRNA in ACC cells can effect cancer cell growth. Therefore, inhibiting a miRNA may serve as a therapeutic option for ACC.

Applications:

- Technology can be developed into a diagnostic and prognostic marker for ACC.
- Inhibiting miRNA can serve as a potential therapeutics for ACC.

Advantages:

- Distinguishes malignant Adrenal cortex tumor from a benign tumor, options for such distinction are limited at this time.
- Technology can help in increased and improved diagnosis and therapeutic options for ACC.

Development Status:

- Pre-clinical.
- Clinical study to test the markers in biopsy and serum samples being planned.

Inventors: Electron Kebebew (CCR, NCI) and Erin E. Patterson (CCR, NCI)

Publication: Patterson E. E. *et al.* (Cancer, 2010). [PubMed: 21061324]

Patent Status: U.S. Provisional Application No. 12/961,298 filed December 6, 2010 (HHS Reference No. E–026–2011/0–US–01)

Licensing Status: Available for licensing.

Licensing Contact: Sabarni Chatterjee, PhD, M.B.A.; 301–435–5587; *chatterjeesa@mail.nih.gov*

Collaborative Research Opportunity: The Center for Cancer Research, Surgery Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the use of diagnostic miRNAs and to target these miRNAs for treatment. Please contact John Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Novel Inhibitors of Thymic Stromal Lymphopoietin (TSLP) for Cancer Therapy

Description of Technology: With estimated overall costs in the U.S. in 2006 at $206.3 billion and WHO predictions of 15 million new cases globally by 2020, the overall economic cost of cancer is staggering. There remains a significant unmet need for therapies to control the spread (metastasis) of cancers to other organs in the body. Available for licensing are compositions and methods of using antagonists of thymic stromal lymphopoietin (TSLP) to prevent cancer progression and metastasis.

TSLP, an IL–7-like type 1 inflammatory cytokine that is often associated with the induction of Th2-type allergic responses in the lungs, is also expressed in cancers regulating their escape (1–3). The cancer-promoting activity of TSLP primarily required signaling through the TSLP receptor on CD4+ T cells, promoting Th2-skewed immune responses and production of immunosuppressive factors such as IL–10 and IL–13. Expression of TSLP therefore may be a useful prognostic marker and its

targeting could have therapeutic potential. Inactivation of TSLP expression or its receptor signaling can effectively control cancer progression and metastasis (1).

Applications:

- In treatments to control cancer invasion and spreading
- Cancer treatment that circumvents cancer-induced immune suppression
- As a means to augment anti-tumor immune responses
- For the development of prognostic markers for disease outcome in cancer patients

Inventors: Arya Biragyn (NIA), Warren J. Leonard (NHLBI)

Relevant Publications:

1. Olkhanud PB, Rochman Y, Bodogai M, Malchinkhuu E, Wejksza K, Xu M, Gress RE, Hesdorffer C, Leonard WJ, Biragyn A. Thymic stromal lymphopoietin is a key mediator of breast cancer progression. J Immunol. 2011;V:186, In Press.

2. De Monte L, Reni M, Tassi E, Clavenna D, Papa I, Recalde H, Braga M, Di Carlo V, Doglioni C, Protti MP. Intratumor T helper type 2 cell infiltrate correlates with cancer-associated fibroblast thymic stromal lymphopoietin production and reduced survival in pancreatic cancer. J Exp Med. 2011 Mar 14;208(3):469–478. [PubMed: 21339327]

3. Pedroza-Gonzalez A, Xu K, Wu TC, Aspord C, Tindle S, Marches F, Gallegos M, Burton EC, Savino D, Hori T, Tanaka Y, Zurawski S, Zurawski G, Bover L, Liu YJ, Banchereau J, Palucka AK. Thymic stromal lymphopoietin fosters human breast tumor growth by promoting type 2 inflammation. J Exp Med. 2011 Mar 14;208(3):479–490. [PubMed: 21339324]

Patent Status: U.S. Provisional Application No. 61/416,619 filed November 23, 2010 (HHS Reference No. E–019–2011/0–US–01)

Licensing Status: Available for licensing.

Licensing Contact: Patrick P. McCue, PhD; 301–435–5560; mccuepat@mail.nih.gov

Collaborative Research Opportunity: The National Institute on Aging, Immunotherapeutics Unit, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize clinical application of TSLP in cancers. Please contact Nicole Guyton, PhD at 301–435–3101 or *darackn@mail.nih.gov* for more information.

System and Method for Producing Nondiffracting Light Sheets That Improves the Performance of Selective Plane Illumination Microscopy (SPIM)

Description of Technology: The technology offered for licensing relates to a system and method of producing nondiffracting beams of light that spatially overlap, but do not interfere with each other when intersecting the detection plane of an optical arrangement. The system includes an illumination source (i.e., ultrafast laser) for transmitting a beam of light through the optical arrangement that includes a diffraction grating for diffracting the light beam to produce beams of light having different wavelengths, which are then passed through an annular aperture that transforms the beams of light into nondiffracting beams having different wavelengths. The method can be readily utilized in Selective Plane Illumination Microscopy (SPIM), a system that provides optical sectioning of a sample that is labeled with fluorescent dyes. SPIM can provide quantitative three-dimensional maps of the distribution of a flurophore within the sample with high spatiotemporal resolution and an excellent signal-to-noise ratio. The standard SPIM technique however produces nonuniform axial resolution, which is caused by the diffraction of the laser beam through the sample, causing degradation in the optical sectioning, and forcing a compromise between field of view and axial resolution. Techniques for decoupling field of view and axial resolution have previously utilized nondiffracting beams (e.g., Bessel beams) for sample illumination. The resulting interference from multiple nondiffracting beams degrades the quality of optical sectioning and the quality of the image. The present technology utilizing nondiffracting noninterfering beams is intended to alleviate the problems associated with the currently used SPIM techniques.

Applications: In Selective Plane Illumination Microscopy (SPIM) used for optical sectioning and imaging of biological samples.

Development Status: Proof of concept has been demonstrated.

Inventors: Andrew York, Yicong Wu, Hari Shroff (NIBIB)

Relevant Publications:

1. Durnin J, Micheli J Jr, Eberly JH. Diffraction-free beams. Phys Rev Lett. 1987 Apr 13;58(15):1499–1501.
2. Greger K, Swoger J, Stelzer EH. Basic building units and properties of a fluorescence single plane illumination microscope. Rev Sci Instrum. 2007 Feb;78(2):023705. [PubMed: 17578115]
3. Fahrbach F, Rohrbach A. Microscopy with Non-diffracting Beams. Abstract at 2009 Focus on Microscopy Conference, *http://www.focusonmicroscopy.org/2009/PDF/28l_Fahrbach.pdf.*
4. Rohrbach A. Artifacts resulting from imaging in scattering media: a theoretical prediction. Opt Lett. 2009 Oct 1;34(19):3041–3043. [PubMed: 19794809]

Patent Status: U.S. Provisional Application No. 61/360,352 filed 30 Jun 2010, entitled "System and Method of Producing Nondiffracting Light Sheets by a Multiplicity of Spatially Overlapping, Minimally Interfering Nondiffracting Optical Beams" (HHS Reference No. E–118–2010/0–US–01)

Licensing Status: Available for licensing.

Licensing Contacts:

- Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov*
- Michael Shmilovich, Esq.; 301–435–5019; *shmilovm@mail.nih.gov*

Collaborative Research Opportunity: The NIBIB Section on High Resolution Optical Imaging is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the nondiffracting Light Sheets for SPIM. Please contact Hari Shroff at 301–435–1995 or *hari.shroff@nih.gov* for more information.

Dated: April 14, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–9571 Filed 4–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, NIEHS, March 20, 2011, 7 p.m. to March 22, 2011, 12:30 p.m., Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC, 27713 which was published in the **Federal Register** on February 23, 2011, 76 FR 36.

This **Federal Register** Notice has been amended to change the meeting date. The meeting will be held Sunday, May 22, 2011 at 7 p.m. through Tuesday, May 24, 2011 at 12:30 p.m. The meeting is partially Closed to the public.

Dated: April 12, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–9492 Filed 4–19–11; 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, Member Conflict: Healthcare Delivery and Methodologies.

Date: May 17–18, 2011.

Time: 9 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: Wenchi Liang, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892. 301–435–0681. *liangw3@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cancer Prevention.

Date: May 19, 2011.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Lawrence Ka-Yun Ng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892. 301–435–1719. *ngkl@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group, Drug Discovery and Molecular Pharmacology Study Section.

Date: May 23–24, 2011.

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: Jeffrey Smiley, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892. 301–594–7945. *smileyja@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–08–224: System Sciences.

Date: May 31, 2011.

Time: 11 a.m. to 1 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: Tomas Drgon, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892. 301–435–1017. *tdrgon@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 12, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–9493 Filed 4–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ACCORD PAR.

Date: April 27–28, 2011.

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: Russell T. Dowell, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 13, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–9577 Filed 4–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Dental & Craniofacial Research, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

Date: May 31–June 2, 2011.

Time: 7 p.m. to 6 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 30, 1 Center Drive, 117, Bethesda, MD 20892.

Contact Person: Alicia J. Dombroski, PhD, Director, Division of Extramural Activities, Natl Inst of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about/CouncilCommittees.asp*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–9633 Filed 4–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, Special Emphasis Panel (SEP)—Model Organism database (MOD).

Date: June 20, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Keith McKenney, PhD, Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: April 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–9573 Filed 4–19–11; 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, Preclinical Services Development of Interventional Agents.

Date: May 3, 2011.

Time: 12 p.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817.

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.*

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, Science Education on Immune-Mediated and Infectious Diseases.

Date: June 2, 2011.

Time: 12:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, 3251, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard W. Morris, 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, *rmorris@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: April 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–9572 Filed 4–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Risk Prevention and Health Behavior.

Date: April 28, 2011.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Rebecca Henry, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892. 301–435–1717. *henryrr@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 13, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–9498 Filed 4–19–11; 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: National Institute of Child Health and Human Development, Special Emphasis Panel, Research Infrastructure Program.

Date: May 17, 2011.

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: Carla T. Walls, 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, 301–435–6898, *wallsc@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: *April 13, 2011.*

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–9500 Filed 4–19–11; 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, Cancer Etiology.

Date: May 16, 2011.

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: Cathleen L Cooper, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892. 301–443–4512. *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Social Science and Population Studies: Overflow.

Date: May 19–20, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.

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: Center for Scientific Review Special Emphasis Panel, Tumor Progression and Metastasis.

Date: May 26–27, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Cathleen L Cooper, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892. 301–443–4512. *cooperc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 13, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–9495 Filed 4–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2010–0084]

Agency Information Collection Activities: Office of Infrastructure Protection; Infrastructure Protection Stakeholder Input Project

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 30-day notice and request for comments; New Information Collection Request: 1670–NEW.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), will submit the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). IP is soliciting comments concerning this New Information Collection Request, Infrastructure Protection Stakeholder Input Project. DHS previously published this Information Collection Request in the **Federal Register** on November 4, 2010 at 75 FR 67989, for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until May 20, 2011. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to the OMB Desk Officer, Department of Homeland Security, Office of Civil Rights and Civil Liberties. Comments must be identified by DHS–2010–0084 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: oira_submission@omb.eop.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 395–5806.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: DHS/NPPD/IP, Michael Beland, (703) 235–3696, *Michael.Beland@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Homeland Security Act of 2002 and Homeland Security Presidential Directive 7 (HSPD–7) call for DHS to coordinate the overall effort to enhance the protection of the Nation's critical infrastructure and key resources (CIKR). Specifically, HSPD–7 states DHS "shall establish appropriate systems, mechanisms, and procedures to share homeland security information relevant to threats and vulnerabilities in national critical infrastructure and key resources with other Federal departments and agencies, state and local governments, and the private sector in a timely manner." DHS designated IP to lead these efforts. Given that the vast majority of the Nation's CIKR in most sectors are privately owned or controlled, IP's success in achieving the homeland security mission for critical infrastructure protection and resilience is dependent upon how well critical infrastructure owners and operators and members of the general public understand the key concepts, are aware of their contribution to achieve a shared national goal, participate in public-private partnerships with IP and the Sector-Specific Agencies, and are motivated to take action in improving their infrastructure. IP has several products, services, and programs and works with partners at the local, state and Federal levels to achieve its mission. However, IP has never conducted a comprehensive feedback assessment with the full range of its stakeholders to identify their needs and collect their feedback on the effectiveness of IP's current products and services and how they can be improved. Additionally, the authority for the voluntary stakeholder surveys is the Government Performance and Results Act of 1993 (Pub. L. No. 103–62). "The purposes of this Act are to: * * * (3) Improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction; and (4) Help Federal managers improve service delivery, by requiring that they plan for meeting program objectives and by providing them with information about program results and service quality." Furthermore, this information collection aligns to the requirements established by the "Government Performance Results Act (GPRA) Modernization Act of 2010" (H.R. 2142) which requires that all Federal agencies "establish a balanced set of performance indicators to be used in measuring or assessing progress toward each performance goal, including, as appropriate, customer service, efficiency, output, and outcome indicators." Also, the Act defines customer service measure as "an assessment of service delivery to a customer, client, citizen, or other recipient, which can include an assessment of quality, timeliness, and satisfaction among other factors."

IP is seeking clearance in this information collection request in order to better meet the requirements of GPRA and OMB. IP will use the information collected to obtain feedback from stakeholders and to monitor performance and the achievement of its strategic objectives over time. IP desires to collect information from its stakeholders in order to:

- Provide a baseline for the effectiveness of efforts to improve the security of the Nation's infrastructure;
- Assist in validating and achieving IP's strategic and mission area objectives;
- Obtain a better understanding of the evolving infrastructure protection and resiliency requirements of IP's stakeholders;
- Assess the visibility and awareness of the critical infrastructure protection and resilience mission; and
- Assess the outreach efforts by IP, sector-specific agencies, and other partners engaged in the infrastructure protection mission.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate.

Title: Office of Infrastructure Protection Stakeholder Input Project.

OMB Number: 1670–NEW.

IP Stakeholder Input Project—Surveys

Frequency: Annually.

Affected Public: Private industry partners, state and local government partners, and members of the Sector Coordinating Council; Government Coordinating Council; State, Local, Territorial, and Tribal Government Coordinating Council; and Regional Consortium Coordinating Council.

Number of Respondents: 3,280.

Estimated Time Per Respondent: 40 minutes.

Total Burden Hours: 2,165 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Dated: April 12, 2011.

David Epperson,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2011–9607 Filed 4–19–11; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0025]

National Emergency Communications Plan (NECP) Tribal Report

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-Day Notice and request for comments; New Information Collection Request: 1670–NEW.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Cybersecurity and Communications (CS&C), Office of Emergency Communications (OEC), will submit the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). NPPD is soliciting comments concerning New Information Collection Request, NECP Tribal Report.

DATES: Comments are encouraged and will be accepted until June 20, 2011. This process is conducted in accordance with 5 CFR part 1320.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to NPPD/CS&C/OEC, *Attn.:* Ryan

Oremland, *Ryan.Oremland@dhs.gov*. Written comments should reach the contact person listed no later than June 20, 2011. Comments must be identified by "DHS–2011–0025" and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: Ryan.Oremland@dhs.gov.*

Include the docket number in the subject line of the message.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

SUPPLEMENTARY INFORMATION: OEC, formed under Title XVIII of the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.,* is required to develop the NECP, which will include identification of goals, timeframes, and appropriate measures to achieve interoperable communications capabilities. The NECP Tribal Report is designed to meet these statutory requirements.

OEC will use the information gained through the reports to track progress that tribes are making in implementing milestones and demonstrating goals of the NECP. The report will provide OEC with broader capability data across the lanes of the Interoperability Continuum, which are key indicators of consistent success in response-level communications.

Tribes with public safety capabilities (police, fire, emergency medical services, emergency managers, dispatchers, radio operators, government workers, etc.) will be responsible for collecting this information from their respective tribes. Tribal points of contact will complete and submit the report directly to OEC through paper mailing at DHS/NPPD/CS&C/OEC, Ryan Oremland, 245 Murray Lane, SW., Mailstop 0614, Washington, DC 20528–0614 or unclassified electronic submission to *NECPgoals@hq.dhs.gov*.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate.

Title: NECP Tribal Report.

From: Not Applicable.

OMB Number: 1670–NEW.

Frequency: Annually.

Affected Public: Tribes.

Number of Respondents: 250.

Estimated Time per Respondent: 0.5 hours.

Total Burden Hours: 125 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $3,052.50.

Dated: April 12, 2011.

David Epperson,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2011–9618 Filed 4–19–11; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2010–0081]

National Emergency Communications Plan (NECP) Goal 2 Performance Report

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 30-day notice and request for comments; New Information Collection Request: 1670–NEW.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Cybersecurity and Communications (CS&C), Office of Emergency Communications (OEC), will submit the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). NPPD is soliciting comments concerning New Information Collection Request, NECP Goal 2 Performance Report. DHS previously published this Information Collection Request in the **Federal Register** on January 14, 2011, at 75 FR 2700, for a 60-day public comment period. DHS received no comments. The purpose of this notice is to allow an additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until May 20, 2011. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the OMB Office of Information and Regulatory Affairs. Comments should be addressed to the OMB Desk Officer, Department of Homeland Security, Office of Civil Rights and Civil Liberties. Comments must be identified by DHS–2010–0081 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: oira_submission@omb.eop.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 395–5806.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: Ryan Oremland, DHS/NPPD/CS&C/OEC, *Ryan.Oremland@dhs.gov.*

SUPPLEMENTARY INFORMATION: OEC, formed under Title XVIII of the Homeland Security Act of 2002, 6

U.S.C. 101 *et seq.,* is required to develop the NECP, including identification of goals, timeframes, and appropriate measures to achieve interoperable communications capabilities. The NECP Performance Report is designed to meet these statutory requirements.

OEC will use the information gained through the reports to track progress that state, local, and territorial governments are making in implementing milestones and demonstrating goals of the NECP. Information regarding demonstration of the NECP will measure the ability of counties or county-equivalents to demonstrate response-level emergency communications within one hour for routine events involving multiple jurisdictions.

Statewide Interoperability Coordinators or Statewide Communications Interoperability Planning points of contact (police, fire, emergency medical services, emergency managers, dispatchers, radio operators, government workers, etc.) will be responsible for collecting this information from their respective counties or county-equivalents within their states. The report will be submitted electronically via e-mail at *OEC@dhs.gov.*

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate.

Title: NECP Goal 2 Performance Report.

From: Not Applicable.

OMB Number: 1670–XXXX.

Frequency: Annually.

Affected Public: State, local, and territorial governments.

Number of Respondents: 56.

Estimated Time per Respondent: 30 hours.

Total Burden Hours: 1680 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Dated: April 8, 2011.

David Epperson,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2011–9626 Filed 4–19–11; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0069]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–0010; Implementation of Coastal Barrier Resources Act

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; extension, without change, of a currently approved information collection; OMB No. 1660–0010; FEMA Form, None.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before May 20, 2011.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Implementation of Coastal Barrier Resources Act.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0010.

Form Titles and Numbers: No forms.

Abstract: When an application for flood insurance is submitted for buildings located in Coastal Barrier Resources System (CBRS) communities, one of the following types of documentation must be submitted as evidence of eligibility: (a) Certification from a community official stating the building is not located in a designated CBRS area; (b) A legally valid building permit or certification from a community official stating that the start date of a building's construction preceded the date that the community was identified in the CBRS; or (c) Certification from the governmental body overseeing the area indicating that the building is used in a manner consistent with the purpose for which the area is protected.

Affected Public: Individuals or households; Businesses or other for-profits; Not-for-profit institutions; Farms; Federal Government; and State, local or Tribal governments.

Estimated Number of Respondents: 2690.

Frequency of Response: Once.

Estimated Average Hour Burden per Respondent: .25 hours.

Estimated Total Annual Burden Hours: 672.5 hours.

Estimated Cost: The estimated annual operations and maintenance costs for technical services is $2690.00.

Dated: April 14, 2011.

Lesia M. Banks,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–9554 Filed 4–19–11; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010–0070]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–0057; Chemical Stockpile Emergency Preparedness Program (CSEPP) Evaluation and Customer Satisfaction Survey

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0057;

Chemical Stockpile Emergency Preparedness Program (CSEPP) Evaluation and Customer Satisfaction Survey; FEMA Form 008–0–3, Pueblo EPZ Residential Survey; FEMA Form 008–0–4, Pueblo City Residential Survey; FEMA Form 008–0–5, Pueblo EPZ Business Survey; FEMA Form 008–0–6, Umatilla EPZ Residential Survey; FEMA Form 008–0–7, Blue Grass EPZ Residential Survey; FEMA Form 008–0–8, Deseret EPZ Residential Survey.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before May 20, 2011.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Chemical Stockpile Emergency Preparedness Program (CSEPP) Evaluation and Customer Satisfaction Survey.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0057.

Form Titles and Numbers: FEMA Form 008–0–3, Pueblo EPZ Residential Survey; FEMA Form 008–0–4, Pueblo City Residential Survey; FEMA Form 008–0–5, Pueblo EPZ Business Survey; FEMA Form 008–0–6, Umatilla EPZ Residential Survey; FEMA Form 008–0–7, Blue Grass EPZ Residential Survey; FEMA Form 008–0–8, Deseret EPZ Residential Survey.

Abstract: To support the development of public outreach and education efforts that will improve the emergency preparedness, FEMA's Chemical Stockpile Emergency Preparedness Program (CSEPP) will collect data from the citizens living in the Immediate Response Zones (IRZ) and Protective Action Zones (PAZ) surrounding stockpile sites. Program managers use survey data findings to evaluate public awareness of protective actions at CSEPP sites, and identify outreach weaknesses and strengths to develop effective outreach and education campaigns. Results from this information collection are shared with State, local, Tribal, and other FEMA officials for subsequent action plans addressing program-wide and stockpile site-specific issues. Results are also shared with other Federal agencies that lend expertise in specific areas of the program.

Affected Public: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 3,715.

Frequency of Response: On occasion.

Estimated Average Hour Burden per Respondent: .24 hours.

Estimated Total Annual Burden Hours: 898.11 hours.

Estimated Cost: There are no annual start-up or capital costs.

Dated: April 14, 2011.

Lesia M. Banks,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–9559 Filed 4–19–11; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–33]

Notice of Submission of Proposed Information Collection to OMB Manufactured Home Construction and Safety Standards Act Reporting Requirements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

The Federal Standards and Procedural Regulations require manufactured home producers to place labels and notices in and on manufactured homes and mandate State and Private agencies participating in the Federal program to issue reports. These Standards protect homebuyers' interests by requiring certain features of design and construction. In addition, information collected assists both HUD and State Agencies in locating manufactured homes with defects to ensure notification and/or correction by the manufacturer.

DATES: *Comments Due Date: May 20, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal.

Comments should refer to the proposal by name and/or OMB approval Number (2502–0253) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov;* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting 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: Manufactured Home Construction and Safety Standards Act Reporting Requirements.

OMB Approval Number: 2502–0253.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: The Federal Standards and Procedural Regulations require manufactured home producers to place labels and notices in and on manufactured homes and mandate State and Private agencies participating in the Federal program to issue reports. These Standards protect homebuyers' interests by requiring certain features of design and construction. In addition, information collected assists both HUD and State Agencies in locating manufactured homes with defects to ensure notification and/or correction by the manufacturer.

Frequency of Submission: On occasion, Monthly, Other per home.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	116,833	1.450		0.0011		193

Total Estimated Burden Hours: 193.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 13, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–9510 Filed 4–19–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–34]

Notice of Submission of Proposed Information Collection to OMB; Disaster Assistance Program Incremental Rent Transition Study

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

The U.S. Department of Housing and Urban Development (HUD) is conducting an important national study of Disaster Housing Assistance Program (DHAP) families who transitioned from stepped-up rents (i.e., Phase I) and $0 rent (i.e., Phase II/Phase III) to market rate or assisted housing and track their housing, employment, and financial outcomes over time.

DATES: *Comments Due Date: May 20, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2528–0256) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov; fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. 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: Disaster Assistance Program Incremental Rent Transition Study.

OMB Approval Number: 2528–0256.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: The U.S. Department of Housing and Urban Development (HUD) is conducting an important national study of Disaster Housing Assistance Program (DHAP) families who transitioned from stepped-up rents (i.e., Phase I) and $0 rent (i.e., Phase II/Phase III) to market rate or assisted housing and track their housing, employment, and financial outcomes over time.

Frequency of Submission: On occasion, Other one time.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	1,425	1.5		0.666		1,425

Total Estimated Burden Hours: 1,425.

Status: Reinstatement with change of a previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 13, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–9508 Filed 4–19–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5486–N–10]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability for the Transformation Initiative: Choice Neighborhoods Research Grant Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* June 20, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent electronically to *Paul.A.Joice@hud.gov* or in hard copy to: Paul Joice, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8120, Washington, DC 20410–6000. Please use "Choice Neighborhoods PRA Comment" in the subject line of any e-mail.

FOR FURTHER INFORMATION CONTACT: Paul Joice at 202–402–4608 (this is not a toll-free number) or *Paul.A.Joice@hud.gov*, for copies of the proposed forms and other available documents. Please use "Choice Neighborhoods PRA Comment" in the subject line of any email.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed extension of 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: Notice of Funding Availability for the Transformation Initiative: Choice Neighborhoods Research Grant Program.

OMB Control Number: N/A.

Description of the Need for the Information and Proposed Use: The information is being collected to select applicants for award in a competitive grant program and to monitor performance of grantees to ensure they meet the goals and requirements of the grant program.

Agency Form Numbers: SF–424, SF–424 Supplemental, HUD–424–CB, SF–LLL, HUD–2880, HUD–2993, HUD–96010 and HUD–96011.

Members of the Affected Public: Eligible applicants include nationally recognized and accredited institutions of higher education, non-profit foundations, think tanks, research consortia or policy institutes, and for-profit organizations located in the U.S.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on a quarterly and annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	20	20	40	800
Quarterly Reports	5	20	6	120
Final Reports	5	5	6	30
Recordkeeping	5	5	4	20
Total	35	50	56	970

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 13, 2011.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2011–9507 Filed 4–19–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5511–N–02]

Credit Watch Termination Initiative; Termination of Direct Endorsement (DE) Approval

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Direct Endorsement (DE) Approval taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their DE Approval terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000; telephone (202) 708–

2830 (this is not a toll-free number). Persons with hearing or speech impairments may access that number through TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in HUD's mortgagee approval regulations at 24 CFR § 202.3. On May 17, 1999 HUD published a notice (64 FR 26769), on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees, which have had their Approval Agreements terminated. On January 21, 2010 HUD issued Mortgagee Letter 2010–03 which advised the extended procedures for terminating Underwriting Authority of Direct Endorsement mortgagees.

Termination of Direct Endorsement Approval: Approval of a DE mortgagee by HUD/FHA authorizes the mortgagee to underwrite single family mortgage loans and submit them to FHA for insurance endorsement. The Approval may be terminated on the basis of poor performance of FHA-insured mortgage loans underwritten by the mortgagee. The termination of a mortgagee's DE Approval is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the DE Approval with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 250 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the quarterly review period ending September 30, 2010, HUD is terminating the DE Approval of mortgagees whose default and claim rate exceeds both the national rate and 250 percent of the field office rate.

Effect: Termination of the DE Approval precludes the mortgagee from underwriting FHA-insured single-family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA-insured mortgages may continue to do so.

Loans that closed or were approved before the Termination became effective may be submitted for insurance endorsement. Approved loans are those already underwritten and approved by a DE underwriter, and cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated mortgagee; however, the cases may be transferred for completion of processing and underwriting to another mortgagee with DE Approval in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for reinstatement of the DE Approval if the DE Approval for the affected area or areas has been terminated for at least six months and the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.10 and 202.12. The mortgagee's application for reinstatement must be in a format prescribed by the Secretary and signed by the mortgagee. In addition, the application must be accompanied by an independent analysis of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The analysis must be prepared by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as provided by the Government Accountability Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024–8000.

Action: The following mortgagees have had their DE Approvals terminated by HUD:

Mortgagee name	Mortgagee home office address	HUD office jurisdictions	Termination effective date	Homeownership centers
Allied Home Mortgage Corp	6100 Pinemont Dr., Ste 220, Houston, TX 77092.	Cleveland	1/18/11	Philadelphia.
Mountain States Mortgage Center	1333 E. 9400 S., Sandy, UT 84093.	Indianapolis	2/28/11	Atlanta.
Mountain States Mortgage Center	1333 E. 9400 S., Sandy, UT 84093.	Salt Lake City	2/28/11	Denver.
Nationwide Home Loans, Inc	4100 NE 2nd Ave., Miami, FL 33137.	Miami	1/18/11	Atlanta.
US Mortgage Finance Corp	225 International Cir., Ste 102, Cockeysville, MD 21030.	Washington DC	1/18/11	Philadelphia.

Dated: April 13, 2011.

Robert C. Ryan,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR- 5511–N–01]

Credit Watch Termination Initiative; Termination of Origination Approval Agreements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000; telephone (202) 708–2830 (this is not a toll-free number). Persons with hearing or speech impairments may access that number through TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in HUD's mortgagee approval regulations at 24 CFR § 202.3. On May 17, 1999 HUD published a notice (64 FR 26769), on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees, which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement: Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Origination Approval Agreement (Agreement) between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single-family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the quarterly review period ending September 30, 2010, HUD is terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 200 percent of the field office rate.

Effect: Termination of the Agreement precludes branch(es) of the mortgagee from originating FHA-insured single-family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA-insured mortgages may continue to do so.

Loans that closed or were approved before the termination became effective may be submitted for insurance endorsement. Approved loans are those already underwritten and approved by a DE underwriter, and cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another FHA-insured mortgagee with direct endorsement approval for the area covered by the termination. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for reinstatement of the Origination Approval Agreement if the approval for the affected branch or branches has been terminated for at least six months and the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 and 202.12. However, Mortgagee Letter 2010–20 and Final Rule 5356–F–02 at 24 CFR 202 eliminates FHA approval for loan correspondents after December 31, 2010. Therefore, HUD will not accept requests for reinstatement from loan correspondents after that date. The mortgagee's application for reinstatement must be in a format prescribed by the Secretary and signed by the mortgagee. In addition, the application must be accompanied by an independent analysis of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The analysis must be prepared by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as provided by the Government Accountability Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024–8000.

Action: The following mortgagees have had their Origination Agreements terminated by HUD:

Mortgagee name	Mortgagee branch office address	HUD office jurisdictions	Termination effective date	Homeownership centers
Consumer Mortgage Group, Inc	1460 Route 9 North, Woodbridge, NJ 07095.	Newark	1/18/11	Philadelphia.
Equity Source Home Loans LLC ...	150 Airport Rd., Ste 1100, Lakewood, NJ 08701.	Newark	1/18/11	Philadelphia.
Mountain States Mortgage Center	1333 E 9400 S, Sandy, UT 84093.	Salt Lake City	2/28/11	Denver.
Mountain States Mortgage Center	1333 E 9400 S, Sandy, UT 84093.	Indianapolis	2/28/11	Atlanta.
Integrity Mortgage & Financial Inc	5528 Library Lane, Colorado Springs, CO 80918.	Denver	1/11/11	Denver.

Dated: March 29, 2011.

Joseph F. Smith,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2011–9504 Filed 4–19–11; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5413–N–02]

Section 8 Housing Choice Voucher Program—Demonstration Project of Small Area Fair Market Rents in Certain Metropolitan Areas, Discussion of Comments, and Request for Participation

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Final notice establishing the Small Area Fair Market Rent (FMR) Demonstration Project and requesting participation from metropolitan public housing agencies.

SUMMARY: Today's notice provides HUD's responses to comments filed in response to a May 18, 2010, notice (75 FR 27808) announcing HUD's intent to operate a small area FMR demonstration project in several metropolitan areas. The purpose of this demonstration project is to provide voucher holders with the opportunity to move to areas of greater opportunity. This notice provides additional details regarding the operation of the tenant-based Housing Choice Voucher (HCV) program in areas selected to participate in the demonstration, establishes the criteria for selecting public housing agencies (PHAs) for participation in the demonstration, and requests interested PHAs to apply for participation in the demonstration according to instructions published in this notice. Metropolitan PHAs that would like to participate in the small area FMR demonstration project may apply, as discussed later in this notice, with an anticipated selection date of July 1, 2011. In order to assess the impact of the demonstration, participating PHAs will be expected to provide HUD with additional data specified in this notice beyond what is normally required.

DATES: Date to request participation in demonstration: June 6, 2011.

ADDRESSES: Interested persons are invited to request participation in the small area FMR demonstration by submitting a request to the Office of General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0001. Communications should refer to the above docket number and title and should contain the information specified in the "Request to Participate" section.

Public Inspection of Requests. All requests to participate submitted to HUD will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the requests to participate must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop small area FMRs, please contact Peter B. Kahn or Marie L. Lihn, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone number 202–708–0590 (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. The small area FMR dataset, **Federal Register** notices, and links to participation requests (as well as comments to the original May 18, 2010, notice) are available on the HUD Web site at *http://www.huduser.org/portal/datasets/fmr.html.* The HUD USER information line at 800–245–2691 may answer questions on this information. (Other than the TDD numbers and the HUD USER information line, telephone numbers are not toll free.)

Electronic Data Availability: This **Federal Register** notice is available electronically from the HUD User Web site at *http://www.huduser.org/portal/datasets/fmr.html.* **Federal Register** notices also are available electronically at *http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR,* the U.S. Government Printing Office Web site. A system for looking up small area FMRs based on Final Fiscal Year (FY) 2011 FMRs is available at *http://www.huduser.org/portal/datasets/fmr/fmrs/index_sa.html.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (USHA) authorizes housing assistance to aid lower-income families in renting safe and decent housing. In the HCV program, the FMR is the basis for determining the "payment standard amount" used to calculate the maximum monthly subsidy for an assisted family (see 24 CFR 982.503). In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (nonluxury) nature with suitable amenities. In addition, all rents subsidized under the HCV program must meet reasonable rent standards.

Currently, FMRs are calculated for all nonmetropolitan counties and metropolitan areas. The same FMR is available throughout a nonmetropolitan county or metropolitan area, which generally is comprised of several metropolitan counties. FMRs in a metropolitan area represent the 40th-percentile (or in special circumstances the 50th-percentile) gross rent of the entire HUD-defined metropolitan area. PHAs may set a payment standard within 90 percent to 110 percent of the FMR. PHAs may determine that payment standards that are higher than 110 percent, or lower than 90 percent, are needed to make the HCV program work in subareas of their market; in such an instance, a PHA would request HUD approval for a payment standard below 90 percent or an exception payment standard above 110 percent. This request could not represent more than 50 percent of the population of the area (see 24 CFR 982.503).

On May 18, 2010, HUD published a notice in the **Federal Register** (75 FR 27808) seeking public comment on a small area FMR demonstration project. Today's notice discusses those comments and provides an opportunity for PHAs to volunteer for the demonstration project that will begin later in FY 2011.

The Housing Choice Voucher (HCV) program is the only HUD program where small area FMRs will be used during the demonstration. All other programs must use the area-wide FMRs listed in Schedule B of the current FMR **Federal Register** notice (75 FR 61253, October 4, 2010). HUD expects that small area FMRs will provide HCV tenants with greater ability to move into opportunity areas, which are where jobs, transportation, and educational opportunities exist, and will reduce undue subsidy in lower-rent areas. Small area FMRs will alter some administrative responsibilities of PHAs that administer HCV programs, but it is unclear what the net effect on administrative costs will be. A copy of the **Federal Register** notice announcing this program can be accessed at *http://www.huduser.org/portal/datasets/fmr/fmr2010f/Small_Area_FMRs.pdf.*

II. Discussion of Public Comments

In response to its notice seeking comments on HUD's proposal to establish a small area FMR demonstration project, HUD received 19 comments by the close of the comment period on July 19, 2010. HUD requested comments on specific questions. These questions and other issues raised by the commenters that concern the small area FMR demonstration project will be addressed in this section.

Most of the commenters support the small area FMR demonstration project, noting that it provides real benefits to HCV program participants.

Opposition to Demonstration From PHAs Operating in Nonmetropolitan Counties

Comments: Two PHA administrators of nonmetropolitan housing agencies expressed opposition to the implementation of small area FMRs. One was concerned about the increased administrative burden of administering so many more payment schedules with the "rollout" of small area FMRs nationally; the other was concerned about covering the costs of portability when a small area FMR is significantly above the current area-wide FMR.

HUD Response: For the first commenter, it should be noted that even with a national rollout of small area FMRs, HUD does not plan to extend this new policy to nonmetropolitan counties. This means that the number of payment standards will not increase in such areas, which should alleviate this concern.

Regarding the second comment concerning portability, voucher portability and funding replacement are components of the HCV program regardless of the geography over which FMRs are defined. FMRs and payment standards vary considerably across the country under current policy, so a tenant may already move from a low-payment standard area to a high-payment standard area. The extent to which small area FMRs would make this issue a larger problem is not clear. Small area FMRs are intended to provide HCV holders with greater access to all parts of metropolitan areas and more opportunity to find suitable housing. Portability is an important component of the HCV program, and any limitations placed on portability would negatively impact tenants' ability to obtain decent housing.

Opposition to and Concern Over Demonstration Because FMRs Are Used in Financing Affordable Projects

Comments: A commenter expressed opposition to the small area FMR demonstration project, on the basis that rental properties that have been developed and operated under federal and state housing programs may be adversely impacted. Such programs target affordable housing development to distressed areas as part of a plan to foster redevelopment and stabilize neighborhoods. Rents are restricted to ensure that they are affordable to very low- and low-income households. These projects have little additional cash flow available after paying debt service and operating costs, to absorb unanticipated negative shocks. For properties that rely on HCV use to support long-term financing, a permanent hold-harmless provision was recommended.

Other commenters, while not opposed to the demonstration project, asked HUD to apply small area FMRs to the HCV program and other programs carefully, as there could be serious unintended consequences. Specifically, several commenters were concerned with the application of small area FMRs to project-based voucher (PBV) developments and other projects that use FMRs for rents.

HUD Response: During the demonstration, the HCV program is the only program that will use small area FMRs, and only in those areas, and by those PHAs, selected for the demonstration. To address the concerns regarding project-based vouchers (PBVs), PBV units for which a notice-of-owner selection was issued in accordance with 24 CFR 983.51(d), as of the effective date of the PHA's participation in the demonstration, will not be subject to the small Area FMRs. This includes PBVs that are currently under a Housing Assistance Payment (HAP) contract. The area-wide FMRs will continue to apply to these PBV units, thus ensuring the viability of PBV projects that were in the development pipeline and had obtained financing based on area-wide FMRs. However, any PBVs for which a notice-of-owner selection is issued after the PHA is selected to participate in the demonstration will be subject to the small area FMRs. PHAs interested in project-based units and owners interested in participating in the PBV program after a PHA is participating in the demonstration should be aware of the small area FMRs in place, and owners will be able to project costs and plan accordingly. HUD will monitor this issue closely throughout the demonstration, will continue to assess the likely impact of small area FMRs on other programs, and will provide another opportunity for public comment on the issue at a future date.

Opposition to Use of 2000 Census Data in Determining Small Area FMRs

Comment: Several commenters asked HUD to delay the small area FMR demonstration project until the 5-year American Community Survey (ACS) data are published. The notice announcing the demonstration project specified HUD would use 2000 Census data to determine the small area FMRs for the demonstration project. Many commenters were concerned that the 5-year data would be significantly different from the 2000 Census data and that significant adjustment to the small area FMRs would be disruptive. One commenter wanted HUD to update FMRs every 3 years rather than every 5 years, because he stated that most of the new data is available on a 3-year basis.

HUD Response: HUD intends to use the 5-year ACS data to calculate small area FMRs for PHAs participating in the demonstration. However, due to timing, the special tabulations of 5-year ACS data that are required for calculating small area FMRs are not available with the publication of this notice requesting applications for the small area FMR demonstration. Therefore, PHAs that choose to apply for the demonstration based on the rent data currently available that are selected for participation in the demonstration will be given the opportunity to opt out of the demonstration after reviewing the small area FMRs calculated using the 5-year ACS data. Due to the nature of the ACS, it is unlikely that 3-year tabulations of data will be available for all metropolitan ZIP Codes. Therefore, HUD has not requested special tabulations of 3-year data.

Length of Demonstration Unclear

Comments: Several commenters stated that HUD has been unclear about the length of the demonstration project. Most commenters agreed that the demonstration project has to be for more than 2 years, because existing tenants will not feel the impact of small area FMRs until their second recertification. Several commenters requested that the demonstration project last 5 years. One commenter did not feel the need to establish a demonstration project and urged HUD to change to small area FMRs without testing the impact.

HUD Response: At a minimum, PHAs selected to participate in the demonstration will operate using small area FMRs for the HCV program until FY 2013.

Opposition to Demonstration Because Voucher Holders May Pick Very Expensive Neighborhoods

Comment: One commenter appeared to oppose the concept of small area FMRs, noting that HCV holders may choose housing in high-income areas, where rents may be as high as the 80th percentile of the metropolitan area rents. The commenter said that this rent is inappropriate, because deeply assisted housing serves only 25 percent of the households eligible for housing assistance.

HUD Response: The purpose of the small area FMR demonstration is to expand the options available to HCV holders within participating metropolitan areas. Small area FMRs will be approximately the 40th percentile rent in each ZIP Code area. Small area FMRs are calculated using the relationship of the ZIP Code-based rent and the core-based statistical area (CBSA) rent as applied to the 40th percentile FMR for that metropolitan area. In addition, as noted in the following section, small area FMRs will be capped at 150 percent of the metropolitan area FMR. If the voucher holder's selected unit passes the rent reasonableness determination, HUD has no objection to the tenant renting the unit in question. In fact, giving tenants access to previously inaccessible neighborhoods is an intended outcome of the small area FMR demonstration.

Implementation of the Small Area FMRs

Comment: Although HUD requested comments specifically concerning caps and floors, many commenters sidestepped this issue, instead asking HUD to phase-in decreases for small area FMRs. Some commenters suggested that HUD allow increases in FMRs immediately but wait for the family's second re-examination for decreases to take effect. Several other commenters noted that the proposed legislation known as the Section Eight Voucher Reform Act (SEVRA) includes an annual phase-in policy of 10 percent and requested that this methodology be followed for the small area FMR demonstration project. Some preferred a lower phase-in level of 5 percent per year.

HUD Response: HUD agrees that there should be a phase-in of decreases in the small area FMR demonstration project, and the proposed caps and floors will be consistent with the Department's long-term vision for the Section 8 HCV program. Consequently, HUD will impose a 10 percent floor on annual decreases in small area FMRs under the demonstration project. There will be no additional annual cap except for the 150 percent cap on the ratio of the ZIP Code area to the FMR area, as discussed below.

Items Where HUD Specifically Requested Comments

1. Should HUD Institute caps and floors on small area FMRs? The current cap is 150 percent of the metropolitan FMR, and the current floor is the state nonmetropolitan minimum FMR. Are these appropriate, or should they be changed or eliminated?

Comments: Several commenters suggested that a 150 percent cap seemed arbitrary. There were suggestions to establish a national rather than a local FMR cap, or to establish area-specific caps based on the 90th FMR percentile. HUD was urged to study the use of the 150 percent cap to ensure that few areas had FMRs set at below-market rents. Few commenters addressed the issue of a floor on small area FMRs. Those commenters approved of the use of the state minimum FMR as a floor.

HUD Response: HUD intends to maintain the state minimum as its small area FMR floor in conjunction with current practice. Based on 2000 Decennial Census data, the 150 percent cap applies to approximately 170 of the more than 17,000 metropolitan ZIP Codes, so the 150 percent cap would not meaningfully restrict voucher tenants' choices. While this cap is only in effect for a small percentage of small areas, HUD intends to maintain the 150 percent cap during the demonstration project as one mechanism for ensuring that HCV program funds are used as judiciously as possible.

2. Should HUD revise the 50th-percentile FMR policy or eliminate it, and why?

Comments: Many commenters supported the continued use of 50th-percentile FMRs, calculated on the basis of the core-based statistical area (CBSA) or the metropolitan Statistical Area (MSA). One commenter noted that HUD should develop regulations that allow the use of higher FMRs when local market conditions reduce program success rates and utilization. One commenter felt that the use of 50th-percentile FMRs would no longer be necessary once small area FMRs are used by all metropolitan areas. However, HUD was cautioned to be careful in transitioning these areas to 40th-percentile FMRs.

HUD Response: HUD will base small area FMRs on the 40th-percentile rent. From a practical standpoint, the regulatory standard for qualifying for a 50th-percentile FMR (i.e., there must be at least 100 census tracts in the FMR area) is not one that will be met by PHAs if they are selected to participate in the small area FMR demonstration project since there are no ZIP Code areas with at least 100 census tracts. In addition, in certain small area FMR demonstration project ZIP Codes, FMRs could increase by as much as 50 percent in a single year. Contrast this with the increase from a 40th- to a 50th-percentile FMR, which without exception results in a 7 to 8 percent increase in FMRs. HUD will not eliminate the 50th-percentile policy for metropolitan FMR areas not participating in the small area FMR demonstration project.

3. Are there any instances where an exception payment standard policy might still be useful?

Comments: Most commenters supported the continuation of exception payment standards, not only for nonmetropolitan areas once the program is rolled out nationally, but for metropolitan areas where there are substantial rent differences within a ZIP Code. Several commenters cited ZIP Codes in their service areas where exception payment standards would be helpful. In addition, commenters want to be sure that HUD continues to issue special exception payment standards for disabled tenants or for disaster areas.

HUD Response: Exception payment standards are a valuable tool available to PHAs to further assist tenants in finding suitable homes. Small area FMRs are also intended to provide tenants with access to portions of metropolitan areas where previous FMRs have been insufficient. With respect to PHAs chosen to participate in the demonstration project, HUD would like to work directly with such agencies to determine appropriate areas for exception payment standards. The regulations regarding family requests for exception payment standards as a reasonable accommodation for a person with disabilities will continue to apply.

4. Do small area FMRs increase the administrative burden of PHAs, and, if so, how can the burden be reduced?

Comments: Tenant advocacy groups either did not address the issue or assumed administrative burden changes would not be significant, because rent reasonableness studies may no longer be required. PHAs and their advocacy groups were, for the most part, concerned about an increase in administrative burden, with some advocating an increase in administrative

fees for agencies participating in the small area FMR demonstration project.

One commenter suggested that HUD eliminate the rent reasonableness requirement for PHAs using small area FMRs to ensure that their administrative burden is reduced. In most cases, PHAs operating in large cities produce a single set of payment standards, so moving to dozens or even hundreds of different FMRs without eliminating rent reasonableness will significantly increase administrative burden. Another commenter stated that HUD should be able to use the ZIP Code FMRs in place of rent reasonableness determinations and that HUD should evaluate whether rent reasonableness studies will be required in the future.

HUD Response: Since rent reasonableness is a statutory requirement, HUD cannot eliminate or waive it. Additionally, although demonstration project FMRs will be based on ZIP Codes, the wide variation in housing quality and rents within ZIP Codes mean that PHAs must continue to conduct rent reasonableness determinations. However, as part of the evaluation of the demonstration, HUD will evaluate whether the small area FMRs reduce the number of units with rents outside an initial rent reasonableness determination.

5. Is the proposed rounding protocol of $25 appropriate, or should small area FMRs be rounded to a larger or smaller amount?

Comments: FMRs are currently rounded to the nearest dollar; several commenters did not want this to change. One commenter supported the proposed rounding protocol to the nearest $25, as a measure that helps reduce administrative burdens for PHAs. No commenter specifically addressed the question of whether state minimums and small area FMRs should be rounded before application or addressed the timing of subsequent rounding.

HUD Response: HUD believes there are several benefits to rounding small area FMRs. These include, but are not limited to, reducing the number of payment standards PHAs will have to administer and limiting the year-to-year fluctuations that adding new survey data annually is likely to impose. HUD also recognizes that in some cases, rounding to the nearest 25 dollars may be too large and contribute to the annual fluctuation in FMRs that HUD is trying to alleviate. For example, if in year one, the unrounded small area FMR is $512, with 25 dollar rounding the published FMR would be $500. If in the next year, the unrounded FMR is $513, the rounded value would be $525—a 5 percent change for a $1 change in the underlying rent. Therefore, in order to maintain the benefits of rounding small area FMRs while limiting the impact of rounding, HUD will round small area FMRs to the nearest 10 dollars.

6. Should the demonstration be open to smaller metropolitan areas than those meeting the size criterion for 50th-percentile FMR eligibility?

Comments: Several public interest group commenters suggested that smaller metropolitan areas be allowed to participate in the demonstration project; however, the only comments received from small, nonmetropolitan areas were opposed to rolling out small area FMRs in their communities. The issue of portability and the reimbursement for higher FMRs was of great concern to several commenters representing small PHAs. One commenter noted that PHAs do not necessarily know if their FMR area meets the size criterion for 50th-percentile FMR eligibility (100 census tracts) and asked HUD to provide this information.

HUD Response: HUD will not limit participants in the demonstration project to those in areas of 100 census tracts or more, because HUD recognizes that eligibility to participate in the Demonstration project must result in a representation of the range of metropolitan areas.

7. Should affordable housing concentration criterion be a consideration in the selection of participating areas?

Comments: One commenter considered this as a worthwhile criterion and requested that HUD provide information on poverty and racial concentration by ZIP Code.

HUD Response: HUD must select areas with as many different characteristics as possible to try to learn as much as possible about implementation issues that would occur with a national rollout of small area FMRs (though limited to metropolitan areas). Additionally, HUD plans to study the effect of the demonstration on PHAs, tenants, landlords, program costs, etc. Therefore, it will be important to have a diverse selection of participants. The selection criteria for participation in the demonstration project are enumerated below in the "Small Area FMR demonstration Details" section of this notice.

8. Is the 80 percent-of-voucher-tenants standard for applicants' eligibility to participate in the demonstration project appropriate?

Comments: Several commenters requested that this requirement be relaxed. One large PHA noted that its market area did not meet the 80 percent-of-voucher-tenants criteria and that other PHAs in its metropolitan area would have less need for small area FMRs.

HUD Response: HUD's initial rationale for suggesting that PHAs representing 80 percent of voucher holders in a metropolitan area must agree to participate in the demonstration project before being allowed to participate was based on the premise that small area FMRs would be set for the entire metropolitan area, not just for the PHAs that desire participation. This requirement, however, has changed so that now only those PHAs in the metropolitan area that agree to participate in the demonstration project will set their FMRs at the small area FMR. Other PHAs in the metropolitan area will continue to use the area-wide FMR. The specific selection criteria are discussed in the "Small Area FMR Demonstration Details" of this notice, but the 80 percent threshold is no longer a minimum criteria.

9. Is demonstrated past use of multiple payment standards an appropriate criterion for participation?

Comments: Several commenters contend that past or current use of multiple payment standards should not be a factor in determining which FMR areas are selected for the small area FMR demonstration project. Commenters stressed that for the demonstration project to be valid, it should be as representative as possible of the subset of PHAs in large metropolitan areas that will eventually use small area FMRs.

HUD Response: Because of their experience, PHAs already operating with multiple payment standards should be able to implement small area FMRs relatively easily. However, to ensure that HUD selects a diverse set of PHAs and areas, while avoiding any notion of preselection preference, this criterion will not be used as a preference for selecting demonstration participants. Please see the section titled "Small Area FMR Demonstration Details" of this notice for specific details regarding the selection of participants.

III. Small Area FMR Methodology

In calculating small area FMRs, HUD will use the methodology set forth in the

May 18, 2010, **Federal Register** notice announcing the demonstration, with the following changes: (1) HUD intends to use the 5-year ACS data to calculate small area FMRs for the demonstration project, and (2) HUD will round small area FMRs to the nearest $10 instead of the nearest $25. In summary, HUD will calculate a rental rate ratio for each ZIP Code area within a metropolitan area in the following manner:

Rental Rate Ratio = Median Gross Rent for ZIP Code area/Median Gross Rent for CBSA

If the ZIP Code within the CBSA does not have 1,000 cash rental units, then the rental rate relationship is calculated as:

Rental Rate Ratio = Median Gross Rent STCO/Median Gross Rent of the CBSA

where STCO is the county within the state containing the ZIP Code.[1] For metropolitan areas, FMRs will be calculated and published for each small area. HUD chose ZIP Codes because they localize rents, and a unit's ZIP Code is easily identifiable by PHAs, landlords, and tenants.

The individual ZIP-Code-level, two-bedroom FMR for each part of the FMR area is the product of the rental rate ratio and the two-bedroom FMR for that area's CBSA, as calculated using methods employed for past metropolitan area FMR estimates (for a description of the methodology currently in place to calculate FMRs, please see HUD's **Federal Register** notice (75 FR 61254) announcing Final FY 2011 FMRs). HUD then compares this product to the state nonmetropolitan minimum, two-bedroom rent for the state in which the area is located and, if the ZIP Code rent determined using the rental rate ratio is less than the minimum, the ZIP Code rent is set at the nonmetropolitan minimum for that state. HUD will calculate the relationship between two-bedroom units and other bedroom sizes from the 5-year ACS for the metropolitan area for the large area of geography. HUD anticipates updating the bedroom rental rate ratios once every 5 years when the 5-year ACS sample is replaced.[2] As discussed in the "Response to Comments" section, the final calculated rents are then rounded to the nearest $10. Small area FMRs based on 2000 Decennial Census data and Final FY 2011 FMRs for all metropolitan areas are available for viewing and download from the Internet at *http://www.huduser.org/portal/datasets/fmr.html.*

[1] For ZIP Codes that cross county boundaries, the Median Gross Rent in the numerator is calculated as the rental unit weighted average of the Median Gross rents for each county containing the ZIP Code.

[2] The current decennial data is not robust enough to lead HUD to believe that updating bedroom ratios on a more frequent basis would provide meaningful changes. The current bedroom ratios are constrained by ranges that reflect the average relationship to the two-bedroom rent and, for the three-bedroom and four-bedroom rents, bonuses have been added to assist with the operation of the Section 8 HCV program.

IV. Small Area FMR Demonstration Details

Selection of Participants

In the May 18, 2010, notice, HUD proposed that entire CBSAs be named demonstration areas (i.e., all PHAs operating in the CBSA would participate, whether all PHAs apply or not). The primary reason for this was to facilitate comparison of participating CBSAs to nonparticipating CBSAs. However, HUD has determined that the demonstration will be served best by PHAs that actively volunteer to participate. Therefore, only PHAs that apply will take part in the demonstration, but a preference will be given to areas where a larger share of PHAs covering a larger share of HCV tenants in the area apply to participate.

The following lists the selection criteria for participation:

1. Percentage of Voucher Tenants in the CBSA Covered by applying PHAs (calculated by HUD using HUD's administrative data). [Weighted 35 percent];

2. Percentage of PHAs in the CBSA Covered by applying PHAs in the CBSA (calculated by HUD using HUD's administrative data). [Weighted 35 percent];

3. Concentration of Voucher Tenants—The concentration of voucher tenants will be measured using the same metric that is used to determine if an area qualifies for 50th-percentile FMRs (25 percent or more of voucher tenants in the CBSA reside in 5 percent of the census tracts for the CBSA). See 24 CFR 888.113 (c)(iii). [Weighted 10 percent];

4. Racial Segregation—In order to affirmatively further fair housing, a CBSA's racial segregation will be assessed based on the non-Hispanic White/all minority Dissimilarity Index calculated at the census tract level for the CBSA from 2010 Decennial Census data. [Weighted 10 percent];

5. Dissimilarity of rents within the area—Using an unbiased measure of the dispersion of rent ratios. [Weighted 10 percent].

The CBSAs containing the applicant PHAs will be ranked according to each of the statistics specified above, and then a weighted average ranking will be calculated according to the weights specified above. The highest-ranking PHA applicant groups will be chosen subject to the requirements for selecting representatives of the different types of metropolitan areas described below.

In addition to the scored criteria above, HUD has established criteria for evaluating a PHA's administrative capacity in order to participate in this demonstration. All applicants must meet the following threshold requirements:

1. *Reporting Requirements.* Each applicant must meet PIC reporting requirements. All PHAs are required to submit Family Reports (form HUD–50058) for at least 95 percent of voucher families leased at the end of the last quarter prior to the application deadline date as verified by the PIC Delinquency Report. All PHAs must also be timely in their reporting.

2. *SEMAP.* Each applicant must not be designated as troubled for its most recently assessed fiscal year.

HUD will also evaluate the PHA on the following areas:

3. *Administrative Capacity.* The Office of Field Operations will be consulted regarding administrative capacity. In making this determination, the field office may consider things such as any unresolved program management findings from an Inspector General's audit, HUD management review or Independent Public Accountant (IPA) audit for the PHA's HCV program, fraud or misconduct, or other significant program compliance problems that were not resolved or were in the process of being resolved prior to the application deadline.

4. *Litigation.* The PHA must not be involved in litigation where HUD determines that the litigation may seriously impede the ability of the applicant to administer the vouchers.

Number of Participants

In order to create similar groups of metropolitan areas for analysis of the demonstration, all metropolitan areas were classified based on five general categories of characteristics: demographics, economic conditions, PHA structure, tenant characteristics, and housing market conditions. HUD assigned 31 variables to one of these 5 categories, and standardized and weighted the variables to maintain equal weight across categories. Based on the results of the analysis of these characteristics, the metropolitan areas have been clustered into 5 groups. Each metropolitan area in the same group has similar characteristics. For each area with PHAs participating in the demonstration, for the purposes of evaluating the demonstration, HUD will

identify a similar area from the same group where no PHAs are participating.

If applications permit, at least one PHA or PHA applicant group in the five metropolitan areas will be selected to participate in the demonstration—at least one metropolitan area from each of the five groups. This will allow for analysis of demonstration differences or similarities across characteristics of the areas (groups).

PHA Administrative Responsibilities

In determining whether to apply for this demonstration, PHAs should consider the additional administrative and programmatic factors that will be impacted by implementing small area FMRs, including but not limited to the following:

1. Converting software to handle larger numbers of payment standards;
2. Additional outreach and briefings for families and landlords on new FMR methodology and how this affects the payment standards;
3. Developing additional briefing materials for new housing markets;
4. Revising current forms and briefing packages;
5. Financial analysis to determine appropriate payment standards and ongoing monitoring of financial impacts;
6. Staff training;
7. Ability to manage additional workload; and
8. Potential changes to rent reasonableness determinations/methodology.

HUD will provide technical assistance and assist PHAs throughout the demonstration to reduce the burden of these activities as much as possible.

PHA Reporting Requirements

HUD needs to evaluate the demonstration project in terms of effectiveness in meeting the primary goal of improving tenants' housing choices in areas of opportunity. In addition, the administrative changes for PHAs participating in the demonstration project must also be evaluated. All PHAs in the demonstration project will be required to report additional data to HUD, in addition to the normal HCV program reporting requirements. Information such as the following will be requested concerning the following topics:

a. Additional procedures implemented to brief tenants and owners on small area FMRs and collect information on demonstration project;
b. Impact/interaction with current rent reasonableness determinations;
c. Software/systems issues;
d. Impact on staffing and resources;
e. Any funding-related impact;
f. Success rate for new HCVs; must be able to be compare with success rate prior to the demonstration project;
g. Time taken for new families to use an HCV;
h. Lease-up rate, for new families; must be able to compare with lease-up rate prior to the demonstration project;
i. Number of participants who elect to move and the differential in the FMR/payment standard; race, age of head of household, number of children, and ages of children must be reported;
j. Reason given by new participants and existing participant for their location choice;
k. Changes in landlord retention and recruitment;
l. Number of vouchers issued and the number of families that successfully lease a unit. In accordance with PIH Notice 2010–25, PHAs are expected to enter the issuance of vouchers in PIC; and
m. Voucher holders requesting to use portability to move into demonstration areas to take advantage of small area FMRs and the number of those families who were successful in leasing up in higher and lower FMR areas.

Program Operation

Participating PHAs will use small area FMRs as the basis for setting payment standards for the tenants that they serve. PHAs applying to participate in the demonstration and operating in areas that are currently eligible for 50th-percentile FMRs will use small area FMRs calculated using 40th-percentile rents. All existing program rules will apply under this demonstration project.

Implementation Date

HUD will work with each of the PHAs selected to participate in the demonstration to determine the implementation date of the small area FMRs based on individual PHA circumstances. However, HUD will expect all PHAs to have the small area FMRs fully operational no later than 90 days after the selection date.

Applicability of Small Area FMRs to Project-based Vouchers

The small area FMRs will not apply to project-based vouchers (PBVs) for which a notice of owner selection was issued in accordance with 24 CFR 983.51(d) as of the effective date of the PHA's participation in the demonstration (i.e., the date that the small area FMRs go into effect for the PHA). This includes units currently under HAP contract. However, any PBVs for which a notice of owner selection is issued after the effective date of the PHA's participation in the demonstration will be subject to the small area FMRs. In cases where the small area FMRs are not applicable to PBV units, the area-wide FMRs will continue to apply.

V. Requests for Participation in the Small Area FMR Demonstration Project

Any PHA operating an HCV program in a metropolitan area may apply to participate in the small area FMR demonstration. Due to the flexibility already provided to PHAs operating in the Moving To Work (MTW) program, HUD does not believe that MTW PHAs need to be included in the demonstration in order to use small area FMRs. Therefore, HUD will not consider the HCVs of an MTW agency when determining the proportion of the metropolitan area's HCVs that a PHA (or group of PHAs) represent. This does not preclude MTW agencies, however, from participating in the small area FMR demonstration.

A PHA wishing to be considered for inclusion in the demonstration should respond with a letter to HUD signed by its executive director. PHAs applying jointly should submit a single letter signed by all of the participating PHAs' executive directors. The letter must include a resolution from the PHA Board of Commissioners authorizing the PHA to participate in the demonstration. (In the case of a joint letter, a resolution for each participating PHA is required.) The request letters should include the PHAs' affirmative declaration to participate and include the number of vouchers the PHAs collectively administer in the metropolitan area. Additionally, the application should include an attachment describing the expected financial impact of implementing small area FMRs in the PHAs jurisdiction. Letters should be addressed to: Small Area FMR Demonstration Project Applications, Office of General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0001.

Once the response period has ended, HUD will compile all of the selection criteria data and determine which areas will be selected to participate. The executive directors of the selected PHAs will be contacted, and a final roster of participants, along with updated small area FMRs based on 2005–2009 ACS data, will be published in a **Federal Register** notice.

VI. Paperwork Reduction Act

In accordance with the Section 3507 of the Paperwork Reduction Act of 1995

(44 U.S.C. 4321), HUD will request approval from the Office of Management and Budget (OMB) to collect data under the reporting requirements that PHAs are not currently providing.

VII. Environmental Impact

This notice involves the establishment of a small area FMR demonstration project, which does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Dated: April 7, 2011.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2011–9501 Filed 4–19–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Notice of Intent To Accept Proposals, Select One Lessee, and Contract for Hydroelectric Power Development at the Granby Dam Outlet, a Feature of the Colorado-Big Thompson (C–BT) Project, Colorado

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent.

SUMMARY: Promoting responsible development of renewable energy and moving the Nation toward a clean energy future is a top priority of the Department of the Interior. The Department signed a Memorandum of Understanding in March 2010 intended to focus on opportunities for development of environmentally sustainable hydropower at existing Bureau of Reclamation (Reclamation) facilities. The Department, acting through Reclamation, will consider proposals for non-Federal development of hydroelectric power at Granby Dam Outlet of the C–BT, Colorado. Reclamation is considering such hydroelectric power development under a lease of power privilege. No Federal funds will be available for such hydroelectric power development. The Department will prioritize projects that appropriately balance increased energy generation with consideration of environmental impacts. The Western Area Power Administration (Western) would have the first opportunity to purchase and/or market the power that would be generated by such development under a lease of power privilege. The C–BT is a Reclamation project. This Notice presents background information, proposal content guidelines, information concerning selection of one or more non-Federal entities to develop hydroelectric power at Granby Dam Outlet, and power purchasing and/or marketing considerations. Interested entities are invited to submit a proposal on this project.

DATES: A written proposal and seven copies must be submitted on or before 1 p.m. (MDT), on August 19, 2011. A proposal will be considered timely only if it is received in the office of the Lease of Power Privilege Coordinator by or before 1 p.m. (MDT) on the designated date. Interested entities are cautioned that delayed delivery to this office due to failures or misunderstandings of the entity and/or of mail, overnight, or courier services will not excuse lateness and, accordingly, are advised to provide sufficient time for delivery. Late proposals will not be considered.

ADDRESSES: Written proposals and seven copies should be sent to Mr. George Gliko, Lease of Power Privilege Coordinator (GP–2200), Bureau of Reclamation, Great Plains Regional Office (GP–2200), P.O. Box 36900, Billings, MT 59107–6900.

Information related to Western's purchasing and/or marketing the power may be obtained at Western Area Power Administration, Rocky Mountain Region, Attn: Dave Neumayer, Power Marketing Manager, 5555 East Crossroads Blvd., Loveland, Colorado 80538, Telephone: (970) 461–7322.

Information related to the operation and maintenance of Granby Dam and Reservoir may be obtained at Northern Colorado Water Conservancy District, 220 Water Avenue, Berthoud, Colorado 80513, Telephone: (970) 532–7700.

FOR FURTHER INFORMATION CONTACT: Mr. George Gliko at (406) 247–7651.

Reclamation will be available to meet with interested entities only upon written request to the Lease of Power Privilege Coordinator at the above address. Reclamation reserves the right to schedule a single meeting and/or visit to address at one time, the questions of all entities that have submitted questions or requested site visits.

SUPPLEMENTARY INFORMATION: The C–BT, located in central Colorado, was authorized for construction, including hydroelectric power, by the Department of the Interior Appropriations Act, 1938 (1938 Act), Public Law 75–249, 50 Stat. 564 (August 9, 1937). Specifically, the 1938 Act appropriates funds for the Project's "construction in accordance with the plan described in Senate Document No. 80, Seventy-fifth Congress, First Session * * *" 50 Stat. 595. As part of the C–BT, the United States constructed Granby Dam. The Northern Colorado Water Conservancy District (District), under its contracts with the United States, has certain operation, maintenance, replacement, and repayment responsibilities and obligations concerning the C–BT, which includes such responsibility for Granby Dam and Reservoir. Reclamation recently released its Hydropower Resource Assessment (March 2011), which estimated that hydropower at Granby Dam is economically feasible to develop (benefit-cost ratio 1.16, including green incentives), and that there is a potential capacity of 484 kW. The Assessment may be viewed in its entirety at *http://www.usbr.gov/power/*.

Reclamation is considering hydroelectric power development at Granby Dam Outlet through a lease of power privilege. A lease of power privilege is a congressionally authorized alternative to Federal hydroelectric power development. A lease of power privilege grants to a non-Federal entity the right to utilize C–BT for non-Federal electric power generation and sale, consistent with project purposes. Leases of power privilege have terms not to exceed 40 years. The general authority for lease of power privilege under Reclamation law includes, among others, the Town Sites and Power Development Act of 1906 (43 U.S.C. 522) and the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) (1939 Act). Reclamation will be the lead Federal agency for ensuring compliance with the National Environmental Policy Act (NEPA) of any lease of power privilege considered in response to this Notice. Leases of power privilege may be issued only when Reclamation, upon completion of the NEPA process, determines that the affected hydroelectric power sites are environmentally acceptable. Any lease of power privilege at Granby Dam Outlet must accommodate existing contractual commitments related to operation and maintenance of such existing facilities, and must meet the requirements of applicable law.

Western would have the first opportunity to purchase and/or market the power that would be generated under any lease of power privilege. Under this process, Western would either purchase and market the power as Loveland Area Power power or market the power independently by first offering it to preference entities and secondly to non-preference entities.

All costs incurred by the United States related to development and

operation and maintenance under a lease of power privilege, including but not limited to NEPA compliance, development of the lease of power privilege, design reviews, construction oversight, and any other associated documents, would be the expense of the lessee.

Proposal Content Guidelines: Interested parties should submit one or more proposals explaining in as precise detail as is practicable how the hydropower potential at each site would be developed. Factors which proposals should consider and address include, but are not limited to, the following:

1. Provide all information relevant to the qualifications of the proposing entity to plan and implement such a project, including, but not limited to, information about preference status, type of organization, length of time in business, experience in funding, design and construction of similar projects, industry rating(s) that indicate financial soundness and/or technical and managerial capability, experience of key management personnel, history of any reorganizations or mergers with other companies, safety record, and any other information that demonstrates the interested entity's organizational, technical and financial ability to perform all aspects of the work. Include a discussion of past experience in operating and maintaining similar facilities and provide references as appropriate. The term *preference entity,* as applied to a lease of power privilege, means an entity qualifying for preference under Section 9(c) of the 1939 Act, as a municipality, public corporation or agency, or cooperative or other nonprofit organization financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936, as amended.

2. Provide geographical locations and describe principal structures and other important features of the proposed development including roads and transmission lines. Estimate and describe installed capacity and the capacity of the power facilities under dry, average, and wet hydrological conditions. Also describe seasonal or annual generation patterns. Include estimates of the amount of electrical energy that would be produced from each facility for each month of average, dry and wet water years. If capacity and energy can be delivered to another location, either by the proposing entity or by potential wheeling agents, specify where capacity and energy can be delivered. Include concepts for power sales and contractual arrangements, involved parties and the proposed approach to wheeling if required.

3. Indicate title arrangements and the ability to acquire title to or the right to occupy and use lands necessary for the proposed development, including such additional lands as may be required during construction.

4. Identify water rights applicable to the operation of the proposed development, the holder of such rights, and how these rights would be acquired or perfected.

5. Discuss any studies necessary to adequately define impacts on the C–BT and the environment required by the development. Describe any significant environmental issues associated with the development and the proposing entity's approach for gathering relevant data and resolving such issues to protect and enhance the quality of the environment. Explain any proposed use of the hydropower development for conservation and utilization of the available water resources in the public interest.

6. Describe anticipated contractual arrangements with the entity or entities having operation and maintenance responsibility for the C–BT feature(s) that are proposed for utilization in the hydropower development under consideration. Define how the hydropower development would operate in harmony with the C–BT, not impact C–BT operations, existing applicable contracts related to operation and maintenance of C–BT feature(s) that are proposed for utilization in the hydropower development under consideration, and any other applicable water-related contracts.

7. Identify the organizational structure planned for the long-term operation and maintenance of any proposed hydropower development.

8. Provide a management plan to accomplish such activities as planning, NEPA compliance, lease of power privilege development, design, construction, facility testing, and start of hydropower production. Prepare schedules of these activities as applicable. Describe what studies are necessary to accomplish the hydroelectric power development and how the studies would be implemented.

9. Estimate development cost. This cost should include all investment costs such as the cost of studies to determine feasibility, NEPA compliance, design, construction, associated bonding and financing as well as the amortized annual cost of the investment; also, the annual operation, maintenance, and replacement expense for the hydropower development; lease payments to the United States; and expenses that may be associated with the C–BT. If there are additional transmission or wheeling expenses associated with the development of the hydropower development, these should be included. Identify proposed methods of financing and hydropower development. An economic analysis should be presented that compares the present worth of all benefits and costs of the hydropower development.

Selection of Lessee: Reclamation will evaluate proposals received in response to this published notice.

Reclamation will give more favorable consideration to proposals that (1) are well-adapted to developing, conserving, and utilizing the water and natural resources, (2) clearly demonstrate that the offeror is qualified to develop the hydropower facility and provide for long-term operation and maintenance, and (3) develop the hydropower potential economically. Credit will be given to those proposals that demonstrate development of power in an environmentally-friendly manner. While all developments will be required to perform NEPA analysis, proposals should include information as to how the proposer will minimize environmental impact during construction, maintenance and operation. Proposers should also include design characteristics and methods that will be used to minimize environmental impacts and improve the environmental attributes of the facility. Any work the developer is proposing to do to enhance the ecosystem should also be explained in the proposal. A proposal will be deemed unacceptable if it is inconsistent with C–BT purposes, as determined by Reclamation. Reclamation will give preference to those entities that qualify as preference entities (as defined under Proposal Content Guidelines, item 1.) provided that their proposal is at least as well-adapted to developing, conserving, and utilizing the water and natural resources as other submitted proposals and that the preference entity is well qualified. Preference entities would be allowed 90 days to improve their proposals, if necessary, to be made at least equal to a proposal that may have been submitted by a non-preference entity.

Power Purchasing and/or Marketing Considerations: Western would have the first opportunity to purchase and/or market the power that would be generated by the project under a lease of power privilege. Western will consult with Reclamation on such power purchasing and/or marketing considerations.

In the event Western elects to not purchase and/or market the power generated by the hydropower development or such a decision cannot

be made prior to execution of the lease of power privilege, the lessee would be responsible for marketing the power generated by the project with priority given to preference entities as heretofore defined in Proposal Content Guidelines, item 1.).

Notice and Time Period to Enter Into Lease of Power Privilege: Reclamation will notify, in writing, all entities submitting proposals of Reclamation's decision regarding selection of the potential lessee. The selected potential lessee will have 2 years from the date of such notification to enter into a lease of power privilege for the site or sites identified in the proposal. Such leases of power privilege will state whether and how Western will be involved in purchasing and/or marketing the power. Any excessive delay resulting from compliance with the provisions of Federal environment laws or administrative review by a Federal agency, pertaining to the project, may extend the 2 year time period for a period equal to that of the delay. This period may only be extended by mutual, written consent of the potential lessee and the United States.

Dated: April 14, 2011.

Michael J. Ryan,

Regional Director.

[FR Doc. 2011–9540 Filed 4–19–11; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Wildland Fire Executive Council Meeting Schedule

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Meetings.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 2, the U.S. Department of the Interior, Office of the Secretary, Wildland Fire Executive Council (WFEC) will meet as indicated below.

DATES: The next meeting will be held on Friday May 6, 2011, from 10 a.m. to 12 noon.

ADDRESSES: The meetings will be held from 10 a.m. to 12 noon Eastern Time in the McArdle Room (First Floor Conference Room) in the Yates Federal Building, USDA Forest Service Headquarters, 1400 Independence Ave., SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Roy Johnson, Designated Federal Officer, 300 E Mallard Drive, Suite 170, Boise, Idaho 83706; telephone (208) 334–1550; fax (208) 334–1549; or e-mail *Roy_Johnson@ios.doi.gov*.

SUPPLEMENTARY INFORMATION: The WFEC is established as a discretionary advisory committee under the authorities of the Secretary of the Interior and Secretary of Agriculture, in furtherance of 43 U.S.C. 1457 and provisions of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the National Wildlife Refuge System improvement Act of 1997 (16 U.S.C. 668dd–668ee), and the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) and in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2. The Secretary of the Interior and Secretary of Agriculture certify that the formation of the WFEC is necessary and is in the public interest.

The purpose of the WFEC is to provide advice on coordinated national-level wildland fire policy and to provide leadership, direction, and program oversight in support of the Wildland Fire Leadership Council. Questions related to the WFEC should be directed to Roy Johnson (Designated Federal Officer) at *Roy_Johnson@ios.doi.gov* or (208) 334–1550 or 300 E. Mallard Drive, Suite 170, Boise, Idaho 83706–6648.

Meeting Agenda: The meeting agenda will be: (1) Welcome and introduction of Council members; (2) Overview of prior meeting and action tracking; (3) Members' round robin to share information and identify key issues to be addressed; (4) Wildland Fire Management Cohesive Strategy; (5) Wildland Fire Issues; (6) Council Members' review and discussion of sub-committee activities; (7) Future Council activities; and (8) Public comments and closing remarks. Participation is open to the public.

Public Input: All WFEC meetings are open to the public. Members of the public who wish to participate must notify Shari Shetler at *Shari_Shetler@ios.doi.gov* no later than the third Friday of the month preceding the meeting. Those who are not committee members and wish to present oral statements or obtain information should contact Shari Shetler via e-mail no later than the third Friday preceding the meeting. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Questions about the agenda or written comments may be e-mailed or submitted by U.S. Mail to: Department of the Interior, Office of the Secretary, Office of Wildland Fire, Attention: Shari Shetler, 300 E. Mallard Drive, Suite 170, Boise, Idaho 83706–6648. WFEC requests that written comments be received by the third Friday of the month preceeding the scheduled meeting. Attendance is open to the public, but limited space is available. Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Shetler at (202) 527–0133 at least seven calendar days prior to the meeting.

Dated: April 15, 2011.

Roy Johnson,

Designated Federal Officer.

[FR Doc. 2011–9632 Filed 4–19–11; 8:45 am]

BILLING CODE 4310–J4–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

[Docket No. BOEM–2011–0005]

Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore New Jersey—Call for Information and Nominations

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Call for Information and Nominations for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore New Jersey.

SUMMARY: The Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) invites the submission of nominations for one or more commercial leases for the construction of a wind energy project(s) on the Outer Continental Shelf (OCS) offshore New Jersey. Although this announcement is not itself a leasing announcement, the area described herein may be subject to future leasing, and BOEMRE will use the response to this Call for Information and Nominations (Call) to gauge specific interest in acquiring commercial wind lease(s) in some or all of the area, and to determine whether competitive interest exists in any particular area as required by 43 U.S.C. 1337(p)(3). Parties wishing to submit a nomination in response to this Call should submit detailed and specific information as described below in the section entitled, "Required Nomination Information."

This announcement also requests that interested and affected parties comment and provide information about site conditions, resources, and multiple uses within the area identified in this notice

that would be relevant to BOEMRE's review of the nominations submitted and subsequent decision to offer all or part of the area for commercial wind leasing. The information that BOEMRE is requesting is described below in the section entitled, "Requested Information from Interested or Affected Parties."

This notice is published pursuant to subsection 8(p)(3) of the OCS Lands Act, which was added by section 388 of the Energy Policy Act of 2005 (EPAct) (43 U.S.C. 1337(p)(3)), and the implementing regulations at 30 CFR Part 285.

The area under consideration for commercial leasing is located off the coast of New Jersey, beginning approximately 7 nautical miles (nmi) from the shore, extending roughly 23 nmi seaward to the approximate 100 ft depth contour, and extending 45 nmi parallel to the Federal/State boundary between Avalon and Barnegat Light. This area is approximately 418 square nmi and contains approximately 43 whole OCS blocks and 34 partial OCS blocks. This area was delineated in consultation with the BOEMRE/New Jersey Renewable Energy Task Force and has been identified as a Wind Energy Area (WEA) as referenced and described in the Secretary's announcement of the Department's "Smart from the Start" offshore wind energy initiative. A detailed description of the area and its development is found later in this notice.

DATES: BOEMRE must receive your nomination describing your interest in this potential commercial leasing area no later than June 6, 2011 for your nomination to be considered. BOEMRE requests comments or other submissions of information by this same date. BOEMRE will consider only the nominations we receive by that time.

Submission Procedures: You may submit your nominations, comments, and information by one of two methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter BOEM–2011–0005, then click "search." Follow the instructions to submit public comments and view supporting and related materials available for this notice. BOEMRE will post all comments which are not labeled "Contains Confidential Information."

2. *By mail, sending your nominations, comments, and information to the following address:* Bureau of Ocean Energy Management, Regulation and Enforcement, Office of Offshore Alternative Energy Programs, 381 Elden Street, Mail Stop 4090, Herndon, Virginia 20170. Nominations submitted by mail must be postmarked by June 6, 2011 to be considered by BOEMRE for the purposes of determining competitive interest. All responses will be reported on regulations.gov.

If you wish to protect the confidentiality of your nominations or comments, clearly mark the relevant sections and request that BOEMRE treat them as confidential. Please label privileged or confidential information "Contains Confidential Information" and consider submitting such information as a separate attachment. Treatment of confidential information is addressed in the section of this Call entitled, "Protection of Privileged or Confidential Information." Information that is not labeled as privileged or confidential will be regarded by BOEMRE as suitable for public release.

FOR FURTHER INFORMATION CONTACT: William Waskes, Project Coordinator, BOEMRE, Office of Offshore Alternative Energy Programs, 381 Elden Street, Mail Stop 4090, Herndon, Virginia 20170, (703) 787–1300.

SUPPLEMENTARY INFORMATION:

Purpose of the Call for Information and Nominations

The OCS Lands Act requires BOEMRE to award leases competitively, unless BOEMRE makes a determination that there is no competitive interest (43 U.S.C. 1337(p)(3)). The issuance of this notice is not intended to indicate that BOEMRE has determined that competitive interest exists in the area identified. Rather, this notice is the first step in the renewable energy leasing process offshore New Jersey and the responses to it will assist BOEMRE in determining if there is no competitive interest in the area identified. This notice also requests information from interested and affected parties on issues relevant to BOEMRE's review of nominations for potential leasing in the area identified.

BOEMRE is issuing a Call instead of a Request for Interest (RFI) to facilitate and expedite the leasing process in keeping with the goals and objectives of the Secretary of the Interior's "Smart from the Start" initiative. If an RFI were issued and the responses to it indicated competitive interest, the applicable regulations would require BOEMRE to issue a Call, which BOEMRE believes would be duplicative of the RFI process and, therefore, unnecessary and inefficient. Issuance of this Call, without an RFI, is designed to enable BOEMRE to analyze information needed to support appropriate commercial leasing, while ensuring ample opportunity for input from interested and affected parties.

The responses to this Call could lead to the initiation of a competitive process in some areas (i.e., where competition exists for certain tracts), and a noncompetitive process in others (where no competitive interest exists in certain tracts). The leasing process is described more completely under "Competitive Leasing Process" and "Noncompetitive Leasing Process," below. If BOEMRE determines that there is no competitive interest in some or all of this area offshore New Jersey, BOEMRE may proceed with the noncompetitive lease process pursuant to 30 CFR 285.232 of the Renewable Energy and Alternate Uses (REAU) of Existing Facilities on the OCS Final Rule for any area(s) where no competitive interest exists. If BOEMRE determines that there is competitive interest in some or all of this area offshore New Jersey, BOEMRE may proceed with Area Identification, as set forth in 30 CFR 285.211(b), and the competitive leasing process set forth under 30 CFR 285.211 through 285.225. Whether the leasing process would be competitive or noncompetitive, it would (1) include additional opportunities for the public to provide input; (2) be reviewed thoroughly for potential environmental and multiple use impacts; and (3) and be conducted in conformance with all applicable laws and regulations. The area that may be offered for lease, if any, has not been determined and may be reduced from the area identified in this Call.

Background

Energy Policy Act of 2005

The EPAct amended the OCS Lands Act by adding subsection 8(p)(1)(c), which authorizes the Secretary of the Interior to grant leases, easements, or rights-of-way (ROWs) on the OCS for activities that are not otherwise authorized by law and that produce or support production, transportation, or transmission of energy from sources other than oil or gas. The EPAct also required the issuance of regulations to carry out the new authority pertaining to renewable energy on the OCS. The Secretary delegated this authority to issue leases, easements, and ROWs, and to promulgate regulations to the Director of BOEMRE. On April 29, 2009, BOEMRE promulgated the REAU rule, which can be found at: *http://www.boemre.gov/offshore/RenewableEnergy/PDF/FinalRenewableEnergyRule.pdf.*

Interim Policy

After the passage of EPAct, BOEMRE moved forward with allowing limited activities related to the development of renewable energy projects on the OCS while finalizing the REAU rulemaking. BOEMRE created and published an Interim Policy (IP) to allow the issuance of leases to assess the renewable energy resource potential on the OCS and evaluate new technology. The IP governed the issuance of leases for the installation of offshore data collection and technology testing facilities on the OCS until the promulgation of the REAU rule. Leases issued under the IP have terms of five years and do not permit the testing of wind turbine generators.

The IP lease issuance process began on November 6, 2007, when BOEMRE published in the **Federal Register** a Request for Information and Nominations for IP leases. Subsequently, BOEMRE published a listing of the locations described in the responses to the Request for Information and Nominations in the **Federal Register** in order to determine if there was competitive interest in the proposed IP lease areas. After considering responses received to the second **Federal Register** notice, BOEMRE determined that there was no competitive interest in any of the proposed IP lease areas and decided to proceed with the noncompetitive leasing process for the IP leases. Six areas on the OCS ranging from 8 to 21 nmi offshore of the coast of New Jersey were nominated by three developers. BOEMRE received applications for the construction of meteorological towers and other site assessment activities on the OCS for four of the six proposed lease areas from Deepwater Wind LLC (2 lease areas), Bluewater Wind New Jersey Energy LLC and Fishermen's Energy of New Jersey (FERN). After a thorough environmental review, BOEMRE offered four leases in June 2009 and executed three IP leases offshore New Jersey, one to each of the three developers listed above, in November 2009. The specific locations of these IP leases are provided under the section entitled, "Existing Interim Policy Leases Offshore New Jersey." The installation of meteorological towers or meteorological buoys is anticipated to begin in mid-2011.

Executive Order 13547: Stewardship of the Ocean, Our Coasts, and the Great Lakes

On July 19, 2010, the President signed Executive Order 13547 establishing a national ocean policy and the National Ocean Council (75 FR 43023). The Order establishes a comprehensive, integrated national policy for the stewardship of the ocean, our coasts and the Great Lakes. Where BOEMRE actions affect the ocean, the Order requires BOEMRE to take such action as necessary to implement this policy, the stewardship principles and national priority objectives adopted by the Order, and guidance from the National Ocean Council.

BOEMRE appreciates the importance of coordinating its planning endeavors with other OCS users and regulators and intends to follow principles of coastal and marine spatial planning, and coordinate with the regional planning bodies as established by the National Ocean Council to inform its leasing processes. BOEMRE anticipates that continued coordination with the State Renewable Energy Task Forces will help inform comprehensive coastal and marine spatial planning efforts.

Actions Taken by the State of New Jersey in Support of Renewable Energy Development

BOEMRE recognizes the importance of the steps that the state of New Jersey has taken to encourage and incentivize offshore wind energy development. While a state may promote such development through activities such as the creation of financial incentives, it is important to note that an offshore wind project cannot be sited on the OCS without an OCS renewable energy lease issued by BOEMRE pursuant to 30 CFR part 285, as described in this Call. Below is a description of the activities that the state has undertaken to support renewable energy development off its coast.

In April 2006, the New Jersey Blue Ribbon Panel (BRP) on the Development of Wind Turbine Facilities in Coastal Waters issued a final report to the Governor. The BRP considered the need for offshore wind turbines to supply renewable energy to state consumers, and compared the potential from offshore wind power to other electric power sources, including fossil, nuclear and renewable fuels, as part of the state's long-term electricity needs. Recommendation (5) of the panel called for the New Jersey Board of Public Utilities (BPU) to proceed with a limited test project, not to exceed 350 megawatts (MW), to obtain practical knowledge of benefits and impacts resulting from offshore wind turbine facilities. The New Jersey BPU issued a request for proposals for the development of a 350 MW capacity wind power project on the OCS, and solicited interest in obtaining financial grants of up to $19 million from the state to support the financing of offshore wind power projects. Five proposals were submitted. In October 2008, the State of New Jersey selected Garden State Offshore Energy LLC (GSOE), a joint venture of Deepwater Wind LLC and Public Service Enterprise Group (PSEG), as the winner of the grant funds solicitation. However, to date, no contract for transferring the grant funds has been executed based on the solicitation. Rather, to encourage development necessary to achieve the Offshore Wind (OSW) goals in the State of New Jersey's 2008 Energy Master Plan (EMP), the BPU reexamined the approach described above and instead designed a rebate program that could reimburse OSW developers for the costs associated with constructing meteorological towers on the OCS offshore New Jersey. This rebate program would provide financial incentives for multiple simultaneous projects on the OCS offshore New Jersey. The BPU authorized this rebate program on November 26, 2008. On January 8, 2009, the BPU issued an Order approving three rebate applications for offshore wind meteorological towers submitted by Bluewater Wind, GSOE, and FERN, which will allow these developers to recover costs associated with constructing meteorological towers on the OCS offshore New Jersey. On August 18, 2010, two of the rebate applications were modified by the BPU to grant rebates for the cost associated with construction of meteorological buoys instead of meteorological towers.

The BRP also advised through recommendation (6) that the test project needed "* * * to be preceded by scientific baseline studies that collect basic data about the existence, location and nature of New Jersey's offshore natural resources * * *" Accordingly, recommendation (4) of the BRP called for the State to conduct baseline studies of New Jersey's coastal waters to, in part, develop spatial and temporal information regarding ocean uses and living natural resources and assess tourism and related economic sectors.

To comply with the BRP's recommendations, the New Jersey Department of Environmental Protection (NJDEP) released a Solicitation for Research Proposals for Ocean/Wind Power Ecological Baseline Studies (OWPEBS). To meet the project goal, baseline data were collected on birds, sea turtles, and marine mammals during an 18-month period and later expanded to a 24-month period to fill major data gaps identified for each group. The final OWPEBS was published in July 2010

and is available at: *http://www.nj.gov/dep/dsr/ocean-wind/report.htm.*

On August 18, 2010, Governor Christie signed the Offshore Wind Economic Development Act (Approved P.L.2010, c.57), which directs the BPU to establish an offshore wind renewable energy certificate (OREC) program. The OREC program requires that each electric power supplier and each basic generation service provider acquire a percentage of the kilowatt hours sold in New Jersey from offshore wind energy, such that at least 1,100 megawatts of generation from offshore wind projects will be supplied to state consumers. An entity seeking to construct an offshore wind project may submit an application to the Board for approval as a qualified offshore wind project eligible to earn ORECs. Financial assistance and tax credits, through the New Jersey Economic Development Authority (EDA), are also made available by the Act for businesses that construct manufacturing, assemblage, and water access facilities to support the development of qualified offshore wind projects in designated "wind energy zones." (Reprint of Pub. L. 2010, c.57 available online at: *http://www.njleg.state.nj.us/2010/Bills/PL10/57_.PDF*).

The ability of private developers to take advantage of these state incentives for potential projects on the OCS offshore New Jersey would be dependent on the developers obtaining leases and subsequent approvals from BOEMRE for their proposed projects on the OCS.

BOEMRE/New Jersey Renewable Energy Task Force

BOEMRE formed the BOEMRE/New Jersey Renewable Energy Task Force for coordination among affected Federal agencies and state, local, and tribal governments throughout the leasing process. The BOEMRE/New Jersey Renewable Energy Task Force meeting materials are available on the BOEMRE Web site at: *http://www.boemre.gov/offshore/RenewableEnergy/stateactivities.htm#NewJersey.*

Secretary Salazar's "Smart From the Start" Atlantic Wind Initiative

Secretary Ken Salazar announced the "Smart from the Start" OCS renewable energy initiative on November 23, 2010. The area delineated in this notice has been identified as a Wind Energy Area (WEA) as defined in BOEMRE's Notice of Intent to Prepare an Environmental Assessment for Mid-Atlantic Wind Energy Areas, 76 FR 7226 (February 9, 2011), and described in the Secretary's announcement. Relevant materials are available on the BOEMRE Web site at: *http://www.boemre.gov/offshore/RenewableEnergy/SmartFromTheStart.htm.*

A WEA is an OCS area that appears to be suitable for the consideration of wind energy development. The New Jersey WEA was delineated based on deliberation and consultation with the BOEMRE/New Jersey Renewable Energy Task Force and identified to be evaluated in a regional environmental assessment (EA). This regional EA will evaluate the environmental consequences associated with lease issuance and site assessment and site characterization activities in this WEA as well as WEAs offshore Delaware, Maryland, and Virginia. The borders of the New Jersey WEA may be adjusted in response to comments and information received during the Call comment period and the regional EA comment period. In addition, it may become appropriate to analyze one or more of the WEAs identified in the regional EA, including the WEA offshore New Jersey, in separate EAs.

BOEMRE will conduct several interagency consultations concurrently with the National Environmental Policy Act (NEPA) process associated with the "Smart from the Start" initiative. These consultations include, but are not limited to, those required by the Coastal Zone Management Act (CZMA), Endangered Species Act (ESA), Magnuson-Stevens Fishery Conservation and Management Act, National Historic Preservation Act (NHPA), Marine Mammal Protection Act (MMPA), and Executive Order 13175—"Consultation and Coordination with Tribal Governments." These consultations would take place before the issuance of any leases.

If the regional EA finds that issuing leases in these areas and approving subsequent site assessment activities on these leases would constitute a major Federal action significantly affecting the quality of the human environment (42 U.S.C. 4332(c)), then BOEMRE would begin the process of preparing an environmental impact statement (EIS) to analyze the effects of lease issuance and site characterization and site assessment activities in those areas. If BOEMRE determines during the regional EA process that issuing leases and conducting site characterization and assessment activities in these WEAs would not result in significant environmental impacts, then BOEMRE would issue a Finding of No Significant Impact (FONSI). After either a FONSI is issued or the EIS process is completed, BOEMRE may issue one or more renewable energy leases in the WEAs in accordance with its determination of competitive interest, described in the following section of this Call. In the event that a particular lease is issued, and the lessee submits a Site Assessment Plan (SAP), BOEMRE will determine whether the regional EA adequately considers the environmental consequences of the activities proposed in the lessee's SAP. If the analysis in the regional EA adequately addresses these consequences, then no further NEPA would be required before the SAP is approved. If that analysis is inadequate, an additional NEPA analysis would be prepared before the SAP could be approved.

If and when a lessee is ready to propose construction and operations of a specific renewable energy facility, it would submit a Construction and Operation Plan (COP). If a COP is submitted for a particular leasehold, a separate NEPA analysis would be prepared analyzing the environmental consequences of the specific project proposed. This would likely take the form of an EIS and will provide additional opportunities for public involvement. Pursuant to 30 CFR Part 285, a lessee may only submit a COP once it has gathered the necessary information through site characterization and site assessment activities. Such an EIS process would provide Federal officials and the public with comprehensive site- and project-specific information regarding potential environmental impacts of the project that the lessee is proposing. These potential impacts would be taken into account when deciding whether to approve, approve with modification, or disapprove the construction and operation of a commercial wind facility.

Determination of Competitive Interest

The first step in determining whether there is no competitive interest in an area on the OCS for wind energy projects offshore New Jersey will be the evaluation of submissions describing nominations for particular areas of interest as suitable for commercial wind projects in response to this notice. At the conclusion of the comment period for this Call, BOEMRE will review the information received, undertake a completeness review and qualifications review of the nominations received, and make a determination as to whether competitive interest exists. BOEMRE will first determine whether there is any geographic overlap of the areas of interest.

If two areas of interest fully or partially overlap, BOEMRE will continue to proceed with the competitive lease process as described

below. BOEMRE may consult with the BOEMRE/New Jersey Task Force throughout this process.

Situations may arise in which several parties nominate project areas that do not overlap. Under these circumstances, BOEMRE could choose to employ an allocation system of leases that involves the creation of competition across tracts. This system is referred to as intertract competition and will also be implemented under the competitive process outlined in the REAU rule. BOEMRE may consult with the BOEMRE/New Jersey Task Force in determining intertract competition.

Competitive Leasing Process

Following are the steps in the competitive process that would follow this Call, as described in 30 CFR 285.211 through 285.225:

(1) *Area Identification:* BOEMRE would identify areas for environmental analysis and consideration for leasing in discussion with appropriate Federal agencies, states, local governments, tribes and other interested parties based on the information submitted in response to this notice and the Notice of Intent to Prepare an Environmental Assessment for Mid-Atlantic Wind Energy Areas, described above.

(2) *Proposed Sale Notice:* BOEMRE would then publish the Proposed Sale Notice (PSN) in the **Federal Register** and send the PSN to any affected tribes, the State Historic Preservation Office, the Governor of any affected state and the executive of any local government that might be affected. The PSN would describe the areas offered for leasing and the proposed terms and conditions of a lease sale, including the proposed auction format, lease form and lease provisions. Additionally, the PSN would describe the criteria and process for evaluating bids. The PSN would be issued after completion of the final NEPA documentation, preparation of the Consistency Determination as required by the CZMA and its implementing regulations, and preparation of various analyses of proposed lease sale economic terms and conditions. The comment period following issuance of a PSN would be 60 days.

(3) *Final Sale Notice:* BOEMRE would then publish the Final Sale Notice (FSN) in the **Federal Register** at least 30 days before the date of the sale. Should BOEMRE proceed with a competitive auction to award leases, BOEMRE would use one of the following four auction formats to select the winner as described at 30 CFR 285.220: multiple-factor bidding; sealed bidding; ascending bidding; or two-stage bidding (a combination of ascending bidding and sealed bidding). BOEMRE would publish the criteria for winning bid determinations in the FSN.

(4) *Bid Submission and Evaluation:* Following publication of the FSN in the **Federal Register**, qualified bidders would be able to submit their bids to BOEMRE in accordance with procedures specified for the auction format to be used. The bids, including the bid deposits if applicable, would be checked for technical and legal adequacy. BOEMRE would evaluate the bids to determine if the bidder has complied with all applicable regulations. BOEMRE reserves the right to reject any or all bids and the right to withdraw an offer to lease an area from the sale.

As stated above, BOEMRE may consider using the multiple-factor auction format in addition to the three other auction formats described at 30 CFR 285.220. If BOEMRE were to use a multiple-factor auction format, the evaluation of bids would be made by a panel composed of members selected by BOEMRE, and factors that BOEMRE may choose to include in the auction could be selected from a wide array of options. Factors that BOEMRE may consider for inclusion in this auction process are: Demonstration of prior diligence in the proposed Call area and in working with the state; lease revenues; technical merit; project experience; credit and security; power purchase arrangements; timeliness; financing and economics; environmental considerations; public benefits; and compatibility with state and local needs. Other factors based on the New Jersey Offshore Wind Economic Development Act may also receive consideration by BOEMRE. These factors would be identified in the FSN.

If BOEMRE were to use a multiple-factor auction format, it is possible that a negotiation stage may be included in the bid assessment criteria, to be used if it becomes necessary to modify a proposal prior to acceptance. BOEMRE would coordinate with the State of New Jersey and other stakeholders, as appropriate, to establish procedures designed to assure the selection of the most worthy proposal that would provide a fair return to the United States pursuant to subsection 8(p) of the OCS Lands Act, as amended by Section 388 of the EPAct (43 U.S.C. 1337(p)(3)).

(5) *Issuance of a Lease:* Following the selection of a winning bid by BOEMRE, the submitter would be notified of the decision and provided a set of official lease forms for execution. The successful bidder would be required to execute the lease, pay the remainder of the bonus bid, if applicable, and file the required financial assurance within 10 days of receiving the lease copies. Upon receipt of the required payments, financial assurance, and properly executed lease forms, BOEMRE would issue a lease to the successful bidder.

Noncompetitive Leasing Process

If, after evaluating the responses to this notice, BOEMRE determines that there is no competitive interest in a proposed lease area, it may proceed with the noncompetitive lease issuance process pursuant to 30 CFR 285.232, consulting with the BOEMRE/New Jersey Task Force, as appropriate. BOEMRE would ask if the respondent wants to proceed with acquiring the lease, and if so, the respondent must submit an acquisition fee as specified within 30 CFR 285.502(a). After receiving the acquisition fee, BOEMRE would follow the process outlined in 30 CFR 285.231(b) through (i), which would entail publication of a Notice of Proposed Lease Area and Request for Competitive Interest (RFCI) for the proposed area considered for noncompetitive leasing. If the RFCI results in no indications of competitive interest, BOEMRE would publish a notice in the **Federal Register** announcing a determination of no competitive interest. Within 60 days of the date of that notice, the respondent would be required to submit a Site Assessment Plan (SAP), as described in 30 CFR 285.231(d)(2)(i).

BOEMRE will comply with the requirements of NEPA, CZMA, ESA, NHPA, MMPA, and other applicable Federal statutes when in the process of issuing a lease noncompetitively. BOEMRE would coordinate and consult, as appropriate, with relevant Federal agencies, affected tribes, and affected state and local governments, in issuing a noncompetitive lease and developing lease terms and conditions.

It is possible that responses to this notice may result in a determination that there is competitive interest for some areas but not for others. BOEMRE will announce publicly its determinations before proceeding with a competitive process, a noncompetitive process, or both.

Description of the Area

The Call area offshore New Jersey contains 43 whole OCS blocks and 34 partial blocks. The boundary begins 7 nmi from the shore and extends roughly 23 nmi seaward. It extends from southwest to northeast approximately 45 nmi between Avalon and Barnegat

Light. The entire area is approximately 418 square nautical miles.

The following 43 full OCS blocks are included within the Call area: Wilmington NJ18–02 Blocks 6439, 6488, 6489, 6539, 6588, 6637, 6638, 6687, 6688, 6689, 6736, 6737, 6738, 6739, 6740, 6786, 6787, 6788, 6789, 6836, 6837, 6838, 6886, 6887, 6933, 6934, 6935, 6936, 6983, 6984, 6985, 7032, 7033, 7034, 7080, 7081, 7082, 7083, 7131, 7132; Salisbury NJ18–05 Blocks 6031, 6032, and 6081. In addition, parts of the following 34 OCS blocks are included within the area of interest: Wilmington NJ18–02 Blocks 6389, 6438, 6589, 6636, 6639, 6735, 6784, 6785, 6790, 6833, 6834, 6835, 6839, 6840, 6883, 6884, 6885, 6888, 6889, 6931, 6932, 6937, 6938, 6982, 6986, 6987, 7030, 7031, 7035, 7036, 7084, 7085, 7133, and 7134 as described in the table below.

LIST OF PARTIAL OCS BLOCKS IN THE CALL AREA

Protraction name	Protraction No.	Block No.	Sub block
Wilmington	NJ18–02	6389	C, D, G, H, K, L, O, P
Wilmington	NJ18–02	6438	D, G, H, K, L, O, P
Wilmington	NJ18–02	6589	A, B, C, D, E, F, G, H, I, J, K, L, M, N
Wilmington	NJ18–02	6636	C, D, G, H
Wilmington	NJ18–02	6639	A, B, E, F, I, J, M, N, O, P
Wilmington	NJ18–02	6735	C, D, G, H, K, L, O, P
Wilmington	NJ18–02	6784	K, L, O, P
Wilmington	NJ18–02	6785	C, D, G, H, I, J, K, L, M, N, O, P
Wilmington	NJ18–02	6790	A, B, C, D, E, F, G, H, I, J, K, M, N
Wilmington	NJ18–02	6833	C, D, F, G, H, I, J, K, L, M, N, O, P
Wilmington	NJ18–02	6834	C, D, I, M, N
Wilmington	NJ18–02	6835	A, B, C, D, E, F, G, H, J, K, L, O, P
Wilmington	NJ18–02	6839	A, B, C, D, E, F, G, H, I, J, K, M, N
Wilmington	NJ18–02	6840	A
Wilmington	NJ18–02	6883	A, B, E, F, I, J, M, N
Wilmington	NJ18–02	6884	A, B, E, F, G, I, J, K, L, M, N, O, P
Wilmington	NJ18–02	6885	C, D, G, H, I, J, K, L, M, N, O, P
Wilmington	NJ18–02	6888	A, B, C, D, E, F, G, H, I, J, K, M, N, O
Wilmington	NJ18–02	6889	A
Wilmington	NJ18–02	6931	H, K, L, N, O, P
Wilmington	NJ18–02	6932	A, B, C, D, E, F, G, H
Wilmington	NJ18–02	6937	A, B, C, D, E, F, G, H, I, J, K, L, M, N, O
Wilmington	NJ18–02	6938	A, B, E
Wilmington	NJ18–02	6982	I, J, K, L, M, N, O, P
Wilmington	NJ18–02	6986	A, B, C, D, E, F, G, H, I, J, K, L, M, N, O
Wilmington	NJ18–02	6987	A, B, E
Wilmington	NJ18–02	7030	B, C, D, E, F, G, H, I, J, K, L, M, N, O, P
Wilmington	NJ18–02	7031	I, J, K, L, M, N, O, P
Wilmington	NJ18–02	7035	A, B, C, D, E, F, G, H, I, J, K, L, M, N, O
Wilmington	NJ18–02	7036	A, B, E
Wilmington	NJ18–02	7084	A, B, C, D, E, F, G, H, I, J, K, L, M, N, O
Wilmington	NJ18–02	7085	A, B, E
Wilmington	NJ18–02	7133	A, B, C, D, E, F, G, H, I, J, K, L, M, N, O
Wilmington	NJ18–02	7134	A, B, E

Map of the Call Area

A map of the area and a table of the Call boundary coordinates in X, Y (eastings, northings) UTM Zone 18, NAD83 Datum and geographic X, Y (longitude, latitude), NAD83 Datum can be found at the following URL: *http://www.boemre.gov/offshore/RenewableEnergy/stateactivities.htm#New Jersey.* A large scale map of the Call area showing boundaries of the area with numbered blocks is available from BOEMRE at the following address: Bureau of Ocean Energy Management, Regulation and Enforcement, Office of Offshore Alternative Energy Programs, 381 Elden Street, Mail Stop 4090, Herndon, Virginia 20170, Phone: (703) 787–1300, Fax: (703) 787–1708.

Development of the Call Area

The Call area was delineated through consultation with the BOEMRE/New Jersey Renewable Energy Task Force and is intended to provide for the protection of ecologically sensitive areas

and minimize user conflicts while making an appropriate area available for commercial offshore wind development. Specific mitigation, stipulations, or exclusion areas may be developed as a result of environmental reviews and associated consultations, as well as continued coordination through the BOEMRE/New Jersey Renewable Energy Task Force, and applied at the leasing and/or at the construction and operations stages. Issues raised through consultation with the BOEMRE/New Jersey Task Force and areas where site-specific stipulations may be required, are described below.

Results of New Jersey's Ocean/Wind Power Ecological Baseline Studies

The New Jersey WEA and Call area was developed using the boundary of New Jersey's Ocean/Wind Power Ecological Baseline Studies (OWPEBS) as a base. The results of the OWPEBS (*http://www.nj.gov/dep/dsr/ocean-wind/report.htm*) helped to identify areas that may not be suitable for development, based on features ranging from physical obstructions and usages to the presence and density of biological resources including avian populations and aquatic habitat. Areas that were removed from consideration include:

- The northern portion of the OWPEBS area, which includes a major shipping lane and additional telecommunications cables. High bird densities are also present in this area due to a number of shoals and artificial underwater features, which have shown to be positively correlated with avian populations.
- The southernmost section of the OWPEBS area where a large number of shoals and biological resources are concentrated (e.g. birds, marine mammals, sea turtles), which increases the area's sensitivity to development and includes Marine Protected Areas (MPAs) and Essential Fish Habitat (EFH).
- The state boundary to 7 nmi line where the OWPEBS identified that avian density markedly decreased moving from inshore to offshore, with a steep decline observed at approximately 7 nmi. The area from the state boundary to the 7 nmi limit is excluded due to high avian densities, as well as for the numerous shipwrecks, reefs, and shoals that tend to occur in this zone, in addition to higher human activity from recreational and commercial vessels (e.g. the Tug Barge Transit Route roughly follows this 7 nmi line).

Additional areas of exclusion were determined using the environmentally sensitive categories defined in the OWPEBS, which are listed below in order of priority. The areas removed from consideration from the area are primarily based on the first four categories.

1. No Build Areas (i.e. shipping lanes, traffic separation schemes (TSS), pipelines and cables, artificial reefs, and shipwrecks)—Development is excluded in blocks containing some of these features (e.g., shipping lanes) since they would directly and adversely affect shipping. Buffer areas may also be required to avoid impacts.
2. Shoals—Should be avoided since they function as feeding grounds and nurseries for various pelagic and bottom-dwelling species, as well as serve as fishing/feeding hotspots for recreational and commercial fishermen, birds, sea turtles and marine mammals.
3. High Avian Densities—Areas with high avian densities are mostly concentrated in state waters along the coast. However, some hotspots can be found offshore, usually associated with shoals or other unique bottom features and/or oceanographic dynamics. Adverse effects may occur due to the greater potential for in-flight mortality due to collisions with wind turbines, avoidance behaviors caused by the disturbance/presence of turbines and/or disturbance of bottom features.
4. Distance from Shore—The results of the OWPEBS found that birds, certain marine mammals and other resources occur in higher densities closer to shore. As stated above, bird activity decreases markedly beyond 7 nmi from the coast. Therefore, some environmental impacts would generally be expected to be reduced with increasing distance from the shoreline.
5. Fishing Hot Spots—Although usually associated with shoals, other natural and artificial bottom features can contribute to fisheries productivity, and should be avoided when possible.
6. Marine Mammals and Sea Turtles—As shown in the OWPEBS, marine mammal and sea turtles densities are roughly evenly distributed throughout the study area, and low in number (with the exception of dolphins). However, marine mammal and sea turtle densities are often found to be higher near underwater features such as shoals and ridges.
7. Essential Fish Habitat (EFH)—EFHs, although not well defined in the study area, are present for numerous fish species, and are known to use the area during all or some life stages. In some cases, EFHs in the Study Area overlap (especially in the South), increasing impact potential.

Traffic Separation Scheme

The area analyzed in the OWPEBS encompassed a portion of the Traffic Separation Scheme (TSS) in the approaches to New York and a traditional transit route utilized by tugs and barge operators. Based on recommendations by the U.S. Coast Guard, and considering the lack of information currently available to assess vessel traffic types, densities, and routing direction of vessels leaving the TSS, BOEMRE determined that OCS blocks within and directly south of the TSS should not be included in the area identified in this notice. OCS blocks within one nautical mile of an identified traditional tug and barge transit route were also removed from consideration.

Department of Defense Activities

The Department of Defense (DOD) conducts offshore testing, training, and operations on the OCS. The area was refined based on DOD assessments of compatibility between commercial offshore wind development and DOD testing, training and operations. OCS Blocks determined to be incompatible with these activities were removed from consideration.

Department of Defense Potential Stipulations

BOEMRE is aware that portions of the area lie within OCS blocks where site specific conditions and stipulations may need to be developed to ensure that projects are compatible with DOD activities. The DOD may request site specific stipulations in the following 28 whole lease blocks: Wilmington NJ18–02 Blocks 6638, 6688, 6689, 6737, 6738, 6739, 6740, 6786, 6787, 6788, 6789, 6836, 6837, 6838, 6886, 6887, 6934, 6935, 6936, 6983, 6984, 6985, 7032, 7033, 7034, 7081, 7082, and 7083. In addition, parts of the following 34 blocks may require site specific stipulations: Wilmington NJ18–02 Blocks 6489, 6539, 6588, 6589, 6637, 6639, 6687, 6736, 6785, 6790, 6835, 6839, 6840, 6884, 6885, 6888, 6889, 6933, 6937, 6938, 6982, 6986, 6987, 7031, 7035, 7036, 7080, 7084, 7085, 7131, 7132, 7133, 7134; and Salisbury NJ18–05 Block 6032 as described in the table below.

OCS PARTIAL BLOCKS SUBJECT TO DOD SITE SPECIFIC STIPULATIONS

Protraction name	Protraction No.	Block No.	Sub block
Wilmington	NJ18–02	6489	H, L, O, P
Wilmington	NJ18–02	6539	B, C, D, F, G, H, I, J, K, L, M, N, O, P
Wilmington	NJ18–02	6588	D, G, H, J, K, L, N, O, P
Wilmington	NJ18–02	6589	A, B, C, D, E, F, G, H, I, J, K, L, M, N
Wilmington	NJ18–02	6637	L, O, P
Wilmington	NJ18–02	6639	A, B, E, F, I, J, M, N, O, P
Wilmington	NJ18–02	6687	B, C, D, F, G, H, I, J, K, L, M, N, O, P
Wilmington	NJ18–02	6736	D, G, H, K, L, N, O, P
Wilmington	NJ18–02	6785	L, O, P
Wilmington	NJ18–02	6790	A, B, C, D, E, F, G, H, I, J, K, M, N
Wilmington	NJ18–02	6835	C, D, F, G, H, J, K, L, O, P
Wilmington	NJ18–02	6839	A, B, C, D, E, F, G, H, I, J, K, M, N
Wilmington	NJ18–02	6840	A
Wilmington	NJ18–02	6884	A, G, K, L, M, N, O, P
Wilmington	NJ18–02	6885	C, D, G, H, I, J, K, L, M, N, O, P
Wilmington	NJ18–02	6888	A, B, C, D, E, F, G, H, I, J, K, M, N, O
Wilmington	NJ18–02	6889	A
Wilmington	NJ18–02	6933	D, F, G, H, I, J, K, L, M, N, O, P
Wilmington	NJ18–02	6937	A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P
Wilmington	NJ18–02	6938	A, B, E
Wilmington	NJ18–02	6982	I, J, K, L, M, N, O, P
Wilmington	NJ18–02	6986	A, B, C, D, E, F, G, H, I, J, K, L, M, N, O
Wilmington	NJ18–02	6987	A, B, E
Wilmington	NJ18–02	7031	I, J, K, L, M, N, O, P
Wilmington	NJ18–02	7035	A, B, C, D, E, F, G, H, I, J, K, L, M, N, O
Wilmington	NJ18–02	7036	A, B, E
Wilmington	NJ18–02	7080	C, D, G, H, L
Wilmington	NJ18–02	7084	A, B, C, D, E, F, G, H, I, J, K, L, M, N, O
Wilmington	NJ18–02	7085	A, B, E
Wilmington	NJ18–02	7131	B, C, D, G, H, L
Wilmington	NJ18–02	7132	A, B, C, D, E, F, G, H, I, J, K, L, N, O, P
Wilmington	NJ18–02	7133	A, B, C D, E, F, G, H, I, J, K, L, M, N, O
Wilmington	NJ18–02	7134	A, B, E
Salisbury	NJ18–05	6032	C, D, H

These stipulations could include but may not be limited to: Hold and save harmless agreements; mandatory coordination with DOD on specified activities; restrictions on electromagnetic emissions; and evacuation procedures from the lease area for safety reasons when notified by the DOD.

Existing Interim Policy Leases Offshore New Jersey

On November 1, 2009, BOEMRE executed three IP leases within the Call area, which, pending submittal of an adequate project plan, authorize the construction, installation, and operation of meteorological towers or buoys for a term of five years, to three developers offshore New Jersey. The location of each lease, the name of lease holder and the lease number are listed below.

INTERIM POLICY LEASES OFFSHORE NEW JERSEY

Protraction name	Protraction No.	Block No.	Sub block	Lease holder	Lease No.
Wilmington	NJ18–02	6931	H, K, L, N, O, P	Fishermen's Energy of New Jersey LLC	OCS–A–0473
Wilmington	NJ18–02	6936		Bluewater Wind New Jersey Energy LLC	OCS–A–0475
Wilmington	NJ18–02	7033		Deepwater Wind LLC	OCS–A–0472

These leases do not confer a right to develop a commercial offshore wind project. Rather, the leases grant the exclusive right, pending submittal of an adequate project plan, to conduct the activities authorized by their lease, which are limited to installing and operating facilities to characterize wind and environmental resources. The installation of meteorological towers or meteorological buoys on those leases is anticipated to begin in mid-2011 with lease expiration on November 1, 2014. Applicants should be aware that while an IP lease area can be nominated for commercial development, the IP lease holder's rights are preserved until the lease's expiration date. Electronic copies of the executed lease can be found at: *http://www.boemre.gov/offshore/RenewableEnergy/Projects.htm*

Required Nomination Information

If you intend to submit a nomination for a commercial lease from BOEMRE for the development of wind resources in the area(s) identified in this notice, you must provide the following:

(1) The BOEMRE Protraction name, number, and specific whole or partial OCS blocks or sub-blocks within the Call area that are of interest for commercial wind leasing, including any required buffer area. If your proposed project area includes one or more partial blocks please describe those partial blocks in terms of a sixteenth (i.e. sub-block) of an OCS block. Note that any nomination identifying areas greater than what would be reasonably necessary to develop a proposed commercial wind facility may not be considered as a valid nomination. In addition, BOEMRE will not consider any areas outside of the Call area in this process;

(2) A description of your objectives and the facilities that you would use to achieve those objectives, including: devices and infrastructure involved; anticipated power production and likely purchasers; a statement that the proposed activity conforms with state and local energy planning requirements, initiatives or guidance, as applicable;

(3) A schedule of proposed activities, including those leading to commercial operations;

(4) Available and pertinent data and information concerning renewable energy resources and environmental conditions in the Call area, including energy and resource data and information used to evaluate the Call area; and

(5) Documentation demonstrating that you are qualified to hold a lease as set forth in 30 CFR 285.107, including documentation demonstrating that you are technically and financially capable of constructing, operating, maintaining, and decommissioning the facilities described in (2) above. Guidance and examples of the appropriate documentation demonstrating your legal qualifications can be found in Chapter 2 and Appendix B of the BOMRE Renewable Energy Framework Guide Book available at: *http://www.boemre.gov/offshore/RenewableEnergy/PDFs/REnGuidebook_03August2009_3_.pdf.*

Guidance regarding how you may demonstrate your technical and financial qualifications can be found at: *http://www.boemre.gov/offshore/RenewableEnergy/RegulatoryInformation.htm.* Documentation you submit to demonstrate your legal, technical, and financial qualifications need to be provided to BOEMRE in both paper and electronic formats. BOEMRE considers an Adobe.pdf file stored on a compact disc (CD) to be an acceptable format for submitting an electronic copy.

It is critical that you submit a complete nomination so that BOEMRE may proceed with the commercial wind leasing process offshore New Jersey in a timely manner. If BOEMRE reviews your nomination and determines that it is incomplete, BOEMRE will inform you of this determination in writing. This letter will describe the information that BOEMRE determined to be missing from your nomination, and that you must submit in order for BOEMRE to deem your submission complete. You will be given 15 business days from the date of the letter to submit the information that BOEMRE found to be missing from your original submission. If you do not meet this deadline, or if BOEMRE determines this second submittal to be insufficient as well, then BOEMRE retains the right to deem your nomination invalid. In that case, BOEMRE would not continue processing your nomination submitted in response to this Call.

Note that the 15 business day compliance period referenced in the paragraph above does not apply to the process to legally qualify your company to hold an OCS renewable energy lease. BOEMRE will make a separate determination regarding whether the information you have submitted is sufficient for BOEMRE to determine whether you are legally qualified to hold a renewable energy lease. The 15 business day compliance period referenced in the paragraph above applies to the remainder of your documentation required under 1–5 above, including the information you should submit in order to demonstrate your technical and financial capability to construct, operate, maintain, and decommission your proposed facilities.

Requested Information From Interested or Affected Parties

BOEMRE is requesting specific and detailed comments describing the following conditions in the area identified:

(1) Geological conditions (including bottom and shallow hazards);

(2) Archeological and cultural resource sites on the seabed or nearshore;

(3) Historic properties potentially affected by commercial wind development in the area identified in this Call;

(4) Multiple uses of the area, including navigation (in particular, commercial and recreational vessel use), recreation, and fisheries (commercial and recreational);

(5) Other relevant socioeconomic, biological, and environmental information.

Protection of Privileged or Confidential Information

Freedom of Information Act

BOEMRE will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly mark it and request that BOEMRE treat it as confidential. BOEMRE will not disclose such information, subject to the requirements of FOIA. Please label privileged or confidential information "Contains Confidential Information" and consider submitting such information as a separate attachment.

However, BOEMRE will not treat as confidential any aggregate summaries of such information or comments not containing such information. Additionally, BOEMRE will not treat as confidential (1) the legal title of the nominating entity (for example, the name of your company), or (2) the list of whole or partial blocks that you are nominating. Finally, information that is not labeled as privileged or confidential will be regarded by BOEMRE as suitable for public release.

Section 304 of the National Historic Preservation Act (16 U.S.C. 470w–3(a))

BOEMRE is required, after consultation with the Secretary, to withhold the location, character, or ownership of historic resources if it

determines that disclosure may, among other things, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities should designate information that falls under Section 304 of NHPA as confidential.

Dated: April 11, 2011.

Michael R. Bromwich,

Director, Bureau of Ocean Energy Management, Regulation and Enforcement.

[FR Doc. 2011–9545 Filed 4–19–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

Gulf of Mexico (GOM), Outer Continental Shelf (OCS), Western Planning Area (WPA), Oil and Gas Lease Sale for the 2007–2012 5-Year OCS Program

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Notice of Availability (NOA) of a Draft Supplemental Environmental Impact Statement (SEIS) and Public Meetings.

SUMMARY: BOEMRE has prepared a Draft SEIS on an oil and gas lease sale tentatively scheduled in late 2011 for WPA Lease Sale 218, which is the final WPA lease sale in the 2007–2012 5–Year OCS Program. The proposed sale is in the Gulf of Mexico's WPA off the States of Texas and Louisiana. This Draft SEIS updated the environmental and socioeconomic analyses for the WPA Lease Sale 218, originally evaluated in the Gulf of Mexico OCS Oil and Gas Lease Sales: 2007–2012; WPA Sales 204, 207, 210, 215, and 218; Central Planning Area (CPA) Sales 205, 206, 208, 213, 216, and 222, Final EIS (OCS EIS/EA MMS 2007–018) (Multisale EIS), completed in April 2007. This Draft SEIS also updated the environmental and socioeconomic analyses for the WPA Lease Sale 218 in the GOM OCS Oil and Gas Lease Sales: 2009–2012; CPA Sales 208, 213, 216, and 222; WPA Sales 210, 215, and 218; Final Supplemental EIS (OCS EIS/EA MMS 2008–041) (2009–2012 SEIS), completed in September 2008.

DATES: Public meetings to obtain additional comments and information regarding the Draft SEIS scheduled for May 17, 2011, and May 19, 2011. For additional information see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For more information on the Draft SEIS or the public meetings, you may contact Mr. Gary D. Goeke, Bureau of Ocean Energy Management, Regulation and Enforcement, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard (MS 5412), New Orleans, Louisiana 70123–2394, or by e-mail at *WPASupplementalEIS@boemre.gov.* You may also contact Mr. Goeke by telephone at (504) 736–3233.

SUPPLEMENTARY INFORMATION: BOEMRE developed the Draft SEIS for WPA Lease Sale 218 to reflect new information made available since completion of the Multisale EIS and the 2009–2012 SEIS and to consider the *Deepwater Horizon* event. This Draft SEIS provides updates on the baseline conditions and potential environmental effects of oil and natural gas leasing, exploration, development, and production in the WPA. BOEMRE conducted an extensive search for such new information, from scientific journals; interviews with personnel from academic institutions; Federal, state, and local agencies; and various other sources. BOEMRE has reexamined potential impacts of routine activities and accidental events, including a possible large-scale event, associated with the proposed WPA lease sale. BOEMRE has also re-analyzed the proposed lease sale's incremental contribution to the cumulative impacts on environmental and socioeconomic resources. Like the Multisale EIS and the 2009–2012 SEIS, the oil and gas resource estimates and scenario information for this Draft SEIS are presented as a range that would encompass the resources and activities estimated for this proposed lease sale.

Draft Supplemental EIS Availability: To obtain a single printed or CD–ROM copy of the Draft SEIS for WPA Lease Sale 218, you may contact BOEMRE, Gulf of Mexico OCS Region, Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). An electronic copy of the Draft SEIS (as well as links to the Multisale EIS and the 2009–2012 SEIS) is available at BOEMRE's Internet Web site at *http://www.gomr.boemre.gov/homepg/regulate/environ/nepa/nepaprocess.html.* The CD–ROM version of the Draft SEIS also contains copies of the Multisale EIS and the 2009–2012 SEIS.

Several libraries along the Gulf Coast have been sent copies of the Draft SEIS. To find out which libraries and their locations have copies of the Draft Supplemental EIS for review, you may contact BOEMRE's Public Information Office or visit BOEMRE's Internet Web site at *http://www.gomr.boemre.gov/homepg/regulate/environ/libraries.html.*

Comments: Federal, State, and local government agencies and other interested parties are requested to send their written comments on the Draft Supplemental EIS in one of the following two ways:

1. In written form enclosed in an envelope labeled "Comments on the WPA Lease Sale 218 Draft Supplemental EIS" and mailed (or hand carried) to the Regional Supervisor, Leasing and Environment (MS 5410), Bureau of Ocean Energy Management, Regulation and Enforcement, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

2. Electronically to the BOEMRE e-mail address: *WPASupplementalEIS@boemre.gov.* Comments should be submitted no later than 45 days from the publication of this NOA.

Public Meetings: BOEMRE will hold public meetings to obtain additional comments and information regarding the Draft SEIS. These meetings are scheduled as follows:

- Tuesday, May 17, 2011; Houston Airport Marriott at George Bush Intercontinental, 18700 John F. Kennedy Boulevard, Houston, Texas 77032, beginning at 1 p.m. and 6 p.m. CDT; and
- Thursday, May 19, 2011, Bureau of Ocean Energy Management, Regulation and Enforcement, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123, beginning at 1 p.m. and 6 p.m. CDT.

Authority: This NOA is published pursuant to the regulations (40 CFR 1503) implementing the provisions of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.* (1988)).

Dated: April 18, 2011.

L. Renee Orr,

Acting Associate Director for Offshore Energy and Minerals Management.

[FR Doc. 2011–9701 Filed 4–19–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2011–N019; [10120–1113–0000–C4]

Endangered and Threatened Wildlife and Plants; 5-Year Status Reviews of Three Species in Washington, Oregon, and California; Reopening of Public Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, recently initiated 5-year reviews for the Oregon silverspot butterfly (*Speyeria zerene hippolyta*), northern spotted owl (*Strix occidentalis caurina*), and *Stephanomeria malheurensis* (Malheur wire-lettuce) under the Endangered Species Act of 1973, as amended (Act). See **SUPPLEMENTARY INFORMATION** for details. Because we may not have received some comments submitted by email, we now reopen the comment period. We request any new information on these species that may have a bearing on their classification as endangered or threatened. Based on the results of our 5-year reviews we will determine whether these species are properly classified under the Act.

DATES: To ensure consideration in our reviews, we are requesting submission of new information no later than May 20, 2011. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Submit information to: Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Suite 100, Portland, OR 97266. Information can also be submitted by e-mail to: *fw1or5yearreview@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Jeff Dillon, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 503–231–6179. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at (800) 877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION: On November 24, 2010, we published a notice initiating 5-year reviews for 58 species in Washington, Oregon, California, and Hawaii and requesting public comment for a 60-day comment period (75 FR 71726). Due to a typographical error in the email address for the Oregon Fish and Wildlife Office, we may not have received some comments for three of these species (Oregon silverspot butterfly, northern spotted owl, and *Stephanomeria malheurensis*) if they were submitted by email. Therefore, we are reopening the comment period for these three species to allow comments to be resubmitted if necessary. Comments that were originally sent by regular mail, or comments addressing the other 55 species in the original notice, need not be resubmitted.

Please refer to our notice of November 24, 2010, for background information on the 5-year review process. As stated in that notice, to ensure that a 5-year review is complete and based on the best available scientific and commercial information, we request new information from all sources. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available 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.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices where the comments are submitted.

Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 8, 2011.

Richard R. Hanman,

Acting Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 2011–9542 Filed 4–19–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2010–N267; BAC–4311–K9–S3]

Parker River and Thacher Island National Wildlife Refuges, Essex County, MA; Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; announcement of public meetings; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and environmental assessment (EA) for Parker River and Thacher Island National Wildlife Refuges (NWR). We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process. We are also announcing public meetings and requesting public comments.

DATES: To ensure consideration, please send your written comments by May 20, 2011. We will hold public meetings and other scheduled events throughout the CCP planning process. We will announce opportunities for public input in local news media throughout the CCP process.

ADDRESSES: Send your comments or requests for more information by any of the following methods.

E-mail: northeastplanning@fws.gov. Include "Parker River CCP" in the subject line of the message.

Fax: Attention: Graham Taylor, at 978–465–2807.

U.S. Mail: Parker River NWR, 6 Plum Island Turnpike, Newburyport, MA 01950.

In-Person Drop-off: You may drop off comments during regular business hours or call for an appointment (978–465–5753) at Parker River NWR, 6 Plum Island Turnpike, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Carl Melberg, Planning Team Leader, at 978–443–4661, or *carl_melberg@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for Parker River and Thacher Island NWRs, in Essex County, Massachusetts. This notice complies with our CCP policy to: (1) Advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on these refuges, and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year

plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the NWRS mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this time, we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of Parker River and Thacher Island NWRs.

We will conduct the environmental review of this project and develop an EA in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et seq.); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Parker River and Thacher Island National Wildlife Refuges

Parker River NWR was established in 1942 to provide feeding, resting, and nesting habitat for migratory birds. The refuge occupies 4,653 acres on Plum Island, a 9-mile-long barrier island off the northeastern coast of Massachusetts, and is a vital stopover site along the Atlantic Flyway for waterfowl, shorebirds, and songbirds. The primary purpose of Parker River NWR is to preserve and manage habitat for a diversity of species, particularly migratory birds and wintering American black ducks. A focus of management is to serve as a land management, research, and demonstration area for salt marsh systems. Adjacent to the refuge, and at the extreme southern tip of Plum Island, is the 77-acre Sandy Point State Reservation. This park's only overland access is through the refuge.

Parker River NWR staff also administer Thacher Island NWR, an unstaffed satellite refuge off the coast of Rockport, Massachusetts. Thacher Island NWR encompasses the northern 22 acres of the 50-acre island, and was established in 1972 to provide feeding, resting, and nesting habitat for migratory birds. The refuge is managed to protect migratory birds, endangered species and other wildlife and their habitats.

Scoping: Preliminary Issues, Concerns, and Opportunities

We have identified preliminary issues, concerns, and opportunities that we may address in the CCP. We have briefly summarized these issues below. During public scoping, we may identify additional issues.

Concerns about the management of several key habitats on the refuges include the protection of the beach/dune for Federally endangered piping plovers and roseate terns, and marsh habitat for saltmarsh sparrows, bitterns and rails, all of which are species of conservation concern. Manmade impoundments provide freshwater wetlands for priority bird species, but these modified habitats are threatened by sea level rise. The feasibility of their long-term maintenance, in comparison to restoring native habitats, will be evaluated. A recent sea level rise study predicts that Plum Island's natural and cultural resources are imminently threatened. Management of native grasslands and maritime shrub, which currently require prescribed fire and mechanical treatments for restoration and maintenance, will also be evaluated. Water quantity and quality issues on the refuge and in the surrounding watershed are additional habitat issues.

Concerns about the management of the barrier island system as a unit involves issues of public access, visitor use, and vehicle "carrying capacity" in relation to the adjacent State reservation's differing management and enforcement of recreation. Parking lot and seasonal beach closures to protect key refuge and adjacent State reservation resources result in traffic and visitor use challenges. Also complicating management is the ability of the refuge to provide quality compatible use, as general beach use often precludes wildlife-dependent priority public uses.

Many partnerships are in place and other key opportunities exist with the Massachusetts Department of Conservation and Recreation, as well as with refuge neighbor Massachusetts Audubon Society, which provides programming and tours on the refuge. These relationships, however, also raise issues related to refuge visibility and visitor and community awareness of refuge ownership and management.

Public Meetings

We will give the public an opportunity to provide input throughout the planning process at public meetings and other scheduled events. You can obtain schedules and meeting information from the planning team leader or project leader (see **ADDRESSES**). You may also send comments anytime during the planning process by mail, e-mail, or fax (see **ADDRESSES**). There will be additional opportunities to provide public input once we have prepared a draft CCP.

Public Availability of Comments

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: April 8, 2011.

Wendi Weber,

Acting Regional Director, U.S. Fish and Wildlife Service, Hadley, MA 01035.

[FR Doc. 2011–9541 Filed 4–19–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–11–L19100000–BJ0000–LRCME0R04773]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in

the BLM Montana State Office, Billings, Montana, on May 20, 2011.

DATES: Protests of the survey must be filed before May 20, 2011 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Steve Toth, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5121 or (406) 896–5009. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Indian Affairs, Rocky Mountain Region, Billings, Montana, and was necessary to determine individual and tribal trust lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 27 N., R. 51 E.

The plat, in one sheet, representing the dependent resurvey of a portion of the subdivisional lines, a portion of the subdivision of sections 17 and 20, the adjusted original meanders of the former left bank of the Missouri River, downstream through sections 17, 18, and 20, and a division of accretion line, the subdivision of section 17, and the survey of the meanders of the present left bank of the Missouri River and informative traverse, downstream, through sections 17 and 20, the left bank and medial line of a relicted channel of the Missouri River, in front of section 17, the informative traverse of a former left bank of the Missouri River, certain division of accretion and partition lines, and an attached island, now designated as Tract 46 in Township 27 North, Range 51 East, Principal Meridian, Montana, was accepted April 8, 2011.

We will place a copy of the plat, in one sheet, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in one sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in one sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

Dated: April 14, 2011.

James D. Claflin

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2011–9547 Filed 4–19–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON00000 L10200000 DF0000.LXSS080C0000]

Notice of Public Meeting, Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest Colorado Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Northwest Colorado RAC has scheduled its remaining 2011 meetings for June 9, August 18, and December 1.

ADDRESSES: The June 9 meeting will be held in Kremmling, Colorado, at the Arlington Inn and Suites, 215 W. Central Ave. The August 18 meeting will be in Craig, Colorado, at the Hampton Inn and Suites, 377 Cedar Court. The December 1 meeting will be in Gateway, Colorado, at the Gateway Canyons Resort, 43200 Colorado Highway 141. Each meeting will begin at 8 a.m. and adjourn at approximately 3 p.m., with public comment periods regarding matters on the agenda at 10 a.m. and 2 p.m.

FOR FURTHER INFORMATION CONTACT: David Boyd, Public Affairs Specialist, Colorado River Valley Field Office, 2300 River Frontage Road, Silt, CO. (970) 876–9008. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Northwest Colorado RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues in Colorado.

Topics of discussion during Northwest Colorado RAC meetings may include the BLM National Sage Grouse Conservation Strategy, working group reports, recreation, fire management, land use planning, invasive species management, energy and minerals management, travel management, wilderness, wild horse herd management, land exchange proposals, cultural resource management, and other issues as appropriate. These meetings are open to the public. The public may present written comments to the RACs. Each formal RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Subcommittees under this RAC meet regarding the McInnis Canyon National Conservation Area, Resource Management Plan revisions for the Colorado River Valley, Kremmling, and Grand Junction field offices, and the White River Field Office Resource Management Plan Oil and Gas Amendment. Subcommittees report to the NW RAC at each council meeting. Subcommittee meetings are open to the public. More information is available at *http://www.blm.gov/co/st/en/BLM_Resources/racs/nwrac.html.*

Dated: April 15, 2011.

Helen M. Hankins,

State Director.

[FR Doc. 2011–9535 Filed 4–19–11; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0411–7108; 2280–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before April 1, 2011. Pursuant to section 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by May 5, 2011. 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.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ARKANSAS

Cleburne County

Old Highway 16 Bridge, Lakefront Resort Rd., Edgemont, 11000262

GEORGIA

Coweta County

Vinewood, 1324 Roscoe Rd., Newnan, 11000263

Troup County

Westside Historic District, Roughly bounded by W. 10th St., the GA–AL state line, W. 15th St. & the Chattahoochee R., West Point, 11000264

MASSACHUSETTS

Essex County

Community House, 284 Bay Rd., Hamilton, 11000265
Saunders, Daniel, School, 243 S. Broadway, Lawrence, 11000266

Franklin County

Deerfield Valley Agricultural Society Fairgrounds, Park St., Charlemont, 1000267

NEW YORK

Albany County

University Club of Albany, The, 141 Washington Ave., Albany, 11000268

Broome County

Bundy, Harlow E., House, 129 Main St., Binghamton, 11000269

Erie County

20th Century Club, 595 Delaware Ave., Buffalo, 11000270
Buffalo Seminary, 205 Bidwell Pkwy., Buffalo, 11000271
Engine House # 2 & Hook & Ladder # 9, 310 Jersey St., Buffalo, 11000272
University Park Historic District, (Suburban Development of Buffalo, New York MPS) Portions of Larchmont Rd., Niagara Falls Blvd., Radcliffe Rd., University Ave., Allenhurst Rd., Pellhan Dr., Buffalo, 11000273

Greene County

Oak Hill Cemetery, NY 81, Oak Hill, 11000274

Niagara County

Herchell, Allan, Carousel Factory (Boundary Increase), 39 Geneva St., North Tonawanda, 11000276
Sheldon, Hazard H., House, 539 4th St., Niagara Falls, 11000275

Onondaga County

Ayling, John G., House, (Architecture of Ward Wellington Ward in Syracuse MPS), 223 DeWitt St., Syracuse, 11000277

Sullivan County

Forestburgh Town Hall, 305 Cty Rd. 48, Forestburgh, 11000278

WASHINGTON

Ferry County

Slagle, Jesse W. & Elizabeth, House, 912 S. Keller St., Republic, 11000279

King County

Allen, John B., School, 6532 Phinney Ave. N., Seattle, 11000280

A request for REMOVAL has been made for the following resource:

INDIANA

Vanderburgh County

Buckingham Apartments (Downtown Evansville MRA) 314–316 SE 3rd St., Evansville, 82000082

[FR Doc. 2011–9503 Filed 4–19–11; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Intent To Accept Proposals, Select One Lessee, and Contract for Hydroelectric Power Development at the Pueblo Dam River Outlet, a feature of the Fryingpan-Arkansas Project (Fry-Ark Project), Colorado

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent.

SUMMARY: Promoting responsible development of renewable energy and moving the Nation toward a clean energy future is a top priority of the Department of the Interior. The Department signed a Memorandum of Understanding in March 2010 intended to focus on opportunities for development of environmentally sustainable hydropower at existing Bureau of Reclamation (Reclamation) facilities. The Department, acting through the Reclamation will consider proposals for non-Federal development of hydroelectric power at Pueblo Dam River Outlet of the Fry-Ark Project, Colorado. Reclamation is considering such hydroelectric power development under a lease of power privilege. No Federal funds will be available for such hydroelectric power development. The Department will prioritize projects that appropriately balance increased energy generation with consideration of environmental impacts. The Western Area Power Administration (Western) would have the first opportunity to purchase and/or market the power that would be generated by such development under a lease of power privilege. The Fry-Ark Project is a Reclamation project. This Notice presents background information, proposal content guidelines, information concerning selection of one or more non-Federal entities to develop hydroelectric power at Pueblo Dam River Outlet, and power purchasing and/or marketing considerations. Interested entities are invited to submit a proposal on this project.

DATES: A written proposal and seven copies must be submitted on or before 12 p.m. (MDT), on August 19, 2011. A proposal will be considered timely only if it is received in the office of the Lease of Power Privilege Coordinator by or before 12 p.m. (MDT) on the designated date. Interested entities are cautioned that delayed delivery to this office due to failures or misunderstandings of the entity and/or of mail, overnight, or courier services will not excuse lateness and, accordingly, are advised to provide sufficient time for delivery. Late proposals will not be considered.

ADDRESSES: Written proposals and seven copies should be sent to Mr. George Gliko, Lease of Power Privilege Coordinator (GP–2200), Bureau of Reclamation, Great Plains Regional Office (GP–2200), P.O. Box 36900, Billings, MT 59107–6900.

Information related to Western's purchasing and/or marketing the power may be obtained at Western Area Power Administration, Rocky Mountain Region, Attn: Dave Neumayer, Power Marketing Manager, 5555 East

Crossroads Blvd., Loveland, CO 80538, Telephone: (970) 461–7322.

Information related to the operation and maintenance of Pueblo Dam and Reservoir may be obtained from Mr. Karl Thiel at the Bureau of Reclamation, Eastern Colorado Area Office, 11056 W County Road 18E, Loveland, CO 80537–9711, Telephone: (970) 962–4331.

FOR FURTHER INFORMATION CONTACT: Mr. George Gliko at (406) 247–7651.

Reclamation will be available to meet with interested entities only upon written request to the Lease of Power Privilege Coordinator at the above address. Reclamation reserves the right to schedule a single meeting and/or visit to address at once the questions of all entities that have submitted questions or requested site visits.

SUPPLEMENTARY INFORMATION: The Fry-Ark Project, located in south-central Colorado, was authorized for construction, including hydroelectric power, by Public Law 87–590; 76 stat. 389. Specifically, the act authorizes the Secretary of the Interior to construct, operate and maintain the Fryingpan-Arkansas Project, Colorado, in substantial accordance with House Document 187. House Document 187 states in several sections (Page 29, Section 45; Page 31, Section 49) that a project power system will be included as project features (including Pueblo Powerplant to be located at Pueblo Dam and Reservoir) and is authorized to be constructed, operated, and maintained. Reclamation operates and maintains Pueblo Dam and Reservoir. Reclamation has recently released its Hydropower Resource Assessment (March 2011), which estimated that Pueblo Dam is economically feasible to develop (benefit-cost ratio 2.34, including green incentives), and that there is a potential capacity of 13 MW. The Assessment may be viewed in its entirety at *http://www.usbr.gov/power/*.

Reclamation is considering hydroelectric power development at Pueblo Dam River Outlet through a lease of power privilege. A lease of power privilege is a congressionally authorized alternative to Federal hydroelectric power development. A lease of power privilege grants to a non-Federal entity the right to utilize the Fry-Ark project for non-Federal electric power generation and sale, consistent with project purposes. Leases of power privilege have terms not to exceed 40 years. The general authority for lease of power privilege under Reclamation law includes, among others, the Town Sites and Power Development Act of 1906 (43 U.S.C. 522) (1906 Act) and the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) (1939 Act). Reclamation will be the lead Federal agency for ensuring compliance with the National Environmental Policy Act (NEPA) of any lease of power privilege considered in response to this Notice. Leases of power privilege may be issued only when Reclamation, upon completion of the NEPA process, determines that the affected hydroelectric power sites are environmentally acceptable. Any lease of power privilege at Pueblo Dam River Outlet must accommodate existing contractual commitments related to operation and maintenance of such existing facilities, and must meet the requirements of applicable law, including, but not limited to, the 1906 Act and the 1939 Act.

Western would have the first opportunity to purchase and/or market the power that would be generated under any lease of power privilege. Under this process, Western would either purchase and market the power as Loveland Area Power power or market the power independently by first offering it to preference entities and secondly to non-preference entities.

All costs incurred by the United States related to development and operation and maintenance under a lease of power privilege, including but not limited to NEPA compliance, development of the lease of power privilege, design reviews, construction oversight, and any other associated documents, would be the expense of the lessee.

Proposal Content Guidelines: Interested parties should submit one or more proposals explaining in as precise detail as is practicable how the hydropower potential at each site would be developed. Factors which proposals should consider and address include, but are not limited to, the following:

1. Provide all information relevant to the qualifications of the proposing entity to plan and implement such a project, including, but not limited to, information about preference status, type of organization, length of time in business, experience in funding, design and construction of similar projects, industry rating(s) that indicate financial soundness and/or technical and managerial capability, experience of key management personnel, history of any reorganizations or mergers with other companies, safety record, and any other information that demonstrates the interested entity's organizational, technical and financial ability to perform all aspects of the work. Include a discussion of past experience in operating and maintaining similar facilities and provide references as appropriate. The term *preference entity,* as applied to a lease of power privilege, means an entity qualifying for preference under Section 9(c) of the 1939 Act, as a municipality, public corporation or agency, or cooperative or other nonprofit organization financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936, as amended.

2. Provide geographical locations and describe principal structures and other important features of the proposed development including roads and transmission lines. Estimate and describe installed capacity and the capacity of the power facilities under dry, average, and wet hydrological conditions. Also describe seasonal or annual generation patterns. Include estimates of the amount of electrical energy that would be produced from each facility for each month of average, dry and wet water years. If capacity and energy can be delivered to another location, either by the proposing entity or by potential wheeling agents, specify where capacity and energy can be delivered. Include concepts for power sales and contractual arrangements, involved parties and the proposed approach to wheeling if required.

3. Indicate title arrangements and the ability to acquire title to or the right to occupy and use lands necessary for the proposed development, including such additional lands as may be required during construction.

4. Identify water rights applicable to the operation of the proposed development, the holder of such rights, and how these rights would be acquired or perfected.

5. Discuss any studies necessary to adequately define impacts on the Fry-Ark Project and the environment required by the development. Describe any significant environmental issues associated with the development and the proposing entity's approach for gathering relevant data and resolving such issues to protect and enhance the quality of the environment. Explain any proposed use of the hydropower development for conservation and utilization of the available water resources in the public interest.

6. Describe anticipated contractual arrangements with the entity or entities having operation and maintenance responsibility for the Fry-Ark Project feature(s) that are proposed for utilization in the hydropower development under consideration. Define how the hydropower development would operate in harmony with the Fry-Ark Project, not impact Fry-Ark Project operations, existing applicable contracts related to operation and maintenance of Fry-Ark Project

feature(s) that are proposed for utilization in the hydropower development under consideration, and any other applicable water-related contracts.

7. Identify the organizational structure planned for the long-term operation and maintenance of any proposed hydropower development.

8. Provide a management plan to accomplish such activities as planning, NEPA compliance, lease of power privilege development, design, construction, facility testing, and start of hydropower production. Prepare schedules of these activities as applicable. Describe what studies are necessary to accomplish the hydroelectric power development and how the studies would be implemented.

9. Estimate development cost. This cost should include all investment costs such as the cost of studies to determine feasibility, NEPA compliance, design, construction, associated bonding and financing as well as the amortized annual cost of the investment; also, the annual operation, maintenance, and replacement expense for the hydropower development; lease payments to the United States; and expenses that may be associated with the Fry-Ark Project. If there are additional transmission or wheeling expenses associated with the development of the hydropower development, these should be included. Identify proposed methods of financing and hydropower development. An economic analysis should be presented that compares the present worth of all benefits and costs of the hydropower development.

Selection of Lessee: Reclamation will evaluate proposals received in response to this published notice.

Reclamation will give more favorable consideration to proposals that (1) Are well-adapted to developing, conserving, and utilizing the water and natural resources, (2) clearly demonstrate that the offeror is qualified to develop the hydropower facility and provide for long-term operation and maintenance, and (3) develop the hydropower potential economically. Credit will be given to those proposals that demonstrate development of power in an environmentally-friendly manner. While all developments will be required to perform NEPA analysis, proposals should include information as to how the proposer will minimize environmental impact during construction, maintenance and operation. Proposers should also include design characteristics and methods that will be used to minimize environmental impacts and improve the environmental attributes of the facility. Any work the developer is proposing to do to enhance the ecosystem should also be explained in the proposal. A proposal will be deemed unacceptable if it is inconsistent with Fry-Ark Project purposes, as determined by Reclamation. Reclamation will give preference to those entities that qualify as preference entities (as defined under Proposal Content Guidelines, item 1.) provided that their proposal is at least as well-adapted to developing, conserving, and utilizing the water and natural resources as other submitted proposals and that the preference entity is well qualified. Preference entities would be allowed 90 days to improve their proposals, if necessary, to be made at least equal to a proposal that may have been submitted by a non-preference entity.

Power Purchasing and/or Marketing Considerations: Western would have the first opportunity to purchase and/or market the power that would be generated by the project under a lease of power privilege. Western will consult with Reclamation on such power purchasing and/or marketing considerations.

In the event Western elects to not purchase and/or market the power generated by the hydropower development or such a decision cannot be made prior to execution of the lease of power privilege, the lessee would be responsible for marketing the power generated by the project with priority given to preference entities as heretofore defined in Proposal Content Guidelines, item 1.

Notice and Time Period to Enter Into Lease of Power Privilege: Reclamation will notify, in writing, all entities submitting proposals of Reclamation's decision regarding selection of the potential lessee. The selected potential lessee will have 2 years from the date of such notification to enter into a lease of power privilege for the site or sites identified in the proposal. This period may only be extended by the United States in writing. Such leases of power privilege will state whether and how Western will be involved in purchasing and/or marketing the power.

Dated: April 14, 2011.

Michael J. Ryan,

Regional Director.

[FR Doc. 2011–9533 Filed 4–19–11; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

Inv. No. 337–TA–756

In the Matter of Certain Reduced Ignition Proclivity Cigarette Paper Wrappers and Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Granting Complainant's Motion To Amend the Complaint and Notice of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 5) of the presiding administrative law judge ("ALJ") granting complainant's motion to amend the complaint and notice of the investigation to add seven respondents to the investigation.

FOR FURTHER INFORMATION CONTACT: Michael Haldenstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3041. Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On January 13, 2011, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint filed by Schweitzer-Mauduit International, Inc., of Alpharetta, Georgia ("Schweitzer"), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain reduced ignition proclivity cigarette paper wrappers and products containing same by reason of infringement of certain claims of U.S. Patent No. 6,725,867 and U.S. Patent No. 5,878,753. Complainant Schweitzer

named as respondents Astra Tobacco Corporation of Chapel Hill, North Carolina; delfortgroup AG of Traun, Austria; LIPtec GmbH and Julius Glatz GmbH of Neidenfels, Germany.

On March 22, 2011, the ALJ issued an ID (Order No. 5) granting complainant Schweitzer's motion to amend the complaint and notice of the investigation to add seven additional respondents to the investigation. The new respondents are Dosal Tobacco Corp.; Farmer's Tobacco Co.; S&M Brands, Inc.; Tantus Tobacco, LLC; KneX Worldwide, LLC; Dr. Franz Feurstein GmbH; and PapierfabrikWattens GmbH & Co. KG. No party petitioned for review of the subject ID. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

By order of the Commission.

Issued: April 15, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–9584 Filed 4–19–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–11–010]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: April 28, 2011 at 11 a.m.

PLACE: Room 110, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–475 and 731–TA–1177 (Final) (Aluminum Extrusions from China). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before May 13, 2011.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier Notification of this meeting was not possible.

By order of the Commission:

Issued: April 18, 2011.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2011–9726 Filed 4–18–11; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 24, 2011, Stepan Company, Natural Products Dept., 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Cocaine (9041)	II
Ecgonine (9180)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 20, 2011.

Dated: April 13, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–9619 Filed 4–19–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 3, 2010, Noramco Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801–4485, made application by letter to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Amphetamine (1100)	II
Phenylacetone (8501)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 20, 2011.

Dated: April 13, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–9610 Filed 4–19–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 17, 2010, and published in the **Federal Register** on June 28, 2010, 75 FR 36679, Lin Zhi International Inc., 670 Almanor Avenue, Sunnyvale, California 94085, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxymethamphetamine (MDMA) (7405).	I
Cocaine (9041)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II

The company plans to manufacture the listed controlled substances as bulk reagents for use in drug abuse testing.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Lin Zhi International Inc., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Lin Zhi International Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: April 13, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–9611 Filed 4–19–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated August 2, 2010, and published in the **Federal Register** on September 1, 2010, (75 FR 53721), Chattem Chemicals Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
4–Methoxyamphetamine (7411)	I
Dihydromorphine (9145)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Reminfentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Chattem Chemicals Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Chattem Chemicals Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: April 13, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–9620 Filed 4–19–11; 8:45 am]

BILLING CODE 4410–09–P

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 2–11]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

Date and Time: Tuesday, May 10, 2011, at 10 a.m.

Subject Matter: Issuance of Proposed Decisions in claims against Albania and Libya.

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Executive Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. *Telephone:* (202) 616–6975.

Judith H. Lock,

Executive Officer.

[FR Doc. 2011–9682 Filed 4–18–11; 4:15 pm]

BILLING CODE 6770–01–P

DEPARTMENT OF LABOR

Employment & Training Administration

[SGA–DFA–PY–10–03]

Solicitation for Grant Applications (SGA); Trade Adjustment Assistance Community College and Career Training Grants Program; Amendment Three

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice: Amendment to SGA/DFA PY 10–03.

SUMMARY: The Employment and Training Administration published a notice in the **Federal Register** on January 21, 2011, announcing the availability of funds and Solicitation for Grant Applications (SGA) for the Trade Adjustment Assistance Community College and Career Training grant program (TAACCCT) to be awarded through a competitive process. This amendment to the SGA clarifies items related to making portions of grant applications publicly available. The document is hereby amended.

In Section IIIG3, of the solicitation (*http://www.doleta.gov/grants/pdf/SGA–DFA–PY–10–03.pdf*), the following text should be replaced:

Old Text—"The Department is committed to conducting a transparent grant award process and publicizing information about program outcomes. Applicants are advised their application and information related to its review and evaluation (whether or not the application is successful) may be made publicly available, either fully or partially. In addition, information about grant progress and results may also be made publicly available."

New Text—"The Department is committed to conducting a transparent grant application and award process. Among other things, posting grant applications on public Web sites is a means of promoting and sharing innovative ideas. For this grant competition, we will publish the Technical Proposal required by Section IVB, Part II for all those applications that are awarded grants, on the

Department's Web site or a similar location. Additionally, in accordance with Section IVB, Part IIIa, of the SGA, which states that the Abstracts will be shared publicly, we will publish the Abstracts for all applications on the Department's Web site or similar location. No other attachments to the application will be published. The Technical Proposals and Abstracts will not be published until after grants are awarded."

DOL recognizes that grant applications sometimes contain information that an applicant may consider proprietary or business confidential, or they may contain personally identifiable information. Information is considered proprietary or confidential commercial/business information when it is not usually disclosed outside your organization, and when its disclosure is likely to cause you substantial competitive harm. Personally identifiable information is information that can be used to distinguish or trace an individual's identity, such as a name, social security number, date and place of birth, mother's maiden name, or biometric records, or any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

In order to ensure that such information is properly protected from disclosure when DOL posts the winning Technical Proposals, applicants whose technical proposals will be posted will be asked to submit a second redacted version of their Technical Proposal, with proprietary, confidential commercial/business, and personally identifiable information redacted. All non-public information about the applicant's and consortium members' staff (if applicable) should be removed as well. The Department will contact the applicants whose technical proposals will be published by letter or email, and provide further directions about how and when to submit the redacted version of the Technical Proposal. Submission of a redacted version of the Technical Proposal will constitute permission by the applicant, and anyone identified in the application, for DOL to post that redacted version. If an applicant fails to provide a redacted version of the Technical Proposal, DOL will publish the original Technical Proposal in full, after redacting personally identifiable information. (Note that the original, unredacted version of the Technical Proposal will remain part of the complete application package, including an applicant's proprietary and confidential information and any personally identifiable information.)

Applicants are encouraged to maximize the grant application information that will be publicly disclosed, and to exercise restraint and redact only information that truly is proprietary, confidential commercial/business information, or capable of identifying a person. The redaction of entire pages or sections of the Technical Proposal is not appropriate, and will not be allowed, unless the entire portion merits such protection. Should a dispute arise about whether redactions are appropriate, DOL will follow the procedures outlined in the Department's Freedom of Information Act (FOIA) regulations (29 CFR part 70).

Redacted information in grant applications will be protected by DOL from public disclosure in accordance with Federal law, including the Trade Secrets Act (18 U.S.C. 1905), FOIA, and the Privacy Act (5 U.S.C. 552a). If DOL receives a FOIA request for your application, the procedures in DOL's FOIA regulations for responding to requests for commercial/business information submitted to the government will be followed, as well as all FOIA exemptions and procedures. 29 CFR 70.26. Consequently, it is possible that application of FOIA rules may result in release of information in response to a FOIA request that an applicant redacted in its "redacted copy."

The Department is working with OMB to meet the requirements of the Paperwork Reduction Act of 1965 (PRA), and will not require any applicants to submit any redactions until the PRA process has been completed. The public reporting burden for this collection of information is tentatively estimated at six hours per response."

FOR FURTHER INFORMATION CONTACT: Melissa Abdullah, Grants Management Specialist, Division of Federal Assistance, at (202) 693–3346.

Signed at Washington, DC, this 14th day of April 2011.

Donna Kelly,

Grant Officer, Employment & Training Administration.

[FR Doc. 2011–9514 Filed 4–19–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before May 20, 2011.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 1–202–693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, *Attention:* Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2011–007–C.

Petitioner: Rosebud Mining Company, P.O. Box 1025, Northern Cambria, PA 15714

Mine: Beaver Valley Mine, MSHA Mine I.D No. 36–08725, located in Beaver County, Pennsylvania. Bergholz Mine, MSHA Mine I.D No. 33–04565, located in Jefferson County, Ohio. Dutch Run Mine, MSHA Mine I.D No. 36–08701; Darmac No. 2 Mine, MSHA I.D. No. 36–08135; and Logansport Mine, MSHA I.D. No. 36–08841, located in Armstrong County, Pennsylvania. Harmony Mine, MSHA Mine I.D No. 36–09477, located in Clearfield County, Pennsylvania. Rossmoyne Mine, MSHA Mine I.D No. 36–09075; Knob Creek Mine, MSHA I.D. No. 36–09394; Starford Mine, MSHA I.D. No. 36–09637, located in Indiana County, Pennsylvania. Tusky Mine, MSHA I.D. No. 33–04509, located in Tuscarawas County, Ohio. Twin Rocks Mine, MSHA I.D. No. 36–08836, located in Cambria County, Pennsylvania.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35(a)(5)(i) (Portable trailing cables and cords).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of 480 volt trailing cables with a maximum length of 1200 feet when #2 American Wire Gauge (AWG) cable is used and 480 volt trailing cables with a maximum length of 950 feet when #4 AWG cable is used on Fletcher Roof Ranger II roof bolters. The petitioner states that: (1) The maximum length of the 480 volt trailing cables will be 1200 feet when #2 AWG cable is being used. The maximum length of 480 volt trailing cable will be 950 feet when #4 AWG cable is being used; (2) the trailing cable for the 480 volt Fletcher Roof Ranger II bolters will not be smaller than #4 AWG cable; (3) all circuit breakers used to protect the #2 AWG trailing cable or the #4 AWG trailing cable exceeding 700 feet in length will have instantaneous trip units calibrated to trip at 500 amperes. The trip setting of these circuit breakers must be sealed to ensure that they cannot be changed, and these breakers will have permanent, legible labels. Each label will identify the circuit breaker as being suitable for protecting the cables; (4) replacement circuit breakers and/or instantaneous trip units, used to protect #2 AWG trailing cable or the #4 AWG trailing cable will be calibrated to trip at 500 amperes, and will be sealed; (5) all components that provide short-circuit protection will have sufficient interruption rating in accordance with the maximum calculated fault currents available; (6) during each production day, the trailing cables, and the circuit breakers will be examined in accordance with all 30 CFR provisions; (7) permanent warning labels will be installed and maintained on the load center identifying the location of each short-circuit protection device. These labels will warn miners not to change or alter the settings of these devices; (8) if the affected trailing cables are damaged in any way during the shift, the cable will be de-energized and repairs made; (9) the proposed alternative method will not be implemented until all miners who have been designated to operate the Roof Ranger II, or any other person designated to examine the trailing cables or trip settings on the circuit breakers, have received proper training; (10) within sixty days after this proposed decision and order becomes final, proposed revisions for the approved Part 48 training plan will be submitted to the District Manager. The training will include the following elements: (a) The hazards of setting the short-circuit device(s) too high to adequately protect the trailing cables; (b) how to verify that the circuit interrupting device(s) protecting the trailing cable(s) are properly set and maintained; (c) mining methods and operating procedures that will protect the trailing cables against damage; and (d) the proper procedure for examining the trailing cable to insure that the cable(s) are in safe operating condition by visually inspecting the entire cable, observing the insulation, the integrity of the splices, and nicks and abrasions. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the standard.

Docket Number: M–2011–008–C.

Petitioner: Blue Mountain Energy, Inc., 3607 County Road #65, Rangely, Colorado 81648.

Mine: Deserado Mine, MSHA Mine I.D. No. 05–03505, located in Rio Blanco County, Colorado.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35(a)(5)(i) (Portable trailing cables and cords).

Modification Request: The petitioner requests a modification of the existing standard to permit the length of trailing cables to be increased for continuous mining machines, shuttle cars, and roof bolters beyond the maximum lengths allowed by Part 18. Maximum lengths of various sizes of trailing cables, when protected with circuit breakers with instantaneous trip settings are not to exceed the values given in Tables 8 and 9, in Appendix I, of Part 18. The petitioner proposes to extend the continuous mining machine trailing cables, #2/0 American Wire Gauge (AWG) to a maximum length of 1,000 feet, the shuttle car trailing cables #2 AWG to a maximum length of 850 feet, and the roof bolter trailing cables #2 AWG to a maximum length of 850 feet. Table 9, Appendix I, of Part 18 limits the maximum length of #2/0 AWG trailing cables to 850 feet, and the maximum length of #2 AWG trailing cables to 700 feet. The petitioner states that: (1) The short-circuit calculations that were performed show that the proposed alternative method will meet the following requirements: (a) Each trailing cable will be protected by an automatic three-pole molded case circuit breaker equipped with a means to provide short-circuit, grounded phase, under-voltage, and ground monitoring protection; (b) the trailing cable short-circuit protection will be provided by means of an adjustable instantaneous trip unit that is integral to the circuit breaker that is set as required by the statutory provision 30 CFR 75.601–1, or 75 percent of the minimum available fault current, whichever is less. The short-circuit calculations determine the minimum phase-to-phase fault current available for each cable size, type, and length desired to be extended to lengths greater than allowable by statutory provisions; and (c) section 75.601 requires that "short-circuit protection for trailing cables be provided by automatic circuit breaker or other no less effective device approved by the Secretary of adequate current-interrupting capacity in each ungrounded conductor". The short-

circuit calculations also determine the maximum fault duties for the circuit breakers that protect the trailing cables to assure that they have adequate interrupting capacities. (2) The short-circuit calculations also include the addition of distribution boxes that will power the continuous miner, shuttle cars, and roof bolter. The distribution boxes will be mounted on a monorail and each will be supplied from the power center by means of 350kemil, 2kV, Type SHD–GC power cable that is 700 feet long. There will be one distribution box that will power the roof bolter and shuttle cars, and one 1,000V distribution box that will power the continuous miner. The resulting system is referred to as the "Deserado Mine Development Monorail System". The continuous mining machines are rated at 950 volts Root Mean Squared (RMS) nominal, three-phase, 60 Hertz, the shuttle cars are rated at 460 volts RMS nominal, three-phase, 60 Hertz; and the roof bolters are rated at 460 volts RMS nominal, three-phase, 60 Hertz. The nominal voltage of the continuous miner section electrical distribution system will not exceed 1,000 volts and 480 volts for the respective section transformer secondary voltages. Actual voltage at which the circuits or systems operate may vary slightly from the nominal voltage within a range that permits satisfactory operation of the equipment; (3) The one-line diagrams and short-circuit calculation models included in the calculations reflect the actual existing Deserado Mine high-voltage electrical distribution system and continuous miner section electrical power distribution and control system to be utilized; (4) the petitioner desires approval to extend the length of the specified trailing cables to improve the safety and efficiency of the mining operation; and (5) due to the unusually large support pillar size in the longwall gate entries, the longer cable lengths will allow a more methodical mining process. Safety will be enhanced due to the decrease in power moves, cable handling, and cable damage. Electrical protection and safety will not be diminished since the trailing cables will still be provided with short-circuit protection that is set conservatively. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection to all miners as would be provided by the standard.

Docket Number: M–2011–009–C.

Petitioner: River View Coal, LLC, 835 St., Route 1179, Waverly, Kentucky 42462.

Mine: River View Mine, MSHA Mine I.D. No. 15–19374, located in Union County, Kentucky.

Regulation Affected: 30 CFR 75.1100–3 (Condition and examination of firefighting equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance for maintaining the condition and examination of firefighting equipment. The petitioner proposes to maintain the slope belt waterline as a "dry line". The petitioner states that: (1) River View Mine is a 16 MMU continuous miner operation located near Waverly, Union County, Kentucky. The mine operates in two coal seams, #11 and the #9 seam separated by approximately 110 feet of competent interburden, the #9 seam being the lowest seam. The mine is accessed by one slope and one intake return dual compartment shaft. The slope is 16 degrees, 1625 feet, dual compartment, with the upper compartment containing the slope belt, and the lower compartment containing the track entry used for lowering heavy equipment; and (2) As an alternative to maintaining the waterline as being "charged" the petitioner proposes the following: (a) The 2 inch waterline will be installed the full length of the slope belt with fire hydrants (water outlets) located every 300 feet or closer if necessary. The water line will be maintained as a "dry line" year round; (b) with two electronically actuated solenoid valves installed in parallel will be located inline of the slope belt waterline at the tailpiece of the slope belt in the #9 seam. Electrical power will be necessary to hold these valves in closed position. The valves will return to the open position (charging the waterline) upon loss of voltage or when activated; (c) the solenoid valves will be connected to the CO monitoring system through PLC programming. The valves will be automatically actuated if any of the CO sensors along the slope belt detect a level of 25 parts per million (ppm) for longer than 180 seconds; (d) a manually operated bypass valve will be installed in parallel with the automatic valves. This manual valve will normally be closed; (e) water will automatically charge the waterline if either the automatic valves or the manual bypass is moved to the open position; (f) the solenoid valves will be capable of being actuated at a manned surface location, either the CO monitoring room or the security station. Either, two miners on each shift or the security station staff will be trained to actuate the solenoid valves. The security station is staffed 24 hours a day, 7 days a week; (g) a manually operated outlet will be installed downstream of the solenoid valves. The manual valve will be designated as a test/drain valve and will be closed except when testing the system or when draining water after testing or actuation; (h) a second manually operated valve will be installed just downstream of the test/drain valve. This valve will be open at all times, except when testing of the system is required. During testing, this valve will isolate the waterline that supplies the fire hydrants along the slope belt. This will allow the solenoid valves to be tested and will assure that the system is functioning properly without filling the entire length of the waterline, thus creating the need to drain a large volume of water; (i) all valves and switches that are part of this system will be clearly marked and labeled as to their intended purpose; (j) the system will be examined monthly and the results of this examination will be recorded; (k) pressure relief valves will be located along the waterline to relieve pressure (entrapped air) when the waterline is charging; (l) at least 500 feet of fire hose will be kept at the following three strategic locations: (i) Slope belt head house (Top of the slope belt); (ii) #11 seam dump point (Approximately 950 feet down the slope); (iii) #9 seam dump point (Located at the bottom of the slope), and additional fire hose will be kept at strategic locations if needed. The petitioner asserts that the proposed alternative method will provide a measure of protection to all miners at River View Mine greater than that of the standard.

Docket Number: M–2011–010–C.

Petitioner: Brooks Run Mining Company, LLC, 208 Business Street, Beckley, West Virginia 25801.

Mine: Still Run No. 3 Mine, MSHA Mine I.D No.46–09301, located in Wyoming County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Modification Request: The petitioner requests a modification of the existing standard to permit deluge-type water spray systems to be used without blow-off dust covers on the nozzles. The petitioner states that: (1) Currently, each nozzle is provided with a blow-off dust cover; (2) weekly inspections and functional tests of its complete deluge-type water spray system are currently being conducted at the mine; (3) due to frequent inspections and functional testing of the system, the dust covers are not necessary because the nozzles can be maintained in an unclogged condition through weekly use; (4) it is

burdensome to recap the large number of covers weekly after each inspection and functional test. The petitioner proposes to continue its weekly inspection and functional testing of the complete deluge-type water spray system, and to remove the blow-off dust covers from the nozzles. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners as would be provided by the existing standard.

Docket Number: M–2011–011–C.

Petitioner: Highland Mining Company, LLC, 530 French Road, Waverly, Kentucky.

Mine: Highland No. 9 Mine, MSHA Mine I.D No. 15–02709, located in Union County, Kentucky.

Regulation Affected: 30 CFR 75.1100–2(b) (Quantity and location of firefighting equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of a dry waterline system to provide fire suppression in the slope area of the Highland No. 9 Mine to ensure the availability of water during freezing and subfreezing weather conditions and to prevent damage to the waterline and related firefighting equipment caused by freezing and subfreezing conditions during cold weather seasons. The petitioner proposes to establish, by designation, a dry waterline system with manual water-charging capabilities in the slope area to prevent water contained in the otherwise charged waterline from freezing, thereby preventing water from flowing through the waterline during an emergency, or otherwise damaging the waterline and related firefighting equipment that may be connected to the waterline from expansion of ice during freezing and subfreezing conditions. The petitioner states that: (1) The area to be serviced by the dry waterline system is from the surface mouth of the slope to the slope bottom; (2) areas of the mine in the designated terminus of the dry waterline system at the slope bottom will continue to be serviced by a charged waterline as currently installed and maintained; (3) in order to provide fire protection in the area designated as the dry waterline system, the following procedures will apply when the dry waterline system is in use: (a) the slope beltline will be monitored by a carbon monoxide (CO) detection system. A person trained in the operation of the CO detection system will be on duty at all times when employees are underground; (b) all hoistmen, surface electricians, belt mechanics, and surface equipment operators will be trained in the location and operation procedures of valves and pumps necessary to pressurize the waterline in the slope, should pressurization become necessary during an emergency; and (c) 300 feet of water hose, nozzles, and wrenches will be stored at the mouth of the slope (surface) on the emergency landing and at the bottom of the slope; (4) there are no belt drives located between the slope mouth at the surface and the slope bottom in the area designated as a dry waterline system; (5) there will be a limit of five minutes elapsed time from actuation of the fire detection device to full water pressurization of such dry waterline, and it will meet flow and pressure requirements. Activation of the waterline will be accomplished by energizing the pressure pump and opening a valve designated as point "A", and by closing a drain line and opening a valve at the slope mouth designated as point "B"; (6) a gauge will be provided to indicate that a supply of water under pressure is available to the dry waterline; (7) to prevent freezing, ice, or slush accumulations which could block the waterline, the dry waterline will be drained or purged after use, charged or tested, or it will be maintained with a low-pressure water-flow sufficient to prevent it from freezing. All valves will likewise be protected; (8) sufficient water will be available at all times to adequately charge and supply the needs of the dry waterline; (9) each dry waterline pressurization system will be visually inspected weekly and a test of the electrical and mechanical functions of the system will be conducted monthly. The dry waterline will be pressurized during the monthly tests; and (10) this petition is only applicable to seasonal periods in which temperatures below 32 degrees Fahrenheit may be anticipated. The petitioner asserts that the proposed alternative method will not result in a diminution of safety to the miners.

Docket Number: M–2011–002–M.

Petitioner: U.S. Silver Idaho, Inc., 1801 California Street, Suite 4900, Denver, Colorado 80202.

Mine: Galena Mine, MSHA Mine I.D No. 10–00082, located in Shoshone County, Idaho.

Regulation Affected: 30 CFR 57.9300(a) (Berms and guardrails).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance as it applies to providing guardrails for a pond at the banks of the roadway where a drop off exists of sufficient grade or depth to cause a vehicle to overturn or endanger persons in equipment. The petitioner states that: (1) Installing a berm around the tailings dam during construction of the lift for the impoundment would cause workers to compact the road surrounding the road from edge to edge to ensure the integrity of the impoundment and the road surrounding it; (2) the compaction of material to 90 percent density is performed by a cat loader and an end dump and is specifically required by a permit issued by the State of Idaho Department of Water Resources Dam Safety Division. This state agency comes to the mine to inspect the lift to ensure compliance with the permit; (3) after proper compaction is achieved a berm is installed on the outside edge of the subject road but not the side closest to the impoundment. Placing a berm on either side of the subject road prior to achieving required compaction would compromise the structural integrity of the embankment. In addition, placing a berm on the inside of the subject road would lift the tailings distribution lines approximately three feet in elevation and could result in enough head loss in the line to cause a tailings spill upstream of the impoundment. A tailings spill upstream of the impoundment would report directly to Shields Creek below the Coeur Mill. Lack of compaction would also cause an obvious hazard to anyone driving on the road, as the relatively uncompacted road could give way under the weight of the equipment. As required by the permit, the tailings distribution point is frequently changed in order to ensure proper distribution of tailings against the dam. If there was an earthen berm installed on the inside of the roadway, the berm would have to be breached each time the distribution point is changed. As such, current application of the standard, requiring a berm around the tailings pond will result in a diminution of safety for miners at the Galena Mine. The petitioner proposes that: (1) A locked gate is installed at the only entrance point to the roadway; (2) signs are posted warning that the roadway is not bermed; (3) the maximum speed limit of 15 miles per hour is posted, and speed limit signs will be posted at appropriate entrance locations to the impoundment roadway; (4) no operations will be conducted on the road when road traction may be impacted by weather conditions, unless corrective measures, such as the use of tire chains, plowing, or sanding are taken to improve traction; (5) a pipeline will be located on the inside edge of the impoundment roadway to serve as a guide for mobile vehicle operations.

Delineators will be used along the perimeter of areas of the roadway where no pipeline was laid and there was a drop-off sufficient for equipment to overturn. Delineators are installed along the perimeter of the impoundment so that, for both directions of travel, the reflective surfaces of at least three delineators along each elevation will always be visible to the driver and spaced at intervals sufficient to indicate the edges and altitude of the roadway; (6) access to the locked gate will be limited to individuals who have received and successfully completed training consisting of applicable task training, and a supervised tour of the impoundment roadway. A training form will be completed for each employee that receives the training and will detail the topics covered in the training. Personnel deemed essential by the petitioner to operate equipment in the area who has not received the training will be accompanied by a person who has received the specified training. Training will be valid for four years from the date of completion; (7) records of the training will be maintained for four years and made available to MSHA upon request; and (8) to enable U.S. Silver to not berm the inside of the impoundment roadway not only prevents a diminution of safety for miners, it provides an alternative method of achieving the results of the standard which at all times guarantees no less than the same measure of protection to all miners at the Galena Mine afforded by the standard.

Dated: April 12, 2011.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2011–9195 Filed 4–19–11; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of Withdrawal.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is to withdraw a petition for modification for the Speed Mining, Inc., American Eagle Mine, MSHA I.D. No. 46–05437. MSHA published a notice in the **Federal Register** on January 14, 2011 (76 FR 2725).

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (voice), *barron.barbara@dol.gov* (e-mail), or 202–693–9441 (telefax). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification. However, petitioner requested a modification of 30 CFR 75.1403–5(g), which is a safeguard and is within the authority of an Authorized Representative of the Secretary to prescribe or modify. See 30 CFR 75.1403–1. Therefore, the Speed Mining, Inc., American Eagle Mine, MSHA I.D. No. 46–05437, Petition for Modification is withdrawn.

Dated: April 12, 2011.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2011–9194 Filed 4–19–11; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before May 20, 2011.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 1–202–693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR

44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2011–004–C, M–2011–005–C, and M–2011–006–C.

Petitioner: Amfire Mining Company, LLC, One Energy Place, Latrobe, Pennsylvania 15650.

Mine: Barrett Mine, MSHA I.D. No. 36–09342, Gillhouser Mine, MSHA I.D. No. 36–09033, Nolo Mine, MSHA I.D. No. 36–08850.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35(a)(5)(i) (Portable trailing cables and cords).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of extended trailing cables on Mobile Bridge Conveyors, Dual Boom Roof Bolters, Continuous Miners, and Shuttle Cars. The petitioner states that these petitions will apply to: (1) Trailing cables that supply 995-Volt 3 Phase AC current to Continuous Miners and Mobile Bridge Conveyors; and (2) trailing cables which supply 480-volt 3 phase AC current to Roof Bolters and Shuttle Cars. The cables will have a 90 degree insulation rating. Additionally, the petitioner states that: (1) The extended length of trailing cables used on Shuttle Cars and Roof Bolters will be 3 conductor round cable, type G–GC, type G or type G & GC. When a type G–GC or type G & GC round cable is used with wireless ground wire monitoring, the ground check conductor will be connected as a ground conductor; (2) the maximum cable length of the Miner, Mobile Bridge Conveyor, Roof Bolters and Shuttle Cars will not exceed 1000 feet. The trailing cable for the Miner will not be smaller than #2/0 American Wire Gauge (AWG). The trailing cable for the Roof Bolter and Shuttle Car will not be smaller than a #4 AWG, and the trailing cable for the haulage unit will not be smaller than a #2 AWG; (3) all circuit breakers used to protect the #4 AWG trailing cables exceeding 600 feet in length will have instantaneous trip units calibrated to trip at 500 amperes (AMPS). The trip settings of these breakers will either be sealed or the breaker trip units will not be larger than 500 AMPS. The circuit breakers will have permanent legible labels attached. The label will identify the circuit breakers as being suitable for protecting #4 AWG cables; (4) replacement breakers and/or instantaneous trip units used to protect #4 AWG cables will be calibrated to trip at 500 AMPS and this setting will be sealed or trip units will not be larger than 500 AMPS; (5) all circuit breakers used to protect #2 AWG cables exceeding 700 feet in length will have instantaneous trip units calibrated to trip at 800 AMPS. The trip settings of these circuit breakers will be sealed and will have permanent legible labels. The label will identify the circuit breakers as being suitable for protecting #2 AWG cables; (6) replacement circuit breakers and/or instantaneous trip units used to protect #2 AWG trailing cables will be calibrated to trip at 800 AMPS and this setting will be sealed; (7) all circuit breakers used to protect #2/0 AWG trailing cables exceeding 850 feet in length will have instantaneous trip units calibrated to trip at 1500 AMPS. The trip setting of these circuit breakers will be sealed, or the maximum available setting on the trip units will not be greater than 1500 AMPS. These circuit breakers will have permanent legible labels. The label will identify the circuit breaker as being suitable for protecting #2/0 AWG cables; (8) replacement breakers and/or instantaneous trip units used to protect #2/0 AWG trailing cables will be calibrated to trip at 1500 AMPS and this setting will be sealed or maximum size of the trip unit will be 1500 AMPS; (9) all components that provide short circuit protection will have a sufficient interruption rating in accordance with maximum calculated fault currents available; (10) during each production day, persons designated by the operator will visually examine the trailing cables to ensure the cables are in safe operating condition and that the instantaneous settings of the specially calibrated breakers do not have seals removed or tampered with and they do not exceed 500, 800 or 1500 AMPS respectively; (11) any trailing cable that is not in a safe operating condition will be removed from service immediately and repaired or replaced; (12) each splice or repair in the trailing cables to the Miner, Mobile Bridge Conveyor, Roof Bolter or shuttle car will be made in a workmanlike manner and in accordance with the instructions of the manufacturer of the splice or repair materials. The splice or repair will comply with 30 CFR 75.603 and 75.604 requirements; (13) permanent warning labels will be installed and maintained on the cover or covers of the power center identifying the location of each sealed short circuit protective drive. The labels will warn miners not to change or alter these sealed short circuit settings; (14) in the event the mining methods or operating procedures cause or contribute to the damage of any trailing cable, the cable will be removed from service immediately and repaired or replaced. Additional precautions will be taken to ensure that haulage roads and trailing cable storage areas are situated to minimize contact of the trailing cable with the Continuous Miner, Mobile Bridge Conveyor, Shuttle Cars and Roof Bolters. Trailing cables, anchors or cable real equipment will be of permanent type that minimizes the tensile forces on the trailing cables; (15) where the method of mining would require that trailing cables cross roadways or haulage ways, the cables will be securely supported from the mine roof or a substantial bridge for equipment to pass over the cables will be provided and used; (16) excess cable will be stored behind the anchor or anchors on equipment that uses cable reels to prevent the cables from overheating; (17) this change will not be implemented until this petition for modification is approved and all miners who will be responsible for examining the cables and associated electrical components have been trained on the contents and precautions included in the petition; and (18) proposed revisions for the approved Part 48 training plan will be submitted to the District Manager for the areas for which the mines are located. The training will include: (a) The hazards of setting the short circuit interrupting device or devices too high to adequately protect the trailing cables; (b) how to verify that the circuit interrupting devices protecting the trailing cables are properly set and maintained; (c) mining methods and operating procedures that will protect the trailing cables from damage; (d) how to protect the trailing cables against damage caused by overheating cables due to excessive cable stored on reels and adjusting stored cable behind cable anchors as tramming distances change; and (e) proper procedures for examining the trailing cable to ensure the cables are in safe operating condition by a visual inspection of the entire cable, observing the insulation, the integrity of splices, nicks and abrasions. The petitioner further states that if regulations are subsequently promulgated that supersede the requirements of 30 CFR 75.503 (18.35(a)(5)(i), the standard, unless it is determined by the Secretary or his representative after opportunity for input from the operator that the alternative method contained in the petition will at all times guarantee no less than the same measure of protection afforded the subsequent promulgated standard. The petitioner asserts that the proposed alternative method will provide for a level of safety equal to or greater than the statute in place.

Dated: April 12, 2011.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2011–9193 Filed 4–19–11; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0062]

Powered Industrial Trucks Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Powered Industrial Trucks Standard (29 CFR 1910.178). The information collection requirements address truck design, construction, and modification, as well as certification of training and evaluation for truck operators.

DATES: Comments must be submitted (postmarked, sent, or received) by June 20, 2011.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0062, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2011–0062) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Paragraph (a)(4) of the Standard requires that employers obtain the manufacturer's written approval before modifying a truck in a manner that affects its capacity and safe operation; if the manufacturer grants such approval, the employer must revise capacity, operation, and maintenance instruction plates, tags, and decals accordingly. For front-end attachments not installed by the manufacturer, paragraph (a)(5) mandates that employers provide a marker on the trucks that identifies the attachment, as well as the weight of both the truck and the attachment when the attachment is at maximum elevation with a laterally centered load. Paragraph (a)(6) specifies that employers must ensure that the markers required by paragraphs (a)(3) through (a)(5) remain affixed to trucks and are legible.

Paragraphs (l)(1) through (l)(6) of the Standard contain the paperwork requirements necessary to certify the training provided to powered industrial truck operators. Accordingly, these paragraphs specify the following requirements for employers:

- Paragraph (l)(1)—Ensure that trainees successfully complete the training and evaluation requirements of paragraph (l) prior to operating a truck without direct supervision.
- Paragraph (l)(2)—Allow trainees to operate a truck only under the direct supervision of an individual with the knowledge, training, and experience to train operators and to evaluate their performance, and under conditions that do not endanger other employees. The training program must consist of formal instruction, practical training, and evaluation of the trainee's performance in the workplace.
- Paragraph (l)(3)—Provide the trainees with initial training on each of 22 specified topics, except on topics that the employer demonstrates do not apply to the safe operation of the truck(s) in the employer's workplace.
- Paragraphs (l)(4)(i) and (l)(4)(ii)—Administer refresher training and evaluation on relevant topics to operators found by observation or formal evaluation to have operated a truck unsafely, been involved in an accident or near-miss incident, or been assigned to operate another type of truck, or if the employer identifies a workplace condition that could affect safe truck operation.
- Paragraph (l)(4)(iii)—Evaluate each operator's performance at least once every three years.
- Paragraph (l)(5)—Train rehires only in specific topics that they performed unsuccessfully during an evaluation and that are appropriate to the employer's truck(s) and workplace conditions.
- Paragraph (l)(6)—Certify that each operator meets the training and

evaluation requirements specified by paragraph (l). This certification must include the operator's name, the training date, the evaluation date, and the identity of the individual(s) who performed the training and evaluation.

Requiring labels (markings) of modified equipment notifies employees of the conditions under which they can safely operate powered industrial trucks, thereby preventing such hazards as fires and explosions caused by poorly designed electrical systems, rollovers/tipovers that result from exceeding a truck's stability characteristics, and falling loads that occur when loads exceed the lifting capacities of attachments. Certification of training and evaluation provides a means of informing employers that their employees received the training and demonstrated the performance necessary to operate a truck within its capacity and control limitations. Therefore, by ensuring that employees operate only trucks that are in proper working order, and do so safely, employers prevent possible severe injury or death of truck operators and other employees who are in the vicinity of the trucks. Finally, these paperwork requirements are the most efficient means for an OSHA compliance officer to determine that an employer properly notified employees regarding the design and construction of, and modifications made to, the trucks they are operating, and that their employer provided them with the required training.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Powered Industrial Trucks (29 CFR 1910.178). The Agency is requesting an increase to its current burden hour estimate of 33,706 hours (from 854,538 hours to 888,244 hours). The increase is due to updated data indicating a rise in the number of powered industrial trucks from 1,134,699 to 1,179,441 and the number of operators from 1,702,048 to 1,769,162. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Powered Industrial Trucks (29 CFR 1910.178).

OMB Number: 1218–0242.

Affected Public: Business or other for-profits.

Number of *Respondents:* 1,769,162.

Frequency: On occasion; annually; triennially.

Average Time per Response: Ranges from two minutes (.03 hour) to mark an approved truck to 6.50 hours to train new truck operators.

Estimated Total Burden Hours: 888,244.

Estimated Cost (Operation and Maintenance): $247,695.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0062). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 4–2010 (72 FR 55355).

Signed at Washington, DC, on April 15, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–9569 Filed 4–19–11; 8:45 am]

BILLING CODE 4510–26–P

MARINE MAMMAL COMMISSION

Sunshine Act Notice

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet on Tuesday, 10 May 2011, from 1 p.m. to 6 p.m.; Wednesday, 11 May 2011, from 8:30 a.m. to 6 p.m.; and Thursday, 12 May 2011, from 8:30 a.m. to 5 p.m. The Commission and the Committee will meet in executive session on Tuesday, 10 May 2011, from 9:30 to 11:30 a.m.

PLACE: Astor Crown Plaza Hotel, 739 Canal Street, New Orleans, LA 70130; *telephone:* 504–962–0500; *fax:* 504–962–0503.

STATUS: The executive session will be closed to the public in accordance with the provisions of the Government in the Sunshine Act (5 U.S.C. 552b) and applicable regulations. The session will be for internal discussions of process, personnel, and the budget of the Commission. All other portions of the meeting will be open to the public. Public participation will be allowed as

time permits and as determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine ecosystem and marine mammal matters with a focus on the Gulf of Mexico and the impact of the Deepwater Horizon oil spill on marine ecosystems. Although subject to change, other major issues that the Commission plans to consider at the meeting include conservation and protection of Florida manatees, Cook Inlet beluga whales in Alaska, and vaquita in the Gulf of California; and Arctic oil and gas development and risks.

CONTACT PERSON FOR MORE INFORMATION: Suzanne Montgomery, Special Assistant to the Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 700, Bethesda, MD 20814; 301–504–0087; *e-mail: smontgomery@mmc.gov.*

Dated: April 15, 2011.

Timothy J. Ragen,

Executive Director.

[FR Doc. 2011–9637 Filed 4–18–11; 4:15 pm]

BILLING CODE 6820–31–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until May 20, 2011.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Tracy Sumpter, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, *E-mail: OCIOmail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6440.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0121.

Form Number: 4063 and 4063a.

Type of Review: Reinstatement, without change, of a previously approved collection.

Title: Notice of Change of Official or Senior Executive Officer and Individual Application for Approval of Official or Senior Executive Officer.

Description: In order to comply with statutory requirements, the agency must obtain sufficient information from new officials or senior executive officers of troubled or newly chartered credit unions to determine their fitness for the position. These forms standardize the information gathered to evaluate the individual's fitness for the position. The format is similar to the one used by the FFIEC agencies and the FRB. 12 CFR 701.14 and 741.205.

Estimated No. of Respondents/ Recordkeepers: 650.

Estimated Burden Hours per Response: 2.0 hours.

Frequency of Response: Reporting and on occasion.

Estimated Total Annual Burden Hours: 1,300.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on April 14, 2011.

Mary Rupp,

Secretary of the Board.

[FR Doc. 2011–9553 Filed 4–19–11; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until June 20, 2011.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Clearance Officer listed below:

Clearance Officer: Tracy Sumpter, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–837–2861, *E-mail: OCIOmail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Corporate Credit Union Monthly Call Report.

OMB Number: 3133–0067.

Form Number: NCUA 5310.

Type of Review: Reinstatement, without change, of a previously approved collection.

Description: NCUA utilizes the information to monitor financial conditions in corporate credit unions, and to allocate supervision and examination resources.

Respondents: Corporate credit unions, or "banker's banks" for natural person credit unions.

Estimated No. of Respondents/Record keepers: 27.

Estimated Burden Hours per Response: 8 hours.

Frequency of Response: Monthly.

Estimated Total Annual Burden Hours: 2,592 hours.

Estimated Total Annual Cost: $64,800.

By the National Credit Union Administration Board on April 14, 2011.

Mary Rupp,

Secretary of the Board.

[FR Doc. 2011–9552 Filed 4–19–11; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for a New Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is submitting the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until June 20, 2011.

ADDRESSES: Interested parties are invited to submit written comments to

the NCUA Clearance Officer listed below:

Clearance Officer: Tracy Sumpter, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–837–2861, *E-mail: OCIOMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Corporate Federal Credit Union Chartering Guidelines.

OMB Number: 3133–NEW.

Form Number: NCUA Forms 4001, 4008, 4012, 9500, 9501.

Type of Review: New collection.

Description: The proposed interpretive ruling and policy statement sets forth the requirements and process for chartering corporate Federal credit unions.

Respondents: Natural person credit unions seeking to establish a new corporate FCU.

Estimated No. of Respondents/ Recordkeepers: 1.

Estimated Burden Hours per Response: 328 hours.

Frequency of Response: Once.

Estimated Total Annual Burden Hours: 328 hours.

Estimated Total Annual Cost: 0.

By the National Credit Union Administration Board on April 14, 2011.

Mary Rupp,

Secretary of the Board.

[FR Doc. 2011–9544 Filed 4–19–11; 8:45 am]

BILLING CODE 7535–01–P

POSTAL REGULATORY COMMISSION

[Docket No. R2011–5; Order No. 715]

Postal Service Rate Adjustment

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service notice of rate and classification changes affecting First-Class Mail presort and Standard Mail commercial letters and flats. The changes are part of an anticipated summer promotion involving mobile barcodes on or in mailpieces. This notice informs the public of the filing, addresses preliminary procedural matters, and invites public comment.

DATES: *Comments are due:* May 2, 2011.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Postal Service Filing
III. Commission Action
IV. Ordering Paragraphs

I. Introduction

On April 12, 2011, the Postal Service filed a notice with the Commission announcing its intention to adjust prices for First-Class Mail presort and Standard Mail letters and flats pursuant to 39 U.S.C. 3622 and 39 CFR part 3010.[1] The adjustment is a 3 percent discount, from July 1, 2011 to August 31, 2011, for mailers of First-Class Mail presort and Standard Mail commercial letters and flats that include a mobile barcode inside or on the mailpieces. Notice at 1.

II. Postal Service Filing

Incentive program. The Postal Service proposes a 3 percent discount on First-Class Mail presort and Standard Mail commercial letters and flats that include, in or on the mailpiece, a two dimensional barcode readable by mobile smart phones. *Id.* at 2. The Postal Service notes that nonprofit standard mailpieces are ineligible for the discount. *Id.*

The Postal Service requires that the barcode must be two dimensional, and notes that one dimensional barcodes, though readable by smart phones, are not eligible to receive the discount. *Id.* The Postal Service requires that the barcode must be designed to "initiate interaction with consumers via mobile smart phones to market, promote, or educate." *Id.* at 2–3.

The 3 percent discount may be combined with the full-service intelligent mail barcode discount, but may not be combined with any other incentive. *Id.* at 3.

Requirements of 39 CFR 3010. The Postal Service certifies that it will, at least 45 days prior to implementation, inform customers of the price adjustment as required by rule 3010.14(a)(3), by way of the Notice, a press release, and publication in the *Federal Register* and *Postal Bulletin. Id.* at 1–2. The Postal Service identifies Greg Dawson, Manager of Pricing Strategy, as the official responsible for responding to any Commission inquiries. *Id.* at 2.

Impact on the price cap. The Postal Service does not calculate the cap implication of the discount as described in rule 3010.14(b)(1) through (4). *Id.* at 3. The Postal Service states that excluding the price cap calculation is consistent with other limited availability discounts offered in the past. *Id.*

Objectives and factors, workshare discounts, and preferred rates. The Postal Service lists the relevant objectives and factors of 39 U.S.C. 3622, and claims the program "[t]o a large extent * * * does not substantially alter the degree to which First-Class Mail and Standard Mail prices already address" the objectives and factors. *Id.* at 5–7. In particular, the Postal Service contends the program is an example of the increased pricing flexibility under the Postal Accountability and Enhancement Act (objective 4), and provides an incentive for profitable new mail that will enhance the financial position of the Postal Service (objective 5). *Id.* at 5. Similarly, the Postal Service contends that the program encourages increased mail volume (factor 7) and will not imperil the ability of First-Class Mail or Standard Mail to cover its attributable costs (factor 2). *Id.* at 7.The Postal Service states that this program will not impact current workshare discounts. *Id.* at 8. The Postal Service states that it does not expect participation in the program to be of a magnitude that would "cause a material impact on the differential between commercial and nonprofit pieces in Standard Mail." *Id.*

Mail Classification Schedule (MCS). The Postal Service provides proposed MCS language in Appendix A of its Notice. It outlines the proposed changes in the MCS for the relevant products. *Id.* Appendix A.

III. Commission Action

The Commission establishes Docket No. R2011–5 to consider all matters related to the Notice. The Commission's rules provide for a 20-day comment period starting from the date of the filing of the Notice. *See* 39 CFR

[1] United States Postal Service Notice of Market-Dominant Price Adjustment, April 12, 2011 (Notice).

3010.13(a)(5). Interested persons may express views and offer comments on whether the planned changes are consistent with the policies of 39 U.S.C. 3622 and 39 CFR part 3010. Comments are due no later than May 2, 2011.

The Commission appoints Natalie Rea to represent the interests of the general public in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. R2011–5 to consider matters raised by the Postal Service's April 12, 2011 filing.

2. Interested persons may submit comments on the planned price adjustments. Comments are due May 2, 2011.

3. Pursuant to 39 U.S.C. 505, Natalie Rea is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Commission directs the Secretary to arrange for prompt publication of this notice in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2011–9543 Filed 4–19–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64300; File No. SR–Phlx–2011–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Rebates and Fees for Customer Complex Orders

April 14, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 8, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Complex Order [3] Fees in Section I of its Fee Schedule titled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols."

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 11, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Section I, Part B of the Exchange's Fee Schedule, titled "Complex Order" to: (i) Pay a Customer Complex Order Rebate for Adding Liquidity of $0.25 per contract for options overlying the iShares Russell 2000 Index ("IWM"); and (ii) waive the Customer Complex Order Fee for Removing Liquidity for options overlying Standard and Poor's Depositary Receipts/SPDRs ("SPY") [4]; the PowerShares QQQ Trust ("QQQ")®; and Apple, Inc. ("AAPL") [sic]. The Exchange is proposing these amendments to the Fee Schedule in order to continue to attract additional Customer order flow.

Complex Order Rebate for Adding Liquidity

Currently, the Exchange pays the following Complex Order Rebates for Adding Liquidity in the Select Symbols:

	Customer	Directed participant	Specialist, ROT, SQT and RSQT	Firm	Broker-dealer	Professional
Rebate for Adding Liquidity in all Select Symbols except SPY, QQQ and AAPL	$0.24	$0.00	$0.00	$0.00	$0.00	$0.00
Rebate for Adding Liquidity for SPY, QQQ and AAPL	0.25	0.00	0.00	0.00	0.00	0.00

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .08(a)(i).

[4] SPY options are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

With respect to Complex Orders, the Exchange pays Customers a rate of $0.25 per contract in specific Select Symbols, namely SPY, QQQ and AAPL. The Exchange currently pays a Complex Order Customer Rebate of $0.24 per contract for transactions that add liquidity in IWM ("IWM Rebate").[5] The Exchange is proposing to change the IWM Customer Complex Order Rebate for Adding Liquidity from $0.24 to $0.25 per contract. The Exchange would continue to pay all other Select Symbols, except SPY, QQQ and AAPL, a Customer Complex Order Rebate for Adding Liquidity of $0.24 per contract. Other, non-Customer market participants would not be paid a Complex Order Rebate for Adding Liquidity.[6] The Exchange believes that this increased rebate for Customers transacting Complex Orders in options overlying IWM will attract additional Customer order flow to the Exchange in IWM.

Complex Order Fee for Removing Liquidity

Currently, the Exchange assesses the following Complex Orders Fees for Removing Liquidity in the Select Symbols:

%	Customer	Directed participant	Specialist, ROT, SQT and RSQT	Firm	Broker-dealer	Professional
Fee for Removing Liquidity	$0.25	$0.25	$0.27	$0.28	$0.35	$0.28

With respect to Complex Orders, the Exchange currently assesses Customers a Fee for Removing Liquidity of $0.25 per contract in all Select Symbols. The Exchange is proposing to waive the Customer Complex Order Fee for Removing Liquidity for options overlying SPY, QQQ, IWM and AAPL. All other Select Symbols would continue to be subject to a Customer Complex Order Fee for Removing Liquidity of $0.25 per contract. The Exchange is not proposing to waive the Complex Order Fee for Removing Liquidity for any other market participant.[7] The Exchange believes that this waiver of the Customer Complex Order Fee for Removing Liquidity for options overlying SPY, QQQ, IWM and AAPL will attract additional Customer order flow to the Exchange in those Select Symbols.

The Exchange does not propose to amend the fees in Section I, Part A titled "Single contra-side order." While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 11, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) of the Act[9] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange also believes that there is an equitable allocation of reasonable rebates among Exchange members.

The Exchange believes that it is reasonable to pay an increased Complex Order Rebate for Adding Liquidity to Customers in options overlying IWM and waive the Complex Order Fee for Removing Liquidity for Customers in options overlying SPY, QQQ, IWM and AAPL, because both the proposed Customer rebate and waiver of the fee should attract additional Customer order flow to the Exchange for the benefit of all market participants. The Exchange believes that the proposal is equitable because by paying an increased Complex Order Rebate for Adding Liquidity to Customers transacting options overlying IWM and waiving the Customer Fee for Removing Liquidity in options overlying SPY, QQQ, IWM and AAPL, all market participants should benefit from the increased liquidity which increased Customer order flow should bring to the Exchange. In addition, the aforementioned proposals are equitable because the Exchange would uniformly pay and waive the rebate and fee, respectively, for all Customer Complex Orders in the applicable symbols.

Also, the Exchange believes that it is reasonable to assess a different Fee for Removing Liquidity in certain symbols. For example, Chicago Board Options Exchange, Incorporated ("CBOE") assesses Customers different fees for transacting QQQ [sic] and SPY as compared to other equity options.[10]

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can readily send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the Complex Order fees and rebates it assesses must be competitive with fees and rebates assessed in place on other options exchanges. The Exchange believes that this competitive marketplace impacts the fees and rebates present on the Exchange today and influences the proposals set forth 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 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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine

[5] The Exchange currently also pays a $0.24 per contract Customer Complex Order Rebate for Adding Liquidity in all Select Symbols except SPY, QQQ and AAPL.

[6] The only market participant that receives a Rebate for Adding Liquidity for Complex Orders today is a Customer.

[7] The other non-Customer market participants would continue to be assessed a Complex Order Fee for Removing Liquidity as noted above.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* CBOE's Fees Schedule.

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx-2011–52 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–Phlx-2011–52. 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 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 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–Phlx-2011–52 and should be submitted on or before May 11, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–9478 Filed 4–19–11; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7397]

Advisory Committee on the Secretary of State's Strategic Dialogue With Civil Society; Notice of the Establishment of an Advisory Committee

This is notice of the establishment of the Advisory Committee on the Secretary of State's Strategic Dialogue with Civil Society (hereinafter "the Committee"). The Committee will provide advice and assistance in the formulation of U.S. policies, proposals, and strategies for engagement with, and protection of, civil society worldwide. Functions of the Committee include, but are not limited to: (a) Providing information and advice on the effective integration of civil society into overall foreign policy; and (b) providing information and advice on the Department of State's role in advancing, promoting, and protecting freedom of association and expression. The objective of the Committee is to bring to the United States government a source of expertise, knowledge, and insight not available within the Department or elsewhere in the government on these issues. The Committee serves in a solely advisory capacity.

The membership of the Committee will consist of representatives who are leaders of U.S. and foreign civil society and U.S. and foreign businesses engaged with civil society. They may include: Leaders of independent public policy advocacy organizations, non-profit organizations that defend human rights and promote democracy, humanitarian organizations, private foundations and funds, charitable trusts, societies, associations and non-profit corporations. It is anticipated that the Committee will meet at least annually. The Department affirms that this advisory committee is necessary and in the public interest.

For further information, please call Tomicah S. Tillemann, Senior Adviser for Civil Society and Emerging Democracies, U.S. Department of State, at *civilsociety@state.gov.*

Dated: April 13, 2011.

Tomicah S. Tillemann

Senior Adviser for Civil Society and Emerging Democracies, U.S. Department of State.

[FR Doc. 2011–9575 Filed 4–19–11; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifty-Fourth Meeting: RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B) meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B).

DATES: The meeting will be held May 3–5, 2011 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the RTCA Conference Rooms, 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036, (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 186, Automatic Dependent Surveillance—Broadcast (ADS–B) meeting. The agenda will include:

Specific Working Group Sessions

Tuesday, May 3

- All Day, WG–6 Application Technical Requirements, MacIntosh-NBAA Room & Hilton-ATA Room

Wednesday, May 4

- All Day, WG–6 Application Technical Requirements, MacIntosh-NBAA Room & Hilton-ATA Room

Thursday, May 5

- Plenary Session

Agenda—Plenary Session—Agenda

May 5, 2011

RTCA—Washington, DC—MacIntosh-NBAA Room & Hilton-ATA Room

9 a.m.

- Chairman's Introductory Remarks

- Review of Meeting Agenda
- Review and Approval of the 53rd Meeting Summary, RTCA Paper No. 035–11/SC186–307
- FAA Surveillance and Broadcast Services (SBS) Program Status
- Traffic Situation Awareness with Alerts (TSAA)
  - Con-Ops Presentation
- ADS–B IM Coordination with SC–214/WG–78 for Data Link Rqts, Discussion and Status
- ADS–B Coordination with SC–206 for Wake Vortex, Discussion and Status
- Working Group Reports
  - WG–1—Operations and Implementation
  - WG–2—TIS–B MASPS—no report
  - WG–3—1090 MHz MOPS –
  - Errata Activity and Status
  - WG–4—Application Technical Requirements
  - Pre-FRAC Briefing for DO–317A
  - WG–5—UAT MOPS—No Report
  - WG–6—ADS–B MASPS
  - RFG—Requirements Focus Group
  - Date, Place and Time of Next Meeting
  - New Business
  - Other Business
  - Review Action Items/Work Programs
  - Adjourn Plenary

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 14, 2011.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2011–9491 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifty Seventh Meeting: RTCA Special Committee 135, Environmental Conditions and Test Procedures for Airborne Equipment

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of Joint RTCA Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment.

DATES: The meeting will be held May 11–12, 2011 from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at Embry-Riddle University, Building 58, Room 106, Prescott, AZ 86301–3720.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a RTCA Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment.

The agenda will include:

Tuesday–Wednesday, May 11–12, 2011

- 9 a.m.–5 p.m.
  - Chairmen's Opening Remarks, Introductions.
  - Approval of Summary from Fifty-Sixth Meeting (RTCA Paper No. 224–110/SC 135–683).
  - Review Approved Revised SC135 TOR (Terms of Reference)—Environmental Conditions and Test Procedures for Airborne Equipment—(RTCA Paper No. 067–11/SCPMC887).
  - Review Proposal of User's Guides.
  - Review Working Group Activities.
  - Review Revised Terms of Reference.
  - New or unfinished business.
  - Establish Date for Next SC–135 Meeting.
  - Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, April 14, 2011.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2011–9499 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Second Meeting: RTCA Special Committee 225: Rechargeable Lithium Batteries and Battery Systems—Small and Medium Sizes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 225 meeting: Rechargeable Lithium Batteries and Battery Systems—Small and Medium Sizes.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 225: Rechargeable Lithium Batteries and Battery Systems—Small and Medium Sizes.

DATES: The meeting will be held May 24–25, 2011, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036, telephone (202) 833–9339 or e-mail *jiverson@rtca.org,* fax (202) 833–9434, Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., and Appendix 2), notice is hereby given for a Special Committee 225, Rechargeable Lithium Batteries and Battery Systems—Small and Medium Sizes.

Agenda

Tuesday May 24, 2011

- Welcome/Introductions/Administrative Remarks.
- Review of the meeting agenda.
- Review and approval of summary from the first plenary meeting RTCA paper no. 064–11/SC225–002.
- UL and IEC presentation.
- Review working group progress on "permanently installed".
- Review working group progress on AC–25–1352–1A and related FAA Special Conditions.
- Test Data Availability.
- Working Group to review:
  - IEC 62133.
  - Underwriters Laboratories (UL) standards 1642, 2054, 60950–1.
  - United Nations (UN) (T1–T8) section 38.3.
  - RTCA/DO–160 (Altitude, Rapid Decompression).
  - RTCA/DO–311.
- Review Agenda for Wednesday, May 25.

Wednesday May 25, 2011

- Review Agenda, Other Actions.
- Working Groups meeting.
- Working Group report, review progress and actions.
- Other Business.
- Establish Agenda for Third Plenary Meeting.
- Administrative Items (Meeting Schedule).
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 14, 2011.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2011–9487 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Third Meeting RTCA NextGen Advisory Committee (NAC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: RTCA NextGen Advisory Committee (NAC).

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA NextGen Advisory Committee (NAC).

DATES: The meeting will be held May 19, 2011 from 9:30 a.m. to 2 p.m.

ADDRESSES: The meeting will be held at JetBlue Airways Hangar 81, Cargo Area C, South Cargo Road and 148th Street, JFK International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the NextGen Advisory Committee meeting. The agenda will include:

- Opening Plenary (Welcome and Introductions), Chairman Dave Barger, President and CEO, JetBlue Airways.
- Official Statement of Designated Federal Official, Michael Huerta, FAA Deputy Administrator.
- Review and Approval of February 1, 2010 Meeting Summary/Terms of Reference.
- Chairman's Report—Chairman Barger.
- FAA Report—Michael Huerta.
- Subcommittee Report: NAC Subcommittee and Work Groups.
  - Subcommittee Co-Chair, Steve Brown, Senior Vice President Operations and Administration, National Business Aviation Association.
- Break.
- Review Recommendations to be Considered for Submission to FAA.
  - Integrated Capabilities Work Group Task Group.
  - Prioritize the NextGen mid-term operations that are dependent on equipage.
  - NAC Equipage AdHoc.
  - Recommend the aircraft types or user groups that should be considered for incentives.
- Lunch Break.
- Review Recommendations to be Considered for Submission to FAA, Metroplex.
  - Criteria for Metroplex Prioritization, Preliminary Prioritization.
  - Integrated Capabilities Scoping and Requirements.
- Review Recommendations to be Considered for Submission to FAA, NextGen Performance Metrics.
  - Preliminary Reports on Key NextGen Performance Indicators.
  - NextGen Measurement Methodology.
- Review Recommendations to be Considered for Submission to FAA, Airspace and Procedures Tasking.
  - Special Activity Airspace Concept of Operations.
- Other Business/Anticipated Issues for NAC Consideration and Action at September 29, 2011 meeting.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 14, 2011.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2011–9488 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Sixteenth Meeting: EUROCAE WG–72: RTCA Special Committee 216: Aeronautical Systems Security (Joint Meeting)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of EUROCAE WG–72: RTCA Special Committee 216: Aeronautical Systems Security (Joint Meeting).

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of EUROCAE WG–72: RTCA Special Committee 216: Aeronautical Systems Security (Joint Meeting).

DATES: The meeting will be held May 10–13, 2011 starting at 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Airbus, Technical University, Airbus Technology Center, Building 70, Nesspriel 5, 21129, Hamburg (Finkenwerder) Germany. Email *jean-paul.moreaux@airbus.com* and *samira.bezza@eurocae.net* of your intention to attend the meeting.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a EUROCAE WG–72: RTCA Special Committee 216: Aeronautical Systems Security (Joint Meeting) meeting.

Agenda

- Day 1, 9 a.m.
  - Welcome/Introductions/ Administrative Remarks.
  - Agenda Overview and Approval.
  - Split Plenary.
  - SC216—Approval of the Summary of the 15th meeting held January 18–21, 2011.
  - Report on the PMC/ICC Action on TOR.
  - RTCA Specific Publication Progress and Update.
  - Subgroup and Action Item Reports.
  - WG–72 Day 2 (9 a.m.–5 p.m.).
  - Introduction/Review of the

previous MoM/Report about publications/Approval of the meeting agenda/Election of new WG–72 secretary/Working Document Discussion/WG–72 specific concerns.
- Day 2 (9 a.m.–11 a.m.) Joint Plenary, Status of Discussions, Layout of Publications, Issues, Concerns, and Topics to be resolved, Priorities of work, Time Line, Mutual work items, *i.e.;* ED203, ED204, and Publication Schedule planning for working documents.
- Day 2 (11 a.m.–5 p.m.) Subgroup Meetings/Break-outs.
- Day 3 –Subgroup Meetings/Break-outs.
- Day 4—(9 a.m.–12 p.m.) Subgroup Meetings/Break-outs.
- Day 4—(1:15 p.m.–4 p.m.) Joint Plenary.
  - Reports on Break-outs.
  - Action Item Review and Coordination.
  - Establish Dates, Location and Agenda for Next Meeting(s).
  - Any Other Business.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 14, 2011.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2011–9489 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Ninth Meeting: RTCA Special Committee 221: Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 221 meeting: Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 221: Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures.

DATES: The meeting will be held May 10–11, 2011, from 9 a.m. to 5 p.m., unless stated otherwise in agenda.

ADDRESSES: The meeting will be held at RTCA, Inc., Colson Board Room, 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC 20036, telephone (202) 833–9339, fax (202) 833–9434, Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., and Appendix 2), notice is hereby given for a Special Committee 221, Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures.

Agenda

Tuesday May 10 (12 p.m.–5 p.m.)

Wednesday, May 11, 2011 (9 a.m.–5 p.m.)

- 12 p.m.
- Welcome/Introductions and Administrative Remarks
- Approval of Summary of the Seventh Meeting held November 16–17, RTCA Paper No. 073–11/SC221–023
- Leadership Comments
- Review of WG Actions—Status Reports
- Consider for Approval—New Document—Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures, RTCA Paper No. 075–11/SC221–025
- SC–221 Follow on Tasks—Discussion
- Other Business
- Adjourn at 5 p.m.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 14, 2011.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2011–9490 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Tenth Meeting: RTCA Special Committee 220: Automatic Flight Guidance and Control

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 220 meeting: Automatic Flight Guidance and Control.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 220: Automatic Flight Guidance and Control.

DATES: The meeting will be held May 10–12, 2011, from 9 a.m. to 5 p.m., unless stated otherwise.

ADDRESSES: The meeting will be held at Hilton Garden Inn, Fort Worth North, 4400 North Freeway, Fort Worth, Texas 76137. Hotel contact information, (817)222–0222 (ph), (817)222–0770 (fax), *http://www.fortworthnorth.gardeninn.com*, POC; Jennifer Severin (*Jennifer.severin@hilton.com*).

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036, telephone (202) 833–9339, fax (202) 833–9434, Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., and Appendix 2), notice is hereby given for a Special Committee 220, Automatic Flight Guidance and Control.

Agenda

Tuesday May 10–Thursday, May 12, 2011

- Introductions and Administrative Items.
- Review of Meeting Agenda.
- Review and approval of summary from the first plenary meeting RTCA paper no. 043–11/SC220–022.
- Presentation of progress of WG–2.
- Presentation of progress of WG–3.
- Continue development of Installation Guidance White Papers.
- Review of Action Items.
- Administrative Items (meeting schedule, location, and next meeting agenda).
- Other Business.
- Adjourn at 2 p.m.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person

listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 14, 2011.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2011–9486 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–18]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 2, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–0348 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:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 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: Kenna Sinclair, ANM–113, (425) 227–1556, Federal Aviation Administration, 1601 Lind Avenue, SW, Renton, WA 98057–3356, or Frances Shaver, (202) 267–4059. Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 14, 2011.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2008–0348.
Petitioner: The Boeing Company.
Section of 14 CFR Affected: § 25.812.
Description of Relief Sought: Boeing requests an amendment to an existing exemption for the Model 747–8F to modify Limitation 12, which requires illumination at the ground end of the assist means used at the crew door for all gear collapse conditions.

[FR Doc. 2011–9520 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at Houma Terrebonne Airport, Houma, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Houma Terrebonne Airport, Houma, Louisiana. The property consists of two small parcels of land, together with all the improvements situated thereon, and all the rights, ways, privileges, servitudes and advantages thereunto belonging or in anywise appertaining. This land is located approximately 4,700 feet west of the Houma Terrebonne Airport, of Houma, Louisiana. The land in question was acquired by the Terrebonne Parish on June 17, 1958, through provisions of the Federal Property Administrative Services Act of 1949 (63 Stat. 765), the Surplus Property Act of 1944 (58 Stat. 765) as amended thereby.

As airport owner, the Terrebonne Parish has requested to release two parcels in an effort to obtain additional funding for airport improvement at the Houma Terrebonne Airport. As part of this release, this parcel will change from aeronautical to non-aeronautical use and be limited to some type of commercial or industrial use under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before May 20, 2011.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Lacey D. Spriggs, Federal Aviation Administration, Southwest Region, Airports Division, Manager/Louisiana/New Mexico Airports Development Office, ASW–640, Fort Worth, Texas 76137–0640.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bradley R. Brandt, Louisiana Department of Transportation, Acting Aviation Director, at the following address: P.O. Box 94245, Baton Rouge, Louisiana 70804–9245.

FOR FURTHER INFORMATION CONTACT: Mr. Justin Barker, Federal Aviation Administration, Program Manager/Louisiana/New Mexico Airports Development, Office, ASW–640, 2601 Meacham Boulevard, Fort Worth, Texas 76137–0640.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Houma Terrebonne Airport under the provisions of the AIR 21.

The following is a brief overview of the request:

As airport owner, the Terrebonne Parish has requested to release two parcels comprised of 0.064 acres and of 0.085 acres that was acquired under the Federal Property Administrative

Services Act of 1949 (63 Stat. 765), the Surplus Property Act of 1944 (58 Stat. 765) as amended thereby.

The release of property will not adversely affect the Houma Terrebonne Airport because these parcels are located on the east side of Louisiana 57, at southeast corner with Hancock Road, approximately 4,700 feet west of the airport Houma Terrebonne Airport. These parcels are situated in Section 12, Township 17 South, Range 17 East, Southeastern (West of River) Land District, Terrebonne Parish, Louisiana. The sale is estimated to provide $12,939.80 and $20,943.00 for a sum of $33,882.80 to be used for airport improvements at the Houma Terrebonne Airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Houma Terrebonne Airport.

Issued in Fort Worth, Texas, on April 4, 2011.

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. 2011–8749 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2011–0001–N–5]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection request (ICR). Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than June 20, 2011.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Mail Stop 25, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130–0578." Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6479, or via e-mail to Mr. Brogan at *Robert.Brogan@dot.gov,* or to Ms. Toone at *Kimberly.Toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Mail Stop 25, Washington, D.C. 20590 (*telephone:* (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Mail Stop 35, Washington, DC 20590 (*telephone:* (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)-(iv); 5 CFR 1320.8(d)(1)(I)-(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved information collection request (ICR) that FRA will submit for clearance by OMB as required under the PRA.

Title: Implementation for Capital Grants for Rail Line Relocation and Improvement Projects.

OMB Control Number: 2130–0578.

Abstract: Section 9002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005) amends chapter 201 of Title 49 of the United States Code by adding section 20154. Section 20154 authorizes—but does not appropriate—$350,000,000 per year for each of the fiscal years (FY) 2006 through 2009 for the purpose of funding a grant program to provide financial assistance for local rail line relocation and improvement projects. Section 20154 directs the Secretary of Transportation (Secretary) to issue regulations implementing this grant program, and the Secretary has delegated this responsibility to FRA. On July 11, 2008, FRA published the final rule intended to carry out that statutory mandate.

Congress did not appropriate any funding for the Program for FY 2006 or FY 2007. In FY 2008, Congress appropriated $20,145,000 for the Program, reduced by rescission too $20,040,200, $14,905,000 of which was available for discretionary (competitive) grants. After evaluating and scoring 37 applications, FRA awarded $14,315,300 to seven different projects, leaving $589,700. In FY 2009, Congress appropriate $25,000,000 and directed that $17,100,000 be awarded to 23

specific projects, with $7,900,000 left over discretionary grants. Subsequently, in FY 2010, Congress appropriated $34,532,000 for the Program, and directed that $24,519,200 go to 27 specifically enumerated projects. FRA combined the remaining $10,012,800 with $589,700 that was not awarded from the FY 2008 competition, $2,000,000 that was awarded to one of the FY 2008 projects but which the project sponsors ultimately turned down, and the $7,900,000 in FY 2009 discretionary funding for a total of $20,502,500. These funds were the subject of a Notice of Funding Availability FRA published in the Federal Register on September 10, 2010. The application period closed on October 29, 2010, and FRA is currently evaluating applications submitted. The information collected will be used by FRA to determine whether or not it is appropriate to provide financial assistance to State and local governments looking to undertake either rail relocation or rail improvement projects.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Respondent Universe: 75 States/Local Governments.

Form Number(s): N/A.

REPORTING BURDEN

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
262.11—Application Process	75-States/Local Governments.	50-grant application	580 hours/290 hours	21,750
—Requests for Meeting with FRA Administrator	75-States/Local Governments.	10 requests	30 minutes	5
—Face-to-face Meetings with Administrator to Discuss Project.	75-States/Local Governments.	10 meeting	2 hours	20
262.15—Environmental Assessment	75-States/Local Governments.	30 environmental documents.	200 hours	6,000
—Consultations with FRA	75-States/Local Governments.	9 consults	2 hours	18
262.17—State Agreements to Combine Grant Awards.	75-States/Local Governments.	1 agreement	10 hours	10
262.19–Close-Out Procedures	75-States/Local Governments.	30 sets of close-out documents.	6 hours	180
—Project Reports	75-States/Local Governments.	30 reports	80 hours	5,400

Total Responses: 170.

Estimated Total Annual Burden: 33,383 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on April 14, 2011.

Donna Alwine,

Acting Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2011–9505 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA Docket No. NHTSA–2011–0048]

Renewal of Charter for the National Emergency Medical Services Advisory Council (NEMSAC)

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Notice.

SUMMARY: The Secretary of Transportation announces the renewal of the National Emergency Medical Services Advisory Council to provide advice and recommendations regarding emergency medical services (EMS) matters to the U.S. Department of Transportation, National Highway Traffic Safety Administration and through NHTSA to the Federal Interagency Committee on Emergency Medical Services. The NHTSA's Office of EMS serves as sponsor of the Advisory Council for the Secretary. The purpose of this notice is to inform interested parties of the renewal of NEMSAC.

FOR FURTHER INFORMATION CONTACT: Drew Dawson, Director, NHTSA Office of EMS, (202) 366–9966 or via e-mail at *drew.dawson@dot.gov.* You may also contact Noah Smith at the Office of EMS at (202) 366–5030 or via e-mail at *noah.smith@dot.gov.* The Office of EMS fax number is (202) 366–7149.

SUPPLEMENTARY INFORMATION: This notice of NEMSAC's charter renewal is given under the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.).

Issued on: April 15, 2011.

Michael L. Brown,

Acting Associate Administrator for Research and Program Development.

[FR Doc. 2011–9612 Filed 4–19–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB–1075X]

Manufacturers Railway Company—Discontinuance Exemption—in St. Louis County, MO

AGENCY: Surface Transportation Board, DOT.

ACTION: Correction to notice of exemption.

On March 24, 2011, Manufacturers Railway Company (MRS) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over all tracks and yards located within the area bordered by Cedar Street on the north to Zepp Street on the south; and Mississippi River flood wall on the east to U.S. Interstate 55 on the west, in St. Louis, MO.

On April 13, 2011, notice of the petition for exemption was served and published in the **Federal Register** (76 FR 20,819). The notice erroneously stated that the lines do not contain any Federally granted rights-of-way. This notice corrects that statement. According to MRS, the lines do contain Federally granted rights-of-way. All other information in the notice is correct.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 14, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–9528 Filed 4–19–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Entities Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of 7 newly-designated entities and 7 newly-designated individuals whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters."

DATES: The designation by the Director of OFAC of the 7 entities and 7 individuals identified in this notice pursuant to Executive Order 13382 is effective on February 1, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/offices/enforcement/ofac*) or via facsimile through a 24-hour fax-on demand service, *tel.:* (202) 622–0077.

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the "Order"), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On February 1, 2011, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated 7 entities and 7 individuals whose property and interests in property are blocked pursuant to Executive Order 13382.

The list of additional designees is as follows:

Entities:

1. CARVANA COMPANY, Number 39, Alvand St., 1st Floor, Argentine Square, Tehran 1516674311, Iran; 1st Apadana St., Number 478, Esfahan 81658, Iran [NPWMD].

2. MACHINE PARDAZAN CO. (a.k.a. MACHINE PARDAZAN CO. LTD.; a.k.a. MACHINE PARDAZAN LTD.), Number 39, Alvand St., 1st Floor, Argentine Square, Tehran, Iran; Km 12 Karadj Special Rd., North Chitgar, Rajaii Ave., Number 1, Tehran, Iran; No. 7, Daftari Ave., Zafar St., Shariati St., Tehran, Iran [NPWMD].

3. MACPAR MAKINA SAN VE TIC A.S. (a.k.a. MACPAR MAKINA; a.k.a. "MAKPA"), Sehidler Caddesi No: 79/2 Tuzla, Istanbul 34940, Turkey; Istanbul Chamber of Comm. No. 537070 (Turkey) [NPWMD].

4. MULTIMAT IC VE DIS TICARET PAZARLAMA LIMITED SIRKETI (a.k.a. MULTIMAT DOMESTIC AND FOREIGN TRADE MARKETING LTD.; a.k.a. MULTIMAT TEHRAN), Bagdat Caddesi, Burc Sitesi, Number 117 A Blok D.2, Feneryolu—Kadkoy, Istanbul, Turkey; Number 39, Alvand St., 1st Floor, Argentine Square, Tehran, Iran; V.A.T. Number Goztepe V.D. 823 026 0248 (Turkey) [NPWMD].

5. STEP A.S. (a.k.a. STANDARD TECHNICAL COMPONENT INDUSTRY AND TRADE COMPANY; a.k.a. STANDART TEKNIK PARCA SAN VE TIC A.S.; a.k.a. STEP ISTANBUL; a.k.a. STEP S.A.; a.k.a. STEP STANDARD TECHNICAL COMPONENTS INDUSTRY AND TRADING CORPORATION), DES San. Sitesi, A13 Blok, No. 4 Y. Dudullu, Istanbul 81260, Turkey; Bahariye Cad., No. 44, K6, Kadikoy, Istanbul, Turkey [NPWMD].

6. MARANER HOLDINGS LIMITED, 143 Flat 1, Tower Road, Sliema, Malta; Business Registration Document # C33482 (Malta) [NPWMD].

7. ROYAL–MED SHIPPING AGENCY LTD, Rockap Apartments No. 20, New Street, Luqa, Malta; 143 Flat 1, Tower Road, Sliema, Malta; Business Registration Document # C47893 (Malta); Email Address *md@royalmed.com.mt;* alt. Email Address *paffairs@royalmed.com.mt;* alt. Email Address

admin@royalmed.com.mt; Telephone: 0035620105010; Telephone: 0035620106381; Fax: 0035620106381; Fax: 0035621317172 [NPWMD].

Individuals:

1. DURANSOY, Cagri; DOB 4 Aug 1985; POB Kadikoy, Turkey; Passport TR–T 577847 (Turkey); alt. Passport 31/2857612/2007 (Turkey) (individual) [NPWMD].

2. DURANSOY, Muammer Kuntay; DOB 3 Jun 1953; POB Eskisehir, Turkey (individual) [NPWMD].

3. FALSAFI, Mahin, Number 7 Daftari, Dawudieh, Shariati Avenue, Tehran, Iran; DOB 20 Apr 1943; POB Tehran, Iran; Passport S2662712 (Iran) expires 16 Apr 2002 (individual) [NPWMD].

4. JAFARI, Mani; DOB 22 Mar 1977; POB Tehran, Iran; Passport 10734 (Iran) (individual) [NPWMD].

5. JAFARI, Milad; DOB 20 Sep 1974; POB Tehran, Iran; nationality Iran; Passport L8081303 (Iran) issued 14 Mar 2006 expires 14 Mar 2011 (individual) [NPWMD].

6. JAFARI, Mohammad Javad, Number 7 Daftari, Dawudieh, Shariati Avenue, Tehran, Iran; DOB 1945 (individual) [NPWMD].

7. BALDACCHINO, Adrian, Fiorella, Triq Tumas Fenech, Qormi, Malta; DOB 1 Jan 1974; citizen Malta; nationality Malta; National ID No. 326074M (Malta) (individual) [NPWMD].

Dated: April 8, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–9570 Filed 4–19–11; 8:45 am]

BILLING CODE 4811–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, June 23, 2011.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Thursday, June 23, 2011, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: April 15, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–9585 Filed 4–19–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, New Jersey, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 14, 2011.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, June 14, 2011, at 10 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: April 15, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–9586 Filed 4–19–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, June 15, 2011.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, June 15, 2011, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: April 15, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–9587 Filed 4–19–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 21, 2011.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, June 21, 2011, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: April 15, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–9589 Filed 4–19–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Alabama, Georgia, Florida, Louisiana, Mississippi, Tennessee, and Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 3 Taxpayer Advocacy Panel will be held Wednesday, June 1, 2011, at 3:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: April 15, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–9590 Filed 4–19–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Arizona, Arkansas, Colorado, Kansas, New Mexico, Missouri, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, June 16, 2011.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Thursday, June 16, 2011, at 11:30 a.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Patricia Robb. For more information please contact Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: April 15, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–9592 Filed 4–19–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Idaho, Iowa, Minnesota, Montana, Nebraska, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Wednesday, June 1, 2011, at 11 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information please contact Mr. Shepard at 1–888–

912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: April 15, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–9593 Filed 4–19–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, June 16, 2011.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 7 Taxpayer Advocacy Panel will be held Thursday, June 16, 2011, at 2 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: April 15, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–9594 Filed 4–19–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Practitioner Engagement Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Practitioner Engagement Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, June 22, 2011.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Practitioner Engagement Project Committee will be held Wednesday, June 22, 2011, at 9 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notifications of intent to participate must be made with Ms. Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: April 15, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–9597 Filed 4–19–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Toll Free Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Toll Free Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 28, 2011.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Toll Free Project Committee will be held Tuesday, June 28, 2011, at 9 a.m. Pacific Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information and site location please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: April 15, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–9599 Filed 4–19–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel Notice Improvement Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notice Improvement Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, June 2, 2011.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Notice Improvement Project Committee will be held Thursday, June 2, 2011 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: April 15, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–9601 Filed 4–19–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 14, 2011.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Tuesday, June 14, 2011, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: April 15, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–9602 Filed 4–19–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, June 27, 2011.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee will be held Monday, June 27, 2011, at 3 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information please contact Ms. Ayala at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: April 15, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–9603 Filed 4–19–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 14, 2011.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Project Committee will be held Tuesday, June 14, 2011, 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues.

Dated: April 15, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–9604 Filed 4–19–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 28, 2011.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee will be held Tuesday, June 28, 2011 at 2:00 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: April 15, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–9605 Filed 4–19–11; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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No. 76 April 20, 2011

Part II

Environmental Protection Agency

40 CFR Parts 122 and 125
National Pollutant Discharge Elimination System—Cooling Water Intake Structures at Existing Facilities and Phase I Facilities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 125

[EPA–HQ–OW–2008–0667, FRL–9289–2]

RIN 2040–AE95

National Pollutant Discharge Elimination System—Cooling Water Intake Structures at Existing Facilities and Phase I Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish requirements under section 316(b) of the Clean Water Act (CWA) for all existing power generating facilities and existing manufacturing and industrial facilities that withdraw more than 2 million gallons per day (MGD) of water from waters of the U.S. and use at least twenty-five (25) percent of the water they withdraw exclusively for cooling purposes. The proposed national requirements, which would be implemented through National Pollutant Discharge Elimination System (NPDES) permits, would establish national requirements applicable to the location, design, construction, and capacity of cooling water intake structures at these facilities by setting requirements that reflect the best technology available (BTA) for minimizing adverse environmental impact. The proposed rule constitutes EPA's response to the remand of the Phase II existing facility rule and the remand of the existing facilities portion of the Phase III rule. In addition, EPA is also responding to the decision in *Riverkeeper* I and proposing to remove from the Phase I new facility rule the restoration-based compliance alternative and the associated monitoring and demonstration requirements. EPA expects this proposed regulation would minimize adverse environmental impacts, including substantially reducing the harmful effects of impingement and entrainment. As a result, the Agency anticipates this proposed rule would help protect ecosystems affected by cooling water intake structures and preserve aquatic organisms and the ecosystems they inhabit in waters used by cooling water intake structures at existing facilities.

DATES: Comments must be received on or before July 19, 2011.

ADDRESSES: Submit your comments, identified by Docket No. EPA–HQ–OW–2008–0667 by one of the following methods:

- *http:www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: OW-Docket@epa.gov,* Attention Docket ID No. EPA–HQ–OW–2008–0667.
- *Mail:* Water Docket, U.S. Environmental Protection Agency, Mail Code: 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–OW–2008–0667. Please include a total of 3 copies. In addition, please mail a copy of your comments on information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attn:* Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* Water Docket, EPA Docket Center, EPA West Building Room 3334, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OW–2008–0667. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information by calling 202–566–2426.

Instructions: Direct your comments to Docket No. EPA–HQ–OW–2008–0667. 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 Water Docket in the EPA Docket Center, EPA/DC, 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 Water Docket is 202–566–2426.

FOR FURTHER INFORMATION CONTACT: For additional technical information, contact Paul Shriner at 202–566–1076; e-mail: *shriner.paul@epa.gov.* For additional economic information, contact Erik Helm at 202–566–1049; e-mail: *helm.erik@epa.gov.* For additional biological information, contact Tom Born at 202–566–1001; e-mail: *born.tom@epa.gov.*

SUPPLEMENTARY INFORMATION:

What Entities Are Regulated By This Action? This proposed rule would apply to existing facilities that use cooling water intake structures to withdraw water from waters of the U.S. and have or require a National Pollutant Discharge Elimination System (NPDES) permit issued under Section 402 of the CWA. Existing facilities subject to this regulation would include those with a design intake flow greater than 2 MGD. If a facility meets these conditions, it is subject to today's proposed regulations. If a facility has or requires a NPDES permit but does not meet the 2 MGD intake flow threshold, it would be subject to permit conditions implementing section 316(b), developed by the NPDES permit director, on a case-by-case basis, using best professional judgment. This proposal defines the term "cooling water intake structure" to mean the total physical structure and any associated waterways used to withdraw water from waters of the U.S., provided that at least twenty-five percent of the water withdrawn is used for cooling purposes. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, the intake pumps. Generally,

facilities that meet these criteria fall into two major groups: steam electric generating facilities and manufacturing facilities.

The following table lists the types of entities that are potentially subject to this proposed rule. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table could also be regulated.

Category	Examples of regulated entities	Standard Industrial Classification Codes	North American Industry Codes (NAIC)
Federal, State and Local Government.	Operators of steam electric generating point source dischargers that employ cooling water intake structures..	4911 and 493	221111, 221112, 221113, 221119, 221121, 221122, 221111, 221112, 221113, 221119, 221121, 221122.
Industry	Operators of industrial point source dischargers that employ cooling water intake structures..	See below	See below.
	Steam electric generating	4911 and 493	221111, 221112, 221113, 221119, 221121, 221122, 221111, 221112, 221113, 221119, 221121, 221122.
	Agricultural production	0133	111991, 11193.
	Metal mining	1011	21221.
	Oil and gas extraction (Excluding offshore and coastal subcategories).	1311, 1321	211111, 211112.
	Mining and quarrying of nonmetallic minerals	1474	212391.
	Food and kindred products	2046, 2061, 2062, 2063, 2075, 2085.	311221, 311311, 311312, 311313, 311222, 311225, 31214.
	Tobacco products	2141	312229, 31221.
	Textile mill products	2211	31321.
	Lumber and wood products, except furniture	2415, 2421, 2436, 2493.	321912, 321113, 321918, 321999, 321212, 321219.
	Paper and allied products	2611, 2621, 2631, 2676.	3221, 322121, 32213, 322121, 322122, 32213, 322291.
	Chemical and allied products	28 (except 2895, 2893, 2851, and 2879).	325 (except 325182, 32591, 32551, 32532).
	Petroleum refining and related industries	2911, 2999	32411, 324199.
	Rubber and miscellaneous plastics products	3011, 3069	326211, 31332, 326192, 326299.
	Stone, clay, glass, and concrete products	3241	32731.
	Primary metal industries	3312, 3313, 3315, 3316, 3317, 3334, 3339, 3353, 3363, 3365, 3366.	324199, 331111, 331112, 331492, 331222, 332618, 331221, 22121, 331312, 331419, 331315, 331521, 331524, 331525.
	Fabricated metal products, except machinery and transportation equipment.	3421, 3499	332211, 337215, 332117, 332439, 33251, 332919, 339914, 332999.
	Industrial and commercial machinery and computer equipment	3523, 3531	333111, 332323, 332212, 333922, 22651, 333923, 33312.
	Transportation equipment	3724, 3743, 3764	336412, 333911, 33651, 336416.
	Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods; watches and clocks.	3861	333315, 325992.
	Electric, gas, and sanitary services	4911, 4931, 4939, 4961.	221111, 221112, 221113, 221119, 221121, 221122, 22121, 22133.
	Educational services	8221	61131.
	Engineering, accounting, research, management and related services.	8731	54171.

To determine whether your facility could be regulated by this action, you should carefully examine the applicability criteria in § 125.91 of the proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Supporting Documentation

1. Docket

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OW–2008–0667. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include information claimed as Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. For information on how to access materials in the docket, refer to the preceding **ADDRESSES** section. To view docket materials, please call ahead to schedule

an appointment. Every user is entitled to copy 266 pages per day before incurring a charge. The Docket may charge 15 cents for each page over the 266-page limit plus an administrative fee of $25.00.

2. Electronic Access

You may access this **Federal Register** document and the docket electronically, as well as submit public comments, through the Web site *http://www.regulations.gov* by searching for Docket ID No. EPA–HQ–OW–2008–0667. For additional information about the public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

3. Technical Support Documents

The proposed regulation is supported by three major documents:

1. Economic and Benefits Analysis for the Proposed Section 316(b) Existing Facilities Rule (EPA–821–R–11–003), hereafter referred to as the Economic and Benefits Analysis (EBA or more simply EA). This document presents the analysis of compliance costs, closures, energy supply effects, and a summary of benefits associated with the proposed rule.

2. Environmental and Economic Benefits Analysis for the Proposed Section 316(b) Existing Facilities Rule (EPA–821–R–11–002), hereafter referred to as the Environmental and Economic Benefits Analysis (EEBA). This document examines cooling water intake structure impacts and regulatory benefits at the regional level.

3. Technical Development Document for the Proposed Section 316(b) Existing Facilities Rule (EPA–821–R–11–001), hereafter referred to as the Technical Development Document (TDD). This document presents detailed information on the methods used to develop unit costs and describes the set of technologies that may be used to meet the proposed rule requirements.

Table of Contents

I. Legal Authority, Purpose, and Background of Today's Proposed Regulation
  A. Legal Authority
  B. Purpose of Today's Proposed Regulation
  C. Background
II. Proposed Amendments Related to the Phase I Rule
  A. Restoration Provisions Not Authorized
  B. Corrections to Subpart I
III. What new information has EPA obtained or developed in support of this proposed rule?
  A. Additional Data
  B. Implementation Experience
  C. New or Revised Analyses
IV. Revised Industry Description
  A. Water Use in Power Production and Manufacturing
  B. Overview of Electric Generators
  C. Overview of Manufacturers
  D. Other Existing Facilities
V. Scope and Applicability of the Proposed Section 316(b) Existing Facility Rule
  A. General Applicability
  B. What is an "existing facility" for purposes of the section 316(b) Phase II rule?
  C. What is "cooling water" and what is a "cooling water intake structure?"
  D. Would my facility be covered if it is a point source discharger?
  E. Would my facility be covered if it withdraws water from waters of the U.S.? What if my facility obtains cooling water from an independent supplier?
  F. What intake flow thresholds result in an existing facility being subject to this proposed rule?
  G. Offshore Oil and Gas Facilities, Seafood Processing Vessels or LNG Import Terminals BTA Requirements Under This Proposed Rule
  H. What is a "new unit" and how are new units addressed under this proposed rule?
VI. BTA Consideration
  A. EPA's Approach to BTA
  B. Technologies Considered To Minimize Impingement and Entrainment
  C. Technology Basis for Today's Proposed Regulation
  D. Options Considered for Today's Proposed Regulation
  E. Option Selection
  F. Four Factors Support EPA's Decision To Establish Site-Specific BTA Entrainment Controls for Existing Facilities
  G. The Process for Establishing Site-Specific BTA Entrainment Controls
  H. Implementation
  I. EPA's Costing of the Preferred Option
  J. Consideration of Cost/Benefit on a Site-Specific Basis
VII. Economic Impact of the Proposed Rule
  A. Overview of Costs to Complying Facilities and Federal and State Governments
  B. Development of Compliance Costs
  C. Social Cost of the Regulatory Options
  D. Economic Impact
VIII. Benefits Analysis
  A. Introduction
  B. Regional Study Design
  C. Physical Impacts of I&E Mortality
  D. National Benefits of Today's Considered Options
  E. Uncertainty and Limitations
IX. Implementation
  A. How would the proposed requirements be applied?
  B. When would affected facilities be required to comply?
  C. What are my requirements?
  D. What information must I submit in my permit application?
  E. When are application studies due?
  F. What are the monitoring requirements in today's proposal for existing facilities?
  G. What reports would I be required to submit?
  H. What records would I be required to keep?
  I. Are there other federal statutes that could be incorporated into a facility's permit?
  J. What is the director's role under today's proposal?
X. Related Acts of Congress, Executive Orders, and Agency Initiatives
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act (RFA)
  D. Unfunded Mandates Reform Act (UMRA)
  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 That Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer and Advancement Act
  J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  K. Executive Order 13158: Marine Protected Areas
XI. Solicitation of Data and Comments
  A. General Solicitation of Comment
  B. Specific Solicitation of Comments and Data

I. Legal Authority, Purpose, and Background of Today's Proposed Regulation

A. Legal Authority

Today's proposal is issued under the authority of sections 101, 301, 304, 308, 316, 401, 402, 501, and 510 of the Clean Water Act (CWA), 33 U.S.C. 1251, 1311, 1314, 1318, 1326, 1341, 1342, 1361, and 1370.

B. Purpose of Today's Proposed Regulation

The purpose of today's proposed rule is to propose national requirements for cooling water intake structures at existing facilities that implement section 316(b) of the CWA. Section 316(b) of the CWA provides that any standard established pursuant to section 301 or 306 of the CWA and applicable to a point source must require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available (BTA) for minimizing adverse environmental impact.

EPA first promulgated regulations to implement section 316(b) in 1976. The U.S. Court of Appeals for the Fourth Circuit remanded these regulations to EPA which withdrew them, leaving in place a provision not remanded that directed permitting authorities to determine BTA for each facility on a case-by-case basis. In 1995, EPA entered into a consent decree establishing a schedule for taking final action on regulations to implement section 316(b).

Pursuant to a schedule in the amended decree providing for final action on regulations in three phases, in 2001, EPA published a Phase I rule governing new facilities. The U.S. Court of Appeals for the Second Circuit, while generally upholding the rule, rejected the provisions allowing restoration to be used to meet the requirements of the rule. *Riverkeeper, Inc.* v. *U.S. EPA,* 358 F. 3d 174, 181 (2d Cir.2004) ("*Riverkeeper* I"). Today's proposed rule proposes to delete these restoration provisions.

In 2004, EPA published the Phase II rule applicable to existing power plants with a design intake flow greater than or equal to 50 MGD. Following challenge, the Second Circuit remanded numerous aspects of the rule to the Agency, including the Agency's decision to reject closed-cycle cooling as BTA. The Agency made this determination, in part, based on a consideration of costs and benefits. The Second Circuit concluded that a comparison of the costs and benefits of closed-cycle cooling was not a proper factor to consider in determining BTA. *Riverkeeper, Inc.* v. *U.S.EPA,* 475 F. 3d 83 (2d Cir. 2007) ("*Riverkeeper* II"). In 2008, the U.S, Supreme Court agreed to review the *Riverkeeper* II decision limited to a single issue: whether section 316(b) authorizes EPA to balance costs and benefits in 316(b) rulemaking. In April 2009, in *Entergy Corp.* v. *Riverkeeper Inc.,* 129 S. Ct. 1498, 68 ERC 1001 (2009) (40 ER 770, 4/3/09), the Supreme Court ruled that it is permissible under section 316(b) to consider costs and benefits in determining the best technology available to minimize adverse environmental impacts. The court left it to EPA's discretion to decide whether and how to consider costs and benefits in 316(b) actions, including rulemaking and BPJ determinations. The Supreme Court remanded the rule to the Second Circuit. Subsequently, EPA asked the Second Circuit to return the rule to the Agency for further review of the rule.

In 2006, EPA published the Phase III rule. The Phase III rule establishes 316(b) requirements for certain new offshore oil and gas extraction facilities. In addition, EPA determined that, in the case of electric generators with a design intake flow of less than 50 MGD and existing manufacturing facilities, 316(b) requirements should be established by NPDES permit directors on a case-by-case basis using their best professional judgment. In July 2010, the U. S. Court of Appeals for the Fifth Circuit issued a decision upholding EPA's rule for new offshore oil and gas extraction facilities. Further, the court granted the request of EPA and environmental petitioners in the case to remand the existing facility portion of the rule back to the Agency for further rulemaking. See section C.2 below for a more detailed discussion of the history of EPA's actions to address standards for cooling water intake structures.

In response to the remand in Phase II, the remand of the existing facility portion of the Phase III rule, and the associated Supreme Court decision, EPA is today proposing a number of requirements. Most significantly, EPA is proposing requirements reflecting the best technology available for minimizing adverse environmental impact, applicable to the location, design, construction, and capacity of cooling water intake structures for existing facilities. EPA is treating existing power generating facilities and existing manufacturing and industrial facilities in one proceeding. Today's proposal applies to all existing power generating facilities and existing manufacturing and industrial facilities that have a design intake flow of at least two million gallons from waters of the United States and use at least twenty-five (25) percent of the water they withdraw exclusively for cooling purposes. In addition, EPA is today also responding to the decision in *Riverkeeper* I and proposing minor changes to the Phase I rule for new facilities. Specifically, EPA proposes to remove from the Phase I rule the restoration-based compliance alternative and the associated monitoring and demonstration requirements.

C. Background

1. The Clean Water Act

The Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.,* seeks to restore and maintain the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. 1251(a). Among the goals of the Act is that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water. 33 U.S.C. 1251(a)(2).

In furtherance of these objectives, the CWA establishes a comprehensive regulatory program, key elements of which are (1) a prohibition on the discharge of pollutants from point sources to waters of the United States, except in compliance with the statute; (2) authority for EPA or authorized States or Tribes to issue National Pollutant Discharge Elimination System (NPDES) permits that authorize and regulate the discharge of pollutants; and (3) requirements for effluent limitations and other conditions in NPDES permits to implement applicable technology-based effluent limitations guidelines and standards and applicable State water quality standards.

Section 402 of the CWA authorizes EPA (or an authorized State or Tribe) to issue an NPDES permit to any person discharging any pollutant or combination of pollutants from a point source into waters of the United States. Forty-seven States and one U.S. territory are authorized under section 402(b) to administer the NPDES permitting program. NPDES permits restrict the types and amounts of pollutants, including heat, that may be discharged from various industrial, commercial, and other sources of wastewater. These permits control the discharge of pollutants by requiring dischargers to meet technology-based effluent limitations guidelines (ELGs) or new source performance standards (NSPS) established pursuant to section 301 or section 306. Where such nationally applicable ELGs or NSPS exist, permit authorities must incorporate them into permit requirements. Where they do not exist, permit authorities establish effluent limitations and conditions, reflecting the appropriate level of control (depending on the type of pollutant) based on the best professional judgment (BPJ) of the permit writer. Limitations based on these guidelines, standards, or on best professional judgment are known as technology-based effluent limits. Where technology-based effluent limits are inadequate to meet applicable State water quality standards, section 301(b)(1)(C) of the Clean Water Act requires permits to include more stringent limits to meet applicable water quality standards. NPDES permits also routinely include standard conditions applicable to all permits, special conditions, and monitoring and reporting requirements. In addition to these requirements, NPDES permits must contain conditions to implement the requirements of section 316(b).

Section 510 of the Clean Water Act provides that, except as provided in the Clean Water Act, nothing shall preclude or deny the right of any State (or political subdivision thereof) to adopt or enforce any requirement respecting control or abatement of pollution; except that if a limitation, prohibition or standard of performance is in effect under the Clean Water Act, such State may not adopt any other limitation, prohibition, or standard of performance which is less stringent than the limitation, prohibition, or standard of

performance under the Act. EPA interprets this to reserve for the States authority to implement requirements that are more stringent than the Federal requirements under state law. *PUD No. 1 of Jefferson County* v. *Washington Dep't of Ecology,* 511 U.S. 700, 705 (1994).

Sections 301, 304, and 306 of the CWA require that EPA develop technology-based effluent limitations guidelines and new source performance standards that are used as the basis for discharge requirements in wastewater discharge permits. EPA develops these effluent limitations guidelines and standards for categories of industrial dischargers based on the pollutants of concern discharged by the industry, the degree of control that can be attained using various levels of pollution control technology, consideration of various economic tests appropriate to each level of control, and other factors identified in sections 304 and 306 of the CWA (such as non-water quality environmental impacts including energy impacts). EPA has promulgated regulations setting effluent limitations guidelines and standards under sections 301, 304, and 306 of the CWA for more than 56 industries. See 40 CFR parts 405 through 471. EPA has established effluent limitations guidelines and standards that apply to most of the industry categories that use cooling water intake structures (*e.g.,* steam electric power generation, paper and allied products, petroleum refining, iron and steel manufacturing, and chemicals and allied products).

Section 316(b) states that any standard established pursuant to section 301 or section 306 of [the Clean Water] Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

Section 316(b) addresses the adverse environmental impact caused specifically by the intake of cooling water, rather than discharges of pollutants, including thermal discharges, into waters of the United States. Despite this special focus, the requirements of section 316(b) remain closely linked to several of the core elements of the NPDES permit program established under section 402 of the CWA to control discharges of pollutants into navigable waters. Thus, while effluent limitations apply to the discharge of pollutants by NPDES-permitted point sources to waters of the United States, section 316(b) applies to facilities subject to NPDES requirements that also withdraw water from a water of the United States for cooling and that use a cooling water intake structure to do so.

The CWA does not describe the factors to be considered in establishing section 316(b) substantive performance requirements that reflect the "best technology available for minimizing adverse environmental impact" nor does it require that EPA develop nationally applicable performance requirements through rule making. The most recent guidance in interpreting 316(b) comes from the U.S. Supreme Court's decision in *Entergy Corp.* v. *Riverkeeper, Inc.* As noted, the decision was limited to the single question of whether Section 316(b) of the Clean Water Act authorizes EPA to compare costs and benefits of various technologies when setting national performance standards for cooling water intake structures under Section 316(b) of the Clean Water Act. In *Riverkeeper* II, the Second Circuit rejected EPA's determination that closed-cycle cooling was not BTA because it could not determine whether EPA had improperly considered costs and benefits in its 316(b) rulemaking. The Supreme Court reversed and remanded the Second Circuit ruling in a 6–3 opinion authored by Justice Scalia. The Court held that it is reasonable for EPA to conduct a cost-benefit analysis in setting national performance standards for cooling water intake structures under Section 316(b). The Court held that EPA has the discretion to consider costs and benefits under Section 316(b) but is not required to consider costs and benefits. The Court's discussion of the language of section 316(b)—section 316(b) is "unencumbered by specified statutory factors"—and its critique of the Second Circuit's decision affirms EPA's broad discretion to consider a number of factors in standard setting under section 316(b). While the Supreme Court's decision is limited to whether or not EPA may consider one factor (cost/benefit analysis) under section 316(b), the language also suggests that EPA has wide discretion in considering other factors that it deems relevant to 316(b) standard setting. ("It is eminently reasonable to conclude that § 1326b's silence is meant to convey nothing more than a refusal to tie the agency's hands as to whether cost-benefit analysis should be used, and if so to what degree." 129 S.Ct. 1498, 1508 (2009).

Regarding the other factors EPA may consider, section 316(b) cross references sections 301 and 306 of the CWA by requiring that any standards established pursuant to those sections also must require that the location, design, construction and capacity of intake structures reflect BTA. EPA has interpreted the cross reference as authorizing consideration of the same factors considered under those provisions Thus, for example, section 306 directs EPA to establish performance standards for *new* sources based on the "best available demonstrated control technology" (BADT). 33 U.S.C. 1316(a)(1). In establishing BADT, EPA "shall take into consideration the cost of achieving such effluent reduction, and any non-water quality environmental impact and energy requirements." 33 U.S.C. 1316(b)(2)(B). The specific cross-reference in CWA section 316(b) to CWA section 306 "is an invitation to look to section 306 for guidance in discerning what factors Congress intended the EPA to consider in determining the 'best technology available' " for new sources. See *Riverkeeper* v. *EPA,* 358 F. 2d 174, 186 (2nd Cir. 2004).

Similarly, Section 301 of the CWA requires EPA to establish standards known as "effluent limitations" for existing point source discharges in two phases. In the first phase, applicable to all pollutants, EPA must establish effluent limitations based on the "best practicable control technology currently available" (BPT). 33 U.S.C. 1311(b)(1)(A). In establishing BPT, the CWA directs EPA to consider the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application, and to also take into account the age of the equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as [EPA] deems appropriate. 33 U.S.C. 1314(b)(1)(b).

In the second phase, EPA must establish effluent limitations for conventional pollutants based on the "best conventional pollution control technology" (BCT), and for toxic pollutants based on the "best available technology economically achievable" (BAT). 33 U.S.C. 1311(b)(2)(A), (E).

In determining BCT, EPA must consider, among other factors, the relationship between the costs of attaining a reduction in effluents and the effluent reduction benefits derived, and the comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industry source * * * and the age of equipment and

facilities involved, the process employed, the engineering aspects * * * of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impacts (including energy requirements), and such other factors as [EPA] deems appropriate. 33 U.S.C. 1314(b)(4)(B).

In determining BAT, the CWA directs EPA to consider "the age of equipment and facilities involved, the process employed, the engineering aspects * * * of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impacts (including energy requirements), and such other factors as [EPA] deems appropriate." 33 U.S.C. 1314(b)(2)(B).

Section 316(b) expressly refers to section 301, and the phrase "best technology available" is very similar to the phrases "best available technology economically achievable" and "best practicable control technology currently available" in that section. Thus, section 316(b), section 301(b)(1)(A)—the BPT provision—and section 301(b)(1)(B)—the BAT provision—all include the terms "best," "technology," and "available," but neither BPT nor BAT goes on to consider minimizing adverse environmental impacts, as BTA does. See 33 U.S.C. 1311(b)(1)(A) and (2)(A). These facts, coupled with the brevity of section 316(b) itself, prompt EPA to look to section 301 and, ultimately, section 304 for further guidance in determining the "best technology available to minimize adverse environmental impact" of cooling water intake structures for existing facilities.

By the same token, however, there are significant differences between section 316(b) and sections 301 and 304. See *Riverkeeper, Inc.* v. *United States Environmental Protection Agency* (2nd Cir. Feb. 3, 2004) ("not every statutory directive contained [in sections 301 and 306] is applicable" to a section 316(b) rulemaking). Moreover, as the Supreme Court recognized, while the provisions governing the discharge of toxic pollutants must require the elimination of discharges if technically and economically achievable, section 316(b) has the less ambitious goal of "minimizing adverse environmental impact." 129 S.Ct. 1498, 1506. In contrast to the effluent limitations provisions, the object of the "best technology available" is explicitly articulated by reference to the receiving water: to minimize adverse environmental impact in the waters from which cooling water is withdrawn. This difference is reflected in EPA's past practices in implementing sections 301, 304, and 316(b). EPA has established BAT effluent limitations guidelines and NSPS based on the efficacy of one or more technologies to reduce pollutants in wastewater in relation to their costs without necessarily considering the impact on the receiving waters. This contrasts to 316(b) requirements, where EPA has previously considered the costs of technologies in relation to the benefits of minimizing adverse environmental impact in establishing 316(b) limits, which historically has been done on a case-by case basis. In *Re Public Service Co. of New Hampshire,* 10 ERC 1257 (June 17, 1977); *In Re Public Service Co. of New Hampshire,* 1 EBAD 455 (Aug. 4, 1978); *Seacoast Anti-Pollution League* v. *Costle,* 597 F. 2d 306 (1st Cir. 1979). EPA concluded that, because both section 301 and 306 are expressly cross-referenced in section 316(b), EPA reasonably interpreted section 316(b) as authorizing consideration of the same factors, including costs, as in those sections. EPA interpreted "best technology available" to mean the best technology available at an "economically practicable" cost. This approach squared with the limited legislative history of section 316(b) which suggested the BTA was to be based on technology whose costs were "economically practicable." In debate on section 316(b), one legislator explained that "[t]he reference here to 'best technology available' is intended to be interpreted to mean the best technology available commercially *at an economically practicable cost.*" 118 Cong. Rec. 33,762 (1972) (statement of Rep. Clausen) (emphasis added).

For EPA's initial Phase II rulemaking, as it had during 30 years of BPJ section 316(b) permitting, EPA therefore interpreted CWA section 316(b) as authorizing EPA to consider not only the costs of technologies but also their effects on the water from which the cooling water is withdrawn.

2. History of Actions To Address Cooling Water Intake Structures Under the NPDES Program

a. 1976 Rulemaking

In April 1976, EPA promulgated regulations under section 316(b) that addressed cooling water intake structures. 41 FR 17387 (April 26, 1976), see also the proposed rule at 38 FR 34410 (December 13, 1973). The rule added a new § 401.14 to 40 CFR Chapter I that reiterated the requirements of Clean Water Act section 316(b). It also added a new part 402, which included three sections: (1) Section 402.10 (Applicability), (2) § 402.11 (Specialized definitions), and (3) § 402.12 (Best technology available for cooling water intake structures). Section 402.10 stated that the provisions of part 402 applied to "cooling water intake structures for point sources for which effluent limitations are established pursuant to section 301 or standards of performance are established pursuant to section 306 of the Act." Section 402.11 defined the terms "cooling water intake structure," "location," "design," "construction," "capacity," and "Development Document." Section 402.12 included the following language: The information contained in the Development Document shall be considered in determining whether the location, design, construction, and capacity of a cooling water intake structure of a point source subject to standards established under section 301 or 306 reflect the best technology available for minimizing adverse environmental impact.

In 1977, fifty-eight electric utility companies challenged those regulations, arguing that EPA had failed to comply with the requirements of the Administrative Procedure Act (APA) in promulgating the rule. Specifically, the utilities argued that EPA had neither published the Development Document in the **Federal Register** nor properly incorporated the document into the rule by reference. The U.S. Court of Appeals for the Fourth Circuit agreed and, without reaching the merits of the regulations themselves, remanded the rule. *Appalachian Power Co.* v. *Train,* 566 F.2d 451 (4th Cir. 1977). EPA later withdrew part 402. 44 FR 32956 (June 7, 1979). The regulation at § 401.14, which reiterates the statutory requirement, remains in effect.

Since the Fourth Circuit remanded EPA's section 316(b) regulations in 1977, NPDES permit authorities have made decisions implementing section 316(b) on a case-by-case, site-specific basis. EPA published draft guidance addressing section 316(b) implementation in 1977. *See Draft Guidance for Evaluating the Adverse Impact of Cooling Water Intake Structures on the Aquatic Environment: Section 316(b) Pub. L. 92–500* (U.S. EPA, 1977). This draft guidance described the studies recommended for evaluating the impact of cooling water intake structures on the aquatic environment and recommended a basis for determining the best technology available for minimizing adverse environmental impact. The 1977 section 316(b) draft guidance states, "[t]he environmental-intake interactions in question are highly site-specific and the decision as to best technology available for intake design, location, construction, and capacity must be made on a case-

by-case basis." (Section 316(b) Draft Guidance, U.S. EPA, 1977, p. 4). This case-by-case approach was also consistent with the approach described in the 1976 Development Document referenced in the remanded regulation. The 1977 section 316(b) draft guidance suggested a general process for developing information needed to support section 316(b) decisions and presenting that information to the permitting authority. The process involved the development of a site specific study of the environmental effects associated with each facility that uses one or more cooling water intake structures, as well as consideration of that study by the permitting authority in determining whether the facility must make any changes for minimizing adverse environmental impact. Under this framework, the Director determined whether appropriate studies have been performed, whether a given facility has minimized adverse environmental impact, and what, if any, technologies may be required.

b. Phase I—New Facility Rule

On November 9, 2001, EPA took final action on regulations governing cooling water intake structures at new facilities. See 66 FR 65255 (December 18, 2001). On December 26, 2002, EPA made minor changes to the Phase I regulations. 67 FR 78947. The final Phase I new facility rule (40 CFR part 125, subpart I) establishes requirements applicable to the location, design, construction, and capacity of cooling water intake structures at new facilities that have a design capacity to withdraw at least two million gallons per day (MGD) and use at least twenty-five percent of the water they withdraw solely for cooling purposes.

In the new facility rule, EPA adopted a two-track approach. Under Track I, for facilities that withdraw equal to or greater than 10 MGD, the intake flow of the cooling water intake structure is restricted, at a minimum, to a level commensurate with that which could be attained by use of a closed-cycle, recirculating cooling system. For facilities that withdraw greater than 2 MGD, the design through-screen intake velocity is restricted to 0.5 feet per second and the total quantity of intake is restricted to a proportion of the mean annual flow of a freshwater river or stream, or to a level necessary to maintain the natural thermal stratification or turnover patterns (where present) of a lake or reservoir except in cases where the disruption is beneficial, or to a percentage of the tidal excursions of a tidal river or estuary. If certain environmental conditions exist, an applicant that withdraws equal to or greater than 10 MGD must select and implement appropriate design and construction technologies for further minimizing impingement mortality and entrainment. Applicants with greater than 2 MGD but less than 10 MGD flows are not required to reduce intake flow to a level commensurate with a closed-cycle, recirculating cooling system, but must still meet specific operational criteria.

Under Track II, the applicant has the opportunity to demonstrate to the Director that the technologies he employs will reduce the level of adverse environmental impact to a comparable level to what would be achieved by meeting the Track I requirements for restricting intake flow and velocity. In making this demonstration, the regulations allow an applicant to rely on a combination of measures in additional to technology controls for reducing impingement and entrainment to achieve results equivalent to the Track I intake flow and velocity requirements. These include measures to restore the affected water body such as restocking fish and improvement of the surrounding habitat to offset the adverse effects that would otherwise be caused by the operation of the intake structures. These restoration measures would result in increases in fish and shellfish which, in combination with any technologies employed, would result in a level of fish and shellfish in the water body comparable to that which would result from the reductions in impingement mortality and entrainment that would be achieved under Track I. Note that restoration provisions are no longer authorized (and EPA is proposing to delete them from the CFR in this rule making), but they are included in this description of the Phase I rule for completeness. See Chapter II of this preamble for more information.

In addition, under the Phase I rule, the Director (*i.e.,* the permitting authority) may establish less stringent alternative requirements for a facility if compliance with the Phase I standards would result in compliance costs wholly out of proportion to those EPA considered in establishing the Phase I requirements or would result in significant adverse impacts on local air quality, water resources, or local energy markets.

EPA specifically excluded new offshore oil and gas extraction facilities from the Phase I new facility rule, but committed to consider establishing requirements for such facilities in the Phase III rulemaking. 66 FR 65338 (December 18, 2001).

c. Phase II—Large Flow Existing Power Plants

On February 16, 2004, EPA took final action on regulations governing cooling water intake structures at certain existing power producing facilities. 69 FR 41576 (July 9, 2004). The final Phase II rule applied to existing facilities that are point sources; that, as their primary activity, both generate and transmit electric power or generate electric power for sale or transmission; that use or propose to use a cooling water intake structure with a total design intake flow of 50 MGD or more to withdraw water from waters of the United States; and that use at least 25 percent of the withdrawn water exclusively for cooling purposes. In addition, power producers fitting the description above were also subject to the final Phase II rule even if they obtain their cooling water from one or more independent suppliers of cooling water. Such facilities were subject to the rule if their supplier withdraws water from waters of the U.S. even if the supplier was not itself a Phase II existing facility. EPA included this provision to prevent circumvention of the Phase II rule requirements by a facility purchasing cooling water from entities not otherwise subject to Section 316(b).

The final Phase II rule and preamble also clarified the definition of an "existing" power producing facility. The Phase II rule defined an "existing facility" as "any facility that commenced construction as described in § 122.29(b)(4) on or before January 17, 2002; and any modification of, or addition of a unit at such a facility that does not meet the definition of a new facility at § 125.83." Given that the definition of the term "existing facility" was based in part on the Phase I definition of the term "new facility," the preamble to the final Phase II rule also clarified and provided some examples of how the definition of "existing facility" might apply to certain changes at power producing facilities.

Under the Phase II rule, EPA established BTA performance standards for the reduction of impingement mortality and, under certain circumstances, entrainment (see 69 FR 41590–41593). The performance standards consisted of ranges of reductions in impingement mortality and/or entrainment (*e.g.*, reduce impingement mortality by 80 to 95 percent and/or entrainment by 60 to 90 percent) relative to a "calculation baseline" that reflected the level of impingement mortality and entrainment that would occur absent specific controls. These performance standards

were not based on a single technology but, rather, on consideration of a combination of technologies that EPA determined were commercially available and economically achievable for the industries affected as a whole. (69 FR 41598–41610). EPA based the impingement mortality and entrainment (I&E) performance standards on a combination of technologies because it found no single technology to be most effective at all affected facilities. For impingement standards, these technologies included: (1) Fine and wide-mesh wedgewire screens, (2) barrier nets, (3) modified screens and fish return systems, (4) fish diversion systems, and (5) fine mesh traveling screens and fish return systems. With regard to entrainment reduction, these technologies include: (1) Aquatic filter barrier systems, (2) fine mesh wedgewire screens, and (3) fine mesh traveling screens with fish return systems. Because EPA based the performance standards on a combination of technologies and because of the uncertainty inherent in predicting the efficacy of one or more of these technologies as applied to different Phase II facilities, EPA promulgated these standards as ranges. Furthermore, because the site-specific performance was based on a comparison to a once-through system without any specific controls on the shoreline near the source waterbody (*i.e.*, calculation baseline, see section III.A.2 for more details), the rule also allowed facilities to receive credit towards meeting the performance standards for I&E reduction associated with alternate locations of their intakes (eg, deep water where fish and shellfish were less abundant).

The types of performance standard applicable to a particular facility (*i.e.*, reductions in impingement mortality only or impingement mortality and entrainment) were based on several factors, including the facility's location (*i.e.*, source waterbody), rate of use (capacity utilization rate), and the proportion of the waterbody withdrawn.

The Phase II rule identified five compliance alternatives to meet the performance standards. A facility could demonstrate to the Director one of the following: (1) That it has already reduced its flow commensurate with a closed-cycle recirculating system (to meet both impingement mortality and entrainment), or that it has already reduced its maximum through-screen velocity to 0.5 feet per second or less (to meet the impingement performance standard only); (2) that its current cooling water intake structure configuration meets the applicable performance standards; (3) that it has selected design and construction technologies, operational measures, and/or restoration measures that, in combination with any existing design and construction technologies, operational measures, and/or restoration measures, meet the applicable performance standards; (4) that it meets the applicability criteria and has installed and is properly operating and maintaining a rule-specified and/or approved State-specified design and construction technology (*i.e.,* submerged cylindrical wedgewire screens) in accordance with § 125.99(a) or an alternative technology that meets the appropriate performance standards and is approved by the Director in accordance with § 125.99(b); or (5) that its costs of compliance would be significantly greater either than the costs considered by the Administrator for a like facility to meet the applicable performance standards, or than the benefits of meeting the applicable performance standards at the facility. Under the cost-cost comparison alternative, a Director could determine that the cost of compliance for a particular facility would be significantly greater than the costs considered by EPA in establishing the applicable impingement mortality and entrainment reduction performance standards. Similarly, under the cost-benefit comparison alternative, a Director could determine that the cost of compliance for a particular facility would be significantly greater than the benefits of complying with the applicable performance standards. In the event of either of these determinations, the Director would have to make a site-specific determination of BTA for minimizing adverse environmental impact that came as close as possible to meeting the applicable performance standards at a cost that did not significantly exceed either the costs EPA considered in establishing these standards or the site-specific benefits of meeting these standards.

The final Phase II rule also provided that a facility that chooses specified compliance alternatives might request that compliance with the requirements of the rule be determined based on the implementation of a Technology Installation and Operation Plan (TIOP) that would indicate how the facility would install and ensure the efficacy, to the extent practicable, of design and construction technologies, and/or operational measures, and/or a Restoration Plan. The rule also established requirements for the development and submittal of a TIOP (§ 125.95(b)(4)(ii)) as well as provisions that specified how compliance could be determined based on implementation of a TIOP (§ 125.94(d)). Under these provisions, a TIOP could be requested in the first permit term and continued use of a TIOP could be requested where a facility was in compliance with such plan and/or its Restoration Plan.

d. Phase III Rulemaking—Low Flow Existing Power Plants, Existing Manufacturing Facilities, and New Offshore Oil and Gas Facilities

On June 16, 2006, EPA published a final Phase III rule that established categorical regulations for new offshore oil and gas extraction facilities that have a design intake flow threshold of greater than 2 MGD and that withdraw at least 25 percent of the water exclusively for cooling purposes. For most such facilities, the rule establishes requirements virtually identical to the requirements applicable to new facilities in the Phase I rule. In the Phase III rule, EPA declined to establish national standards for Phase III existing facilities. Instead it concluded that CWA section 316(b) requirements for electric generators with a design intake flow of less than 50 MGD and all existing manufacturing facilities would continue to be established on a case-by-case basis under the NPDES permit program using best professional judgment. (71 FR 35006).

3. Rulings by the U.S. Court of Appeals for the Second Circuit

Both the Phase I and Phase II 316(b) rules were challenged in the U.S. Court of Appeals for the Second Circuit. Key aspects of each of these decisions are discussed below.

a. Phase I Rule

Various environmental and industry groups challenged the Phase I 316(b) rule. In February 2004, the Second Circuit sustained the entire rule except for the restoration provision, ruling that restoration was not a technology as provided for in 316(b). With respect to the other provisions of the rule, the Court concluded the Phase I rule was based on a reasonable interpretation of the applicable statute and sufficiently supported by the record. Restoration provisions of the rule were remanded to EPA for further rulemaking consistent with the Court's decision. *Riverkeeper, Inc.* v. *EPA,* 358 F.3d 174, 191 (2nd Cir., 2004). Today's proposal rule would remove the restoration provisions from the Phase I rule. *See* Chapter II of this preamble for more details.

b. Phase II Rule

Industry, environmental stakeholders, and some States [1] challenged many aspects of the Phase II regulations. On January 25, 2007, the Second Circuit (*Riverkeeper, Inc.* v. *EPA,* 475 F.3d 83, (2d Cir., 2007)) upheld several provisions of the Phase II rule and decision and remanded others to EPA for further rulemaking.

As noted above, for the final rule EPA rejected closed-cycle cooling as BTA. Instead, EPA selected a suite of technologies to reflect BTA, including *e.g.,* screens, aquatic filter barriers, and barrier nets. Based on the chosen technologies, EPA established national performance standards for reducing impingement mortality and entrainment of fish and fish organisms but did not require the use of any specific technology. Among the aspects of the rule the Second Circuit remanded for further clarification was EPA's decision to reject closed-cycle cooling as BTA and EPA's determination of performance ranges as BTA. In addition, the Second Circuit found that, consistent with its Phase I decision, restoration was not a technology for BTA, and that EPA's cost-benefit site-specific compliance alternative was not in accord with the Clean Water Act. There are also several issues for which the court requested additional clarification, and some instances where the court determined that EPA had failed to provide adequate notice and opportunity to comment on certain provisions of the rule.

4. EPA Suspension of the Phase II Rule

As a result of the decision of the Second Circuit Court of Appeals in *Riverkeeper, Inc.* v. *EPA,* 475 F.3d 83, (2d Cir., 2007), EPA, on July 9, 2007 (72 FR 37107) suspended the requirements for cooling water intake structures at Phase II existing facilities, pending further rulemaking. Specifically, EPA suspended the provisions in § 122.21(r)(1)(ii) and (5), and part 125 Subpart J, with the exception of Sec. 125.90(b). EPA explained that suspending the Phase II requirements was an appropriate response to the Second Circuit's decision, and that such action would allow it to consider how to respond to the remand. In addition, suspending the Phase II rule was responsive to the concerns of the regulated community and permitting agencies, both of whom sought guidance regarding how to proceed in light of the approaching deadline of the remanded rule. EPA's suspension clarified that pending further rulemaking, permit requirements for cooling water intake structures at Phase II facilities should be established on a case-by-case, best professional judgment (BPJ) basis (*see* 125.90(b)).

5. Ruling by the U.S. Supreme Court

Following the Phase II decision in the Second Circuit, several industry group litigants petitioned the U.S. Supreme Court to hear an appeal regarding several issues in the case. *Entergy Corp. et al.* v. *EPA, S. Ct. No. 07–588, et al.* On April 14, 2008, the Supreme Court granted the petitions for writs of certiorari submitted by these Phase II litigants, but limited its review to the issue of whether section 316(b) authorizes EPA to compare costs with benefits in determining BTA for cooling water intake structures. The Supreme Court held oral arguments in this case on December 2, 2008, and issued a decision on April 1, 2009. The Supreme Court held that it is permissible for EPA to rely on cost-benefit analysis in decision making for setting the Phase II national performance standards, and in providing for cost-benefit variances from those standards as part of the Phase II regulations. The Court indicated that the phrase "best technology available for minimizing adverse environmental impact" does not unambiguously preclude use of cost-benefit analysis in decision making. The ruling supports EPA's discretion to consider costs and benefits, but imposes no obligation on the agency to do so.

6. Ruling by the U.S. Court of Appeals for the Fifth Circuit

In 2009, EPA petitioned the Fifth Circuit to remand the existing facility portion of the Phase III rule. Specifically, EPA requested remand of those provisions in the Phase III rule that establish 316(b) requirements at electric generators with a design intake flow of less than 50 MGD, and at existing manufacturing facilities, on a case-by-case basis using best professional judgment. This request did not affect the Phase III rule requirements that establish categorical regulations for new offshore oil and gas extraction facilities that have a design intake flow threshold of greater than 2 MGD and that withdraw at least 25 percent of the water exclusively for cooling purposes.

On July 23, 2010, the U. S. Court of Appeals for the Fifth Circuit issued a decision regarding the Phase III rule. The Court granted EPA's motion to remand the rule with respect to existing facilities. In addition, the Fifth Circuit affirmed the portion of the rule that regulated cooling water intake structures for new offshore oil and gas facilities. In sustaining these requirements, the Fifth Circuit upheld EPA's decision not to use cost benefit balancing in determining the requirements for these new facilities. This was in accord with the discretion afforded by 316(b) and affirmed by the Supreme Court, namely that EPA properly interpreted section 316(b) as authorizing, but not requiring, the Agency to consider costs and benefits in its decision making.

7. Settlement of Litigation in U.S. District Courts

On January 19, 1993, a group of individuals and environmental organizations [2] filed, under section 505(a)(2) of the CWA, 33 U.S.C. 1365(a)(2), a complaint in *Cronin, et. al.* v. *Reilly,* 93 Civ. 314 (LTS)(S.D.N.Y.). The plaintiffs alleged that EPA had failed to perform a non-discretionary duty to issue regulations implementing section 316(b) of the CWA, 33 U.S.C. 1326(b). In 1995, EPA and the plaintiffs executed a consent decree in the case that provided for EPA to implement section 316(b) of the CWA by prescribed dates in the three separate rulemaking proceedings described above. In late 2002, the district court entered an amended consent decree that modified the schedule for the Phase II and Phase III rulemakings for existing facilities.

On November 17, 2006, some of the same environmental organizations in the *Cronin* case filed a second complaint, amended on January 19, 2007, in *Riverkeeper, et al.* v. *EPA,* 06 Civ. 12987 (S.D.N.Y.). Here, the plaintiffs alleged that EPA failed to perform a non-discretionary duty under section 316(b) of the CWA in its final regulation covering the Phase III facilities, and also had violated sections 706(2)(A) and 706(2)(C) of the Administrative Procedure Act (APA) in the manner in which it had made that decision.

Earlier, the same plaintiffs had also petitioned for review of the Phase III rule in the U.S. Court of Appeals for the Second Circuit. This and other petitions for review were consolidated for hearing

[1] Rhode Island, Connecticut, Delaware, Massachusetts, New Jersey, and New York.

[2] There are the following plaintiffs currently: Riverkeeper, Inc.; Alex Matthiessen, a/k/a The Hudson Riverkeeper; Maya K. Van Rossum, a/k/a The Delaware Riverkeeper; Terrance E. Backer, a/k/a The Soundkeeper; John Torgan, a/k/a The Narragansett BayKeeper; Joseph E. Payne, a/k/a The Casco BayKeeper; Leo O'Brien, a/k/a the San Francisco BayKeeper; Sue Joerger, a/k/a The Puget Soundkeeper; Steven E. Fleischli, a/k/a The Santa Monica BayKeeper; Andrew Willner, a/k/a The New York/New Jersey Baykeeper; The Long Island Soundkeeper Fund, Inc.; The New York Coastal Fishermen's Association, Inc.; and The American Littoral Society, Inc.

in the U.S. Court of Appeals for the Fifth Circuit. *Conoco Phillips* v. *EPA* (5th Cir. No. 06–60662). Following the Supreme Court decision in *Entergy,* EPA, Riverkeeper and others requested remand of the regulation to allow EPA to reconsider its decisions regarding Phase III facilities in light of more recent technical information and recent court decisions. As noted above, on July 23, 2010, the Fifth Circuit granted the joint motion of EPA and environmental petitioners for a voluntary remand. On September 3, 2010, one of the industry petitioners filed a petition asking the Fifth Circuit panel to rehear its grant of the motion to remand.

On August 14, 2008, EPA filed a motion to terminate the *Cronin* proceeding because it had discharged its obligations ("to take final action") under the decree with respect to the Phase II and III rulemakings. The plaintiffs in *Cronin* asserted that EPA had not discharged its obligations under the second amended decree because the Second Circuit remanded core provisions of the 316(b) rule for existing power plants to EPA, and EPA had suspended the Phase II rule. In the *Riverkeeper* proceeding, on February 7, 2007, EPA moved to dismiss arguing that the district court lacked jurisdiction to hear the challenge to the Phase III rule.

EPA entered into a settlement with the plaintiffs in both lawsuits. Under the settlement agreement, EPA agreed to sign a notice of a proposed rulemaking implementing section 316(b) of the CWA at existing facilities no later than March 14, 2011 and to sign a notice taking final action on the proposed rule no later than July 27, 2012. Plaintiffs agreed to seek dismissal of both their suits, subject to a request to reopen the *Cronin* proceeding in the event EPA failed to meet the agreed deadlines. The district courts have now entered orders of dismissal. On March 11, 2011, the parties agreed to an amendment to the settlement agreement to extend the date for proposal to March 28, 2011.

II. Proposed Amendments Related to the Phase I Rule

EPA is proposing several limited changes to the Phase I rule at 40 CFR subpart I. The changes fall into two categories. The first is deletion of the provision in the rule that would allow a facility to demonstrate compliance with the Phase I BTA requirements in whole or in part through restoration measures. The proposed change responds to the decision of the U.S. Court of Appeals for the Second Circuit which remanded these provisions to EPA because it concluded the statute did not authorize restoration measures to comply with section 316(b) requirements. The second category of changes reflects technical corrections or errors that do not change the substance of the current Phase I rule. EPA is not reopening any other aspects of the Phase I rule other than the provisions specifically noted here.

A. Restoration Provisions Not Authorized

As discussed above in Section I.C.2, the Phase I final rule established two compliance tracks. Track I requires facilities to restrict intake flow and velocity. Track II gives a facility the option of demonstrating to the Director that the control measures it employs will reduce the level of adverse environmental impact to a comparable level to what would be achieved by meeting the Track I requirements. As part of this demonstration, Track II allows a facility to make use of restoration measures. The Comprehensive Demonstration Study allowed a quantitative or qualitative demonstration that restoration measures would meet, in whole or in part, the performance levels of Track I. Similarly, the Verification Monitoring Plan could be tailored to verify that the restoration measures would maintain the fish and shellfish in the waterbody at a substantially similar level to that which would be achieved under Track I. *See* 65 FR 65280–65281.

As discussed in Section I.C.3, the Second Circuit concluded that EPA exceeded its authority by allowing new facilities to comply with section 316(b) through restoration measures, and remanded that aspect of the rule to EPA. The Supreme Court did not grant the petitions for writs of certiorari concerning restoration provisions. Thus in EPA's view the Agency is bound by the Second Circuit decision. Today's proposed rule proposes to amend Phase I to remove those provisions in § 125.84(d) and 125.89(b)(1)(ii) authorizing restoration measures. This proposed rule also specifically proposes deletion of application requirements contained in the Comprehensive Demonstration Study at § 125.86(c)(2)(ii); evaluation of proposed restoration measures at 125.86(c)(2)(iv)(C); and verification monitoring requirements at 125.86(c)(2)(iv)(D)(*2*)) that are specific to restoration. EPA acknowledges these changes may reduce the alternatives available to some Phase I facilities. However, EPA notes that the deletion of restoration measures does not otherwise alter the availability of Track II. In any event, EPA's determination of BTA for Phase I did not presume reliance on the restoration provisions, and the deletion of restoration measures in no way alters the Agency's BTA determination for Phase I facilities.

B. Corrections to Subpart I

Today's proposed rule proposes to change the applicability statement at 125.81(a)(3) to match the applicability of the technical requirements at 125.84 and application requirements at 125.86. The applicability in all three instances should specify design intake flow or withdrawals "greater" than the specified value of 2 MGD. See Basis for the Final Regulation at 66 FR 65270.

Today's proposed rule also proposes a correction to the source waterbody flow information submission requirements. Track I requirements at 125.84(b)(3) apply to new facilities that withdraw equal to or greater than 10 MGD. Track I requirements at 125.84(c)(2) apply to facilities that withdraw less than 10 MGD. The source waterbody flow information under 125.86(b)(3) requires a facility to demonstrate it has met the flow requirements of both 125.84(b)(3) "and" 125.84(c)(2). However, a facility cannot be subject to both 125.84(b)(3) and 125.84(c)(2) at the same time. Accordingly, the word "and" should read as "or" in 125.86(b)(3).

In addition, today's proposed rule proposes corrections to the application requirement for the Source Water Biological Characterization at 122.21(r)(4). Accordingly, references to the Source Water Biological Characterization should read as (r)(4). However, the references to the Source Water Biological Characterization at 125.86(b)(4)(iii), at 125.87(a), and at 125.87(a)(2) incorrectly refer to 122.21(r)(3) and are thus being corrected.

III. What New Information Has EPA Obtained or Developed in Support of This Proposed Rule?

In developing the Phase I, Phase II, and Phase III rules, EPA collected and analyzed a substantial amount of information regarding cooling water intake structures, their biological impacts, available technologies to reduce those impacts, and other relevant subjects. EPA considered a sizable volume of material submitted during previous public comment periods, as well as additional data from stakeholders, industry groups, technology vendors, and environmental organizations since those comment periods. Many of the materials are summarized or discussed in the preambles to these regulations or in the administrative record for these rules

(see, *e.g.,* docket numbers W–00–03, OW–2002–0049, and EPA–OW–2004–0002). Today's proposal is based on data and information contained in the records supporting the Phase I, Phase II, and Phase III rulemakings, as well as new information. This section summarizes new data collected since the promulgation of the Phase III rule in June 2006; it will not review or summarize previous data collection efforts except to frame discussions about the new data. For information on EPA's historic data collection efforts, refer to the preambles and records for the three rules (see, *e.g.,* 65 FR 49070, 66 FR 28854, 68 FR 17131, 68 FR 13524, 69 FR 41593, 69 FR 68457, and 70 FR 71059).

A. Additional Data

EPA has supplemented the existing documents with additional information as summarized below.

1. Site Visits

As documented in the suspended 2004 Phase II rule, EPA conducted site visits to 22 power plants in developing the 2004 rule. See 67 FR 17134. Since 2007, EPA has conducted over 50 site visits to power plants and manufacturing sites. The purpose of these additional visits was to: Gather information on the intake technologies and cooling water systems in place at a wide variety of existing facilities; better understand how the site-specific characteristics of each facility affect the selection and performance of these systems; gather performance data for technologies and affected biological resources; and solicit perspectives from industry representatives. EPA used a number of criteria in selecting the sites to visit, including those sites representing a variety of geographical locations and different types of intakes, and sites that already had an impingement or entrainment technology in place for which the facility had collected performance data. EPA also asked trade associations to recommend sites facing unique circumstances that may affect the adoption of certain control technologies. EPA also collected information on 7 additional facilities that staff did not physically visit; usually, these were other facilities owned by the parent company of a site visited by EPA. EPA also held conference calls or met with representatives of other sites at EPA's Washington, DC location.

Copies of the site visit reports (which provide an overall facility description as well as detailed information such as electricity generation, the facility's cooling water intake structure and associated fish protection and/or flow reduction technologies, impingement and/or entrainment sampling and associated data, and a discussion of the possible application of cooling towers) for each site are provided in the docket for the proposed rule. In addition, in response to stakeholder inquiries, EPA made these site reports publicly available well before publication of the proposed rule. A list of the facilities visited by EPA is provided in the TDD.

2. Data Provided to EPA by Industrial, Trade, Consulting, Scientific or Environmental Organizations or by the General Public

EPA has continued to exchange information with various stakeholders in the development of today's proposal. EPA met several times with Electric Power Research Institute (EPRI), Edison Electric Institute, Nuclear Energy Institute, and Utility Water Act Group, along with other representatives from facilities and affected industries on topics including the latest advancements in fish protection technologies, permit experience, and the feasibility and cost of installing technologies at certain types of facilities.

In 2010, the North American Electric Reliability Corporation (NERC) issued a reliability study and found potentially substantial reliability effects under a 316(b) rule scenario that would require closed-cycle cooling of all large power plants. See *Potential Resource Adequacy Impacts of U.S. Environmental Regulations. October 2010.* The scenario assumes all existing steam units with a capacity utilization factor of less than 35% would close,[3] and assumes all in-scope electric generators would be required to install cooling towers within a 5-year window. While the report's focus was on energy reliability and reflects a regulatory scenario that is not directly comparable to any of the options explored for today's proposed rule, the report nevertheless serves as a useful upper bound estimate of (1) the potential for premature generating unit retirements to avoid the costs of retrofitting existing cooling water intake systems and (2) increased power needs as a result of a capacity derating (*i.e.,* the energy penalty[4]).

[3] IPM analyses do not predict all units with capacity utilization rates of less than 35% would close as a result of a closed-cycle cooling retrofit. Thus the total loss in capacity under EPA's Option 2 would be 14,418 MW or 1.3% of existing capacity.

[4] The report assumes the total energy penalty of 4 percent is a constant; EPA believes the energy penalty is reduced over time as units replace, repower, or make other modifications such as condenser replacement that would eliminate the turbine backpressure.

The Edison Electric Institute published a study of the combined impact of EPA's upcoming air, water (316(b)), and solid waste rulemakings on the coal fired fleet of power plants. See *Potential Impacts of Environmental Regulation on the U.S. Generation Fleet Final Report. January 2011.* As with the NERC study, conservative assumptions were made about EPA rules yet to be proposed or promulgated. The report summarizes reductions in capacity, but does not distinguish how much of that capacity was unused in the baseline scenario. Conservative costing assumptions such as 21 percent higher average costs,[5] and application of full retrofit costs to new capacity (instead of incremental costs for installing required technology at new construction) gives results that are not comparable to any of the options explored for today's proposed rule. While this study analyzed multiple scenarios, each scenario combines the effects of multiple rules so that the impact of the section 316(b) rule alone could not be determined. Even so, the report provides useful insight on the potential impact of multiple rulemakings if each EPA rule was promulgated at the level of stringency assumed in the study.

EPA met with Riverkeeper and other environmental groups to discuss the progress of the revisions to the rule, advances in fish protection technologies, state programs, environmental issues associated with cooling water withdrawals, and the feasibility of closed-cycle cooling. Through these interactions, EPA has received additional data and information including, but not limited to: Efficacy data, operating information, cost information, feasibility studies, environmental impacts, and non-water quality related impact information for various candidate BTA technologies.

3. Other Resources

EPA also collected information on cooling water intake structure-related topics from a variety of other sources, such as state and international policies. For example, the California Office of Administrative Law approved the "Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling" on September 27, 2010, which requires that all coastal power plants reduce their intake flow to a level commensurate with closed-cycle cooling. The Delaware state legislature passed a resolution that urges the Delaware Department of Natural

[5] EPRI's site-specific evaluation of 82 facilities provides an average capital cost of $275 per GPM, but the EEI report uses $319 per GPM.

Resources and Environmental Control (DNREC) to consider closed-cycle cooling as BTA and to require closed-cycle cooling at all facilities. The New York Department of Environmental Conservation (DEC) released a draft policy in March 2010 that would require flow reduction equivalent to closed-cycle cooling at all existing facilities that withdraw more than 20 MGD as part of the state's plan to restore the Hudson River. Additional examples of state programs are discussed further in the TDD.

In addition to state-wide cooling water policies, some recent individual NPDES permits have incorporated requirements for significant reductions in cooling water flow. For example, EPA Region I (which develops NPDES permits for several non-delegated New England states) issued a final NPDES permit in October 2003 that required Brayton Point in Somerset, Massachusetts to reduce cooling water intake flow and thermal discharges approximately 95 percent.[6] Brayton is currently constructing two natural draft cooling towers at the facility. New Jersey, as part of its policy for protecting marine life from the adverse impacts created by power plants, issued a draft permit for Oyster Creek that would require closed-cycle cooling, and is studying closed-cycle cooling for two units at Salem Generating Station. Other examples are documented in site visit reports found in the record for today's proposed action.

Electric generators are the subject of several rulemaking efforts that either are or will soon be underway. In addition to this rulemaking proposal, this includes regulation under section 110(a)(2)(D) of the Clean Air Act (CAA) addressing the interstate transport of emissions contributing to ozone and PM air quality problems, coal combustion wastes, hazardous air pollutants under CAA section 112, and criteria pollutant NSPS standards under CAA section 111. They will also soon be the subject of a rulemaking under CAA section 111 concerning emissions of greenhouse gases. EPA recognizes that it is important that each and all of these efforts achieve their intended environmental objectives in a common-sense manner that allows the industry to comply with its obligations under these rules as efficiently as possible and to do so by making coordinated investment decisions and, to the greatest extent possible, by adopting integrated compliance strategies. In addition, EO 13563 states that "[i]n developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote such coordination, simplification, and harmonization. Each agency shall also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation." Thus, EPA recognizes that it needs to approach these rulemakings, to the extent that its legal obligations permit, in ways that allow the industry to make practical investment decisions that minimize costs in complying with all of the final rules, while still achieving the fundamentally important environmental and public health benefits that the rulemakings must achieve. The Agency expects to have ample latitude to set requirements and guidelines in ways that can support the states' and industry's efforts in pursuing practical, cost-effective and coordinated compliance strategies encompassing a broad suite of its pollution-control obligations.

[6] See *http://www.epa.gov/ne/braytonpoint/index.html.*

B. Implementation Experience

Following promulgation of the 2004 Phase II rule, states and EPA Regions began to implement the rule. During that time, EPA worked to assist states in understanding the rule requirements, develop guidance materials, and support review of the documentation of the new requirements. As a result, EPA became aware of certain elements of the 2004 rule that were particularly challenging or time-consuming to implement. In developing today's proposed rule, EPA has considered these challenges and crafted a revised regulatory framework that the Agency believes is easier for all stakeholders to understand and implement. Some of the key changes are described below.

1. Calculation Baseline

The 2004 Phase II rule required that facilities reduce impingement mortality and entrainment from the calculation baseline. The calculation baseline was intended to represent a "typical" Phase II facility and outlined a configuration for a typical CWIS. (See 69 FR 41590.) EPA defined the calculation baseline as follows:

> an estimate of impingement mortality and entrainment that would occur at your site assuming that: the cooling water system has been designed as a once-through system; the opening of the cooling water intake structure is located at, and the face of the standard 3/8 inch mesh traveling screen is oriented parallel to, the shoreline near the surface of the source waterbody; and the baseline practices, procedures, and structural configuration are those that [a] facility would maintain in the absence of any structural or operational controls, including flow or velocity reductions, implemented in whole or in part for the purposes or reducing impingement mortality and entrainment.

Under this approach, a facility that had undertaken efforts to reduce impingement and entrainment impacts (*e.g.,* by installing a fine mesh screen or reducing intake flow) would be able to "take credit" for its past efforts and only be required to incrementally reduce impingement mortality or entrainment to meet the performance standards.

In practice, both permittees and regulatory agencies encountered difficulty with the calculation baseline, specifically how a facility should determine what the baseline represented and how a particular facility's site-specific configuration or operations compared to the calculation baseline. For facilities whose site configuration conforms to the calculation baseline, it was relatively easy to determine impingement mortality and entrainment at the conditions representing the calculation baseline. However, for facilities that have a different configuration, estimating a hypothetical calculation baseline could be difficult. For example, facilities with intake configuration that differed significantly from the calculation baseline (*e.g.,* a submerged offshore intake) were unsure as to how to translate their biological and technological data to represent the calculation baseline (a shoreline CWIS). Oftentimes facilities encountered difficulty in determining the appropriate location for monitoring to take place. Other facilities were unsure as to how to take credit for retired generating units and other flow reductions practices. In site visits, EPA learned that facilities with little or no historical biological data encountered a particularly difficult and time-intensive task of collecting appropriate data and developing the calculation baseline. For example, EPA found that for some sites impingement was very difficult to convert into a baseline, as facilities needed to predict which fish would be impinged and then further estimate which of those impinged organisms survived. As a result, EPA has developed a new approach to the technology-based requirements proposed today that does not use a calculation baseline.

2. Entrainment Exclusion Versus Entrainment Survival

As EPA worked towards revising the existing facility rules, EPA discovered a nuance to the performance based requirements of the 2004 Phase II rule: Entrainment exclusion versus entrainment survival. As discussed in section III.C below, EPA re-reviewed the

data on the performance of intake technologies and conducted statistical analysis of the data. From this analysis, it became apparent that the 2004 Phase II rule did not fully consider the true performance of intake technologies in affecting "entrainable" organisms.

By definition, entrainment is the incorporation of aquatic organisms into the intake flow, which passes through the facility and is then discharged. In order to pass through the technologies located at the CWIS (*e.g.,* intake screens, nets, etc.), the organisms must be smaller than the smallest mesh size.[7] For coarse mesh screens (3/8″ mesh size), most "entrainables" simply pass through the mesh (and through the facility) with only some contact with the screen.[8] In this situation the mortality of organisms passing through the facility was assumed to be 100 percent. However, as mesh sizes are reduced,[9] more and more entrainables will actually become impinged on the screens (*i.e.,* "converted" from entrainable to impingeable) and would then be subjected to spray washes and returned along with larger impinged organisms as well as debris from the screens. Under the 2004 Phase II rule, these "converts" would be classified as a reduction in entrainment, since the entrainment performance standard simply required a reduction in the number (or mass) of entrained organisms entering the cooling system. However, for some facilities the low survival rate of converts resulted in the facility having difficulty complying with the impingement mortality limitations. By comparison, the performance standard for impingement was measured as impingement mortality. Organisms that were impinged (*i.e.,* excluded) from the CWIS were typically washed into a return system and sent back to the source water. In this case, impingement mortality is an appropriate measure of the biological performance of the technology.

Through EPA's review of control technologies, the Agency found that the survival of "converts" on fine mesh screens was very poor, and in some extreme cases comparable to the extremely low survival of entrained organisms that are allowed to pass entirely through the facility.[10] More specifically, EPA found that nearly 100 percent of eggs were entrained unless the mesh slot size was less than 2 mm, and mortality of eggs "converted" to impingement ranged from 20 to 30 percent. Further, the mortality of larvae collected from a fine mesh screen was usually greater than 80 percent. As a result, a facility with entrainment exclusion technologies such as fine mesh screens could approach 90 percent performance, but the subsequent survival of eggs and larvae combined ranged from 0 to 52 percent (mean value of 12 percent survival) depending on life stage and species, and the facility's impingement mortality rates increased. In other words, a facility that simply excluded entrainable organisms (with no attention being paid to whether they survive or not) could be deemed to have met its entrainment requirements under the 2004 Phase II rule, when in fact it may be causing the same level of mortality as a facility with no entrainment controls at all. EPA's current review of entrainment and entrainment mortality shows the same trends identified in the research reviews by EPRI (2003), namely that entrainment decreases with increasing larval length, increased sweeping flow, decreasing slot (intake) velocity, and decreasing slot width. In other words, by using screens with finer mesh, entrainment mortality can be converted to impingement mortality without necessarily protecting any more aquatic organisms.

3. Cost-Cost Test

In the 2004 Phase II rule, EPA developed facility-specific cost estimates, and published those costs in Appendix A (69 FR 41669). The 2004 Phase II rule also included a cost-cost test (see 69 FR 41644) where a facility could demonstrate that its costs to comply with the 2004 rule were significantly greater than those that EPA had considered. Since initial implementation of the July 9, 2004 316(b) Phase II rule, EPA has identified several concerns with the facility-specific costs listed in Appendix A and their use in the cost-cost test. First, EPA has identified numerous inconsistencies between facility permit applications, responses in the facility's 316(b) survey, and overall plant capacity as reported in the most recent EIA database. These inconsistencies resulted in Appendix A costs that were different from the facility's own compliance cost estimates due to inconsistencies in the underlying parameters used to estimate these costs. In addition, as described more fully in Chapter 2 of this proposal's Technical Development Document, EPA does not have available technical data for all existing facilities. EPA obtained the technical data for facilities through industry questionnaires. In order to decrease burden associated with these questionnaires, EPA requested detailed information from a sample, rather than a census, of facilities. EPA has thus concluded that the costs provided in Appendix A are not appropriate for use in a facility-level cost-cost test. Moreover, for most of the national requirements EPA is proposing here, a cost-cost variance is not necessary for the reasons described below. As a result, EPA is not providing a framework similar to Appendix A in today's proposed rule.[11] (See section III.C below and VII for more information about how EPA developed compliance costs.)

First, the impingement mortality requirements of today's proposed rule are economically achievable,[12] and the low variability in the costs of impingement mortality controls at a facility makes such a provision unnecessary. Second, a cost-cost variance is not necessary for entrainment mortality requirements because the costs of various requirements are a factor considered in each site-specific determination. Under the national rule, entrainment requirements would be established on a facility specific basis, except in the case of new units at an existing facility, which are subject to standards based on closed-cycle cooling or its equivalent. In the facility-specific process proposed today for entrainment mortality, a facility would be required to submit facility-specific compliance cost estimates. The determination of whether the cost of specific entrainment mortality technologies is too high is made by the Director on a case-by-case basis and accordingly a cost-cost provision is unnecessary for these facilities. However, consistent with the Phase I rule, EPA has included a

[7] In the case of many soft-bodied organisms such as eggs and larvae, the force of the intake flow can be sufficient to bend organisms that are actually larger than the screen mesh and pull them into the cooling system.

[8] Eggs are generally smaller than 2 millimeters in diameter, while larvae head capsids are much more variable in size, increasing as they mature to the juvenile stage.

[9] Fine mesh screens were considered to be one technology that could be used to meet the entrainment performance standards under the 2004 Phase II rule. EPA also reviewed performance data for screens with mesh sizes as small as 0.5 mm, as described in section III.C.

[10] Through-plant entrainment survival has been studied extensively, with EPRI's Review of Entrainment Survival Studies being amongst the most comprehensive. See DCN 2–017A–R7 from the Phase I docket.

[11] There is a form of "cost-cost variance" for new units at existing facilities, comparable to the provision in Phase I for new facilities. See further discussion below.

[12] The Phase II rule found impingement mortality (plus entrainment exclusion on certain waterbodies) was economically achievable; EPA has not identified any reason for revising this conclusion. See 69 FR 41603.

provision for new units at existing facilities that the Director may establish less stringent alternative requirements for a facility if compliance with the Phase I standards would result in compliance costs wholly out of proportion to those EPA considered in establishing the Phase I requirements or would result in significant adverse impacts on local air quality, water resources other than impingement or entrainment, or local energy markets.

C. New or Revised Analyses

In addition to collecting new information, EPA has re-evaluated some existing data and analyses that underlay its earlier decisions. The standards of the 2004 Phase II regulation required impingement mortality reduction for all life stages of fish and shellfish of 80 to 95 percent from the calculation baseline (for all Phase II facilities) and entrainment reduction requirements of 60 to 90 percent (for certain Phase II facilities). EPA based these performance requirements on a suite of technologies and compliance alternatives. For today's proposal, EPA has reanalyzed various candidate technologies as the basis for EPA's BTA decision. This reanalysis includes, but is not limited to, a reanalysis of candidate BTA technologies, their effectiveness, their costs, and their application. This section highlights some of the results from this reanalysis. See Section VI for a thorough discussion of EPA's updated BTA analysis and determination. Based on this reanalysis, EPA has reached several conclusions. The first is that closed-cycle cooling reduces impingement and entrainment mortality to the greatest extent. The second is that screen technologies are significantly less effective, particularly in comparison with closed-cycle cooling, in reducing entrainment mortality than EPA had concluded in 2004. Finally, EPA determined that while none of the reviewed technologies cause unacceptable energy reliability concerns, particulate emission increases, or adverse economic impacts at the national level, the performance and availability of some technologies varies widely depending on local factors, and these issues could be a significant concern at individual sites.

1. Revised Performance Database

In its Section 316(b) rule development efforts to date, EPA has gathered industry documents and research publications with information from studies which evaluated the performance of a range of technologies for minimizing impingement or entrainment. As explained in 68 FR 13538–13539, EPA previously developed a Technology Efficacy Database in an effort to document and assess the performance of various technologies and operational measures designed to minimize the impacts of cooling water withdrawals (*see* DCN 6–5000 in the docket for the 2004 Phase II rule). In support of today's proposal, EPA has updated that performance database. In updating the database, EPA's objective was to review the methods used to generate data in these studies and to combine relevant data across studies in order to produce statistical estimates of the overall performance of each of the technologies.

In developing the updated database, EPA considered data from over 150 documents. This includes documents previously contained in all three phases of EPA's 316(b) rulemaking records as well as new documents obtained during development of today's proposal. These documents contain information on the operation and/or performance of various forms and applications of these technologies, typically at a specific facility or in a controlled setting such as a research laboratory. The studies presented in these documents were performed by owners of facilities with cooling water intake structures, organizations that represent utilities and the electric power industry, and other research organizations. EPA established two general criteria for using data from the documents: (1) The data must be associated with technologies for minimizing impingement mortality or entrainment [13] that are currently viable (as recognized by EPA) for use by industries with cooling water intake structures that are (or will be) subject to Section 316(b) regulation; and (2) the data must represent a quantitative measure (*e.g.,* counts, densities, or percentages) that is related to the impingement mortality or entrainment of some life form of aquatic organisms within cooling water intake structures under the given technology.

For studies meeting the above criteria, EPA populated a new database. This performance study database consisted of two primary data tables. The first table contains specific information on a particular study, such as the document and study IDs, facility name, water body, data classification (*e.g.,* impingement mortality, entrainment), technology category, and other test conditions when specified (*e.g.,* mesh size, intake velocity, flow rate, water temperature, conditions when the technology is in place, control conditions). The second table contains the reported performance data for a given study. Each row of this table contains one or more performance measures for a particular species along with other factors when they were specified (*e.g.,* age category, dates or seasons of data collection, water temperature, velocity, elapsed time to mortality). For one option considered for today's proposed rule, EPA used this database in an attempt to revise the impingement mortality and entrainment limits developed for the Phase II rule. However, as described in section VI, the performance data for screens and other intake technologies indicates that those technologies were not very effective at minimizing entrainment mortality in comparison to closed-cycle cooling. As a result, EPA has not included this option in today's proposed rule package.

2. Impingement Mortality and Entrainment Technology Performance Estimates

To evaluate the effectiveness of different control technologies and the extent to which the various regulatory options considered for today's proposal minimize adverse environmental impacts associated with cooling water intake structures, EPA used the data collected in the revised performance database to develop impingement mortality and entrainment reduction estimates associated with each technology. For some technologies, this proposal reflects updated information or a different methodology for estimating effectiveness. For impingement mortality, EPA focused on 14 studies of 31 species for traveling screens with post-Fletcher modifications and with a 48 hour [14] or less holding time, and found the monthly impingement mortality corresponding to the 95th percentile was 31 percent mortality. EPA's full analysis of impingement mortality limitations may be found in Chapter XI of the TDD. EPA found the best performance of entrainment exclusion for fine mesh screens was 73 to 82 percent for eggs and 46 to 52 percent for larvae at 0.5 mm slot sizes. The best performance of fine mesh screens for entrainment survival (and not just exclusion) was 29 to 34 percent, with zero survival of eggs and larvae under certain conditions. The next section further discusses the distinction

[13] There were insufficient numbers of studies specifically looking at entrainment mortality or entrainment survival, therefore EPA broadened the review to include any measure of entrainment.

[14] Holding times beyond 48 hours often result in mortality due to holding conditions rather than mortality due to impingement.

between entrainment exclusion and entrainment survival.

3. Exclusion Technologies

As discussed in section III.B above, screens and other technologies operate using a principle of excluding organisms from entering the cooling system. For technologies other than cooling towers, EPA generally calculated their efficacy as the mean percent efficacy of the available data. Because EPA has sufficient data to evaluate impingement mortality, its impingement mortality technology efficacy calculation accounts for mortality. However, because EPA has data on entrainment exclusion but lacks sufficient entrainment mortality data to calculate exclusion technology entrainment mortality efficacy, EPA's calculated mean entrainment percent efficacy does not account for mortality. Available data on today's proposed technology basis demonstrate that entrainment reductions associated with fine mesh technologies vary depending on life stage and mesh size. See Section VIII and the TDD for additional information on EPA's estimate of entrainment reductions for today's proposal.

In reality, excluding an organism from the cooling water intake does not minimize entrainment-related adverse environmental impacts unless the excluded organisms survive and ultimately return back to the waterbody. In the 2004 Phase II rule, EPA made the assumption that any entrainable organism which was entrained died (*i.e.,* 100 percent mortality for organisms passing through the facility) and any organism not entrained survived. In other words, if a technology reduced entrainment by 60 percent, then EPA estimated 40 percent of the organisms present in the intake water would die in comparison to 100 percent in the absence of any entrainment reduction. As explained in Section VI, while it has been conjectured that certain species of eggs have been shown to survive entrainment under certain conditions, EPA has not received any new data for either the most common species or the most frequently identified species of concern described in available studies and, as such, has not altered its decision that for purposes of national rulemaking, entrainment should be presumed to lead to 100 percent mortality. Today's proposed rule would allow facilities to demonstrate, on a site-specific basis, that entrainment mortality of one or more species of concern is not 100 percent.

For today's proposal, EPA analyzed the limited data on the survivability of organisms that are "converted" from entrained to impinged on fine mesh screens. These data show that under most operational conditions, many larvae die as a result of the impact and impingement on fine mesh screens. In the case of eggs, the data indicate that some species may die, but some do survive. The data also demonstrate that if the organisms can withstand the initial impingement on the fine mesh screen, the majority of entrainable organisms survive after passing through a fish return and returning to the source water. Finally, the data indicate that survival increases as the body length and age of the larvae increases.[15] EPA seeks additional data on the survivability (or mortality) of organisms that are converted from entrained to impinged on fine mesh screens.

4. Application of Requirements Based on Capacity Utilization Rate (CUR) and Waterbody Type

In the 2004 Phase II rule, the type of performance standard applicable to a particular facility (*i.e.,* reductions in impingement mortality only or impingement mortality and entrainment) depended on several factors, including the facility's location (*i.e.,* source waterbody), capacity utilization rate (CUR) (as an indicator of the rate of use), and the proportion of the source waterbody withdrawn. EPA's reanalysis of impingement and entrainment data does not support the premise that the difference in the density of organisms between marine and fresh waters justifies different standards. More specifically, the average density of organisms in fresh waters may be less than that found in marine waters, but the actual density of aquatic organisms in some specific fresh water systems exceeds that found in some marine waters. In other words, there is considerable overlap in the range of densities found in marine waters and in fresh waters. EPA also believes the different reproduction strategies of freshwater versus marine species makes broad characterizations regarding the density less valid a rationale for establishing different standards for minimizing adverse environmental impact.

In re-considering the applicability of requirements based on CUR, EPA found that even infrequently used facilities may still withdraw significant volumes of water when not generating electricity. EPA also found that load-following and peaking plants operate at or near 100 percent capacity (and therefore 100 percent design intake flow) when they are operating, and these operations occur frequently during peak summer electricity demand, coinciding with some of the most biologically sensitive portions of the year.[16] Accordingly, today's proposed requirements are not based on waterbody type or CUR. See further discussion in Section VI.

IV. Revised Industry Description

Today's proposed rule applies to all existing electric generating and manufacturing facilities, except for certain water going vessels as described in section V. EPA has earlier fully described the electricity industry in the 2002 Phase II proposed rule (*see,* for example, 67 FR 17135) and the manufacturing industries in the 2004 Phase III proposed rule (*see,* for example, 69 FR 68459).[17] While these general descriptions continue to broadly reflect the current state of these industries, EPA has revised some of its estimates of numbers of facilities, intakes, flows, and other pertinent information. In particular, this section describes those facilities with a cooling water intake structure having a DIF of greater than 2 MGD, related cooling water use in power production and manufacturing activities, and an overview of the industry sectors in scope for today's proposed rule. See the TDD and EA for today's proposed rule for more detailed information including industry profiles.

A. Water Use in Power Production and Manufacturing

Water is used for a wide variety of application in the United States. The U.S. Geologic Survey (USGS) publishes a comprehensive review of water use across industry sectors every 5 years. The 2005 report indicated that 410 billion gallons per day (BGD) of water are withdrawn for various uses. (See

[15] EPA found this is a very important distinction when reviewing technology efficacy, as some studies do not include the smaller, more fragile, and often non-motile stages of larvae. Older stages of larvae have started to develop avoidance responses, and generally have already started developing scales and skeletal structures.

[16] Some facilities continue to withdraw cooling water even when not generating for a variety of reasons: to discourage biofouling or mechanical seizures, to promote continued water flow, or to maintain a state of readiness. Peaking facilities (those with a CUR of less than 15percent, as defined in the 2004 Phase II rule) may withdraw relatively small volumes on an annual basis, but if they operate during biologically important periods such as spawning seasons or migrations, then they may have nearly the same adverse impact as a facility that operates year round.

[17] EPA also addressed both electric generators and manufacturers in the 2000 Phase I proposed rule (see, for example, 65 FR 49070). The support documents for all three rule phases also provide information characterizing the affected industry sectors.

DCN 10–6872.) Of that amount, approximately 201 BGD is withdrawn by electric generators, primarily for non-contact cooling,[18] plus water withdrawals by other industrial sites of 18.2 BGD for a total of 219 BGD. This total flow represents the universe of flow potentially subject to regulation under 316(b), therefore today's proposed rule may address over half of the water withdrawals in the entire nation.[19]

Industrial water use (broadly defined as water used by power plants and manufacturers) falls generally into one of four categories: non-contact cooling water, contact cooling water, process water, and other water uses. A more detailed description of each category and how it relates to 316(b) is provided below.

1. Non-Contact Cooling Water

Power plants and manufacturers frequently generate large amounts of heat in their industrial processes. Non-contact cooling systems are one of the most common techniques used to dissipate this heat. In a non-contact cooling system, water is pumped through a heat exchanger or other equipment where it comes into indirect contact with heated materials in the industrial process. The water absorbs heat and is subsequently discharged (in a once-through cooling system) or recirculated (in a closed-cycle system). In these systems, the cooling water does not come into contact with any industrial materials, equipment or processes; the cooling water is contained within the cooling system for heat absorption and generally requires very little treatment (except heat removal) before discharge.

At power generators, non-contact cooling is by far the largest water use. Approximately three quarters of the total annual electricity output in the United States results from steam powered turbines. Power plants heat water inside a boiler. The water is turned to steam, at which point the temperature of the steam can be increased with further heating, allowing additional energy to be stored in the steam. The steam is then used to spin a turbine, producing electricity. The steam must then be condensed and returned to the boiler.[20] Non-contact cooling water is used to extract heat and return the steam to water in a condenser. The water can then be pumped back to the boiler for heating to repeat the cycle. Consistent with engineering theory, there are limits to the maximum efficiency of a thermal plant. Thermal power plants are actually not very efficient at converting fuel to electricity; only 30 to 60 percent of the fuel is captured as electricity, with the higher efficiency units relying on further use of the steam for further heating (usually referred to as cogeneration) or energy purposes (such as combined cycle power generators or other process warming). Depending on the type of generating unit, roughly one-third to two-thirds of the total energy generated is lost in the form of heat that must be subsequently dissipated.

At manufacturers, non-contact cooling is also a significant component of water use. Some manufacturers have electric generating units which generally operate in the same manner as summarized above. In some cases, virtually all of the manufacturing facility's cooling water withdraws are for power production. In contrast to power generators, some manufacturing facilities also need a reliable source of high pressure steam for manufacturing processes. Other manufacturers may need to condense steam generated from other processes, or may need to extract heat from a raw or processed material (*e.g.,* to reduce the temperature of an intermediate petroleum or chemical product before it enters a subsequent processing stream). Some facilities engage in testing or research, and have cooling needs for these activities.

2. Contact Cooling Water

Contact cooling water differs from non-contact cooling in that contact cooling systems use cooling water in direct contact with the hot equipment or heated materials. As a result, contact cooling water may intermingle with industrial products or equipment and often will take up pollutants other than heat, such as oil and grease or metals. Contact cooling water often requires treatment for these pollutants before it may be discharged.

In power plants, cooling water may be used for contact cooling of pumping equipment, such as the cooling water pump bearings. Contact cooling water is more frequently needed by manufacturing processes, such as quench water (*e.g.,* water into which bars of hot metal are dipped for rapid cooling or control of the formed metal temperature), mechanical pulping, forming and molding processes, food and agricultural products, and petrochemical gas quenching.

3. Process Water

Process water is water that is used directly in an industrial process. While steam electric plants do have some process water, process water is more typically associated with manufacturers, as the primary industrial process at power plants (electricity generation) is usually cooled with non-contact cooling water. Examples of process water include water used to break down wood pulp in a paper mill, water that is used in creating consumer products such as beverages or personal care products, water added to facilitate transportation of materials within a manufacturing process, water needed as a raw material, and water used in numerous chemical separations processes. Process water may be used as an ingredient in the intermediate products, consumed by the products, lost to evaporation, extracted later in the process line for treatment and discharge, or further reused.

EPA has found through site visits, extensive experience with manufacturing water use in the development of previous effluent guidelines, and a general review of water uses by manufacturing processes that a significant amount of reduction, reuse, and recycling has already occurred in most manufacturing processes, in part due to pretreatment standards and NPDES permit conditions. Beyond these reductions, today's proposed rule recognizes that many industrial facilities have worked to reduce the volume of process water usage at their sites and to increase the reuse of process water for other purposes within the facility. A leading facility or an entire industry may have evolved to use less process water in its industrial process. For example, EPA has found some facilities have undergone plant wide energy audits to reduce their energy needs by up to 25 percent, providing a roughly 25 percent reduction in cooling water needs. One analysis of paper mills estimates that over 39 billion gallons daily of water is recycled and not used solely for cooling purposes by a typical mill. Further, there has been a 69 percent reduction in

[18] Irrigation was the next highest user of water at 31% of the total withdrawn.

[19] In the Phase I rule, EPA also presented data indicating that the combined 316(b) rules for electric generators and the largest manufacturing sectors would address approximately 99% of all cooling water withdrawals in the U.S. See 65 FR 49071 and the Phase I Economic and Engineering Analyses of the Proposed § 316(b) New Facility Rule.

[20] The thermodynamic laws governing the Rankine cycle in power plants requires a heat source and a heat sink. The difference in temperature and pressure is a major factor in maintaining efficiency of the thermal engine. Additional reasons for condensing the steam include: handling pressure drops in the system, the need to remove non-condensable gases before they damage equipment, to allow make-up water to be added to the system, and to safely allow pumping of the water back to the boiler.

the average volume of treated effluent at pulp and paper mills (see DCN 10–6902). In response to effluent guidelines discharge limitations, some facilities have reduced their compliance costs by reducing the volume of wastewater they must treat. Some effluent limitation guidelines have also established explicit requirements for flow reduction. In the case of iron and steel facilities, effluent limitations require no discharge of process wastewater pollutants (for example, see 40 CFR part 420 subpart D Steelmaking). As another observed example of the recycling of process water, a facility might use non-contact cooling water for condensing steam, but then reuse the heated water for washing raw materials instead of discharging the water.

See section V for more information on how water reuse and conservation efforts are considered in compliance alternatives for today's proposed rule.

4. Other Uses

Given the diversity of industrial processes across the U.S., there are many other industrial uses of water not intended to be addressed by today's proposed rule. Emergency water withdrawals, such as fire control systems and nuclear safety systems, are not considered as part of a facility's design intake flow. Warming water at liquefied natural gas terminals, and hydro-electric plant withdrawals for electricity generation are not cooling water uses and are not addressed by today's proposal. Other water uses might include service water and dilution water. Service water is a generic term that often refers to uses other than non-contact cooling (*i.e.,* it may include contact cooling), but can also include specialty water uses such as makeup water for radiation waste systems at nuclear power plants. Examples of dilution water are using water to reduce the concentration of a pollutant for biological treatment purposes, or to reduce the temperature of an effluent.

B. Overview of Electric Generators

In the Phase I proposal, EPA described its rationale for setting the threshold for section 316(b) national requirements at 2 MGD. As described in that proposed rule, EPA selected 2 MGD to ensure that almost all cooling water withdrawn from waters of the U.S. is covered by a national regulation. The Agency recognized that there was relatively little information currently available regarding the lower bound of withdrawals at which significant levels of impingement and entrainment and, therefore, adverse environmental impact, was likely to occur. At the time, most case studies available to the agency documenting impingement and entrainment from cooling water withdrawals focused on facilities withdrawing very large amounts of water (in most cases greater than 100 MGD). After soliciting comment and data on several different thresholds, the Agency adopted 2 MGD in the final rule. 66 FR 65288.

While the overview of the electric generating facilities in the previous Phase II and III proposed and final rules has not changed substantially, this section combines those multiple industry profiles into one overview. The information below is generally based on data from the U.S. Department of Energy's (DOE) "Annual Electric Generator Report" (Form EIA–860) and "Annual Electric Power Industry Report" (Form EIA–861), and EPA's Section 316(b) Industry Surveys. According to the 2007 EIA database, 38 of the 671 facilities have ceased operation since the Survey and 15 facilities will likely do so by the time today's proposed rule is promulgated (*i.e.,* 2012). EPA also excluded 20 electric generators that are already required by state policy to comply with standards based on closed-cycle cooling, and thus for regulatory analysis purposes are not expected to be affected by the proposed rule. In addition, 39 facilities are projected to be baseline closures according to Integrated Planning Model analyses (see Section VII of this preamble and Chapter 6 of the EA for discussion of IPM analysis).[21] Based on (1) data collected from these Surveys; (2) the compliance requirements in today's proposed rule, and (3) the in-scope threshold of 2 MGD DIF (see section V for further explanation of the 2 MGD threshold), EPA has therefore identified 559 Electric Generators that are in scope of today's 316(b) Existing Facilities Proposed Rule.[22] [23]

EPA estimates that the 559 steam electric generators represent 3 percent of all parent-entities, approximately 11 percent of all facilities, and over 45 percent of the electric power sector capacity. Based on the 2007 EIA database, EPA estimates that 388 of these in-scope facilities are owned by utilities and 171 in-scope facilities are owned by non-utilities.[24] The majority of electric generating facilities expected to be subject to today's proposed Existing Facilities rule, or 285 facilities, are investor-owned utilities, while nonutilities make up the second largest category. For a detailed discussion of parent-entities, see Chapter 5 and 7 of the EA (DCN 10–0002).

As reported in Exhibit IV–1, approximately half of the in-scope electric generators draw water from a freshwater river (306 facilities or 55 percent), followed by lakes or reservoirs (117 facilities or 21 percent) and estuaries or tidal rivers (83 facilities or 15 percent). The exhibit also shows that most of the in-scope facilities (355 facilities or 63 percent) employ a once-through cooling system.

EXHIBIT IV–1—NUMBER OF IN-SCOPE ELECTRIC GENERATORS BY WATERBODY AND COOLING-SYSTEM TYPE [a]

Waterbody type	Recirculating Number	Once-through Number	Combination Number	Other Number	Total [b] Number
Estuary/Tidal River	5	69	8	1	83
Ocean	0	9	0	0	9
Lake/Reservoir	36	73	7	1	117
Freshwater Stream/River	102	166	32	5	306

[21] For the purpose of this analysis, a facility is considered no longer in operation and retired if it no longer has any steam operations.

[22] EPA developed the estimates of the number and characteristics of facilities expected to be within the scope of today's proposed rule, based on the facility sample weights that were developed for the suspended 2004 Phase II Final Regulation analysis. These weights provide comprehensive estimates for the total of expected in-scope facilities based on the full set of facilities sampled in the Section 316(b) Industry Surveys. See Appendix 3.A: Weighting Concepts of the Economic and Benefits Analysis report for further discussion of the sample weights used in this analysis.

[23] EPA estimates of the characteristics of facilities expected to be within the scope of today's proposed rule are also based on the facility sample weights that were developed for the suspended 2004 Phase II Final Regulation analysis.

[24] Electric utilities engage in the generation, transmission, and the distribution of electricity for sale generally in a regulated market. Utilities include investor-owned, publicly-owned, and cooperative entities.

EXHIBIT IV–1—NUMBER OF IN-SCOPE ELECTRIC GENERATORS BY WATERBODY AND COOLING-SYSTEM TYPE [a]—Continued

Waterbody type	Recirculating Number	Once-through Number	Combination Number	Other Number	Total [b] Number
Great Lake	4	37	2	0	43
Total	148	355	49	7	559

[a] The numbers of facilities are calculated on a sample-weighted basis.
[b] Individual values may not sum to totals due to independent rounding.

C. Overview of Manufacturers

EPA obtained information on in-scope Manufacturers presented in the tables below from the EPA's Section 316(b) Industry Surveys (the Industry Screener Questionnaire (SQ) and the Industry Detailed Questionnaire (DQ)). Based on the Survey data and the compliance requirements in today's proposed rule, EPA estimates 592 industry facilities with greater than 2 MGD DIF would be subject to today's proposal; 575 of these facilities are in the 6 primary manufacturing industries.[25]

Exhibit IV–2 below presents in-scope and industry-wide facility and parent entity counts by industry. The largest share of manufacturers, or 225 facilities, is in the Pulp and Paper industry, while facilities in the Chemicals and Allied Products make up the second largest category at 179 facilities.

EXHIBIT IV–2—EXISTING MANUFACTURERS BY INDUSTRY

Sector	Number of facilities	
	Sector total	Number in-scope [b c]
Aluminum	333	26
Chemicals	4,433	179
Food	28,938	37
Paper	597	225
Petroleum	352	39
Steel	1,525	68
Total	36,178	[a] 575

[a] In-scope facility counts include baseline closures and exclude an estimated additional 17 facilities with NAICS codes that do not fall into any of these six primary manufacturing industries.
[b] Number of in-scope facilities are weighted estimates; see Appendix 3.A of the EA for information on weights development. Individual values may not sum to totals due to independent rounding of sample-weighted (non integer) estimates.
[c] These facility count estimates are based on sample weights that are applicable for estimating the number of facilities that would be within the scope of today's proposed rule. However, because of missing financial data on certain facilities, these weights were not used in assessing the economic impact of the rule. Alternative weights, which yield modestly different total in-scope facility estimates (*e.g.,* 569 in-scope facilities in the Primary Manufacturing Industries instead of the 575 reported in this table), were used for developing facility count estimates in the economic impact analysis.

Exhibit IV–3 provides the distribution of manufacturing intakes by source water body and cooling system type. In total, EPA estimates that 593 intakes will be within the scope of today's rule. The vast majority (453 facilities or 77 percent) withdraw cooling water from freshwater streams or rivers, followed by Great Lakes (47 facilities). Two hundred eighty-seven (48 percent) manufacturers employ once-through cooling systems, 119 (20 percent) use closed-cycle cooling systems, and 124 (21 percent) use "combination" systems. An estimated 192 (32 percent) manufacturers have installed one or more cooling towers. In the total of 593 facility/intake combinations, EPA does not have information on the cooling water system type for 4 facilities/intakes. Note that not all manufacturers that have installed a cooling tower are classified as using closed-cycle cooling systems, as facilities with multiple cooling water systems may be "combination" systems that employ both closed-cycle and once-through cooling. Manufacturers may also list "helper" cooling towers in their survey responses, which are generally used to mitigate discharge temperatures and do not necessarily affect intake flows.

EXHIBIT IV–3—NUMBER OF IN-SCOPE MANUFACTURERS BY WATERBODY AND COOLING-SYSTEM TYPE

Waterbody type	Recirculating [b] Number	Once-through Number	Combination Number	Other Number	Type unknown Number	Total [a] Number
Estuary/Tidal River	1	23	16	0	0	40
Ocean	0	11	0	0	0	11
Lake/Reservoir	7	13	12	11	0	42
Freshwater Stream/River	111	215	82	41	4	453
Great Lake	0	25	14	7	0	47
Total	119	287	124	59	4	593

[a] Facility counts include baseline closures and exclude 17 facilities with NAICS codes that do not fall into the six primary manufacturing industries (see Chapter 3 of EA for more detail). Individual facilities may be reported more than once in this table if they have multiple intakes while a single intake that serves both recirculating and once-through systems is counted once as a combination. Individual values may not sum to totals due to independent rounding of sample-weighted (non integer) estimates.
[b] Four facilities have an unknown CWS type.

[25] The remaining 17 facilities have NAICS codes that do not fall into any of these six primary manufacturing industries.

D. Other Existing Facilities

EPA's data collection efforts largely focused on five industrial sectors: Chemicals and allied products (SIC Major Group 28); primary metals industries (SIC Major Group 33); paper and allied products (SIC Major Group 26); petroleum and coal products (SIC Major Group 29); and food and kindred products (SIC Major Group 20).[26] The first four sectors use a significant portion of the cooling water withdrawn among all manufacturing industries and were more heavily targeted in EPA's industry questionnaire effort, but data were also collected from the following industries: Food processing; aircraft engines and engine parts; cutlery; sawmills and planing mills; finishers of broad woven fabrics of cotton; potash, soda and borate minerals; iron ores; and sugarcane and sugar beets. These data from other industries, while not a statistically derived sample, confirm that the primary industry sectors discussed above account for the vast majority of non-power plant cooling water use. The data collected for these other industries suggests that the intake structure design and construction at these industries were substantially similar to the industries for which EPA did collect data, and EPA did not receive any data during the Phase III proposed rule comment period that suggests otherwise. EPA's analysis of costs and impacts includes these additional existing facilities.

V. Scope and Applicability of the Proposed Section 316(b) Existing Facility Rule

The proposed rule includes all existing facilities with a design intake flow of more than 2 MGD. The proposed rule also clarifies the definition and requirements for new units at existing facilities. The applicable requirements are summarized in Exhibits V–1 and V–2.

EXHIBIT V–1—APPLICABILITY BY PHASE OF THE 316(b) RULES

Facility characteristic	Applicable rule
New power generating or manufacturing facility	Phase I rule.
New offshore oil and gas facility	Phase III rule.
New unit at an existing power generating or manufacturing facility	This proposed rule.
Existing power generating or manufacturing facility	This proposed rule.
Existing offshore oil and gas facility and seafood processing facilities	This proposed rule (Case-by-case, best professional judgment).

EXHIBIT V–2—APPLICABLE REQUIREMENTS OF TODAY'S PROPOSED RULE FOR EXISTING FACILITIES

Facility characteristic	Applicable requirements
Existing facility with a AIF >125 MGD	Impingement mortality requirements at 125.94(b) and Entrainment Characterization Study requirements at 125.94(c) (categorical rule).
Existing facility with a DIF >2 MGD but AIF not greater than 125 MGD	Impingement mortality requirements at 125.94(b) (categorical rule).
New unit with a DIF >2 MGD at an existing facility	Impingement and entrainment mortality requirements at 125.94(d) (categorical standard).
Other existing facility with a DIF of 2 MGD or smaller or that has an intake structure that withdraws less than 25 percent of the water for cooling purposes.	Case-by-case, best professional judgment.

Initially, EPA divided the 316(b) rulemaking into three phases in response to litigation and to make the best use of its resources (see Section I). However, as EPA's analysis progressed, it became clear that cooling water intake structures are operated similarly at most industrial facilities (*i.e.,* both power producing and manufacturing facilities). From a biological perspective, the effect of intake structures on impingement and entrainment does not differ depending on whether an intake structure is associated with a power plant or a manufacturer. Instead the impingement and entrainment impacts associated with intakes of the same type are generally comparable, and today's proposed rule addresses these impacts without discriminating which facilities are behind the intake structure. Thus, EPA is consolidating the universe of potentially regulated facilities from the 2004 Phase II rule with the existing facilities in the 2006 Phase III rule for purposes of today's proposed rule. This consolidation also provides a "one-stop shop" for information related to today's proposed rulemaking, as all existing facilities would be addressed in an equitable manner by the same set of technology-based requirements.

A. General Applicability

This rule would apply to owners and operators of existing facilities that meet all of the following criteria:

- The facility is a point source that uses or proposes to use cooling water from one or more cooling water intake structures, including a cooling water intake structure operated by an independent supplier not otherwise subject to 316(b) requirements that withdraws water from waters of the United States and provides cooling water to the facility by any sort of contract or other arrangement;
- The total design intake flow of the cooling water intake structure(s) is greater than 2 MGD; and
- The cooling water intake structure(s) withdraw(s) cooling water from waters of the United States and at least twenty-five (25) percent of the water withdrawn is used exclusively for cooling purposes measured on an average annual basis for each calendar year.

EPA is proposing to continue to adopt provisions to ensure that the rule does not discourage the reuse of cooling water for other uses such as process water. The definition of cooling water at 125.93 provides that cooling water used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage of a facility's intake flow that is used for cooling purposes. Therefore, water used for both cooling and non-cooling purposes does not count towards the 25

[26] EPA also identified many other industry sectors that use cooling water; a more comprehensive list of industries that use cooling water and their NAICS and SIC Codes can be found in section A of the Supplementary Information.

percent threshold. EPA notes this definition is the same definition used for new facilities in the Phase I rule at 125.83. Examples of water withdrawn for non-cooling purposes includes water withdrawn for warming by liquefied natural gas facilities and water withdrawn for public water systems by desalinization facilities. Further, the proposed rule at 125.91(c) specifies that obtaining cooling water from a public water system or using treated effluent (such as wastewater treatment plant "gray" water) as cooling water does not constitute use of a cooling water intake structure for purposes of this rule.

Today's proposed rule focuses on those facilities that are significant users of cooling water; only those facilities that use more than 25% of the water withdrawn for cooling purposes are subject to the proposed rule. EPA previously considered a number of approaches for clarifying applicability of the rule (66 FR 28854 and 66 FR 65288). EPA adopted the 25% threshold in each of the Phase I, II, and III rules, and EPA has not received any new data or identified new approaches that would provide further clarity to the applicability of the rule. EPA is proposing to continue to adopt 25% as the threshold for the percent of flow used for cooling purposes to ensure that a large majority of cooling water withdrawn from waters of the U.S. is addressed by requirements for minimizing adverse environmental impact. Because power generating facilities typically use far more than 25 percent of the water they withdraw exclusively for cooling purposes, the 25 percent threshold will ensure that intake structures accounting for nearly all cooling water used by the power sector are addressed by today's proposed requirements. While manufacturing facilities often withdraw water for more than cooling purposes, the majority of the water is withdrawn from a single intake structure.[27] Once water passes through the intake, water can be apportioned to any desired use, including uses that are not related to cooling. However, as long as at least 25% of the water is used exclusively for cooling purposes, the intake will be subject to the requirements of today's rule. EPA estimates that approximately 68% of manufacturers and 93% of power-generating facilities that meet the other proposed thresholds for the rule use more than 25% of intake water for cooling and thus will be addressed by today's rule.

EPA decided to propose requiring the Director, exercising BPJ, to establish BTA impingement and entrainment mortality standards for an existing offshore oil and gas facility, a seafood processing vessel, or an offshore liquefied natural gas import terminal. Such a facility would be subject to permit conditions implementing CWA section 316(b) where the facility is a point source that uses a cooling water intake structure and has, or is required to have, an NPDES permit. At their discretion, permit writers may further determine that an intake structure that withdraws less than 25% of the intake flow for cooling purposes should be subject to section 316(b) requirements, and set appropriate requirements on a case-by-case basis, using best professional judgment. Today's proposed rule is not intended to constrain permit writers at the Federal, State, or Tribal level, from addressing such cooling water intake structures.

B. What is an "existing facility" for purposes of the Section 316(b) Phase II rule?

In today's proposed rule, EPA is defining the term "existing facility" to include any facility that commenced construction before January 18, 2002, as provided for in § 122.29(b)(4).[28] EPA is proposing to establish January 17, 2002 as the date for distinguishing existing facilities from new facilities because that is the effective date of the Phase I new facility rule. Thus, existing facilities include all facilities the construction of which commenced on or before this date. In addition, EPA is defining the term "existing facility" in this proposed rule to include modifications and additions to such facilities, the construction of which commences after January 17, 2002, that do not meet the definition of a new facility at § 125.83, which is the definition used to define the scope of the Phase I rule.[29]

The preamble to the final Phase I rule discusses this definition at 66 FR 65256; 65258–65259; 65285–65287, December 18, 2001. EPA's definition of an "existing facility" in today's proposed regulation is intended to ensure that all sources excluded from the definition of new facility in the Phase I rule are captured by the definition of existing facility in this proposed rule.

A point source would be subject to Phase I or today's proposed rule even if the cooling water intake structure it uses is not located at the facility.[30] In addition, modifications or additions to the cooling water intake structure (or even the total replacement of an existing cooling water intake structure with a new one) does not convert an otherwise unchanged existing facility into a new facility, regardless of the purpose of such changes (*e.g.,* to comply with today's proposed rule or to increase capacity). Rather, the determination as to whether a facility is new or existing focuses on whether it is a green field or stand-alone facility and whether there are changes to the cooling water intake to accommodate it.

C. What is "cooling water" and what is a "cooling water intake structure?"

EPA has not revised the definition of cooling water intake structure for today's proposed rule. A cooling water intake structure is defined as the total physical structure and any associated constructed waterways used to withdraw cooling water from waters of the United States. Under the definition in today's proposed rule, the cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, the intake pumps. Today's proposed rule proposes for existing facilities the same definition of a "cooling water intake structure" that applies to new facilities under Phase I. Today's proposal also adopts the new facility rule's definition of "cooling water" as water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The definition specifies that the intended use of cooling water is to absorb waste heat rejected from the processes used or auxiliary operations on the facility's premises. The definition also indicates that water used in a manufacturing process either before or after it is used for cooling is process water and would not be considered cooling water for purposes of determining whether 25 percent or more of the flow is cooling water. This clarification is necessary because cooling water intake structures typically bring water into a facility for numerous purposes, including industrial processes; use as circulating

[27] Facilities may also use groundwater wells or municipal water for various uses, but the volume of these withdrawals is usually much smaller than the volume withdrawn from surface waters.

[28] Construction is commenced if the owner or operator has undertaken certain installation and site preparation activities that are part of a continuous on-site construction program, and it includes entering into certain specified binding contractual obligations as one criterion (§ 122.29(b)(4)).

[29] The Phase I rule also listed examples of facilities that would be "new" facilities and facilities that would "not be considered a 'new facility'" in two numbered paragraphs.

[30] For example, a facility might purchase its cooling water from a nearby facility that owns and operates a cooling water intake structure.

water, service water, or evaporative cooling tower makeup water; dilution of effluent heat content; equipment cooling; and air conditioning. Note however, that all intake water (including cooling and process) is included in the determination as to whether the 2 MGD DIF threshold for covered intake structures is met.

D. Would my facility be covered only if it is a Point Source Discharger?

Today's proposed rule would apply only to facilities that are point sources (*i.e.,* have an NPDES permit or are required to obtain one). This is the same requirement EPA included in the Phase I new facility rule at § 125.81(a)(1). Requirements for complying with section 316(b) will continue to be applied through NPDES permits.

Based on the Agency's review of potential existing facilities that employ cooling water intake structures, the Agency anticipates that most existing facilities subject to this proposed rule will control the intake structure that supplies them with cooling water, and discharge some combination of their cooling water, wastewater, or storm water to a water of the United States through a point source regulated by an NPDES permit. Under these circumstances, the facility's NPDES permit will include the requirements for the cooling water intake structure. In the event that an existing facility's only NPDES permit is a general permit for storm water discharges, the Agency anticipates that the Director would write an individual NPDES permit containing requirements for the facility's cooling water intake structure. Alternatively, requirements applicable to cooling water intake structures could be incorporated into general permits. If requirements are placed into a general permit, they must meet the requirements set out at 40 CFR 122.28.

As EPA stated in the preamble to the final Phase I rule (66 FR 65256 (December 18, 2001)), the Agency encourages the Director to closely examine scenarios in which a facility withdraws significant amounts of cooling water from waters of the United States but is not required to obtain an NPDES permit. As appropriate, the Director will necessarily apply other legal requirements, where applicable, such as section 404 or 401 of the Clean Water Act, the Coastal Zone Management Act, the National Environmental Policy Act, the Endangered Species Act, or similar State or Tribal authorities to address adverse environmental impact caused by cooling water intake structures at those facilities.

E. Would my facility be covered if it withdraws water from waters of the U.S.? What if my facility obtains cooling water from an independent supplier?

The requirements in today's proposed rule apply to cooling water intake structures that have the design capacity to withdraw amounts of water equal to or greater than 2 MGD from "waters of the United States." Waters of the United States include the broad range of surface waters that meet the regulatory definition at 40 CFR 122.2, which includes lakes, ponds, reservoirs, nontidal rivers or streams, tidal rivers, estuaries, fjords, oceans, bays, and coves. These potential sources of cooling water may be adversely affected by impingement and entrainment.

Some facilities discharge heated water to manmade cooling ponds, and then withdraw water from the ponds for cooling purposes. EPA recognizes that cooling ponds may, in certain circumstances, constitute a closed-cycle cooling system and therefore may already comply with some or all of the technology-based requirements in today's proposed rule. However, facilities that withdraw cooling water from cooling ponds that are waters of the United States and that meet the other criteria for coverage (including the requirement that the facility has or will be required to obtain an NPDES permit) would be subject to today's proposed rule. In some cases water is withdrawn from a water of the United States to provide make-up water for a cooling pond. In many cases, EPA expects such make-up water withdrawals are commensurate with the flows of a closed-cycle cooling tower, and again the facility may already comply with requirements to reduce its intake flow under the proposed rule. In those cases where the withdrawals of make-up water come from a water of the United States, and the facility otherwise meets today's criteria for coverage (including a design intake flow of 2 million gallons per day), the facility would be subject to today's proposed rule requirements.

EPA does not intend this rule to change the regulatory status of cooling ponds. Cooling ponds are neither categorically included nor categorically excluded from the definition of "waters of the United States" at 40 CFR 122.2. The determination whether a particular cooling pond is, or is not, a water of the United States is to be made by the permitting authority on a case-by-case basis. The EPA and the U.S. Army Corps of Engineers have jointly issued jurisdictional guidance concerning the term "waters of the United States" in light of the Supreme Court's decision in *Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers,* 531 U.S. 159 (2001) (SWANCC). A copy of that guidance was published as an Appendix to an Advanced Notice of Proposed Rulemaking on the definition of the phrase "waters of the U.S.," see 68 FR 1991 (January 15, 2003), and may be obtained at (*http://www.epa.gov/owow/wetlands/pdf/ANPRM–FR.pdf*). The agencies additionally published guidance in 2008 regarding the term "waters of the United States" in light of both the *SWANCC* and subsequent *Rapanos* case (*Rapanos* v. *United States,* 547 U.S. 715 (2006)).

The Agency recognizes that some facilities that have or are required to have an NPDES permit might not own and operate the intake structure that supplies their facility with cooling water. In addressing facilities that have or are required to have an NPDES permit that do not directly control the intake structure that supplies their facility with cooling water, revised § 125.91 provides (similar to the new facility rule) that facilities that obtain cooling water from a public water system or use treated effluent are not deemed to be using a cooling water intake structure for purposes of this proposed rule. However, obtaining water from another entity that is withdrawing water from a water of the US would be counted as using a cooling water intake structure for purposes of determining whether an entity meets the threshold requirements of the rule. For example, facilities operated by separate entities might be located on the same, adjacent, or nearby property(ies); one of these facilities might take in cooling water and then transfer it to other facilities prior to discharge of the cooling water to a water of the United States. Section 125.91(b) specifies that use of a cooling water intake structure includes obtaining cooling water by any sort of contract or arrangement with one or more independent suppliers of cooling water if the supplier or suppliers withdraw water from waters of the United States but that is not itself a new or existing facility subject to section 316(b), except if it is a public water system.

As a practical matter, existing facilities are the largest users of cooling water, and typically require enough cooling water to warrant owning the cooling water intake structures. In some cases, such as at nuclear power plants or critical baseload facilities, the need for cooling water includes safety and reliability reasons that would likely preclude any independent supplier arrangements. Therefore, EPA does not expect much application of this

provision. EPA is nevertheless retaining the provision in order to prevent facilities from circumventing the requirements of today's proposed rule by creating arrangements to receive cooling water from an entity that is not itself subject to today's proposed rule, and is not explicitly exempt from today's rule (such as drinking water or treatment plant discharges reused as cooling water).

F. What intake flow thresholds result in an existing facility being subject to this proposed rule?

There are two ways in which EPA determines the cooling water flow at a facility. The first way is based on the design intake flow (DIF), which reflects the maximum intake flow the facility is capable of withdrawing. While this normally is limited by the capacity of the cooling water intake pumps, other parts of the cooling water intake system could impose physical limitations on the maximum intake flow the facility is capable of withdrawing. The second way is based on the actual intake flow (AIF), which reflects the actual volume of water withdrawn by the facility. EPA has defined AIF to be the average water withdrawn each year over the preceding 3 years. Both of these definitions are used in today's proposed rule.

In this proposed rule EPA considered requirements based on the intake flow at the existing facility. EPA is proposing the rule to apply to facilities that have a total design intake capacity of at least 2 MGD (see § 125.91).[31] Above 2 MGD, 99.7% of the total water withdrawals by utilities and other industrial sources would potentially be covered (if the other criteria for coverage are met) while 58% of the manufacturers, 70% of the non-utilities, and 100% of the utilities would be covered. EPA also chose the greater than 2 MGD threshold to be consistent with the applicability criteria in the Phase I rule.[32] EPA continues to believe that this threshold ensures that the largest users of cooling water will be subject to the proposed rule.

EPA proposes to continue to use a threshold based on design intake flow as opposed to actual intake flow for several reasons. In contrast to actual intake flow, design intake flow is a fixed value based on the design of the facility's operating system and the capacity of the circulating and other water intake pumps. This provides clarity, as the design intake flow does not change, except in limited circumstances, such as when a facility undergoes major modifications. On the other hand, actual flows can vary significantly over sometimes short periods of time. For example, a peaking power plant may have an actual intake flow close to the design intake flow during times of full energy production, but an AIF of zero during periods of standby. Use of design intake flow provides clarity as to regulatory status, is indicative of the possible magnitude of environmental impact, and would avoid the need for monitoring to confirm a facility's status. Also see 69 FR 41611 for more information about these thresholds.

Under current NPDES permitting regulations at § 122.21, all existing facilities greater than 2 MGD DIF must submit basic information describing the facility, source water physical data, source water biological characterization data, and cooling water intake system data. Under this proposed rule, all facilities greater than 2 MGD DIF must submit additional facility-specific information including the proposed impingement mortality reduction plan, relevant biological survival studies, and operational status of each of the facility's units.[33] Certain facilities withdrawing the largest volumes of water for cooling purposes have additional information and study requirements such as the Entrainment Characterization Study as described below.

EPA is proposing to use actual intake flow (AIF) rather than design intake flow (DIF) for purposes of determining which facilities must conduct an Entrainment Characterization Study. Environmental impacts, particularly entrainment and entrainment mortality, result from actual water withdrawals, and not the maximum designed withdrawals. Further, using actual flow may encourage some facilities to reduce their flows in order to avoid collecting supplemental data and submitting the additional entrainment characterization study. Furthermore, any facility that has DIF greater than 2 MGD is required to submit basic information that will allow the permitting authority to verify its determination of whether or not it meets the 125 MGD AIF threshold.

EPA has selected a threshold of 125 MGD AIF because a threshold of 125 MGD would capture 90 percent of the actual flows but would only establish the Entrainment Characterization Study requirements for 30 percent of existing facilities. This would significantly reduce facility burden by more than two-thirds of the potentially in-scope facilities, and would focus permit authorities on the majority of cooling water withdrawals by addressing approximately 200 billion gallons of daily cooling water withdrawals.

In today's proposal, EPA seeks to clarify that for some facilities, the design intake flow is not necessarily the maximum flow associated with the intake pumps. For example, a power plant may have redundant circulating pumps, or may have pumps with a name plate rating that exceeds the maximum water throughput of the associated piping. EPA intends for the design intake flow to reflect the maximum volume of water that a plant can physically withdraw from a source waterbody over a specific time period. This also means that a plant that has permanently taken a pump out of service or has flow limited by piping or other physical limitations should be able to consider such constraints when reporting its DIF. EPA solicits comment on whether the definition of DIF should be revised to make this clarification more apparent.

G. Offshore Oil and Gas Facilities, Seafood Processing Vessels or LNG Import Terminals BTA Requirements Under This Proposed Rule

Under today's proposal, existing offshore oil and gas facilities, seafood processing facilities and LNG import terminals would be subject to 316(b) requirements on a best professional judgment basis. In the Phase III rule, EPA studied offshore oil and gas facilities and seafood processing facilities[34] and could not identify any technologies (beyond the protective screens already in use) that are technically feasible for reducing impingement or entrainment in such existing facilities.[35] As discussed in the Phase III rule, known technologies that could further reduce impingement or entrainment would result in unacceptable changes in the envelope of existing platforms, drilling rigs, mobile offshore drilling units (MODUs), seafood processing vessels (SPVs), and similar facilities as the technologies would project out from the hull, potentially decrease the seaworthiness, and potentially interfere with structural

[31] The 2004 Phase II rule applied to existing power-generating facilities with a design intake flow of 50 mgd or greater. Facilities potentially in scope of the Phase III rule had a DIF of greater than 2 MGD.

[32] See 65 FR 49067/3 for more information.

[33] The proposed rule contains streamlined information submission requirements for facilities that already employ closed cycle cooling.

[34] EPA studied naval vessels and cruise ships as part of its development of a general NPDES permit for discharges from ocean-going vessels. (See *http://cfpub.epa.gov/npdes/home.cfm?program_id=350* for more information.) EPA studied seafood processing vessels and oil and gas exploration facilities in the 316(b) Phase III rule.

[35] As discussed in today's preamble, requirements for new offshore facilities set forth in the Phase III rule remain in effect.

components of the hull. EPA also believes that for many of these facilities, the cooling water withdrawals are most substantial when the facilities are operating far out at sea—and therefore not withdrawing from a water of the U.S. The EPA is aware that LNG facilities may withdraw hundreds of MGD of seawater for warming (re-gasification). However, some existing LNG facilities may still withdraw water where 25 percent or more of the water is used for cooling purposes. As discussed in section V, EPA has not identified a uniformly applicable and available technology for minimizing impingement and entrainment (I&E) mortality at these facilities. However, technologies may be available for some existing LNG facilities. LNG facilities that withdraw any volume of water for cooling purposes would be subject to case-by-case, best professional judgment BTA determinations.

EPA has not identified any new data or approaches that would result in a different determination. Therefore, today's rule would continue to require that the BTA for existing offshore oil and gas extraction facilities and seafood processing facilities is established by NPDES permit directors on a case-by-case basis using best professional judgment. EPA solicits comment and data on the appropriateness of national categorical standards for these facilities.

H. What is a "new unit" and how are new units addressed under this proposed rule?

The Phase I rule did not distinguish between new stand-alone facilities and new units where the units are built on a site where a source is already located and does not totally replace the existing source. Because EPA is not changing the new facility rule definitions, and is only proposing clarifying revisions to the existing facility rule, this proposed provision is not intended to otherwise reopen the Phase I rule. Today's proposed rule establishes requirements for new units added to an existing facility that are not a "new facility" as defined at § 125.83. Today's proposal seeks to clarify the definitions of "new" versus "existing" by first noting that, for purposes of section 316(b), a facility cannot be defined as a new facility and an existing facility at the same time. In this rule, while EPA will continue to treat replacement and new units for the same industrial purpose as existing facilities, EPA intends to have different requirements for the addition of new units. A replacement unit or repowered unit, as distinct from constructing an additional unit, would not be treated as a new unit. The requirements for new units are modeled after the requirements for a new facility in the Phase I rule.

EPA has adopted this approach for the following reasons. As new units are built at existing facilities to provide additional capacity, facilities have the ideal opportunity to design and construct the new units without many of the additional expenses associated with retrofitting an existing unit to closed-cycle. The incremental downtime that can be associated with retrofitting to closed-cycle cooling is avoided altogether at a new unit. In addition, when new units are added, the condensers can be configured for closed-cycle, reducing energy requirements, and high efficiency cooling towers can be designed as part of the new unit, allowing for installation of smaller cooling towers. Thus, the capital costs for closed cycle cooling at new units are lower than the capital costs for once-through cooling. These advantages may not always be available when retrofitting cooling towers at an existing unit.

In consideration of the fact that additional unit construction decisions rest largely within the control of the individual facility, EPA decided that subjecting new units to the same national BTA requirements as those applicable to new facilities is warranted.

VI. BTA Consideration

In response to the Supreme Court's decision in *Entergy Corp. et al.* v. *EPA* in April 2009, and the Second Circuit decision in *Riverkeeper II,* EPA has reevaluated the requirements for existing facilities under section 316(b). As discussed in Section III, for the BTA determinations proposed below, EPA collected additional data and information and updated the technology efficacy and costs analyses prepared for the earlier rulemaking efforts. These data and analyses serve to update the rulemaking record and allow EPA to apply greater technical rigor to EPA's analysis of BTA. As a result, EPA has decided not to re-propose requirements similar to those of the final Phase II rule, but would adopt, for the reasons explained in this preamble, a new framework. In addition, as previously noted, EPA decided to address all existing facilities subject to 316(b) in one rule (*i.e.,* Phase II and Phase III).

A. EPA's Approach to BTA

Section 316(b) of the CWA requires EPA to establish standards for cooling water intake structures that reflect the "best technology available for minimizing adverse environmental impact." The statute is silent with respect to the factors that EPA should consider in determining BTA but courts have held that, given section 316(b)'s reference to sections 301 and 306 of the Act, EPA may look to the factors considered in those sections in establishing those standards for section 316(b) standard setting. The Supreme Court noted that, given the absence of any factors language in Section 316(b), EPA has more discretion in its standard setting under section 316(b) than under the effluent guidelines provisions. EPA has broad discretion in determining what is the "best" available technology for minimizing adverse environmental impact. EPA is not bound to evaluate the factors it considers in standard setting in precisely the same way it considers them in establishing effluent limitations guidelines under section 304 of the Clean Water Act. Thus, the U.S. Supreme Court has explained that, under section 316(b), "best" technology may reflect a consideration of a number of factors and that "best" does not necessarily mean the technology that achieves the greatest reduction in environmental harm that the regulated universe can afford. Rather, the "best" (or "most advantageous" technology in the court's words) may represent a technology that most efficiently produces the reductions in harm.

EPA has interpreted section 316(b) to require the Agency to establish a standard based on the best technology available that will minimize impingement and entrainment—the two main adverse effects of cooling water intake structures. In EPA's view, there are several important considerations underpinning its decision. First, its BTA determination should be consistent with,and reflective of, the goals of Section 101 of the CWA: "to restore and maintain the physical, chemical, and biological integrity of the Nation's waters," with an interim goal of protecting water quality so as to provide for the protection and propagation of fish, shellfish, and wildlife and provide for recreation in and on the water.

Second, because the Supreme Court has concluded that EPA may permissibly consider costs and benefits in its BTA determination and E.O. 13563 directs EPA only to propose regulations based on a reasoned determination that the benefits justify the costs, EPA has taken costs and benefits into account in this proposal. EPA has concluded that the benefits of the proposed option justify its costs. See section VI. E below.

Both *Riverkeeper* decisions recognize that EPA may consider a number of factors in establishing section 316(b) standards. In the Phase I *Riverkeeper* case, the court explained that the cross

reference in section 316(b) to sections 301 and 306 is an "invitation" to look to those statutory provisions for guidance concerning the factors EPA should consider in determining BTA. In the Phase II decision, the court stated that the interpretation of section 316(b) should be "informed" by these other two provisions. EPA may consider the factors involved in establishing effluent discharge limitations when regulating intake structures. The factors specifically delineated in CWA sections 301 and 306 that EPA may consider include: cost of the technology, taking into account the age of the equipment and facilities, process employed, engineering aspects associated with a particular technology, process changes and non-water quality environmental impact (including energy requirements).

In selecting the "best" technology, EPA looked at a number of factors. Thus, EPA first considered the availability and feasibility of various technologies, their costs including potential costs to facilities as well as households, and economic impacts of different technologies. EPA reviewed the efficacy of these technologies in reducing impingement and entrainment mortality, including cost-effectiveness relationships. EPA also considered additional factors set out in 304(b) of the Clean Water Act, including location, age, size, and type of facility. EPA next considered the non-water quality effects of different technologies on energy production and availability, electricity reliability, and potential adverse environmental effects that may arise from the use of the different controls evaluated.

EPA has also considered the costs and the benefits of the different technologies it evaluated for BTA. Consideration of benefits in particular is complicated by the absence of well-developed tools or data to fully express the ecological benefits in monetized terms. EPA has, however, used the best currently available science to monetize the benefits of the various options in four major categories: Recreational fishing, commercial fishing, nonuse benefits, and benefits to threatened and endangered species (see Exhibit VIII–10). EPA believes that the benefits estimated for the first two categories are fairly complete, while the benefits estimated for the latter two categories are incomplete for a number of reasons. For example, the non-use benefits consider only the northeast and middle Atlantic states. EPA will continue to refine its tools in order to develop a more complete analysis concerning benefits during the rulemaking proceeding.

As a result of this thorough evaluation, EPA is proposing the use of modified traveling screens with a fish handling and return system or reduced intake velocity as BTA for impingement mortality. EPA's record shows modified traveling screens are available for all facilities, whereas reduced intake velocity may not be available at all locations. For entrainment, on the other hand, EPA could identify no single technology that represented BTA for all facilities for the reasons explained in detail below. Instead, as the national BTA entrainment requirement for existing facilities, EPA is proposing to adopt regulations that establish a process for the permitting authority to determine entrainment BTA controls on a site-specific basis following the consideration of several factors. In addition to the general considerations discussed above, EPA has identified the following specific factors as the key elements in its decision not to prescribe a single technology as the basis for a national BTA determination. These factors are local energy reliability, air emissions permits, land availability, and remaining useful plant life. The rest of this chapter describes each of these considerations in detail.

B. Technologies Considered to Minimize Impingement and Entrainment

As described in Section IV, power plants and manufacturers withdraw large volumes of cooling water on a daily basis. The majority of environmental impacts associated with intake structures are caused by water withdrawals that ultimately result in the loss of aquatic organisms. These losses may be due to impingement, entrainment, or both. Impingement occurs when organisms are trapped against the outer part of a screening device of an intake structure.[36] The force of the intake water traps the organisms against the screen and they are unable to escape. Not all organisms contained in the incoming water are impinged, however. Some may pass through the screening system and the intake structure and travel through the entire cooling system including the pumps, condenser tubes, and discharge pipes. This is referred to as entrainment. Various factors lead to the susceptibility of an organism to impingement or entrainment. For more detailed discussion of impingement and entrainment and their resulting impact, see 67 FR 17136–17140 and the EEBA.

As described in Section III.D, reductions in impingement or entrainment do not necessarily mean reductions in mortality. For purposes of this proposal, EPA has developed the following definitions for impingement and entrainment and mortality:

- Impingement: The entrapment of all life stages of fish and shellfish on the outer part of an intake structure or against a screening device during periods of intake water withdrawal.
- Impingement Mortality: The death of fish or shellfish due to impingement (as defined above). Note impingement mortality need not occur immediately; impingement may cause harm to the organism, which results in mortality several hours after the impingement event. For purposes of this proposed rule, impingement mortality is limited to those organisms collected or retained by ⅜ inch sieve.
- Entrainment: The incorporation of all life stages of fish and shellfish with intake water flow entering and passing through a cooling water intake structure and into a cooling system.
- Entrainment Mortality: The death of fish or shellfish due to entrainment. This also includes the death of those fish and shellfish due to fine mesh screens or other technologies used to exclude the organisms from entrainment. For purposes of this proposed rule, entrainment mortality is limited to those organisms passing through a ⅜-inch sieve.

Based on available information, as described in section III.D, EPA is assuming for purposes of this rule that all entrained organisms are a loss, *i.e.*, no entrained organisms survive. Therefore, in the absence of entrainment control, entrainment is assumed to lead to entrainment mortality. Also see Chapter A7 of the Phase II Regional Studies Document (DCN 6–0003; EPA–HQ–OW–2002–0049–1490). Entrainable organisms generally consist of eggs and early life stage larvae. Early larvae generally do not have skeletal structures, have not yet developed scales, and in many cases are incapable of swimming for several days post hatching. However, for impingement, mortality occurs less than 100% of the time. Impingeable organisms are generally larger juvenile or adult fish, with fully formed scales and skeletal structures, and well developed survival traits such as avoidance responses. EPA's data demonstrate that, under the proper conditions, many impinged organisms survive.

In addition to these definitions it is helpful to further characterize

[36] Typically, cooling water intake structures use various screening devices to prevent large objects (e.g., trash, logs) from being drawn in with the cooling water and ultimately clogging or damaging the cooling water system.

impingement and entrainment as those terms are used in the literature and in studies conducted by power plants. Historically, traveling screens deployed by power plants utilized a 3/8-inch mesh size. For this reason, most studies and reports referring to impingement are in fact referring to those organisms impinged on a 3/8-inch mesh screen. Impingement can also refer to any organism incapable of swimming away from the intake structure due to the water velocity at the intake. Similarly, entrainable organisms are those organisms fitting through a mesh of less than or equal to 3/8 of an inch. This also means the majority of entrainable organisms are comprised of eggs, larvae, and juveniles. More recent studies, particularly those that evaluate mesh sizes smaller than 3/8 of an inch, continue to refer to impingement as any organism caught on the screen. This can cause some confusion, as many organisms that would have been entrained with a 3/8-inch mesh instead become impinged by the finer mesh. These are referred to as "impinged entrainables" or "converts." EPA has also found that most studies of entrainment are biased towards the larger (older) larvae with higher survival rates and do not analyze survival of smaller larvae. This corresponds to larvae body lengths sufficient to have begun scale and bone development, and generally reflects the more motile early life stages. EPA found these study findings cannot be applied to non-motile life stages, which are incapable of avoidance responses. As discussed in Section III.C, it is also important to note that the prevention of entrainment by some exclusion technologies may result in very high entrainment reductions, but these organisms do not necessarily survive interactions with the exclusion technology. Therefore, while entrainment refers specifically to passage through the cooling water intake system, entrainment mortality also includes those smaller organisms killed by exclusion from the cooling water intake system. Today's rule proposes to use the 3/8-inch mesh size as part of the definition of impingement and entrainment mortality as a means of clearly differentiating those organisms that may be susceptible to impingement or entrainment, and thereby avoiding any confusion over the status of "impinged entrainables" or "converts."

Generally, there are two basic approaches to reduce impingement and entrainment (I&E) mortality. The first approach is flow reduction, where the facility installs technology or operates in a manner to reduce or eliminate the quantity of water being withdrawn. Reduced volumes of cooling water produce a corresponding reduction in I&E, and therefore reduced I&E mortality. The second way to reduce I&E is to install technologies or operate in a manner that either (a) gently excludes organisms or (b) collects and returns organisms. Under the first approach, technologies or practices are used to divert those organisms that would have been subject to I&E. The second approach is to install collection and return technologies; organisms not diverted are collected and returned back to the source water.

Though not available to all facilities, a third approach to reducing impingement and entrainment is relocating the facility's intake to a less biologically rich area in a water body, usually further from shore and/or at greater depths, or varying the timing of withdrawals by time of day, season, etc., to target withdrawals to times when organism densities are lower. This approach can be effective at entrainment reduction, but is not generally available to inland facilities.

The section below further describes flow reduction and exclusion technologies.

1. Flow Reduction

Flow reduction is commonly used to reduce impingement and entrainment. For purposes of rulemaking, EPA assumes that entrainment and impingement (and associated mortality) at a particular site are proportional to source water intake volume.[37] Thus, if a facility reduces its intake flow, it similarly reduces the amount of organisms subject to impingement and entrainment. Some common flow reduction technologies include: Variable frequency drives, variable speed pumps, seasonal operation or seasonal flow reductions, unit retirements, use of alternate cooling water sources, water reuse, and closed-cycle cooling systems. For additional detailed information on these technologies as well as others, see the TDD, "California's Coastal Power Plants: Alternative Cooling System Analysis" (DCN 10–6964), and EPRI's "Fish Protection at Cooling Water Intake Structures: A Technical Reference Manual" (DCN 10–6813).

a. Variable Frequency Drives and Variable Speed Pumps

A facility with variable speed drives or pumps operating at their design maximum can withdraw the same volume of water as a conventional circulating water pump. However, unlike a conventional circulating water pump, variable speed drives and pumps allow a facility to reduce the volume of water being withdrawn for certain time periods. The pump speed can be adjusted to reduce water withdrawals when cooling water needs are lower, such as when ambient water temperatures are colder (and therefore capable of dissipating more heat) or when fewer generating units are operating. In site visits, EPA found that variable speed drives and pumps were typically used at units operating below capacity, such as load following units. For this reason most base load generating units and continuously operated manufacturing processes would obtain minimal reductions in flow as a result of these technologies. EPA estimates that facilities with intermittent water withdrawals could achieve a 5 to 10 percent reduction in flow.[38] EPA is further aware that some facilities need to withdraw water for cooling even while the facility is not in production, such as facilities on standby status, or nuclear facilities where the heat energy generated by fission must still be dissipated while the facility is out of service.

b. Seasonal Flow Reductions

Seasonal flow reduction refers to the reduction or elimination of a quantity of water being withdrawn during certain biologically important time periods. Most facilities that practice seasonal flow reductions do so in order to reduce entrainment because peak entrainment events are often seasonal, typically occurring during local spawning season, while impingement is more sporadic. For example, clupeids species experience impingement episodes sporadically all throughout the winter and spring. Largemouth bass, on the other hand, may spawn in the late-spring, which would thus be a season of

[37] Impingement rates are related to intake flow, intake velocity, and the swimming ability of the fish subject to impingement. Entrainment is generally considered to be proportional to flow and therefore reduced on a 1-to-1 basis via flow reductions, as EPA assumes for purposes of national rulemaking that entrainable organisms are uniformly distributed throughout the source water. EPA has consistently applied this assumption throughout the 316(b) rulemaking process (see, *e.g.,* 66 FR 65276 for a discussion of proportional flow requirements in the Phase I rule or 69 FR 41599) and continues to believe that it is broadly applicable on a national scale and is an appropriate assumption for a national rulemaking. EPA recognizes that this assumption is not necessarily true on a site specific basis and that relocating or varying the time pattern of withdrawals may be effective strategies to reduce I&E in some cases.

[38] Withdrawals of colder water could allow facilities to reduce their intake using variable speed drives and pumps, but EPA does not have data on the efficacy or availability of this approach.

potentially high entrainment for this species. During this specific peak entrainment time period, a facility could operate less (or perhaps not at all) thereby reducing or eliminating the volume of cooling water withdrawn. This may be accomplished through a combination of variable speed pumps or shutting down some portion of the pumping system. Seasonal flow reduction may also consist of operating a once-through cooling system during part of the year and switching to closed-cycle during peak entrainment season. Facilities may also choose to schedule periodic maintenance to occur during these time periods; these maintenance activities often require the facility to reduce or cease operations and can be timed to coincide with the most biologically productive periods. By identifying species of concern at facilities visited by EPA, the Agency has identified some sites where entrainment is significant all year long, and other sites where peak entrainment occurs in as few as three to four months of the year. In addition, not all power generating facilities in a local area could stop operating at the same time without interrupting local electricity reliability. Therefore, not all facilities can utilize seasonal flow reduction technologies.

c. Unit Retirements

Some power plants have retired units completely or have essentially ceased all operations but have yet to be formally retired or decommissioned. Reasons for their inactivity vary,[39] but the end result is the facility eliminates the need for cooling water withdrawals for these units. Similarly, manufacturers may retire processing units as market demand changes, process lines are moved to other sites, or production technologies change. Unit closures provide clear reductions in flow, but the demand for electricity (or other products) may dictate that production be increased at the facility in question or another facility altogether; there is usually no guarantee that the intake flow will be permanently retired. EPA expects flow reductions due to unit closures could be reasonably included as part of a facility's I&E mortality reductions for a period of up to 10 years.

d. Alternate Sources of Cooling Water

While not reducing the overall usage of water at a facility, using an alternate source of cooling water may have the same effect in reducing impingement and entrainment, as new or additional withdrawals from surface waters may be reduced. An example is using "gray" water as a source of cooling water; a facility reaches an agreement with a nearby wastewater treatment plant to accept the WWTP's effluent as a source of cooling water.[40] Such alternative sources are limited by available capacity, consistency of flow, and increasing competition for these sources of water, and may be more challenging to find for existing facilities than for new facilities that are not yet fixed in location.

e. Water Reuse

Typically associated with manufacturing facilities, water reuse (defined as using water for multiple processes) can reduce the volume of water needed for cooling, process, or other uses. For example, a facility might withdraw water for non-contact cooling water and then re-use the heated effluent as part of an industrial process. In effect, the facility has eliminated the need to withdraw additional water for the latter process. EPA has observed significant water reuse at manufacturing facilities, but has not developed national level data for such reuse due to the range of different manufacturing sectors and the significant variability in manufacturing processes (during site visits, it was observed that complex facilities have found it difficult to assess their specific water reuse). See Section IV for further discussion on water usage in specific industrial sectors.

f. Closed-cycle Cooling Towers

Closed-cycle cooling systems allow a facility to transfer its waste heat to the environment using significantly smaller quantities of (or in some cases no) water. There are two main types of closed-cycle cooling systems: Wet cooling and dry cooling. Each of these is described below.

Wet Cooling Tower Systems

In a wet cooling system, cooling water that has absorbed waste heat, transfers that heat through evaporation of some of the heated water into the surrounding air and recirculates the cooling water to continue the cooling process.[41] This process enables a facility to re-use the remaining water, thereby reducing the quantity of water that must be withdrawn from a water body. Because the heat is transferred through evaporation, while the amount of water withdrawn from the water source is greatly reduced, it is not eliminated completely because make-up water is required to replace that lost through evaporation and blowdown. There are two main types of wet cooling systems: Natural draft and mechanical. While wet cooling towers reduce withdrawals relative to once-through systems, they may increase the consumptive use of water since they tend to rely on evaporation (which is not returned to the water body) for heat dissipation. When once-through cooling is used and withdrawals are a significant portion of the waterbody, the return of heated water may contribute to greater evaporation from the water body. However, EPA does not have data on the relative magnitude of these effects. The relative loss of water through evaporation for closed cycle and once-through systems is site specific, depending on the exact design of the systems.

A natural draft cooling tower is tall[42] and has a hyperbolic shape. The height of these towers creates a temperature differential between the top and bottom of the tower, creating a natural chimney effect that facilitates heat transfer as heated water contacts rising air. In contrast, mechanical cooling towers rely on motorized fans to draw air through the tower and into contact with the heated water. These towers are likely to be much shorter units than natural draft cooling towers,[43] and due to their modular construction can be built in multiples, but they may require more land area for the same amount of cooling. Both types of towers require electricity for pumps, while mechanical draft towers also require electricity to operate the fans; both electricity needs serve to reduce a facility's net generating output. Thus the monetary and environmental costs of making up this reduction in energy efficiency need to be considered. These environmental costs include human health and welfare effects from increased air emissions, including the global climate change effects of increased greenhouse gas output at fossil-fueled plants. Both natural draft and mechanical cooling towers can operate in freshwater or saltwater environments. Saltwater applications typically require more make-up water than freshwater

[39] Note that some generating units are retired for market-driven reasons (*i.e.,* the unit is no longer considered sufficiently profitable to operate). They may also be mothballed, placed on cold storage, or maintained in various other states of operational readiness.

[40] See, for example, EPA's site visit report for PSEG's Linden Generating Station (DCN 10–6557), which has a capacity of 1230 MW, 35% CUR, and uses 7–8 mgd of gray water as makeup water for its cooling towers.

[41] In addition, a smaller portion of the heat is also removed through direct contact between the warm water and the cooler surroundings.

[42] Natural draft towers can be as high as 500 feet or more.

[43] Mechanical draft towers typically range from 30 to 75 feet in height.

applications, making them less efficient in reducing water withdrawals.[44] Optimized cooling towers may achieve flow reductions of 97.5 percent or better and 94.9 percent or better for freshwater and saltwater sources, respectively.

Dry Cooling Tower Systems

Dry cooling systems virtually eliminate the need for cooling water withdrawals.[45] Unlike wet cooling systems, in dry cooling systems, waste heat is transferred completely through convection and radiation, rather than evaporation. Direct dry cooling is much like a car radiator; turbine exhaust steam passes through tubes or fins and the condensate is returned for reuse in the turbine. The system is completely closed to the atmosphere and there is no contact between the outside air and the steam or the resulting condensate. Due to the heavy reliance of dry cooling on ambient air temperatures and the lower efficiency of heat transfer through convection and radiation, dry cooling towers are much larger and therefore more expensive [46] than wet cooling towers for a given cooling load. Dry cooling towers have been built in areas where limited water supplies exist for either once-through cooling or wet cooling make-up water, such as the arid southwestern U.S. Dry cooling is not demonstrated and available for nuclear facilities, due to the backup cooling systems and related safety needs required at a nuclear facility.

Hybrid Cooling Tower Systems

In certain applications, a facility may choose a hybrid cooling tower design that incorporates elements of both wet and dry cooling. Typically, the base of the tower functions as a wet cooling tower and the upper portion as a dry tower; the most common reason for this design is to reduce the visible plume emitted from the tower, which is accomplished by recapturing some of the water vapor evaporated in the wet portion of the tower. This design is also usually much shorter than natural draft wet towers, which can also offer plume abatement controls.

2. Exclusion Technologies To Minimize Impingement and/or Entrainment

Over the last several decades, in addition to flow reduction and closed-cycle cooling, numerous technologies have been developed in an effort to minimize impingement and entrainment mortality associated with cooling water intake systems. The following summarizes the most widely used technologies as well as the most effective and best performing technologies. For additional detailed information on these technologies as well as others, see the TDD, CA Report, and EPRI report.

a. Screens

i. Traveling Screens

Traveling screens are a technology in place at virtually all cooling water intake structures. These screens were originally designed to prevent debris from entering the cooling water system, but also prevent some fish and shellfish from entering the cooling water system. Traveling screens have been installed in numerous environmental conditions: Salt water, brackish water, fresh water, and icy water. Based on the technical survey, EPA found 93 percent of electric generators and 73 percent of manufacturers employ traveling screens or other intake screens. There are many types of traveling screens (*e.g.,* through flow, dual flow, center flow). The most common design in the U.S. is the through flow system. The screens are installed behind bar racks (trash racks) but in front of the water circulation pumps. The screens rotate up and out of the water where debris (including impinged organisms) is removed from the screen surface by a high pressure spray wash. Screen wash cycles are triggered manually or by a certain level of head loss across the screen (indicating clogging). By definition, this technology works by collecting or "impinging" fish and shellfish on the screen. Traveling screens are ideally used with a fish handling and return system, discussed further in Section VI.B.3 below.

ii. Cylindrical Wedgewire Screens

Cylindrical wedgewire screens, also called "V" screens or profile screens, unlike traveling screens, are a passive intake system. Wedgewire screens consist of a v-shaped, cross section wire on a framing system. Slot sizes for conventional traveling screens typically refer to a square opening (⅜″ × ⅜″) that is punched or woven into the screen face. Wedgewire screens are constructed differently, however, with the slot size referring to the maximum distance between longitudinally adjacent wires. These screens are designed to have a low through-slot velocity (less than 0.5 ft/sec or 0.15 m/sec) and typically have smaller slot sizes than a coarse mesh traveling screen. The entire wedgewire structure is submerged in the source waterbody.

When appropriate conditions are met, these screens exploit physical and hydraulic exclusion mechanisms to achieve consistently high impingement reductions (and as a result, impingement mortality reductions). Wedgewire screens require an ambient current crossflow to maximize the sweeping velocity provided by the waterbody. The screen orientation and cross current flow carries organisms away from the screen allowing them to avoid or escape the intake current. Lower intake velocities also allow fish to escape from the screen face. Entrainment reductions can potentially be observed when the screen slot size is small enough and intake velocity is low enough to exclude egg and larval life stages.[47] There is also limited evidence suggesting that extremely low intake velocities can allow some egg and larval life stages to avoid the intake due to hydrodynamic influences of the cross current. Therefore performance is largely dictated by local conditions that are further dependent on the source waterbody's biological composition. Costs of wedgewire screens also increases significantly as slot size and design intake velocity decrease. Wedgewire screens may also employ cleaning and de-icing systems such as air-burst sparging to aid in maintaining open intake structures and low intake velocities.

According to data from the industry questionnaire, EPA's site visits, and industry documents, dozens of facilities across the U.S. employ cylindrical wedgewire screens. However, wedgewire screens are not feasible for facilities with limited access to source water, such as shallow water or limited shoreline frontage. Wedgewire screens may also not be feasible where the size and number of wedgewire screens would interfere with navigational traffic. As described above, locations also need to have an adequate source water sweeping velocity. Most of the performance data for wedgewire screens is based on coarse mesh slot sizes with an intake velocity of 0.5 feet per second. As it is extremely difficult to measure

[44] Modular cooling tower units provide an additional cooling tower alternative. Modular cooling towers resemble mechanical cooling towers, but are portable, typically rented for short-term periods and quickly assembled.

[45] Dry cooling systems do blow down some of the circulating water within the cooling system to prevent the buildup of materials within the condenser. However, the volume of makeup water is extremely low—a dry cooling system typically reduces intake flows by 98–99 percent over a comparable once-through cooling system.

[46] The construction and capital costs for dry cooling towers have been reported as five to 10 times as expensive as wet cooling towers, and the parasitic load for dry cooling is higher than for wet cooling. See DCN 10–6679.

[47] Note that this is entrainment exclusion and not necessarily related to the survival of entrainable organisms. See Section III.B.2 for more detail.

impingement and entrainment reductions in the field, most performance data is based on barge studies and lab studies. EPA does not have data on the performance of fine mesh wedgewire screens on entrainment survival; therefore EPA has only considered wedgewire screens for impingement mortality. For additional discussion of the specific design and operation of cylindrical wedgewire screens, see the TDD. The following section discusses the importance of mesh size to impingement and entrainment mortality reductions.

iii. Screen Mesh Size Considerations

Coarse Mesh

Coarse mesh traveling screens are the typical traveling screen fitted on the majority of cooling water intakes. A large number of facilities have intake screens with ⅜-inch (9.5 mm) mesh panels. This size mesh is common because, as a general rule of thumb, the maximum screen slot size is never larger than one half of the condenser tube diameter (the condenser tubing is the narrowest point in the cooling water system and, as such, is most susceptible to clogging from debris), and this tubing is typically ¾ or ⅞ inches in diameter. Mesh of ⅜-inch (roughly 9.5 mm) does not prevent entrainment and in the absence of any other precautions can lead to high mortality of impinged fish. Coarse mesh traveling screens have been in use by both power plants and manufacturers for more than 75 years and represent the baseline technology. Similarly, the majority of successful wedgewire installations are coarse mesh.

Fine Mesh

Fine mesh traveling and wedgewire screens are similar to coarse mesh screens, with the only difference being the size of the screen mesh. The mesh size of fine mesh screens varies, depending on the organisms to be protected, but typically range from 0.5 to 5 mm. Typically, facilities have incorporated fine mesh in an effort to reduce entrainment. Data in the record demonstrate that entrainment typically decreases as mesh size decreases. However, slot sizes larger than 2 mm do not prevent eggs from passing through the screen. Fine mesh traveling screens have been in use in this industry since the 1980s. EPA estimates as many as 17 percent of existing intakes could not be expanded in size to accommodate a 2 mm mesh, and as many as 55 percent of existing intakes could not accommodate a 0.5 mm slot size under conditions of low intake velocities. For these reasons, fine mesh screens are demonstrated for some locations, but are not the best performing technologies, and are not available technologies for the industry as a whole. See Chapter 6 of the TDD for more details.

b. Barrier Nets

Barrier nets are nets that fully encircle the intake area of water withdrawal, from the bottom of the water column to the surface and that prevent fish and shellfish from coming in contact with the intake structure and screens. According to data from the industry questionnaire (as of the year 2000), at least a half dozen facilities employ a barrier net. Typically, barrier nets have large mesh sizes (*e.g.,* ½-inch or 12.7 mm)[48] and are designed to prevent impingement. Due to the large mesh size, they offer no reduction in entrainment. They are often deployed seasonally, wherever seasonal migrations create high impingement events or to avoid harsh winter conditions which jeopardize integrity of the net. Barrier nets also prevent impingement of shellfish on the intake traveling screen. Shellfish such as crustaceans may pose a unique issue for traveling screens because the shellfish are not impinged, but rather they may grab hold of the traveling screen surface and are not removed from the traveling screen by pressure wash sprays. Barrier nets have been shown to be particularly helpful in this regard. For this reason, the costs of options considered today include the costs of barrier nets to minimize impingement mortality of shellfish.

c. Aquatic Filter Barriers

Aquatic Filter Barriers (AFBs), such as the Gunderboom Marine Life Exclusion System (MLES) or simply "Gunderboom," are similar to barrier nets in that they extend throughout the area of water withdrawal from the bottom of the water column to the surface. However, AFBs consist of water permeable fabric panels with small pores (< 20 microns). AFBs reduce both impingement mortality and entrainment because they present a physical barrier to all life stages. The surface area of an AFB is quite large compared to a traveling screen, allowing for extremely low water velocities. The low velocity allows non-motile organisms to drift away. EPA is aware of one power plant that used an AFB, but notes that this facility recently ceased operations.[49] EPA has updated performance data for AFB for small flow intakes, but does not have enough data to evaluate the technology at large intakes and in all waterbodies.

3. Collection and Return

Conventional traveling screens were not designed with the intention of protecting fish and aquatic organisms that become entrapped against them. Marine life may become impinged against the screens from high intake velocities that prevent their escape. Prolonged contact with the screens may suffocate insufficiently strong species or certain susceptible life stages of fish. Exposure to high pressure sprays and other screening debris may cause significant injuries that result in latent mortality, or increase the susceptibility to predation or re-impingement. Organisms that do survive initial impingement and removal are not typically provided with a specifically-designed mechanism to return them to the water body and are handled in the same fashion as other screening debris. Other objects collected on the screen are typically removed with a high-pressure spray and deposited in a dumpster or debris return trough for disposal. Screens are rotated periodically based on a set time interval or when the pressure differential between the upstream and downstream faces exceeds a set value. Conventional traveling screen systems have been modified to reduce impingement-related mortalities with collection and return systems. In simplest form, this is comprised of a return flume or trough with sufficient water volume and flow to enable impinged organisms to return to the source water. Return systems should be designed to avoid predation and latent mortality while organisms are in the flume, positioned at an appropriate water depth for high survival of the organisms, located at an appropriate elevation to avoid large drops of the organisms back to the surface water, and sited to avoid repeated impingement of the organisms by the intake structure.

Following the 1972 Clean Water Act's requirement to require technology-based solutions to minimize adverse environmental impacts, some conventional coarse mesh traveling screen systems were modified to reduce impingement mortality by removing fish trapped against the screen and returning them to the receiving water with as few injuries as possible. The first modified

[48] Barrier net mesh sizes vary, depending on the configuration, level of debris loading, species to be protected, and other factors.

[49] This facility ceased operations for reasons other than impingement and entrainment related to cooling water intake.

screens, also known as "Ristroph" screens, feature capture and release modifications. In the simplest sense, these screens are fitted with troughs (also referred to as buckets) containing water that catch the organisms as they rise out of the water and are sprayed off of the screen. The return component consists of a gentle mechanism to remove impinged fish from the collection buckets, such as a low-pressure spray. The buckets empty into a collection trough that returns fish to a suitable area in the source water body. These modified screens have shown significant improvements in reducing impingement mortality compared with unmodified screen systems.

Data from early applications of the "Ristroph" screen design showed that while initial survival rates might be high at some installations, latent mortality rates were higher than anticipated, indicating significant injuries could be sustained during the impingement and return process that were not immediately fatal. Based on a study conducted by Ian Fletcher in the 1990s (see DCN 5–4387), industry identified several additional critical screen modifications to address latent mortality. These include redesign of the collection buckets to minimize turbulence, addition of a fish guard rail/barrier to prevent fish from escaping the collection bucket, replacement of screen panel materials with "fish friendly" smooth woven mesh, and a low pressure wash to remove fish prior to any high pressure spray to remove debris on the ascending side. The Fletcher analysis also identified that longer impingement duration, insufficient water retention in the buckets, and exposure to the air and temperature extremes could negatively impact fish survival. Finally, these findings indicate that modified Ristroph screens must be continually rotated instead of the periodic rotation schedule common with conventional screen systems. Performance data for modified traveling screens with fish return systems show low levels of impingement mortality across a wide variety of water body types and fish species. Therefore, EPA has concluded modified traveling screens with a fish return system is a candidate best performing technology for impingement mortality.

For additional and more detailed discussion of the specific design and operation of these screen modifications, see the TDD.

4. Intake Location and Velocity Caps

Currently, the most common intake location for a cooling water intake structure is along a shoreline. In some types of waterbodies, shoreline locations are thought to have the potential for greater environmental impact because the water is withdrawn from the most biologically productive areas especially with regards to earlier life stages. Some facilities employ an offshore intake to withdraw water from less biologically productive areas to reduce entrainment relative to intakes located in more productive shoreline areas, though impingement (and therefore impingement mortality) reductions have also been observed. Obviously, reduction in impingement mortality and entrainment depend on intake location at a particular site, but the greatest potential for reductions is found with far offshore locations at distances of several hundred feet, something not possible on many rivers and streams. Both depth and the offshore location must be evaluated to determine if fish densities and species distribution at the offshore location are substantially different than those near the shoreline. Two areas where far offshore locations are commonly used today include the oceans and Great Lakes.

EPA found most offshore intakes are fitted with a velocity cap. Velocity caps are a physical structure rising vertically from the sea bottom and placed over top of the intake pipe. Intake water is withdrawn through openings in the velocity cap in a manner which converts the direction of flow from vertical to horizontal. The horizontal flow provides a physiological trigger in fish to induce an avoidance response thereby reducing impingement mortality. The velocity cap further serves to limit the zone of influence of the intake to the depth level at which the velocity cap is situated, thus affecting only the life stages that live at that depth. Furthermore, the velocity at an offshore intake is lower than the velocity of an equivalent sized intake at the shoreline due to differences in pressure, resulting in a lower intake velocity at the velocity cap than at a shoreline intake. Velocity caps are also usually equipped with supports and bar spacing selected to prevent larger aquatic organisms (*e.g.,* turtles or marine mammals) from entering the intake pipe. Because velocity caps operate under the principle that the organisms can escape the current, velocity caps do not offer entrainment reductions over and above those achieved by being located offshore. Reductions in entrainment observed with velocity caps occur due to the difference in organism densities in far offshore deep water compared to a surface intake at the shoreline.

For additional and more detailed discussion of the specific design and operation of offshore intake locations and velocity caps, see the TDD.

5. Reduced Intake Velocity

Impingement mortality can be greatly reduced by reducing the through-screen velocity in any screen. Reducing the rate of flow of cooling water through the screen (through-screen velocity) to 0.5 ft/sec or less reduces impingement of most fish because it allows them to escape the intake current. (See 66 FR 65274 and DCN 2–028A, EPRI's "Technical Evaluation of the Utility of Intake Approach Velocity as an Indicator of Potential Adverse Environmental Impact Under Clean Water Act 316(b).") Limited lab studies indicate that entrainment also may decrease as through-screen velocity decreases and that through-screen velocity may have an effect on entrainment survival rates, although such data is extremely variable by species (see DCN 10–6802 and DCN10–6803). As a result, some Phase II facilities have designed and operate their modified traveling screens or wedgewire screens so as not to exceed a through-screen velocity of 0.5 ft/sec. In addition, for the reasons described in Section VI.B.2, aquatic filter barriers and velocity caps [50] are likely to have velocities of 0.5 ft/sec or less. Swim speed studies demonstrate that for most facilities, an intake velocity of 0.5 feet per second or less results in 90 percent or better reductions in impingement mortality for most species. (EPA notes that preliminary results from recent studies of fine mesh screens suggest that at even lower intake velocities such as 0.25 feet per second, there may be some hydrodynamic influences that reduce entrainment mortality even more, because flow dynamics are nonlinear. It is unclear whether such observations hold true when cooling water withdrawals (water volumes) are large.) Therefore, EPA has concluded reduced intake velocity is a candidate best performing technology for impingement mortality.

C. Technology Basis for Today's Proposed Regulation

As described in the previous section, EPA examined the full range of technologies that reduce impingement and/or entrainment, and evaluated these technologies based on their efficacy in reducing impingement and entrainment, availability, and cost. Based on an assessment of these factors, EPA has

[50] Velocity as measured at the velocity cap opening.

identified three best performing technologies for further analysis as the basis for today's proposed rule: Modified traveling screens with a fish return (for fish impingement), barrier nets (for shellfish impingement on tidal waters), and mechanical draft wet cooling towers (for impingement and entrainment at new units). Although EPA has identified velocity reduction to 0.5 feet per second or less as a candidate best performing technology for impingement mortality, EPA is not proposing reduced intake velocity as BTA because it is not available at all facilities, but is allowing facilities to comply with intake velocity of 0.5 feet per second or less where available.

EPA has concluded that modified traveling screens, such as Ristroph screens and equivalent modified traveling screens are a best performing technology for impingement mortality. These screens use coarse size mesh with collection buckets designed to minimize turbulence, a fish guard rail/barrier to prevent fish from escaping the collection bucket, "fish friendly" smooth woven mesh, and a low pressure wash to remove fish prior to any high pressure spray to remove debris on the ascending side. The fish removal spray must be of lower pressure and the fish return must be fish friendly and provide sufficient water and minimize turbulence. Modified traveling screens must generally be continually rotated to obtain the highest reductions in impingement mortality. As discussed in Section III, traveling screens with post-Fletcher modifications achieve a monthly impingement mortality of 31 percent mortality (performance corresponding to the 95th percentile of the beta distribution) under conditions of 48 hour or less holding times. The use of the 95th percentile is consistent with the convention EPA has used for monthly average limitations in the effluent guidelines program (*i.e.,* for pollutant discharges). In developing the monthly average standard proposed for this rule, EPA has taken into account the reasonable anticipated variability in impingement mortality that may occur at a well-operated facility. Variability occurs due to changes in seasons, differing intake locations, higher mortality of certain species, and speciation found in different water bodies.

In contrast to the monthly average, which is adjusted to reflect month-to-month variability in performance of the technology, EPA has not included an upward adjustment of the annual average[51] standard to account for year-to-year variability. The annual average standard requires that impingement mortality not exceed 12 percent, calculated as the average of monthly impingement mortality for 12 consecutive months as determined by the Director. The 12 percent value corresponds to the long-term average performance of the technology that EPA has identified as BTA, based on available data from eight episodes of sampling collected on three different waterbody types over all seasons (see Chapter 11 of the TDD for more information). EPA expects facilities to track their compliance with the annual average standard on an ongoing basis, and to proactively modify their technology or operations when any individual monthly average suggests that they may be in danger of exceeding the annual average standard in the future. EPA recognizes that some variability in the annual average is inevitable, and thus the only way to consistently achieve the 12 percent annual standard is to target a better level of performance as the long-term average performance. While EPA's data show a long-term average performance of 12 percent impingement mortality for the BTA technology, EPA believes that by continuously monitoring and adaptively adjusting the operation of the technology, facilities can achieve a better long-term performance than is documented in the data, and thus consistently meet the annual average.

EPA also considered applying a confidence or tolerance limit to the long-term average in deriving the annual average standard. EPA rejected this approach because EPA believes that facilities can achieve better long-term performance than documented in the data by maintaining tight control on their technology and operations and adaptively managing the technology to achieve the best possible performance. While EPA has not included any additional costs for this adaptive management, EPA believes that such adaptive management should be part of the routine maintenance and operation of the technology and additional costs should not be necessary.

EPA has occasionally used annual limits in the effluent guidelines program (most recently for the pulp and paper industry category (40 CFR 430, promulgated in 1998) and has previously not included a variability factor for annual limits. Thus, EPA's proposed approach to calculating the annual standard for mortality impingement is consistent with past practice. EPA requests comment on its proposed approach for calculating and implementing the annual standard.

This technology does not minimize adverse environmental impacts associated with entrainment, and does not specifically address impingement mortality of shellfish.

EPA selected the seasonal deployment of barrier nets on estuaries and oceans as the best performing technology for minimizing the impingement mortality of shellfish (crustaceans) because no other technology has been identified that is available, demonstrated, and feasible. EPA did not select wedgewire screens as a candidate technology for impingement mortality because wedgewire screens are not available and feasible for all existing facilities. Wedgewire screen performance requires an adequate crossflow of the source water that is not present in all waterbodies. Wedgewire screens also require a minimum water depth in order to fully submerge the screens; the requisite depth and space to submerge the screens is not available at all locations, and further may pose an obstacle to navigation. However, where passive screens such as cylindrical wedgewire screens are feasible, data in the record shows they would perform equally as well or better than seasonal deployment of barrier nets. EPA has included a provision in the proposed regulation that specifies that passive screens meet the IM requirement for shellfish.

One technology for reducing impingement mortality as well as reducing entrainment mortality is wet cooling towers. Mechanical cooling towers achieve flow reductions of 97.5 percent for freshwater and 94.9 percent for saltwater sources by operating the towers at a minimum of 3.0 and 1.5 cycles of concentration, respectively. Based on the high levels (greater than 95 percent on average) of flow reduction obtained by optimized cooling tower operation, EPA has identified wet cooling towers as a candidate best performing technology for both impingement mortality and entrainment mortality for new units at existing facilities. As discussed further below, EPA is not proposing cooling towers as BTA for existing facilities (other than new units) because it is not available on a national basis. As described in Section VI.B, other technologies are demonstrated, but are not the best performing technologies and/or are not

[51] The annual average should not be confused with a rolling average of the preceding 12 months; EPA has specified in the rule language at § 125.96 that the annual average means 12 consecutive months as specified by the Director. EPA expects that compliance with the annual average standard would be determined once each calendar year.

available technologies for the industry as a whole.

Although, EPA's record shows numerous instances of existing facility retrofits to closed-cycle, EPA has not identified it as BTA for the reasons discussed below. EPA has also not identified any other available and demonstrated candidate technology for entrainment mortality that is available on a national basis; see Section VI.B and the TDD for other entrainment technologies that may be available on a site-specific basis. EPA did not select the other flow reduction technologies such as variable speed drives and seasonal flow reductions as the technology basis for entrainment mortality because these technologies are not feasible for all facilities. Further, EPA has not identified a basis for subcategorizing existing facilities for where these flow reduction technologies are feasible, because their seasonal operation depends on the site-specific biology of the facility. EPA did not select relocation of a shoreline intake to far offshore as a technology basis because this technology is not feasible for all facilities. Even if EPA subcategorized by water body type (*i.e.,* intake location), the performance of wet cooling towers for entrainment mortality is at least three times that of a far offshore intake. Therefore relocation of the intake is not the best performing technology for minimizing entrainment mortality.

D. Options Considered for Today's Proposed Regulation

After careful consideration of the technologies available as described in Section VI.C, EPA developed four primary options based on these technologies for today's proposed rule. Three of the options would require the same impingement mortality standards, but would vary the approach to entrainment mortality controls. The fourth option would allow both impingement and entrainment mortality controls to be established on a site-specific BPJ basis for facilities with a DIF less than 50 MGD. The options are described briefly below, followed by a discussion of EPA's evaluation of each option as BTA.

1. Option 1—Uniform Impingement Mortality Controls at All Existing Facilities; Site-Specific Entrainment Controls for Existing Facilities (Other Than New Units) That Withdraw Over 2 MGD DIF; Uniform Entrainment Controls for All New Units at Existing Facilities

Under this option, all existing facilities withdrawing more than 2 MGD would be required to meet either the design or the performance standard for impingement mortality. Entrainment controls would be established by the permitting authority on a case-by-case basis taking into account those factors at a particular facility that are specified in today's proposal and the information required by the existing permit regulations at § 122.21(r)(1)–(8) for all facilities with at least 2 MGD DIF. In addition, under EPA's CWA sections 301, 308, 316(b), and 402 authority, in the case of facilities withdrawing greater than 125 MDG AIF (actual intake flow), the site-specific determination of BTA would be based on a submission of certain other required information. The proposal would amend the permit application requirements at § 122.21(r)(9)–(11) to require the facility to prepare an Entrainment Characterization Study that would fully characterize the amount of entrainment at the facility. (See below for more details about the study). In addition, under the proposal, the facility would provide detailed information on the other factors relevant to the Director's site-specific BTA determination. These would include information concerning the technologies available for control of such entrainment, the costs of controls, the non-water quality impacts of such controls, and both the monetized and non-monetized benefits of such controls. The CWA requires, and EPA encourages, the public to have a role in the permitting process; therefore EPA has also included meaningful public opportunity for participation in the site-specific decision making to help ensure the soundness of both the information and subsequent determinations.

a. Impingement Mortality Controls

As described earlier in this section, traveling screens have undergone a number of technological improvements over the years and modern screens have proven to be highly effective in promoting the survival of impinged organisms. The proposed rule requires the use of state-of-the-art screens with fish buckets, a low pressure spray wash, a dedicated fish return line, etc., but is not specifying any particular screen configuration, mesh size or screen operations, so long as facilities can consistently meet the numeric impingement mortality limits (impingement mortality also includes a design standard for shellfish). EPA is also not specifying additional design or operational criteria to promote development of improved technologies, and to allow facilities to use variations such as dual flow traveling screens and drum screens.

EPA did not select intake velocity as the sole technology basis for impingement mortality controls because, although the performance of 0.5 feet per second intake velocity is slightly better than the selected technology, the intake velocity is not available or feasible for all existing facilities (see Chapter 6 of the TDD). However, EPA has long recognized the relationship between impingement and intake velocity. EPA conducted an analysis of fish swim speeds in the Phase I rule (see 66 FR 65274) and concluded that a design through-screen velocity of 0.5 feet per second would be protective of 96% of motile organisms. As a result, a facility may chose to comply with the impingement mortality standards in today's proposed rule by instead demonstrating that the through-screen design velocity does not exceed 0.5 feet per second, or by demonstrating that the actual average intake velocity does not exceed 0.5 feet per second.

While the data shows the majority of healthy motile organisms would be protected by a maximum intake velocity of 0.5 feet per second, some species would not be adequately protected. Some facilities employ traveling screens, but do not have fish friendly modifications such as a fish handling and return system. EPA is concerned that some facilities would comply with the impingement mortality requirements by the intake velocity compliance alternative, and would continue to operate unmodified traveling screens. This is particularly a concern where the traveling screens are located in a forebay, potentially resulting in entrapment of any impinged organisms. Therefore, EPA is considering a provision that would require facilities to either demonstrate that the species of concern are adequately protected by the maximum intake velocity requirements, or to employ specific fish friendly protective measures including, at a minimum, a fish handling and return system. EPA solicits comment and data on such a provision.

EPA did not select wedgewire screens as the technology basis for impingement mortality controls because wedgewire screens are not available and feasible for all existing facilities. EPA also did not need to include wedgewire screens as a compliance alternative because wedgewire screens designed with an intake velocity of 0.5 feet per second can demonstrate compliance with the impingement mortality limits based on the intake velocity as just described. EPA did not select flow reduction by retrofit to closed-cycle cooling as the technology basis for impingement mortality because closed-cycle cooling

costs more than 10 times that of modified traveling screens with a fish return system. In other words, modified traveling screens with a fish return system and closed-cycle cooling are comparable in impingement mortality performance, but modified traveling screens with a fish return system is more cost-effective than flow reduction at preventing impingement mortality. EPA is not including wet cooling towers as a compliance alternative (*e.g.,* a pre-approved technology) because EPA's data shows existing facilities that retrofit to a closed-cycle cooling system have an intake velocity of less than 0.5 feet per second. As a practical matter, make-up water withdrawals are made at such low velocities that facilities with closed-cycle can demonstrate compliance with the alternative reduced intake velocity to meet the impingement mortality limits. For estuaries and oceans, EPA is proposing seasonal deployment of barrier nets on estuaries as the technology basis for minimizing the impingement mortality of shellfish (crustaceans) because no other technology has been identified that is available, demonstrated, and feasible. As noted previously, use of wedgewire screens (along with the limitations on intake velocity) obviates the need for barrier nets.

b. Entrainment Controls

The proposal would require consideration of site-specific entrainment controls for each facility above 2 MGD DIF. EPA considered proposing no further controls to address entrainment mortality, and to rely instead only on the BTA impingement mortality controls, which would achieve up to a 31 percent reduction in total AEI. EPA has not selected this option as the basis for national BTA because EPA believes that some facilities may be able to do more to control entrainment and that requiring a structured site-specific analysis of candidate BTA technologies for entrainment control will allow the Director to determine where it is appropriate to require such controls. However, one outcome of the site specific analysis may be that the Director would determine that no other technologies beyond impingement control meet the criteria for selection as BTA, because no other technologies are feasible and/or their benefits do not justify their costs. EPA requests comment on the option of basing national BTA on impingement controls only and dropping the specific requirement for a structured site-specific analysis of entrainment BTA options, as discussed below.

In the case of site-specific entrainment controls for facilities withdrawing greater than 125 MGD AIF, EPA's proposal would, in addition, require these facilities to develop and submit an entrainment characterization study for use by the Director in establishing site-specific BTA. See Section V.F for more on development of the 125 MGD threshold. (Facilities under the 125 MGD AIF threshold must still provide certain water body and water population information under the current permit applications requirements at § 122.21(r)). An early step in conducting the entrainment characterization study is the preparation of an entrainment mortality data collection plan, which must be submitted to the Director for review and comment before implementation. The entrainment mortality data collection plan would include, at a minimum, the specific entrainment monitoring methods, taxonomic identification, latent mortality identification, documentation of all methods, and quality assurance/quality control procedures for sampling and data analysis appropriate for a quantitative survey. EPA would also require peer review of the entrainment mortality data collection plan. Peer reviewers would be selected in consultation with the Director who may consult with EPA and federal, State, and Tribal fish and wildlife management agencies with responsibility for fish and wildlife potentially affected by the cooling water intake structure(s).

The Entrainment Characterization Study would include information already collected to meet current § 122.21(r)(4) requirements. In addition, under the new permit application requirements proposed for § 122.21(r)(5)–(12), the facility would submit certain additional site-specific information. This would include an engineering study of the technical feasibility and incremental costs of candidate entrainment mortality control technologies. The facility would also study, evaluate, and document: the technical feasibility of technologies at a minimum including closed-cycle cooling and fine mesh screens with a mesh size of 2 mm or smaller; engineering cost estimates of all technologies considered; any outages, downtime, or other impacts to revenue along with a discussion of all reasonable attempts to mitigate these cost factors; and a discussion of the magnitude of water quality and other benefits, both monetized and non-monetized, of the candidate entrainment mortality reduction technologies evaluated. Finally, the information must include a discussion of the changes in non-water quality factors attributed to technologies and/or operational measures considered, including but not limited to increases and decreases in the following: energy consumption; thermal discharges; air pollutant emissions including particulates and associated human health and global climate change impacts; water consumption; noise; safety (*e.g.,* visibility of cooling tower plumes, icing); grid reliability, and facility reliability. See Section IX for a thorough discussion of these study requirements.

Under this option, it is EPA's expectation that the Director would review the candidate technologies for entrainment mortality control that at a minimum includes closed-cycle cooling and fine mesh screens. In the decision about what additional entrainment controls (if any) to require, the Director would consider all of the facility-specific factors described above. At a minimum, the Director must provide a discussion explaining how issues concerning local energy reliability, air emissions or land availability insofar as they relate to the feasibility of adoption of a particular entrainment technology, remaining useful plant life, and the relationship of social benefits to social costs were addressed in the site-specific determination. Under the proposal, the Director must issue a written explanation for the basis of the BTA determination for each facility. EPA also expects the written explanation would provide a review of the social costs (and not just the facility costs (see chapter 11 of the EA) of the various technologies; a review of the potential reductions in entrainment and entrainment mortality; and a review and analysis of monetized and non-monetized benefits).

Under Option 1, new units at an existing facility that withdraws more than 2 MGD would have requirements similar to the requirements of a new facility in Phase I. Under this option, new units would be required to reduce flow commensurate with closed-cycle cooling for the new unit. Under the proposal, as with Track II of the Phase I rule, a facility could demonstrate compliance with entrainment control requirements by establishing reductions in entrainment mortality for the new unit that are 90 percent of the reductions that would be achieved by closed-cycle cooling.

2. Option 2—Impingement Mortality Controls at All Existing Facilities That Withdraw Over 2 MGD DIF; Require Flow Reduction Commensurate With Closed-Cycle Cooling by Facilities Greater Than 125 MGD DIF and at New Units at Existing Facilities

Under Option 2, all in-scope existing facilities would be required to achieve the numeric impingement mortality limits described in Option 1 above. In addition, this option would require flow reduction commensurate with closed-cycle cooling by facilities greater than 125 MGD DIF and at new units. Option 2 explores using the facility size, in terms of design intake flow (DIF), as a factor for establishing different BTA for different subcategories. EPA's analysis shows that a DIF of 125 MGD would be an appropriate threshold for this purpose; see Section V. For all facilities that withdraw over 2 MGD but less than or equal to 125 MGD DIF, entrainment controls would be determined by the permitting authority on a case-by-case basis taking into account the factors at a particular facility. Facilities greater than 125 MGD DIF would not submit Entrainment Characterization Studies (because under this option this rule would have already determined that closed cycle is BTA for that facility), but all facilities would still submit § 122(r)(2)–(r)(7) to the Director to inform the BTA determination as described in Option 1. Requirements for new units at an existing facility would be the same as described in Option 1.

EPA also considered a variation of this option that uses 125 MGD Actual Intake Flow (AIF) rather than 125 MGD Design Intake Flow (DIF) as the threshold. Setting the threshold at 125 MGD AIF would allow a Permit Director to treat differently those facilities that are above 125 MGD on a DIF basis but below 125 MGD on an AIF basis relative to today's Option 2. EPA traded off introducing more flexibility at those facilities for simplicity of implementation (DIF is static), but solicits comment on both the threshold and the flow basis for this option.

The technology basis for entrainment mortality controls for facilities greater than 125 MGD DIF under this option would be wet cooling towers as described in Section VI.B. The record shows optimized wet cooling towers achieve flow reductions of 97.5 percent and 94.9 percent for freshwater and saltwater sources, respectively. Optimized operation of wet cooling towers would be demonstrated through flow monitoring and conductivity measurements. Alternatively, this option would allow facilities to demonstrate flow reductions commensurate with closed-cycle cooling based on optimized wet cooling towers.

As part of this option, EPA would provide flexibility to the Director to establish compliance timelines for each existing facility to mitigate grid reliability and local electricity reliability. Under this option, most existing facilities would have no more than 10 years to complete the retrofit to closed-cycle cooling. Under this option the Director would determine when and if any such schedule for compliance is necessary, and if the facility is implementing closed-cycle as soon as possible. This provision would give the Director the discretion to provide nuclear facilities with no more than 15 years to complete the retrofit, because all nuclear facilities are baseload generating units and the additional flexibility in timelines would further mitigate energy reliability, and because the retrofits at these types of facilities in particular involve additional complexities and safety issues. The Director would have the discretion to provide manufacturing facilities with no more than 15 years to complete the retrofit due to the complexity of manufacturing facilities, multiple process units and product lines, and to allow consideration of production schedules in setting such a timeline.

3. Option 3—Establish Impingement Mortality Controls at All Existing Facilities That Withdraw Over 2 MGD DIF; Require Flow Reduction Commensurate With Closed-Cycle Cooling at All Existing Facilities Over 2 MGD DIF

Under this option, all in-scope existing facilities would be required to achieve numeric impingement mortality limits as described in Option 1 above. In addition, this option would require flow reduction commensurate with closed-cycle cooling by all facilities (including new units at existing facilities) as described in Option 2. This option would similarly authorize the Director to establish compliance timelines for each existing facility to mitigate grid reliability and local electricity reliability as described in Option 2 above. Requirements for new units at an existing facility would be the same as described in Option 1.

4. Option 4—Uniform Impingement Mortality Controls at Existing Facilities With Design Intake Flow of 50 MGD or More; BPJ Permits for Existing Facilities With Design Intake Flow Between 2 MGD and 50 MGD DIF; Uniform Entrainment Controls for All New Units at Existing Facilities

Under Option 4, only in-scope existing facilities with a design intake flow of 50 MGD or more would be required to comply with uniform national impingement regulatory requirements as described in Option 1 above. In-scope facilities with a design intake flow less than 50 MGD would not be subject to the national impingement requirements in today's proposed rule but would continue to have their 316(b) permit requirements established on a case-by-case, best professional judgment basis. In the case of an existing facility below 50 MGD that adds a new unit, the flow associated with the new unit would be subject to the uniform entrainment requirements based on closed cycle cooling. Finally, all existing facilities withdrawing in excess of 2 MGD of design intake flow would be subject to entrainment controls established on a site-specific basis.

EPA considered additional thresholds, subcategories, and other factors to explore other options; see Chapter 7 of the TDD for more information. In particular, EPA considered an approach that required impingement mortality controls only, but is not proposing such an approach because it would only address one-third of the mortality due to impingement and entrainment on a nationwide basis and EPA believes there is value in the structured site-specific entrainment BTA determination required in Option 1. As discussed in Section VI.E, EPA is aware of technologies that can further reduce entrainment mortality for some facilities. EPA also considered an approach that would establish both impingement and entrainment mortality requirements on a case-by-case basis taking into account the factors at a particular facility, but is not proposing such an approach because there are low-cost technologies for impingement mortality that are available, feasible, and demonstrated for facilities on a national basis. EPA requests comment on these and the other approaches discussed in Chapter 7.

E. Option Selection

EPA is proposing Option 1 as best technology available for minimizing adverse environmental impact under section 316(b) of the CWA. As previously explained, in evaluating

technologies that reduce impingement or entrainment mortality as the possible basis for section 316(b) requirements, EPA assessed a number of different technologies. Based on this technology assessment, EPA concluded that closed-cycle cooling reduces impingement and entrainment mortality to the greatest extent.

But EPA has determined that closed cycle cooling is not the "best technology available" for this proposal. After considering all of the relevant factors, EPA proposes that it should not establish a uniform BTA entrainment standard based on closed-cycle cooling for existing facilities other than for new units. Instead, for existing facilities other than new units, EPA is proposing that the permitting authority should establish BTA entrainment mortality controls on a site-specific basis. Site-specific proceedings are the appropriate forum for weighing all relevant considerations in establishing BTA entrainment mortality controls as discussed in section F below.

EPA proposes to reject closed-cycle cooling as the basis for national entrainment controls and choose an option under which the permitting authority would establish entrainment controls on a site-specific basis after considering specified factors. EPA concluded that closed-cycle is not the best technology available for minimizing adverse environmental impact on a national basis. The record shows that closed-cycle cooling is not practically feasible in a number of circumstances. While EPA cannot identify with precision the extent of these limitations on installation on closed-cycle on a nation-wide basis, EPA knows that the circumstances are not isolated or insignificant. In light of this, EPA decided that it should not establish closed-cycle cooling as the presumptive BTA entrainment control. Instead, entrainment controls should be determined in a site-specific setting where the opportunity for local community input in decision-making process will be maximized.

Four factors, in particular, led EPA, for this proposal, to reject a uniform standard based on closed-cycle cooling and illustrate why site-specific standard setting is the proper approach here. These factors are energy reliability, air emissions permits, land availability, and remaining useful plant life. Further explanation is provided below as to why these factors support establishing BTA entrainment mortality control on a site-specific basis as discussed in section F below.

As noted, the Supreme Court in its *Entergy* decision determined that EPA may permissibly consider the benefits, both quantitative and qualitative, derived from reductions in the adverse environmental impacts associated with cooling water intake structures and the costs of achieving them and determine the extent of reductions warranted under the circumstances. Further, E.O. 13563 directs agencies, to the extent permitted by law, to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify). E.O. 13563, Sec. 1(b)(1).

Pursuant to the principles spelled out in the Executive Order, EPA has assessed costs and benefits for its proposed regulatory option and has reasonably determined that the benefits of its proposed rule justify the costs. EPA has analyzed the social cost of this rule to be $384 million annually. New unit requirements would cost $15 million per year. As will be described in more detail below, there are significant benefits associated with the proposed rule. These benefits include the annual reduction in impingement of 615 million age-one equivalents. In addition, there are important other benefits that EPA was not able to fully quantify such as reductions in impingement and entrainment at new units, impacts to many shellfish species, and non-use values associated with the vast majority of fish and shellfish. The rule would also require establishing site-specific entrainment control through a process in which specific environmental conditions and the localized benefits of entrainment reductions will be assessed along with the costs of controls. The information generated in the required studies would enhance the transparency of decision-making, and the opportunity for meaningful public participation and ensure decision-making based on the best available data. Overall, these requirements will foster protection and restoration of healthy aquatic ecosystems that have important commercial, recreational, aesthetic and cultural values to their surrounding communities. Many of the benefits that would result from the rule are not quantified, and as a result the Agency's quantitative benefits analysis underestimates the totality of the rule's benefits. Based on the record, EPA has determined that the proposed impingement and entrainment mortality controls will result in benefits that justify the costs of the rule.

EPA would also note that its valuation of the benefits is not yet complete. For example, EPA's analysis does not fully quantify or monetize certain potentially important categories of benefits, such as existence values for threatened and endangered species, secondary and tertiary ecosystem impacts, benthic community impacts, shellfish impacts and the impacts arising from reductions in thermal discharges that would be associated with closed cycle. Changes in fish assemblages due to impingement, entrainment and thermal effects are also not fully valued. These categories of benefits that are not fully valued are often referred to as non-use benefits: those benefits people derive absent a use or activity, such as fishing; the value one places on knowing that an aquatic ecosystem is healthy is a non-use value. Non-use benefits could be more completely evaluated than they have been to date. EPA intends to characterize these benefits more fully through the use of a stated preference survey of the general population and will consider the results of this survey analysis in development of the final rule. Although not discussed in this preamble, EPA also conducted an alternative benefits analysis that is suggestive of the potential for a more complete analysis to result in monetary benefits that are much more in line with social costs (see chapter 9 of the EEBA). These factors all lend further support to EPA's conclusion that benefits associated with the proposal justify its costs.

EPA is proposing that the permitting authority would consider social costs and benefits on a site specific basis in establishing entrainment mortality controls. This approach is consistent with the direction of E.O. 13563 and supported by several considerations.

On the basis of currently available information, a national evaluation of benefits no matter how accurate would necessarily fail to account for the variations in benefits from location to location. A national assessment would tend to mask variations in benefits and costs from different geographical locations for different water bodies. Thus for example, some fish species at coastal facilities have biological spawning attributes that differ from those at other locations. The proportion of the receiving water withdrawn for cooling may also vary among sites. The values that communities place on their resources may vary from site to site. As a consequence, for example, one ecological environment may experience large masses of hardier eggs subject to potential entrainment while another will have fewer but less hardy eggs susceptible to entrainment. The resulting differences in the value of reduced entrainment—which may be dramatic for some sites—necessarily disappear in a national aggregation of

results. The Agency has decided this masking of variation in benefits supports a requirement to consider the localized benefits of entrainment control technologies in the site-specific process to establish entrainment mortality controls.

Today's proposed rule establishes requirements based on closed-cycle cooling for new units added to an existing facility that are not a "new facility" as defined at § 125.83. The requirements for new units are essentially the same as the requirements for a new facility in the Phase I rule.

EPA also considered a variation of Option 1 that would exclude existing facilities (except existing facilities that add a new unit) with a design intake flow under 50 MGD from the national impingement mortality requirements of today's proposal (Option 4). These smaller facilities would continue to be permitted on a case-by-case, best professional judgment basis for both impingement and entrainment controls. Under this option, 98.9 percent of the monetized benefits of Option 1 are realized. In addition, almost all small businesses would be excluded from the impingement requirement of the national rule, thereby reducing impacts of the national rule to small businesses. The cost of Option 4 would result in savings of $57 million over Option 1.

EPA rejected Option 4 for the proposal as BTA because EPA found that Option 1 is available, feasible, and demonstrated for all in-scope facilities on a national basis. Moreover, EPA analysis showed that economically Option 1 does not have a significant impact on a substantial number of small entities, including those that would be exempted from the national impingement mortality controls under Option 4. Of the 13 full-facility closures discussed below in Section VII, none are predicted to be small businesses. Additionally, the analysis performed under the Regulatory Flexibility Analysis showed that under Option 1, five to six small entities would incur costs exceeding 1 percent of revenue and 3 small entities would incur costs exceeding 3 percent of revenue. As percentages of the estimated total of small in-scope entities (56–96 small in-scope entities, see above), these small entities represent 5–13 percent of small in-scope entities at the 1 percent of revenue threshold, and 3–5 percent of small in-scope entities at the 3 percent of revenue threshold.

Option 4 is similar to the final determination with respect to the Phase III rule, which relied on BPJ to determine impingement and entrainment BTA for all facilities with DIF less than 50 MGD. Unlike the Phase III determination, Option 4 would not rely on BPJ for new units at existing facilities or manufacturing facilities with DIF greater than 50 MGD. This is consistent with the recommendations of the Small Business Advocacy Review Panel for the Phase III rule, which noted that an applicability threshold in the range of 20 to 50 MGD would remove a significant number of Phase III facilities, but only a small percent of flow, from coverage under national requirements, and recommended that EPA analyze a range of potential thresholds, particularly those between 20 and 50 MGD. EPA is also aware of concerns that even though Option 1 by itself does not have a significant adverse impact on a substantial number of small entities, many of the small entities affected by the rule, particularly those in the electric power sector, are subject to cumulative impacts from a number of other major regulations that will likely have to be implemented in the same time frame as this rule. For the final rule, EPA will also evaluate the relative costs and benefits of Option 4, once it has more complete benefits information, including results from its WTP Survey on impacts to fish populations. EPA solicits comment on Option 4 and the impacts, including the cumulative impacts of today's proposal on small entities generally. EPA also requests comment on whether, if Option 4 were adopted for the final rule, it should include uniform national requirements for new units at existing facilities with DIF less than 50 MGD based on closed-cycle cooling.

F. Four Factors Support EPA's Decision To Establish Site-Specific BTA Entrainment Controls for Existing Facilities

The four key factors that support determining entrainment mortality controls on a site-specific basis (except with respect to new units) and rejecting Options 2 and 3 are energy reliability, increased air emissions, land availability, and remaining useful life. First, EPA recognized that there may be potential adverse consequences to the reliability of energy delivery on the local level from the installation of cooling towers. Second, EPA also is aware that increased air emissions may be associated with increased combustion of fossil fuel as the result of installation of closed cycle cooling, and additional PM formulation associated with plume drift (even with plume abatement technology). These increased air emissions have human health, welfare, and global climate change impacts which must be considered. Furthermore, it may be difficult or impossible to obtain air permits for cooling towers at existing facilities located in nonattainment areas or attainment areas with maintenance plans. Third, EPA has identified land availability concerns that might limit the feasibility of the installation of cooling towers on a site-specific basis. Finally, EPA concluded that there are circumstances in which construction and installation of cooling towers might not be warranted given the remaining useful life of a particular facility. How all of these factors support the Agency's conclusion that site-specific, not national, entrainment controls for most existing facilities except those installing new units is discussed in detail below.

1. Energy Reliability Should Be Considered on a Localized Basis

During EPA's site visits, several urban areas were identified where the existing transmission system would not be able to transfer sufficient electricity during periods of extended downtime. This limitation to reliability occurs even when a surplus of electricity can be generated within the same NERC region. For example, EPA identified localized circumstances in Los Angeles and Chicago where an extended outage of one or more generating units could not be readily replaced by excess capacity in nearby areas. Currently available models are not able to predict localized impacts, and instead are limited to measures of reserve capacity in broader geographic regions. This uncertainty about the extent and likelihood of local reliability impacts is an important consideration in the decision to propose requiring site-specific development of section 316(b) entrainment requirements.

One approach EPA could have adopted in today's proposed rule would have been to establish a uniform entrainment requirement and then to address these local reliability concerns by providing permitting authorities the flexibility to establish extended compliance timelines (*i.e.,* 10 to 15 years) (see Option 2). This would have allowed facilities to develop more workable construction schedules with their permit writers and coordinate with NERC to schedule installation down times accounting for generating supply reliability needs. This approach would have been consistent with EPA's assessment that, at the national level (rather than local level), closed-cycle cooling would not pose material energy reliability consequences; see EA for more information. EPA was concerned that such a flexible approach, however, would not resolve all local reliability

concerns, because currently available information is not adequate to establish either the extent or significance of possible electric reliability concerns.

These same concerns would not apply in the case of the installation of new units because of the smaller nature of such projects and the availability of options like seasonal operation and portable cooling towers to address the flow reduction requirements. Since the unit is not yet online, the potential for local energy reliability to be compromised is minimal; also, local energy reliability is likely improved with the addition of the new unit, even if older units are later retired.

2. Increased Air Emissions Could Be a Factor on a Local Basis

As previously discussed, closed-cycle cooling would result in increased air emissions of various pollutants, including particulates, sulfur dioxide, nitrogen oxides, mercury, and greenhouse gases, among others.[52] As a result of the installation of closed-cycle cooling structures, fossil-fueled facilities would need to burn additional fuel (thereby emitting additional PM, CO_2, SO_2, NO_X, and Hg). There are two reasons for this: (1) To compensate for energy required to operate cooling towers, and (2) slightly lower generating efficiency attributed to higher turbine backpressure. In contrast to retrofits, new units can have their cooling water intake systems optimized for cooling towers, reducing the size of the cooling towers, increasing their efficiency, and reducing energy requirements (see Section VI.E).

The impact of the increased emissions varies based on the local circumstances. The increased emissions may consist of cooling tower emissions, stack emissions from increased fuel usage, and plumes of water vapor. EPA's analysis suggests that the most significant impacts will be specifically for $PM_{2.5}$, which, in addition to increased mortality and morbidity, may result in a facility having difficulty in obtaining air permits in those localities in non-attainment for $PM_{2.5}$ because of the need to identify offsets to its emissions. EPA notes that while there is the potential for increases in PM (*e.g.,* salt drift) in the vicinity of any wet cooling tower, there are plume abatement and drift eliminator technologies that may address this concern (and EPA has included costs for such technologies in its analysis of Options 2 and 3). However, emissions may not be eliminated entirely. EPA expects most effects of PM from cooling tower emissions would be so localized as to be wholly on the facility's property. (See DCN 10–6954.) EPA recognizes this is separate from PM emissions from the stack as a result of increased fuel usage. In addition, plumes of water vapor from the cooling tower may cause safety issues due to icing of nearby roadways, and visibility constraints for facilities located near an airport. EPA's review of emissions data from E–GRID (year 2005) suggests that impacts from other pollutants will be less significant, but on a localized basis these could still be significant. They include human health, welfare, and global climate change impacts associated with a variety of pollutant that are emitted from fossil fuel combustion generally. EPA is not able to quantify the frequency with which facilities may experience these local impacts, and therefore EPA believes a site-specific assessment must be conducted to fully address such local impacts.

EPA believes that emissions are less of a concern at new units. The condensers can be optimized for closed-cycle, reducing energy requirements, and high efficiency cooling towers can be incorporated into the design of the new unit, potentially allowing for installation of smaller cooling towers. Turbine backpressure and the associated energy penalty can be eliminated in a new unit. However, new units will still have a parasitic energy penalty. Therefore energy penalties and air emissions for tower operations can be minimized but not eliminated. The effects of requiring closed cycle cooling at new units of existing facilities is similar to the effects of this requirement at new facilities and would not pose an unacceptable impact. See the TDD for more information.

3. Land Availability Could Be A Factor on a Localized Basis

While EPA's record indicated that the majority of facilities have adequate available land for placement of cooling towers,[53] some facilities do have feasibility constraints. Based on site visits, EPA has found that several facilities have been able to engineer solutions when faced with limited available land. EPA attempted to determine a threshold of land (for example, one option explored a threshold of approximately 160 acres per GW) below which a facility could not feasibly install cooling towers. While EPA originally estimated as many as 23 percent of facilities would not have enough space,[54] EPA found some facilities with a small parcel of land were still able to install closed-cycle cooling by engineering creative solutions. On the other hand, EPA found that some facilities with large acreage still could not feasibly install cooling towers due to local zoning or other local concerns. In conjunction with setback distances to mitigate noise and plume abatement (based on GPS mapping of residential areas), EPA estimates as many as 25 percent of facilities may have one or more constraints on available space that would limit retrofit of cooling towers for the entire facility or would result in increased compliance costs. At this time, EPA lacks adequate data to better analyze how land constraints can be accommodated at existing facilities.

In contrast, for new units, because the amount of space dedicated to closed-cycle would be limited to the new unit rather than the entire facility, space constraints would be much less of an issue. New units also pose the opportunity to properly design an optimized closed-cycle cooling system for the new unit. Retrofitting an existing facility would require a facility to identify (or possibly obtain) enough acres to accommodate the cooling towers and their tie-in. By not uniformly requiring facilities to retrofit to closed-cycle, EPA has determined that more land is available for new unit construction, especially in light of compact design and more efficient use of limited resources. Furthermore, new units and their corresponding cooling system can be built in stages rather than as a facility-wide retrofit.

While EPA has concluded that space constraints would not foreclose the installation of closed cycle cooling for new units at existing facilities, EPA has concerns about whether, on a national basis, physical geography would constrain the full retrofit of closed-cycle cooling to existing facilities. Under the

[52] EPA recognizes that retrofitting closed cycle cooling could be combined with other energy efficiency or pollution control technologies with the net effect of reducing air emissions; however, facilities could (and may well have to under other rules) install such technologies anyway, without converting to closed cycle cooling as well. Comparing closed-cycle cooling to once-through cooling with all other technologies held constant, there is an energy penalty that would lead to greater air emissions.

[53] In the case of fossil fuel plants, scrubber controls may also be newly required to comply with air rules and standards.

[54] EPRI reported at least 6 percent of sites evaluated were deemed "infeasible" on the basis that no space was available on which to locate a cooling tower. (DCN 10–6951) While EPA does not have access to the facility level data, and is therefore unable to confirm the infeasibility analysis, EPRI's report supports EPA's assertion that there is significant uncertainty around space constraints for facilities to install closed-cycle cooling.

circumstances, EPA decided not to propose uniform entrainment standards for all existing facilities based on closed-cycle cooling. Instead, EPA has determined that it should establish a process for site-specific determination of entrainment controls. Site-specific proceedings would provide the opportunity to address these issues, along with the other factors discussed in this preamble in determining which additional entrainment mortality controls, if any, are appropriate.

4. Remaining Useful Plant Life Could Be a Factor on a Facility Basis

Many facilities are nearing the end of their useful life. Considering the long lead time to plan, design, and construct closed-cycle cooling systems such as wet cooling towers, EPA proposes that the permit authority should be given the latitude to consider the remaining useful plant life in establishing entrainment mortality standards for that facility. The remaining useful plant life along with other site-specific information, would affect the evaluation of the benefits (non-monetized and monetized) of closed-cycle at a particular facility. For example, closed-cycle at a facility that is going to shut down in 3 years would not result in the benefits that a facility that would continue to operate for 20 years. Because of this factor, EPA proposes that requiring closed-cycle cooling should be evaluated on a facility-specific basis, arguing against a uniform national entrainment mortality standard.

This is obviously not an issue for new units. A new unit has its full useful life before it and thus would experience the maximum possible entrainment mortality reductions throughout that useful life. Considering this factor, EPA is proposing that new units be treated the same as new facilities. EPA believes this factor, along with the other factors discussed above, indicates that it is reasonable to require new units to meet entrainment mortality requirements based on closed-cycle cooling.

G. The Process for Establishing Site-Specific BTA Entrainment Controls

EPA believes that the factors discussed above support establishment of BTA entrainment requirements on a site-specific basis and counsels against establishing a national rule based on a single BTA technology for entrainment controls. In addition, there are other factors that also support site-specific decision-making. Thus, as noted, for example, a national weighing of cost and benefits tends to mask important local differences and argues for site-specific evaluations.

As a result, EPA proposes that closed-cycle cooling for all existing units is not BTA on a national basis, except for new units at existing facilities.

EPA has decided to propose Option 1 as the basis for national performance standards that represent the "best technology available" for cooling water intake structures at existing facilities. EPA proposes that a uniform national impingement standard coupled with entrainment controls determined on a site-specific basis represents the best technology available for minimizing the adverse environmental impacts associated with intake structures. EPA's proposed decision to reject a single uniform national entrainment standard is based on closed-cycle cooling not being the "best technology available" on a national basis and not warranted under the circumstances. This proposed decision flowed from EPA's consideration of the factors described above and its conclusion that determination of BTA for entrainment through a process that allowed full and site-specific assessment of these factors with respect to candidate entrainment controls including closed-cycle cooling represented the most appropriate course here.

H. Implementation

EPA's proposal would require a site-specific determination of BTA. In that process, the permit writer would have access to all the information necessary for an informed decision about which additional technology to reduce entrainment mortality, if any, is BTA, including a full consideration of whether the benefits justify the costs.

The adoption of the proposed Option 1 approach of site-specific BTA entrainment decisions will result in one of two outcomes at any facility: BTA is an entrainment mortality technology beyond what the facility has already installed (this may include closed cycle cooling or other technologies, see Section VI.B and C), or BTA requires no additional controls for entrainment mortality. Thus, EPA expects that, under the proposed approach, there will be additional entrainment controls for some facilities and none for others.

EPA notes that in a number of areas of the country (California, Delaware, New York and New England; see, *e.g.,* DCNs 10–6963 and 10–6841, as well as EPA Region I's Brayton Point), permitting authorities have already required or are considering requiring existing facilities to install closed-cycle cooling operations. EPA supports those state efforts and determinations and thinks that similar decisions would be able to be made under this proposed rule.

The proposal would require that the facility's permit application must include the following information: The facility would submit an engineering study of the technical feasibility and incremental costs of candidate entrainment mortality control technologies. The facility would also study, evaluate, and document: the technical feasibility of technologies at a minimum including closed-cycle cooling and fine mesh screens with a mesh size of 2 mm or smaller; engineering cost estimates of all technologies considered; any outages, downtime, or other impacts to revenue along with a discussion of all reasonable attempts to mitigate these cost factors; and a detailed discussion of the magnitude of water quality benefits, both monetized and non-monetized, of the candidate entrainment mortality reduction technologies evaluated. Finally, the study must include a detailed discussion of the changes in non-water quality factors attributed to technologies and/or operational measures considered, including but not limited to increases and decreases in the following: energy consumption; thermal discharges; air pollutant emissions including particulates and their health and environmental impacts; noise; safety (*e.g.,* visibility of cooling tower plumes, icing); grid reliability, and facility reliability. See Section IX for a thorough discussion of these study requirements.

Certain facilities would submit an Entrainment Characterization Study including an entrainment mortality data collection plan that would indicate, at a minimum, the specific entrainment monitoring methods, taxonomic identification, latent mortality identification, documentation of all methods, and quality assurance/quality control procedures for sampling and data analysis appropriate for a quantitative survey. EPA would also require peer review of the entrainment mortality data collection plan. Peer reviewers would be selected in consultation with the Director who may consult with EPA and Federal, State, and Tribal fish and wildlife management agencies with responsibility for fish and wildlife potentially affected by the cooling water intake structure(s). Further, facilities with greater than 125 MGD AIF must complete an Entrainment Characterization Study (ECS). The ECS could include information already collected to meet current § 122.21(r)(2)–(r)(4) requirements. With the

information in this study, the permit writer will know more about potential entrainment mortality reductions. Data from the ECS would also corroborate any through-plant entrainment survival study results from Performance Studies conducted in 122.21(r)(7). Data collected as part of the ECS would support the Benefits Valuation Study in 122.21(r)(11) by parsing entrainment mortality, for example, by recreational/commercial species and those species that are strictly forage species,[55] by species most susceptible to thermal effects (including thermal barriers), and by species of particular local or regional concern and threatened and endangered species. EPA's benefits estimate were based on an extrapolation of available I&E mortality studies; the specific entrainment characterization study conducted by a facility may lead to a different estimate of I&E mortality for that facility than its portion of EPA's regional estimate in the analysis in Section VIII.

The purpose of the ECS is to better understand, and thus help minimize, the impact of entrainment on species of concern. More specifically, the ECS should identify species of concern that may be entrained, and estimate their baseline mortality rates given current entrainment controls. Moreover, the ECS should include as much information as practical about the aquatic ecosystem effects of entrainment mortality of species of concern. An understanding of the potential ecosystem consequences of entrainment mortality for species of concern will help inform decisions about permit requirements for additional technologies and management practices. EPA will endeavor to identify high quality examples of ECSs as they are completed, and post them to the web site for this rule as a resource for ECS preparation.

Following the permit writer's review of this information, the permit writer must determine what BTA entrainment standard to propose and explain in writing the basis for the proposal. The written explanation and the draft permit would then be available for comment from the interested public under the Permitting Authority's normal permitting process. Therefore, EPA's proposed BTA standard would establish uniform requirements for impingement mortality and a process in which BTA entrainment controls would be determined on a site-specific basis.

[55] Distinctions between predator and prey cannot be made on the basis of species alone; the young of some recreational and commercial species function as forage fish.

I. EPA's Costing of the Preferred Option

For the purposes of this proposal, EPA has prepared an economic analysis according to Executive Order 12866. For the preferred option, this analysis incorporates the full costs and partially monetized benefits of impingement controls, including the costs of conducting the entrainment characterization studies. There may be additional costs and benefits associated with reductions in entrainment mortality that result from the Director's BTA entrainment determinations. Because this process will play out over the next 10 to 15 years as Directors consider waterbody-specific data, local impacts, and public comment, and weigh costs and benefits of further entrainment reductions, air quality impacts, grid reliability, and land availability, estimates of the costs of these site-specific determinations would be highly speculative.

For illustrative purposes, EPA analyzed two hypothetical outcomes for site-specific BTA determinations under Option 1. EPA analyzed the cost of closed-cycle at the 76 largest fossil fuel plants withdrawing from tidal waters and arrived at an annual compliance cost for these facilities of $762 million. EPA also analyzed a variant on the above scenario. EPA estimates this second scenario would involve 46 facilities at an annual compliance cost of $480 million, assuming only baseload and load following facilities would retrofit to closed-cycle cooling.

These hypothetical scenarios illustrate the site-specific costs if a significant number of facilities install and operate a closed-cycle cooling system. These scenarios assume facilities would install only closed-cycle cooling and operate it year-round. This may represent an upper-bound cost for those facilities. EPA also assumed that cooling towers will be installed at fossil fuel plants within 10 years. EPA is aware that there are other possible scenarios for projecting which facilities might be required to install closed-cycle cooling or other entrainment mortality technologies as a result of individual BTA determinations. Some of these would show lower or higher costs than those presented here. EPA requests comment on other scenarios that might better capture the range of costs that result from the structured analysis of entrainment mortality BTA required by today's proposed rule.

J. Consideration of Cost/Benefit on a Site-Specific Basis

In establishing performance standards for entrainment controls, as the Supreme Court in *Entergy* made clear, one factor that EPA may consider is the costs and benefits associated with various control options. That is, in setting standards, EPA may consider the benefits derived from reductions in the adverse environmental impacts associated with cooling water intake structures and the costs of achieving the reductions. As previously explained, EPA has determined that the benefits of the proposed rule justify its costs. In addition, EPA has explained why consideration of costs and benefits is also appropriate in the site-specific permit setting when establishing entrainment controls.

In the site-specific proceeding, the permit writer would be required to consider, among other factors, quantified and qualitative social benefits and social costs of available entrainment controls, including ecological benefits and benefits to any threatened or endangered species. The permit writer would be able to reject otherwise available entrainment controls if the costs of the controls are not justified by their associated benefits (taking into account both quantified and non-quantified benefits) as well as the other factors discussed in the proposed rule.

In making the site-specific entrainment BTA determination, the proposal would require that the Director consider the information required under § 122.21(r) to be submitted with the section 316(b) permit application. Further, in the case of the larger cooling water intake structures (125 MGD AIF or greater), the proposed rule would require submission of additional information including, among other things, studies on entrainment at the facility, the costs and feasibility of control options, and information on the monetized and non-monetized benefits of entrainment controls. In evaluating benefits, the Director should not ignore benefits that cannot be monetized and consider only the I&E reductions that can be counted. The assessment of benefits must take into account all benefits, including categories such as recreational, commercial and other use benefits, benefits associated with reduced thermal discharges, reduced losses to threatened and endangered species, altered food webs, nutrient cycling effects, and other nonuse benefits. Merely because there is no price tag on those benefits does not mean that they are not valuable.

Under the proposal, the Director must explain the basis for rejecting an available technology not selected for entrainment control in light of the submissions, with a consideration of the

same four factors that argued against a uniform requirement for closed-cycle cooling. EPA expects that the Director's decision about BTA controls will also reflect consideration of the costs and benefits (monetized and non-monetized) of the various control technologies considered for the facilities.

As noted, the permit writer may reject an otherwise available entrainment technology as BTA (or not require any BTA controls) if the costs of the controls are not justified by the benefits. EPA decided to adopt this approach in determining site-specific entrainment controls because it is permissible under *Entergy* and consistent with the more than 30-year history of section 316(b) permitting decisions as well as E.O. 13563.

This history illustrates the role that cost/benefit considerations have played. As early as 1977, EPA issued a permitting decision and a General Counsel opinion that explained that, while Section 316(b) does not require a formal cost-benefit analysis, the relationship of costs and benefits may be considered in 316(b) decision-making. *In re Pub. Serv. Co. of N.H. (Seabrook Station, Units 1 and 2),* No. 76–7, 1977 WL 22370 (June 10, 1977), remanded on other grounds, 572 F.2d 872 (1st Cir. 1978); accord *In re Central Hudson Gas & Elec. Corp., Op. EPA Gen. Counsel,* NPDES No. 63, 1977 WL 28250, at *8 (July 29, 1977). In the more than 30 years since then, EPA and state permitting authorities have considered the relationship between costs and benefits to some extent in making individual permitting decisions. *See, e.g., In re Pub. Serv. Co. of N.H. (Seabrook Station, Units 1 and 2),* No. 76–7, 1978 WL 21140 (E.P.A. Aug. 4, 1978), aff'd, *Seacoast Anti-Pollution League* v. *Costle,* 597 F.3d 306, 311 (1st Cir. 1979).

Because E.O. 13563 directs agencies to propose and adopt rules only upon a reasoned determination that the benefits justify the costs, EPA is proposing to apply this same standard in BTA entrainment determinations. This approach is consistent with the framework EPA has traditionally followed and would allow for a full assessment in permit decisions of both qualitative and quantitative benefits and costs. As designed, EPA's proposed requirement for the establishment of site-specific BTA entrainment requirements strikes an appropriate balance between environmental improvements and costs, allowing the permitting authority to consider all of the relevant factors on a site-specific basis and determine BTA on the basis of those factors.

After considering all of the factors relevant to a particular site, the Director must establish appropriate entrainment controls at those facilities. The Director must review available control technology and may reject otherwise available entrainment controls as BTA if the social costs of the controls are not justified by their social benefits (taking into account both quantified and non-quantified benefits) or if there are other adverse factors that cannot be mitigated that the Director deems unacceptable. As designed, EPA's proposed requirement for the establishment of site-specific BTA entrainment requirements strikes an appropriate balance between environmental improvements and costs by electively requiring closed-cycle cooling or other entrainment technologies at some facilities, without requiring the same technologies at all facilities.

VII. Economic Impact of the Proposed Rule

This section summarizes EPA's analysis of the social cost and economic impact for the following regulatory options: Option 1: Impingement mortality (IM) limitations based on modified traveling screens for all facilities with flow greater than 2 million gallons per day (MGD), closed cycle cooling or its equivalent for new units, and a site-specific determination of entrainment BTA for all other facilities: Option 2: Intake flow commensurate with closed-cycle cooling for facilities that have a design intake flow of greater than 125 MGD and IM limitations based on modified traveling screens for all facilities with flow greater than 2 MGD; Option 3: Intake flow commensurate with closed-cycle cooling for all facilities and IM limitations based on modified traveling screens, for all facilities with flow greater than 2 MGD; and Option 4: Impingement mortality (IM) limitations based on modified traveling screens for all facilities with flow greater than 50 million gallons per day (MGD), closed cycle cooling or its equivalent for new units, and a site-specific determination of entrainment BTA for all other facilities and of impingements mortality controls for facilities with flow less than or equal to 50 MGD. These options are described more fully in Section VI.C.

The first part of this section provides an overall summary of the costs of the regulatory options to complying facilities and federal and state governments. This discussion is followed by a review of the method for developing compliance cost estimates. The third part provides an estimate of the total social costs of the regulatory options. The final part reviews the economic impact of the regulatory options.

A. Overview of Costs to Complying Facilities and Federal and State Governments

For estimating the total cost and economic impact of the regulatory options presented in this preamble, EPA estimated costs associated with the following cost components: Initial fixed and capital costs, annual operating and maintenance costs, downtime costs, recordkeeping, monitoring, studies, and reporting costs. The cost estimates reflect the incremental costs attributed only to today's proposal. For example, facilities with closed-cycle recirculating systems would likely already meet all of the proposed performance standards, and therefore most facilities with closed-cycle cooling would not incur costs to retrofit new technologies (though such facilities would still incur some components of permitting costs). EPA assumes, based on its technical survey data that most closed-cycle cooling systems operate with an intake velocity of less than 0.5 fps, and so would comply with the impingement BTA requirements. However, EPA recognizes a facility with closed-cycle cooling may incur additional costs to meet the proposed performance standards; some facilities with closed-cycle cooling were assumed to incur costs of modified screens with a fish handling and return system. Because EPA assumes the fish handling and return system would meet the requirements to eliminate entrapment, EPA has not included further costs for entrapment.

For the economic analyses, EPA distinguished between the two industry groups covered by the standards for existing facilities as follows:

> Manufacturing and Other Industries ("Manufacturers")—facilities in the paper, aluminum, steel, chemicals, petroleum, food and kindred products, and other industries. In addition to engaging in production activities, some of these facilities also generate electricity for their own use and occasionally for sale. Electric power producers ("Electric Generators")—facilities owned by investor-owned utilities, municipalities, States, Federal authorities, cooperatives, and nonutilities, whose primary business is electric power generation or related electric power services.

Costs to complying Electric Generators and Manufacturers include technology costs, cost of installation downtime, and costs of administrative activities; in addition, electric generating facilities are expected to incur certain energy penalty costs (*see*

Chapter 3 of the EBA report for a discussion of costs to complying facilities and of implementation costs to federal, State, and local governments). Manufacturing facilities may also need additional electricity to run certain technologies, but if they do not produce this electricity themselves, these additional energy requirements are included in operating costs, rather than accounted for separately as an energy penalty. Electric Generators incurring these costs include facilities owned by private firms, governments, and electric co-operatives. Manufacturers incurring these costs include facilities owned by private firms only. The administrative costs to federal, State, and local governments include the costs of rule implementation—*e.g.,* permits, monitoring, and working with in-scope facilities to achieve compliance. Costs are initially developed on a pre-tax, as incurred, basis. These costs underlie the analysis of the social costs of the regulatory options and are also used in assessing the impact of compliance requirements on in-scope facilities and the affected industrial categories. In the analysis of facility impacts, costs are accounted for on an after-tax basis.

B. Development of Compliance Costs

This section describes the data and methods used to estimate compliance costs of the options considered and the costs of today's proposed rule. Costs were developed for technology controls to address impingement mortality separately from controls for entrainment mortality, as the requirements of the various rule options considered would lead to different technologies being used by each facility to comply. Some of the options considered would impose different compliance timelines for impingement mortality and entrainment mortality technologies. As a result, different methodologies were used and each is briefly described below. More detailed information on these methodologies, as well as costs of other technologies and regulatory approaches, are available in the TDD.

1. Combined Facility-Specific and Model-Facility Approach

EPA develops national level costs estimates for facilities within scope of the various regulatory options. In general, facility-specific data can be used to determine what requirements apply to a given facility or whether that facility would already meet the requirements set forth in the proposed rule. This approach requires facility-specific technical data for all of the approximately 1,200 existing facilities in scope. An alternative approach is to develop a series of model facilities that exhibit the typical characteristics of the affected facilities and calculate costs for each model facility; EPA would then determine how many of each model facility would be needed to accurately represent the full universe of affected facilities.

EPA has estimated costs for potentially regulated facilities using a combination of the facility-specific and model facility approaches. The facility-specific approach used in this effort involved calculating compliance costs for 891 individual facilities for which EPA had detailed technical data from its various industry questionnaires regarding the intake design and technology. Specifically, these are the in-scope facilities that completed the detailed technical questionnaire. Where facilities reported data for separate cooling water intake structures (CWISs), compliance costs may have been derived for each intake and these intake costs were summed together to obtain total costs for each facility. These facilities became model facilities and each facility's costs were then multiplied by a weighting factor (derived from a statistical analysis of the industry questionnaire) specific to each facility to obtain industry-wide costs for the national economic impacts analyses. The weighting factors are similar to ones derived during the development of the 2004 Phase II Rule for extrapolating the impacts of DQ facilities to all in-scope facilities.

2. Updates to the Survey Data

In the 2004 Phase II rule, EPA developed facility-specific cost estimates for all facilities and published those costs in Appendix A (69 FR 41669). Since the initial implementation of the 2004 Phase II rule, EPA identified several concerns with using only the facility-specific costing approach, as well as the use of those costs in Appendix A. Since 2004, EPA has collected data from industry and other groups as described in section III. These data generally reflect changes to actual intake flow, design intake flow, intake velocity, technology in place, and operational status. EPA developed a new master database including this new data to supplement the data from the detailed technical questionnaire. Although it has been approximately 10 years since the detailed technical questionnaire was initially collected, EPA has conducted over 50 site visits, reviewed current permits, and conducted literature reviews including comparisons to data collected by EPRI, EIA, and EEI. Based on that review EPA has concluded the master database is representative and appropriate for most facilities.[56] The following section describes how EPA used this new database to estimate compliance costs.

3. Tools for Developing Compliance Costs

During the 2004 Phase II rule, EPA began developing a spreadsheet based tool that would provide facilities and permit authorities with a simple and transparent method for calculating facility-specific compliance costs. EPA refined the tool in developing the Phase III regulations. EPA has since made further refinements to the cost tool, which was used to calculate the compliance costs for impingement mortality for today's proposed rule. The cost tool employs a decision tree (*see* the TDD for a graphical presentation of the decision tree) to determine a compliance response for each model facility and assigns a technology "module" that represents a retrofit to a given technology. Cost estimates are derived through a series of computations that apply facility-specific data (such as DIF, width of intake screens, etc.) to the selected technology module. Cost tool outputs include capital costs, incremental operation and maintenance (O&M) costs, and installation downtime (in weeks).

To calculate the compliance costs of retrofitting to closed-cycle cooling for controlling entrainment mortality, EPA utilized a second tool based on a cost-estimating spreadsheet developed by the Electric Power Research Institute (EPRI). EPRI's first draft methodology presented three different levels of capital cost (Easy, Average, Difficult) based on the relative difficulty of the retrofit project. For electric generators, EPA used costs for the Average level of difficulty, as it was developed across a broad spectrum of facilities and is the most appropriate for estimating national level costs.[57] For manufacturers, EPA used the Difficult level of retrofit costs. This reflects the more complex water systems and generally more frequent technical challenges to retrofitting closed-cycle cooling at a manufacturing facility. While some manufacturers only withdraw cooling water for power or steam generation, many manufacturers have multiple units or processes that utilize cooling water. In site visits, EPA found the largest manufacturing facilities would require multiple retrofits, and accordingly believes the

[56] EPA notes that, while it has not collected updated technical information for every facility, it has updated financial data, as discussed later in this section.

[57] For purposes of energy reliability estimates, EPA used the Difficult level for electric generators.

Difficult level of retrofit costs is more representative for purposes of estimating national level costs. Additionally, EPA's tool includes additional modifications to EPRI's methodology, such as increased compliance costs for approximately 25 percent of facilities to reflect the additional expense of noise control or plume [58] abatement, and using only the cooling water flow rate for non-contact cooling water flow [59] for purposes of estimating costs for closed-cycle cooling. EPA has included the spreadsheet tools in the docket for the proposed rule to assist both facilities and permit authorities in estimating compliance costs. (*See* DCNs 10–6655 and DCN 10–6930).

4. Which technologies form the basis for compliance cost estimates?

EPA identified two broad classes of control technologies that may be used singularly or in combination to comply with the proposed rule. These classes of control technologies are: (1) Technologies that address impingement mortality (IM) and (2) technologies that address entrainment mortality (EM). *See* Section VI for further details. Under the various options considered, a facility may be subject to one or both requirements, depending on their configuration, technologies in use, or other site-specific factors.

For the impingement mortality requirements, EPA analyzed data from a wide variety of technologies and facilities and concluded that modified Ristroph (or equivalent) coarse mesh traveling screens are the most appropriate basis for determining the compliance costs.[60] As discussed in Section VI of the preamble, a facility may also comply with impingement mortality requirements by meeting a maximum intake velocity limit. Based on facility-specific data, EPA made a preliminary assessment of which model facilities would not currently meet impingement mortality requirements through either approach, and assigned technology costs based on the installation of modified traveling screens with a fish handling and return system. This assigned technology is assumed to meet the BTA standard (*see* § 125.94(b)). However, some facilities might still incur costs for restructuring their intakes to avoid entrapment.[61] EPA solicits comment and data on the costs of this requirement.

For facilities subject to entrainment mortality requirements, EPA selected wet cooling towers as the technology basis for determining the compliance costs. In some cases, costs reflect installation of multiple technologies, as impingement mortality and entrainment mortality requirements were applied separately to each facility. EPA also evaluated other technologies for reducing entrainment mortality, such as seasonal operation of cooling towers, partial towers, variable speed pumps, and fine mesh screens. The performance of these technologies is further described in section VI; a detailed discussion of how the costs were developed may be found in the TDD.

5. How is facility downtime assessed?

Downtime is the amount of time that a facility may need to shut down due to the installation of a compliance technology. Downtime estimates primarily assume that the facility would need to completely shut down operations to retrofit an intake, such as relocating an intake, connecting wet cooling towers into the facility, or reinforcing condenser housings. Downtime estimates are provided as incremental outages, taking into account the periodic outages all facilities already incur as part of preventative maintenance or routinely scheduled outages. For example, nuclear facilities have refueling outages approximately every 18 months lasting approximately 40 days.[62] The entrainment control implementation periods, 10 years for fossil fuel plants and 15 years for nuclear plants, in Options 2 and 3 would provide facilities with an opportunity to schedule the retrofit when other major upgrades are being done, reducing downtime.

For most facilities subject to impingement mortality, no downtime was assigned. Facilities that are replacing or rehabilitating existing traveling screens typically do so one intake bay at a time without affecting the overall operations. EPA has also found that facilities that need to scrub screens do so during other routinely scheduled outages. For some compliance technologies such as relocating an intake, or expanding an existing intake to lower the intake velocity, several weeks of downtime are incurred, as these are more invasive tasks.

For facilities subject to entrainment mortality controls, EPA reviewed historical retrofit data and site visits conducted since 2004, and has largely retained its assumptions for downtime from the Phase II and Phase III rules. On average, EPA assumes the net construction downtime for a cooling tower retrofit for non-nuclear electric generators is 4 weeks. This total downtime allows for the tie-in of the cooling tower to the existing cooling water system. The refueling outage downtime, the safety-sensitive nature of nuclear facility retrofits, and other data in EPA's record supports 28 weeks as the net construction downtime for nuclear facilities. Downtime for manufacturing facilities that use cooling water for power and steam generation was converted into the incremental cost for purchase of those utilities during the outage. For individual process units other than power or steam generation units at a manufacturing facility (*i.e.* cooling water use for purposes other than power production), on average the downtime was assumed to be zero. In EPA's extensive experience with manufacturers while developing effluent guidelines, EPA found manufacturers are generally able to shut down individual intakes for specific process lines, use inventory approaches such as temporary increases of intermediate products, and develop other workarounds without interrupting the production of the entire facility. EPA requests comment from those manufacturing facilities that have made modifications to their cooling water systems on their experiences with facility downtime. See below for further discussion of how installation downtime in weeks is included in the estimated national costs.

6. How is the energy penalty assessed?

The term "energy penalty" in relation to a conversion to closed-cycle cooling has two components: One is the extra

[58] The EPRI tool includes drift abatement technologies in its cost assumptions, so no additional costs were included for drift eliminators.

[59] As described in the TDD, EPA only used non-contact cooling water flows in determining the proper size for wet cooling towers, the technology that forms the technical basis for entrainment mortality. Cooling towers are not widely used for contact cooling or process water, so these flows were excluded. For electric generators, the vast majority of flow is non-contact cooling, but manufacturers are more varied in their water usage.

[60] Note that this does not preclude the use of other technologies; EPA simply used the available performance data in deriving the performance requirements and excluded technologies that were either inconsistent performers or did not offer sufficient data for analysis in a national categorical regulation. EPA's research has shown that other technologies may also be capable of meeting the proposed requirements, but EPA did not opt to identify these technologies as the technology basis for today's proposal.

[61] Facilities incurring costs for impingement mortality are assumed to meet the requirement for entrapment. Because EPA does not know how many facilities that already comply with impingement mortality requirements would incur additional costs to avoid entrapment, EPA conducted a sensitivity analysis of the additional costs; see Chapter 12 of the TDD.

[62] Nuclear Energy Institute (NEI) reported average length of outage from 2003 to 2009.

power required to operate fans at a mechanical draft cooling tower, as well as additional pumping requirements (often referred to as the parasitic energy penalty), and the other is the lost power output due to the reduction in steam turbine efficiency because of an increase in cooling water temperature (often referred to as the turbine efficiency penalty or turbine backpressure penalty). Energy penalty costs only apply to facilities retrofitting a cooling tower; facilities installing a new impingement mortality technology will generally see little or no measureable change in energy usage. EPA's national level costs include the costs for both components. The parasitic energy penalty was included as a separate component in the O&M costs and was assessed for all facilities. The turbine efficiency penalty was typically expressed as a percentage of power output; EPA estimates the turbine efficiency energy penalty for nuclear and non-nuclear power generation would be 2.5% and 1.5%, respectively (see the TDD). For most manufacturers, the energy penalty for turbine efficiency loss for non-nuclear power plants (*i.e.,* 1.5%) was assumed. This may overstate costs where cooling water is used by a manufacturing facility for purposes other than power production.

7. How did EPA assess facility-level costs for the national economic impacts and energy reliability analyses?

To assess the national economic impacts, EPA conducted a modeling analysis using IPM (Integrated Planning Model). This model is widely used by EPA for analysis of rules and policies affecting electric generating facilities. This analysis is used to assess economic impacts, increases in household electricity bills, and changes in electricity reliability. In contrast to the model facility costing approach, the IPM model requires a facility-level cost for each facility. Model facility costs were converted to a per MGD DIF basis, and then averaged to derive cost equations using DIF as the independent variable. This cost equation thus provides average costs that can be applied to any facility by simply scaling to that facility's DIF. EPA also used a conservative compliance scenario in order to develop a bounding "worst case" impact analysis by assuming all facilities would be subject to Entrainment Mortality reductions based on closed-cycle cooling towers. In the worst case scenario EPA conducted the IPM analysis using the Difficult level cost for all facilities, thereby generating an upper bound of total costs and conservative predictions of the economic impacts. See the EBA for more information. In conducting its analysis, EPA found the equations used to derive the cost module estimates produced substantially higher costs per MGD rates at lower flow levels. To reflect the higher per unit costs of retrofits at lower DIF (*i.e.* smaller) facilities, EPA derived separate model facility cost equations for facilities with DIF <10 MGD and those with DIF ≥ 10 MGD. (See the TDD).

8. How did EPA assess costs for new units?

This section describes the data and methods used to estimate compliance costs for new units at existing electric generators and manufacturers. Compliance costs for new units at existing electric generators are calculated using a similar methodology to the compliance cost estimates for existing facilities. EPA is not able to predict which facilities will construct new units, however the national projections of increased capacity (*i.e.* additional megawatts capacity to be constructed each year) can be converted to a number of new units of a specified size; EPA then applied the cost equations to these projected new units. Based on site visits, EPA has found that industry trends towards water conservation and reuse in addition to the operational flexibility at existing manufacturers would result in no additional compliance costs for achieving flow commensurate with closed-cycle cooling at new units. EPA solicits comment on this assumption.

a. New Units at Existing Electric Generators

Power generation units that meet the definition of a "new unit" will be required to meet entrainment reduction based on closed-cycle cooling or an equivalent reduction in entrainment mortality for the cooling water component of the intake flow based on the average intake flow (AIF). Estimates for compliance costs for new units are based on the net difference in costs between what cooling system technologies would have been built under the current regulatory structure and what will be built given the change in requirements imposed by the proposed regulation. Compliance costs are derived using estimates of the new generating capacity that will be subject to these requirements.

Generally speaking, EPA has identified a number of differences in costs between a closed-cycle cooling retrofit at an existing facility compared to installing closed-cycle cooling at a new unit:

- New units can incorporate closed-cycle cooling in a more cost effective manner.
- The duration of new unit construction is sufficiently long enough that there would be, in nearly all circumstances, no net increase in "construction downtime."
- For power generation systems, the design of boilers, steam turbines and condensers "from scratch" allows for the optimization of the system design and cooling water flow volume to minimize the heat rate penalty. Flow is reduced over a comparable once-through cooling system, which reduces closed-cycle cooling system costs.
- Because major components of the once-through intake and cooling system must be constructed from scratch, the capital costs of closed-cycle cooling for new units are lower than the capital costs of once-through cooling.[63]
- There will be an increase in the parasitic energy requirements associated with fan operation in the closed-cycle cooling towers.
- While parasitic energy requirements for pumping head will increase as well, it may be offset, at least in part, by reductions in pumping flow associated with optimization. Any capacity losses due to parasitic energy penalty can be accounted for in the new unit design.
- New construction allows the use of an optimized cooling system design that can minimize any system efficiency losses associated with conversion to closed-cycle.

Estimation of New Capacity Subject to the Rule

New generating units will be constructed at either "greenfield" facilities subject to the Phase I regulation or at existing facilities where they may be subject to the new unit requirements for entrainment reduction.[64] New generating capacity at existing facilities can occur in three ways: (1) From new units added to an existing facility; (2) repowering, replacement and major upgrades of existing units; and (3) minor increases in system efficiency and output. Repowered, replaced, and upgraded units are not considered new units under today's proposed rule and would not be subject to requirements for entrainment reduction. While a small portion of this new capacity may result from minor increases in plant efficiency and output, this analysis assumes all

[63] See DCN 10–6650 and DCN 10–6651.

[64] This discussion will focus only on new units at existing facilities; for a discussion of the Phase I rule, see 66 FR 65256.

new capacity will occur be associated with new units.

New power generation capacity estimates by fuel/plant type were derived from IPM modeling. For the new unit costs analysis EPA focused on coal and combined cycle, since these comprised the majority of increased capacity that utilize a steam cycle and are most likely to be constructed at existing generation facilities. In the Phase I rule analysis, EPA determined that 76% of new coal and 88% of new combined cycle capacity would be constructed at new "greenfield" facilities and would be subject to Phase I requirements while the remainder (24% of coal and 12% of combined cycle) would occur at existing facilities and be subject to existing facility regulations. EPA has selected a conservative value of 30% reflecting both coal and combined cycle to serve as an estimate for the portion of new capacity that would be constructed at existing facilities.

At existing nuclear facilities, only new capacity associated the construction of new generating units would be subject to the new unit requirements. Considering their size and heat discharge as well as recent trends in industry, it is assumed that any new nuclear units will utilize closed-cycle cooling [65] and so the capacity for these nuclear facilities is not included in the costs of requirements for new units. Exhibit VII–1 presents a summary of new capacity estimates for all fuel types.

EXHIBIT VII–1—ESTIMATED NEW CAPACITY

Fuel type	New capacity (MW) [a]		New capacity incurring costs under this rule	
	Annual average	24 Year total	Annual average	24 Year total
Coal	3,573	85,744	1,072	25,723
Combined Cycle	1,491	35,795	447	10,739

[a] Includes capacity subject to both Phase I and existing facility requirements.

Baseline Compliance

Baseline compliance reflects the scenario whereby new units will use once-through cooling or closed-cycle cooling. About 32% of existing facility steam generating capacity already employs closed-cycle and another 11% employ combination cooling systems. EPA assumes that at existing plants where closed-cycle cooling is already employed for at least part of the generating capacity that closed-cycle would be used for any new capacity, regardless of the requirements of today's proposed rule. Therefore at least 43% of new capacity is projected to be compliant in the baseline (*i.e.,* they will already meet the entrainment mortality requirements of the proposed rule for new units). For example, a number of regulatory authorities have adopted or pursued closed-cycle cooling requirements for some or all existing facilities (*e.g.,* New York, California, Delaware). EPA expects this to be particularly true where the new unit would result in a substantial increase in the volume of once-through cooling water withdrawn above what is currently permitted. Thus, approximately 50% of new fossil units at existing facilities in the baseline scenario would already be compliant with the proposed rule. EPA requests comment on this assumption.

Repowering Versus New Units

The increased capacity at existing fossil fuel facilities is divided into two types of projects. The first is new unit(s) added adjacent to the existing generating units which would require a new intake or the existing intake to be substantially modified in order to supply the needed additional volume of cooling water. The second is a repowered unit which replaces an existing generating unit(s) and is assumed to be sized such that the existing once-through cooling water intake volume will provide sufficient flow to meet heat discharge requirements. Based on 2007 IPM projections (since more recent projections do not include this distinction) approximately 85% of projected total new combined cycle capacity was estimated to be repowered oil and gas units. The estimate for repowered coal capacity was very small (less than 1%). However, since there are significant economic advantages to repowering, EPA believes this to be an underestimate and selected a more conservative value of 10%. Exhibit VII–2 presents the capacity values assumed to be compliant in the baseline or that require costs associated with closed-cycle cooling for new added units versus repowering.

EXHIBIT VII–2—NEW CAPACITY SUBJECT TO NEW UNIT REQUIREMENT BY COST CATEGORY

Fuel type		Capacity subject to new unit compliance costs (MW)	
		Annual average	24 Year total
Coal	Baseline is Compliant	536	12,862
	New Added Unit	482	11,575
Combined Cycle	Baseline is Compliant	224	5,369
	New Added Unit	34	805

[65] Less than half of the current U.S. nuclear plants still use once through cooling.

Compliance Cost Estimation

Compliance costs reflect compliance with the proposed requirements for closed-cycle for the new unit; these costs do not represent costs to retrofit the entire facility to closed-cycle. Compliance costs for new units are derived from EPA's estimates for retrofitting a closed-cycle cooling system at existing facilities where the costs are expressed on a per MGD basis. For new units, the cost equations are converted to a cost per MW capacity. The cooling water flow estimates are based on plant fuel efficiency values of 42% for coal (the average of values for super-critical and ultra-critical steam), 57% for combined cycle, and 33.5% for nuclear. [DCN 10–2827]. Cost components were broken out as follows.

Capital Costs

EPA has found that for new units, the total estimated capital costs for a closed-cycle cooling system is slightly less than the capital costs of a once-through cooling system (when including costs for a new intake structure). Therefore, a conservative estimate of the incremental compliance capital costs are $0 for new units.

O&M Costs

Fixed and variable O&M costs are adjusted by deducting the O&M costs for traveling screens assumed in the baseline once-through system. Energy costs are also adjusted downward to account for reduced pumping volume passing through the intake structure and adjusted up to account for the increase in pumping head through the cooling tower.

Downtime

Each of the new units will involve extensive construction activities that would result in a prolonged construction downtime regardless of the cooling system requirements. Thus, no downtime costs are assessed for new unit compliance.

Energy Penalty

The energy penalty consists of parasitic load and heat rate penalties. Both types of installation—new and retrofit—face parasitic load associated with fans and pumps, but only retrofits would face a heat rate penalty, which is the largest portion of a retrofit energy penalty. Energy penalty costs associated with net changes in parasitic energy requirements between once-through and closed-cycle cooling are included in the O&M cost estimates.

b. New Units at Existing Manufacturers

Similar to new units at existing electric generators, manufacturing "units" that meet the definition of a "new unit" will be required to meet entrainment reduction requirements. These requirements will require closed-cycle cooling or an equivalent reduction in entrainment for the cooling water component of the intake flow based on the average intake flow (AIF). Estimates for compliance costs for new units are based on the net difference in costs between what would have been built under the current regulatory structure (baseline) and what will be built given the change in requirements imposed by the proposed regulation. Thus, baseline manufacturing unit process design and cooling water technology would be based on the response to the permitting authorities application of existing requirements including 316(b), applicable industrial water use and discharge standards (*e.g.,* categorical standards), and BPJ.

As discussed in section IV of the preamble, it has become standard practice for industries to adopt water use reduction and reuse practices wherever practical. A new unit provides the opportunity to employ such measures to the fullest extent. Thus, the baseline cooling AIF for "new units" at manufacturers should, in most cases, be much smaller than the AIF for a comparable existing unit. This is especially true for new units that perform a similar function or produce a similar product to existing units since economic factors such as the need to increase process efficiencies are often driving factors in the decision to construct a new unit. EPA recognizes that while this appears to be a general trend, it may not always be true on a site-specific basis.

For manufacturing process units that are newly constructed, many of the same cost-related factors listed above for power generators apply but additional factors may include:

- A much greater proportion of intake flow is used for process water and other non-cooling purposes which greatly increases the opportunity to design and incorporate cooling water reuse strategies within the unit.
- Where the new unit comprises only a portion of the plant, cooling water reduction may be accomplished through reuse elsewhere within the plant. The proposed rule provides credit for such flow reductions.
- The modular nature of closed-cycle cooling allows for the limited application of closed-cycle cooling only to the portion of cooling flow necessary to meet any additional reductions not accounted for by any other reuse or reduction strategies employed. Additionally, new units can utilize cooling system designs specifically tailored to process requirements. The modular nature of closed-cycle cooling and the flexibility inherent in the process system allows for more optimal placement of cooling tower units, thus minimizing piping costs.
- Flow reductions associated with the use of variable speed pumps can result in benefits associated with both reduced flow and pumping energy costs.

For power generation facilities and generating units that use once-through cooling, the majority of the intake flow is used for non-contact cooling purposes. Process water typically constitutes a few percent or less of the total. A review of the responses to the detailed technical survey showed that the median and average values for the percent of design intake flow used for cooling purposes reported for each separate cooling water intake at power generation facilities were 100% and 85% respectively. In contrast, most industrial manufacturing operations utilize a substantial portion of intake water for non-cooling purpose and the same median and average values for manufacturing facilities were 50% and 52%, respectively. In addition, this cooling flow component data includes contact cooling water, as discussed in section IV.A (*i.e.,* flow reduction is only required for non-contact cooling water flows), thus decreasing the proportion. Therefore, a "typical" manufacturing unit may use less than 50% of AIF for cooling purposes of the type that may be subject to the "new unit" requirements. In many cases, this "typical" facility may be able to reuse 100% of the cooling water in place of the process component. Thus, the "typical" manufacturing facility may be capable of designing a "new" process that could meet the "new unit" requirements through water reuse alone. EPA has observed significant innovation and water reuse during site visits to manufacturing facilities, and notes extensive industry trends towards internal water and energy audits.

Since this 50% value is the median of all reported manufacturing cooling water intake systems, at least half of manufacturing cooling water systems may have the potential to meet the "new unit" requirements simply by reusing non-contact water as process water. For the remainder, modifications to the process that reduce cooling water use such as use of variable speed pumps may provide additional reduction. For some, there may be a need to install

cooling towers for the cooling flow component that cannot be reused. EPA assumes, however, that this, however, will in most instances be a small portion of the total intake flow. Also, if the new unit comprises only a portion of the entire manufacturing facility, there may be other process units and plant operations nearby that could reuse the cooling water (or supply reusable water) in order to meet the flow reduction requirements. The proposed rule encourages facilities to incorporate flexible water use arrangements, including a provision where cooling water that is reused elsewhere in the facility is not considered cooling water; as a result, facilities will have an incentive to reuse water and avoid being subject to 316(b) requirements.

For new units that would require an increase in intake flow, EPA has found that the capital costs of the new intake and screen technology which requires deeper pump and intake wells to accommodate source water depth variations will be comparable to the capital costs for closed-cycle technology. In these cases, closed-cycle may have slightly higher O&M costs for pump and fan energy but these costs may be offset by other cost savings such as reductions in water treatment costs.

The definition of new manufacturing units limits the applicability of closed-cycle requirements to new units. As such, it is assumed that the construction activities would involve substantial downtime periods that would be of similar or more likely greater duration than required for construction and tie-in activities associated with the closed-cycle cooling technology. EPA concludes that only a small portion of new units will need to meet new unit flow reduction requirements through the use of closed-cycle cooling and the associated net costs will be minimal. EPA requests comment on these costing assumptions.

C. Social Cost of the Regulatory Options

EPA calculated the social cost of the four regulatory options for existing Manufacturers and Electric Generators using two social discount rate values: 3 percent and 7 percent. For the analysis of social costs, EPA discounted all costs to the beginning of 2012, the date at which this proposal would become effective under the regulation development schedule. EPA assumed that all facilities subject to the regulation would achieve compliance between 2013 and 2027, inclusive, depending on the compliance schedules associated with the four regulatory options considered in the proposed rule for specific categories of facilities. EPA performed the social cost analysis over a 50-year period to reflect: The last year in which individual facilities are expected to achieve compliance (2027) under any of the regulatory options considered for this analysis, the technology life of the longest-lived compliance technology installed at any facility (30 years), and a period of 5 years after the last year of compliance technology operation during which benefits continue to accrue. Under this framework, the last year for which costs were tallied in the analysis is 2056, with benefits continuing on a diminishing basis through 2061. Because the analysis period extends beyond the useful life of compliance equipment assumed to be installed at facilities that achieve compliance before 2017, the social cost analysis accounts for re-installation of IM compliance technologies after the end of their initial useful life periods; however, EPA does not expect in-scope facilities to completely re-build cooling towers (components such as piping and the concrete basin can be reused) and EPA expects other technology replacement costs (such as pumps and fill material) are accounted for as part of the ongoing O&M expenses for cooling towers. Costs incurred by governments for administering the regulation were analyzed over the same time frame. This analysis accounts for technology costs associated with new units starting in the first year after promulgation, *i.e.,* 2013 (for more information on new units see Chapter 3: Development of Costs for Regulatory Options of the EBA report).

At a 3 percent discount rate, EPA estimates annualized costs of compliance of $384 million under Option 1, $4,463 million under Option 2, $4,631 million under Option 3, and $327 million under Option 4. At a 7 percent discount rate, these costs are $459 million, $4,699 million, $4,862 million, and $383 million, respectively. The largest component of social cost is the pre-tax cost of regulatory compliance incurred by complying facilities. These costs include one-time technology costs of complying with the rule, one-time costs of installation downtime, annual fixed and variable operating and maintenance (O&M) costs, the value of electricity requirements for operating compliance technology, and permitting costs (initial permit costs, annual monitoring costs, and permit reissuance costs). In addition, all Electric Generators are expected to become subject to I&E mortality requirements at the 125 MGD threshold under Option 2. Social cost also includes implementation costs incurred by Federal and State governments. EPA's social cost estimates exclude the cost to facilities estimated to be baseline closures. As further described in the EBA document, in the case of Electric Generators, the baseline closure generating units were identified in Energy Information Administration reports or in the baseline IPM analyses, as having closed or projected to close independent of the requirements of the existing facilities rule. For Manufacturers, EPA's analyses indicated that these facilities are in sufficiently weak financial condition before outlays for this regulation, that the facilities are likely to close, again, independent of the requirements of the existing facilities rule. Because these facilities are not expected to comply with the existing facilities rule, EPA did not include the costs that would otherwise be assigned to these facilities in the analysis of social cost. Consistent with this treatment of costs, EPA also did not include benefits from these facilities in the tally of benefits to society for the analysis of social costs and benefits of the existing facilities rule.

Exhibit VII–3 presents the social cost of the proposed options, by type of cost, using 3 percent and 7 percent discount rates.

EXHIBIT VII–3—ANNUALIZED SOCIAL COST

[In millions, 2009 $] [a]

	Option 1	Option 2	Option 3	Option 4
3% Discount Rate:				
Direct Compliance Cost:				
Manufacturers	$61.31	$141.69	$172.92	$33.99
Electric Generators	318.77	4,319.59	4,457.79	289.77
Total Direct Compliance Cost	380.08	4,461.28	4,630.71	323.77

EXHIBIT VII–3—ANNUALIZED SOCIAL COST—Continued

[In millions, 2009 $] [a]

	Option 1	Option 2	Option 3	Option 4
State and Federal Administrative Cost	3.71	1.62	0.92	2.79
Total Social Cost	383.80	4,462.90	4,631.62	326.55
7% Discount Rate:				
Direct Compliance Cost:				
Manufacturers	68.90	133.60	157.49	39.04
Electric Generators	385.68	4,564.02	4,703.65	340.80
Total Direct Compliance Cost	454.58	4,697.62	4,861.14	379.84
State and Federal Administrative Cost	4.23	1.72	0.91	3.26
Total Social Cost	458.81	4,699.35	4,862.05	383.10

[a] These social cost estimates do not include costs associated with installation of cooling tower technology at new generating units subject to today's rule. They also do not include costs associated with complying with site-specific BTA determinations under Options 1, 2, and 4. Section VI.I discusses costs for complying with site-specific BTA determinations.

As shown in Exhibit VII–3, compliance cost in the Electric Generators segment accounts for the majority of total social cost and direct compliance cost under all four options. On a per regulated facility basis and at a 3 percent discount rate, annualized pre-tax costs in the Electric Generators segment amount to $0.57 million under Option 1, $7.73 million under Option 2, $7.97 million under Option 3, and $0.52 million under Option 4.[66] For Manufacturers, the average cost per regulated facility at a 3 percent discount rate is $0.12 million under Option 1, $0.27 million under Option 2, $0.33 million under Option 3, and $0.07 million under Option 4.[67] EPA's analysis found a similar profile of per facility costs by industry segment for the 7 percent discount rate case (see EBA Chapter 11 for additional detail). While all four options require some form of control technology at all facilities with design intake flows of two MGD or greater, Option 2 and Option 3 require more costly technologies, which raises the per-facility cost of compliance in these options.

EPA's estimate of federal and State government costs for administering this proposal is comparatively minor in relation to the estimated direct cost of regulatory compliance. EPA estimates government annual administrative costs under 3 and 7 percent discount rates, respectively, of approximately $3.71 million and $4.23 million (Option 1), $1.62 million and $1.72 million (Option 2), $0.92 million and $0.91 million (Option 3), and $2.79 million and $3.26 million (Option 4).

[66] Calculated using the total of 559 in-scope Electric Generators based on technical facility weights.

[67] Calculated using the total of 518 in-scope Manufacturers based on technical facility weights.

EPA also estimated the costs for installation of closed cycle cooling system technology at New Generating Units, as required by today's rule. These costs are based on the estimates of occurrence of new unit construction that would be subject to the New Units requirement, and the incurrence of costs as described above in the section titled "How Did EPA Assess Costs for New Units?"

The social costs of adding closed cycle cooling system capability at newly constructed units at existing facilities are not included in the total social cost tallies presented above. EPA did not include these costs in the tallies presented above because EPA did not estimate benefits from installation of closed cycle cooling systems at these units (their location is unknown). As a result, comparisons of social cost, which would include these costs, with benefits, which would not include the I&E mortality reductions from installing those closed cycle cooling systems, would be inconsistent. The costs for adding closed cycle cooling system capability at newly constructed units are the same across all four of the regulatory options presented in today's proposed rule, because the technology performance requirements for existing units at existing facilities, which vary by regulatory option, do not apply to these newly constructed generating units. On an annualized cost base, these amount to $14.7 million at a 3 percent discount rate, and $10.9 million at a 7 percent discount rate.

D. Economic Impact

EPA assessed the economic impact of the regulatory options in different ways depending on the affected segment, Manufacturers or Electric Generators:

For Manufacturers, EPA assessed the impact of compliance costs on business viability at the level of the affected facility (*facility-level analysis*), including assessment of the potential for facility closures and of the potential for affected facilities to incur financial stress short of closure. For manufacturers, EPA also assessed the impact of compliance requirements on the entities that own in-scope facilities (*firm-level analysis*), based on the level of compliance costs incurred by the total of in-scope facilities owned by a firm in relation to the revenue of the firm.

For Electric Generators, EPA assessed economic impact in three ways: (1) An assessment of the impact of compliance costs on first, complying facilities and second, the entities that own those facilities, based on comparison of compliance costs to facility and firm revenue, (2) an assessment of potential electricity price effects on residential and other electricity consumers, and (3) an assessment of the impact of the proposed regulatory options within the context of the electricity markets in which affected facilities operate.

These analyses are based on the facilities included in EPA's previous 316(b) surveys of electric generators and those manufacturing industries whose operations are most reliant on cooling water and that are expected to be most affected by this proposal. For each regulatory option, only those facilities that would be subject to national standards, based on their DIF, are included in the analyses.

The following sections summarize the methods and findings for manufacturers and electric power generators for these analyses.

a. Manufacturers

This section presents EPA's estimated economic impacts on Manufacturers for the three regulatory options. The

economic impact analyses for Manufacturers assess how facilities, and the firms that own them, are expected to be affected financially by the regulatory options. The facility impact analysis starts with compliance cost estimates from the EPA engineering analysis (see section VII.B) and then calculates how these compliance costs would affect the financial performance and condition of the sample facilities and owning firms.

Measures of economic impact include facility closures and associated losses in revenue and employment, financial stress short of closure ("moderate impacts"), and firm-level impacts.[68]

In conducting the facility impact analysis, EPA first eliminated from the analysis those facilities that the Agency estimated to be at substantial risk of financial failure regardless of any additional financial burden that might result from the regulatory options under consideration (baseline closure facilities). Second, for the remaining facilities, EPA evaluated how compliance costs would likely affect facility financial performance and condition. EPA identified a facility as a regulatory closure if it would have operated under baseline conditions but would fall below an acceptable financial performance level under the new regulatory requirements.

EPA's analysis of regulatory closures is based on the estimated change in facility After-Tax Cash Flow (cash flow) as a result of the regulation and specifically examines whether the change in cash flow would be sufficient to cause the facility's going concern business value to become negative. EPA calculated business value using a discounted cash flow framework in which cash flow is discounted at an estimated cost of capital to calculate the going concern value of the facility. The specific definition of cash flow used in these analyses is after-tax free cash flow available to all capital—equity and debt—including an allowance for ongoing capital expenditures required by the business. Correspondingly, the cost of capital reflects the combined cost, after-tax, of equity and debt capital. For its analysis of economic/financial impacts on the Manufacturers industry segment, EPA used 7 percent as a real, after-tax cost of capital. Use of the 7 percent discount rate is consistent with guidance from the Office of Management and Budget on the opportunity cost of capital to society.

In these analyses, EPA first calculated the baseline going concern value of the facility using its baseline cash flow—*i.e.,* facility cash flow before compliance-related outlays—and used this value to determine whether a given facility is a baseline closure (for details see Chapter 4 of the EBA report). If EPA found the facility's estimated going concern value to be negative, then the facility was judged a baseline closure—*i.e.,* likely to fail financially, independent of incurrence of compliance costs—and removed the facility from further consideration in the impact and other economic analyses.

As the second step in the facility impact analysis, EPA adjusted the baseline cash flow to reflect the expected financial effects of compliance technology installation and operation. Based on an assessment of cost pass-through potential in the affected industries (see Chapter 5 and Appendix 4.A of the EBA), EPA assumed that *none* of the facility's compliance costs could be passed on to its customers as price and revenue increases—*i.e.,* all compliance costs must be absorbed within the facility's cash flow. EPA then recalculated the facility's business value using the adjusted post-compliance cash flow. If this analysis found that the facility's business value would become negative as a result of meeting compliance requirements, then EPA judged the facility to be a regulatory closure.

EPA also identified facilities that would likely incur moderate financial impacts, but that are not expected to close, as a result of the rule. EPA established thresholds for two measures of financial performance and condition—interest coverage ratio and pre-tax return on assets—and compared the facilities' performance before and after compliance under each regulatory option with these thresholds. EPA attributed incremental moderate impacts to the rule if both financial ratios exceeded threshold values in the baseline (*i.e.,* there were no moderate impacts in the baseline), but at least one financial ratio fell below the threshold value in the post-compliance case.

i. Baseline Closure Analysis

Exhibit VII–4 presents projected baseline closures for the estimated facilities in the Primary Manufacturing Industries and additional known facilities in Other Industries.[69] From the analysis as outlined above, EPA determined that 73 facilities (or 13 percent) of the estimated 569 regulated facilities in the six Primary Manufacturing Industries are baseline closures. The highest percentages of baseline closures occur in the Steel industry sector (32 percent). An additional three facilities (or 30 percent) of the 10 known facilities in Other Industries are projected to be baseline closures. These facilities were excluded from the post-compliance analysis of regulatory impacts, leaving 504 facilities for the assessment of compliance impacts.

EXHIBIT VII–4—SUMMARY OF BASELINE CLOSURES FOR MANUFACTURERS

Sector	Total number of facilities [a]	Number of baseline closures	Percentage of baseline closures	Operating in baseline
Paper	230	32	14	198
Chemicals	171	4	3	167
Petroleum	36	5	15	30
Steel	68	22	32	46
Aluminum	27	3	12	24
Food and Kindred Products	37	6	17	31
Total Facilities in Primary Manufacturing Industries	*569*	*73*	*13*	*497*

[68] For the analysis of three regulatory options presented in this document, neither employment loss nor output loss were in fact relevant because none of these options resulted in regulatory closures.

[69] The estimated number of Manufacturers facilities considered in the impact analysis (579) differs from the number reported in the broader analyses (592). EPA determined that the survey responses of 14 sample facilities lacked certain financial data needed for the facility impact analysis while containing sufficient data to support estimates of facility counts and compliance costs. EPA therefore retained these sample facilities (37 sample weighted facilities) in the broader analyses but excluded them from the impact analysis. When these sample facilities were excluded from the impact analysis, the sample weights for the remaining facilities within the affected sample frames were adjusted upwards to account for their removal (the revised weights are referred to as the economic analysis weights). The difference in the reported facility totals in the impact and social cost analyses reflects the removal of these 14 facilities and the use of adjusted sample weights, which due to rounding error results in a difference of 13 between the facilities in the impact analysis and those in the other analyses.

EXHIBIT VII–4—SUMMARY OF BASELINE CLOSURES FOR MANUFACTURERS—Continued

Sector	Total number of facilities [a]	Number of baseline closures	Percentage of baseline closures	Operating in baseline
Additional known facilities in Other Industries	10	3	30	7
Total Manufacturers Facilities	579	76	13	504

[a] Economic Analysis Weights were used to determine facility counts. See preceding footnote.

ii. Number of Facilities Subject to National Standards

EPA estimates that all of these 504 Manufacturers facilities—497 facilities in the Primary Manufacturing Industries and 7 facilities in the Other Industries—are subject to the requirements under the four regulatory options, although the technology response anticipated at individual facilities differs under each option. Under Option 1, all 504 facilities passing the baseline closure test would be required to meet IM standards and EPA estimates that 370 will need to install new technology in order to do so. Under Option 2, 57 facilities with DIF exceeding 125 MGD would be required to meet I&E mortality standards, and EPA estimates that all of these facilities would need to retrofit closed-cycle cooling. The remaining 448 facilities would be subject only to IM standards, and EPA estimates that 366 would need to install new technology to meet these requirements. Under Option 3, all 504 facilities would be required to meet I&E mortality standards, and in this case EPA estimates that 426 facilities would need to install a cooling tower to meet these requirements. In addition, EPA estimates that 181 facilities would need to install additional IM technology to meet Option 3's regulatory requirements. Under Option 4, 156 facilities would be required to meet IM standards; in this case, EPA estimates that 139 facilities would need to install new technology to meet this requirement.

iii. Post-Compliance Facility Impact Analysis; Summary of Impacts

Of the 504 Manufacturers facilities potentially subject to regulation after excluding baseline closures, EPA estimated that no facilities would close or incur employment losses as a result of the Options. EPA also found that no facilities would incur moderate impacts under Options 1, 2, and 4, but 17 facilities would incur moderate impacts under Option 3.

Exhibit VII–5 summarizes the estimated impacts of the proposed rule on Manufacturers by option, including facility impacts and total annualized compliance costs on an after-tax basis. The reported costs exclude compliance costs for baseline closures. The total annualized, after-tax compliance cost reported in Exhibit VII–5 represents the cost actually incurred by complying firms, taking into account the reductions in tax liability resulting from compliance outlays and assuming no recovery of costs from customers through increased prices. The after-tax analysis uses a combined federal/State tax rate, and accounts for facilities' baseline tax circumstances. Specifically, tax offsets to compliance costs are limited not to exceed facility-level tax payments as reported in facility questionnaire responses. The total annualized, after-tax compliance cost reported here is the sum of annualized, after-tax costs by facility at the year of compliance, using a 7 percent after-tax cost of capital. This cost calculation differs from the calculation of compliance costs as included in the calculation of the total social costs of the regulation (see Section VII.C) where costs are accounted for on a pre-tax basis.

EXHIBIT VII–5—FACILITY IMPACTS AND COMPLIANCE COSTS FOR MANUFACTURERS

	Option 1	Option 2	Option 3	Option 4
Primary Manufacturing Industries				
Number of Facilities Operating in Baseline	497	497	497	497
Number of Closures (Severe Impacts)	0	0	0	0
Percentage of Facilities Closing	0%	0%	0%	0%
Number of Facilities with Moderate Impacts	0	0	17	0
Percentage of Facilities with Moderate Impacts	0%	0%	3.40%	0.00%
Annualized Compliance Costs (after tax, million 2009 $)	$40.78	$108.71	$147.87	$23.38
Additional Known Facilities in Other Industries				
Number of Facilities Operating in Baseline	7	7	7	7
Number of Closures (Severe Impacts)	0	0	0	0
Percentage of Facilities Closing	0%	0%	0%	0%
Number of Facilities with Moderate Impacts	0	0	0	0
Percentage of Facilities with Moderate Impacts	0%	0%	0%	0%
Annualized Compliance Costs (after tax, million 2009 $)	$1.13	$1.52	$1.99	$0.60

iv. Firm-Level Impact

In addition to analyzing the impact of the regulation at the facility level, EPA also examined the impact of the proposed rule on firms that own manufacturing facilities with cooling water intake structures. A firm that owns multiple facilities could be adversely affected due to the cumulative burden of regulatory requirements over these facilities. For the assessment of firm-level effects, EPA calculated annualized after-tax compliance costs as a percentage of firm revenue and reports here the estimated number and percentage of affected firms incurring compliance costs in three cost-to-revenue ranges: Less than 1 percent; at least 1 percent but less than 3 percent; and 3 percent or higher.

EPA's sample-based analysis of facilities in the Primary Manufacturing Industries supports specific estimates of the number of facilities expected to be affected by the regulation and the total compliance costs expected to be incurred in these facilities. However, the sample-based analysis does not support specific estimates of the number of firms that own facilities in the Primary Manufacturing Industries. In addition, and as a corollary, the sample-based analysis does not support specific estimates of the number of regulated facilities that may be owned by a single firm, or of the total of compliance costs across regulated facilities that may be owned by a single firm. For the firm-level analysis, EPA therefore considered two approximate bounding cases based on the sample weights developed from the facility survey. These cases provide a range of estimates for the number of firms incurring compliance costs and the costs incurred by any firm owning a regulated facility. The cases are as follows:

1. *Lower bound estimate of number of firms owning facilities that face requirements under the regulation; upper bound estimate of total compliance costs that a firm may incur.* For this case, EPA assumed that any firm owning a regulated sample facility(ies), owns the known sample facility(ies) and all of the sample weights associated with the sample facility(ies). This case yields an approximate lower bound estimate of the count of affected firms, and an approximate upper bound estimate of the potential cost burden to any single firm (see EBA Chapter 4 for information on the analysis of firm-level impacts).

2. *Upper bound estimate of number of firms owning facilities that face requirements under the regulation; lower bound estimate of total compliance costs that a firm may incur.* For this case, EPA inverted the prior assumption and assumed (1) that a firm owns only the regulated sample facility(ies) that it is known to own from the sample analysis and (2) that this pattern of ownership, observed for sampled facilities and their owning firms, extends over the facility population represented by the sample facilities. This case minimizes the possibility of multi-facility ownership by a single firm and thus maximizes the count of affected firms, but also minimizes the potential cost burden to any single firm.

Exhibit VII–6 summarizes the results of the firm-level analysis for these two analytic cases.

EXHIBIT VII–6—FIRM-LEVEL AFTER-TAX ANNUAL COMPLIANCE COSTS AS A PERCENTAGE OF REVENUE

Number of firms in the analysis	Pot. reg.	Not analyzed due to lack of revenue information [b]		Number and percentage with after tax annual compliance costs/annual revenue of:					
				Less than 1%		1–3%		At least 3%	
		Number	%	Number	%	Number	%	Number	%
Primary Manufacturing Industries									
Case 1: Lower bound estimate of number of firms owning facilities that face requirements under the regulation; upper bound estimate of total compliance costs that a firm may incur [a]									
Option 1	117	3	3	113	96	0	0	1	1
Option 2	117	3	3	113	96	0	0	1	1
Option 3	117	3	3	113	96	0	0	1	1
Option 4	117	0	0	117	100	0	0	0	0
Case 2: Upper bound estimate of number of firms owning facilities that face requirements under the regulation; lower bound estimate of total compliance costs that a firm may incur.									
Option 1	359	9	3	349	97	0	0	1	0
Option 2	359	9	3	349	97	0	0	1	0
Option 3	359	9	3	349	97	0	0	1	0
Option 4	359	0	0	359	100	0	0	0	0
Other Industries									
Option 1	9	0	0	9	100	0	0	0	0
Option 2	9	0	0	9	100	0	0	0	0
Option 3	9	0	0	9	100	0	0	0	0
Option 4	9	0	0	9	100	0	0	0	0

[a] The alternative analysis case concepts are not applicable to the Other Industries firms and facilities, because these facilities do not receive sample weights.

[b] For Options 1, 2, and 3, all facilities and parent firms are assigned costs; however three firms are not analyzed because no revenue data is available. In Option 4, these three firms are assigned no costs, and so by definition have cost to revenue ratios less than 1% and are categorized as such.

As presented in Exhibit VII–6, EPA estimated that the number of firms owning regulated facilities in the Primary Manufacturing Industries range from 117 (Case 1 estimate) to 359 (Case 2 estimate), depending on the assumed ownership cases outlined above. An additional 9 firms are known to own facilities in Other Industries.[70]

EPA's analyses indicate that the number of firms falling in the reported cost-to-revenue impact ranges is the

[70] The alternative analysis case approaches are not applicable to the Other Industries firms and facilities, because these facilities do not receive sample weights.

same across Options 1, 2, and 3, by analysis case. No firms fall in the reported impact ranges under Option 4 for either analysis case. Under Case 1, Lower Bound Estimate of Number of Firms Owning Facilities/Upper Bound Estimate of Costs Incurred by these Firms, zero of the estimated 117 firms owning Manufacturers facilities incur costs between 1 and 3 percent of revenue for all Options, and one firm incurs costs exceeding 3 percent of revenue under Options 1, 2, and 3. No firms incur costs exceeding 3 percent of revenue under Option 4. The remaining 113 (Options 1, 2, and 3), and 117 (Option 4) firms incur costs below 1 percent of revenue or no costs.

Under Case 2, Upper Bound Estimate of Number of Firms Owning Facilities/ Lower Bound Estimate of Costs Incurred by these Firms, zero firms in the Primary manufacturing industries are estimated to incur costs between 1 and 3 percent of revenue under all Options. Like Case 1, one firm incurs costs exceeding 3 percent of revenue under Options 1, 2, and 3, and no firms incur costs exceeding 3 percent of revenue under Option 4. The remaining 349, and 359 firms, respectively, incur costs below 1 percent of revenue or no costs.

For the firms owning Other Industries facilities, EPA's analysis indicates that across all Options, no firms incur costs exceeding 1 percent of revenue.

Regardless of the analysis case or regulatory option, the number and percentage of firms incurring costs between one and three percent of revenue, or exceeding three percent of revenue, are small.

b. Electric Generators

For Electric Generators, EPA assessed the economic impact of the regulatory options in three major ways: (1) Entity level impacts (at both the facility and parent company levels), (2) potential electricity price effects on residential and other electricity consumers, and (3) broader electricity market impacts (taking into account the interconnectedness of regional and national electricity markets, using five metrics, for the full industry, for in-scope facilities only, and as the distribution of impacts at the facility level).

1. Assessment of the Impact on Complying Facilities and Parent Entities

EPA assessed the cost to complying facilities and parent entities based on cost-to-revenue analyses. For these two analyses, the Agency assumed that none of the compliance costs will be passed on to consumers through electricity rate increases and will instead be absorbed by complying facilities and their parent entities. In performing these and other impact analyses, EPA developed and used sample weights to extrapolate impacts assessed initially at the level of a sample of facilities to the full population of in-scope facilities. Specifically, EPA developed and used different sets of weights, with each weight set being used to derive a specific estimate and/or used with a different set of sample facilities to which the weights were applied to derive a given estimate. (See Appendix 3.A of the EBA report for a discussion on weights development and application.)

a. Cost-to-Revenue Analysis for Complying Facilities

To provide insight on the potential significance of the compliance costs to complying facilities, EPA calculated the annualized after-tax compliance costs of the regulatory options as a percentage of baseline annual revenues, for 559 in-scope facilities.[71] [72] Most of the revenue estimates used in this analysis were developed using the average of facility-specific baseline (*i.e.,* pre-promulgation) projections from the Integrated Planning Model (IPM) for 2015, 2020, 2025, and 2028.[73] In a few instances where IPM-based revenue values were not available, EPA used estimates based on Energy Information Administration (EIA) data. EPA performed this analysis for each of the 257 facilities for which compliance cost estimates were explicitly developed. As stated above, EPA used facility sample weights to estimate the total numbers of in-scope facilities that fall within various cost-to-revenue ranges as reported in Exhibit VII–7 (see Chapter 5 of the EBA report for a discussion of the facility-level cost-to-revenue analysis).

Exhibit VII–7, below, summarizes the facility-level cost-to-revenue analysis results for each option, by North American Electricity Reliability Corporation (NERC) region.[74] EPA estimates for Options 1 and 4, that the majority of facilities subject to today's proposal will incur annualized costs of less than 1 percent of revenue (481 facilities or 86 percent). Under Options 2 and 3, the majority of in-scope facilities, 333 (or approximately 60 percent) and 386 (or approximately 69 percent), respectively, will incur annualized costs exceeding 3 percent of revenue.

EXHIBIT VII–7—FACILITY-LEVEL COST-TO-REVENUE ANALYSIS RESULTS BY REGULATORY OPTION AND NERC REGION [A]

Number of in-scope facilities [a, b]	No revenue [c]	Number of facilities with cost-to-revenue ratio of			Minimum ratio %	Maximum ratio %
		< 1%	1–3%	> 3%		
Option 1: IM Everywhere						
ASCC	0	0	0	0	0.00	0.00
ERCOT	5	28	7	2	0.00	3.28
FRCC	0	18	4	4	0.00	3.49

[71] For private, tax-paying entities, after-tax costs are a more relevant measure of potential cost burden than pre-tax costs. For non tax-paying entities (e.g., State government and municipality owners of in-scope facilities), the estimated costs used in this calculation include no adjustment for taxes.

[72] For the facility cost-to-revenue analysis, EPA estimated compliance costs for all facilities as of an assumed single proxy compliance year, 2015, for comparison with 2015 revenues. EPA's choice of the year for which cost and revenue values are used in a particular part of the cost analysis was driven by the concept of a given analysis (e.g., should cost and revenue values be as of the Rule promulgation year, as of a facility's expected compliance year, or as of a post-compliance, steady state operations year?) and the availability of data for the analysis. For more information on the methodology for the facility-level cost-to-revenue analysis, *see* Chapter 5 of the EBA report.

[73] To develop the average of year-by-year revenue values over the data years, EPA set aside from the averaging calculation, revenue values for years that are substantially lower than the otherwise "steady state average"—e.g., because of a generating unit being out of service for an extended period. EPA believes the resulting cost-to-revenue comparison provides a more realistic assessment of potential impact on a "steady state" operations basis.

[74] The NERC regions used for summarizing these findings are as of 2008. Some NERC regions have been re-defined over the past few years. The NERC region definitions used in today's Proposed Existing Facilities Regulation analyses vary by analysis depending on which region definition aligns better with the data elements underlying the analysis.

EXHIBIT VII–7—FACILITY-LEVEL COST-TO-REVENUE ANALYSIS RESULTS BY REGULATORY OPTION AND NERC REGION [A]—Continued

Number of in-scope facilities [a, b]	No revenue [c]	Number of facilities with cost-to-revenue ratio of			Minimum ratio %	Maximum ratio %
		< 1%	1–3%	> 3%		
HICC	0	2	2	0	0.34	1.04
MRO	0	43	4	0	0.00	1.80
NPCC	0	49	14	0	0.00	2.64
RFC	0	148	13	3	0.00	3.58
SERC	0	146	6	5	0.00	3.61
SPP	0	28	6	0	0.00	2.38
WECC	0	19	0	4	0.00	3.38
Total	5	481	55	18	0.00	3.61
Option 2: IM Everywhere and EM for Facilities With DIF > 125 MGD						
ASCC	0	0	0	0	0.00	0.00
ERCOT	5	5	1	31	0.00	43.39
FRCC	0	5	4	16	0.00	35.37
HICC	0	0	0	3	3.87	8.48
MRO	0	20	6	20	0.00	10.96
NPCC	0	15	10	38	0.00	37.53
RFC	0	47	15	102	0.00	12.50
SERC	0	44	14	100	0.00	24.23
SPP	0	11	6	17	0.00	49.66
WECC	0	19	0	4	0.00	40.10
Total	5	166	55	333	0.00	49.66
Option 3: I&E Mortality Everywhere						
ASCC	0	0	0	0	0.00	0.00
ERCOT	5	5	1	31	0.00	43.39
FRCC	0	5	4	16	0.00	35.37
HICC	0	0	0	3	3.87	8.48
MRO	0	6	7	33	0.00	18.38
NPCC	0	0	9	55	1.22	37.53
RFC	0	38	8	119	0.00	51.38
SERC	0	29	22	106	0.00	28.47
SPP	0	11	6	17	0.00	49.66
WECC	0	17	0	6	0.00	40.10
Total	5	112	57	386	0.00	51.38
Option 4: IM for Facilities With DIF > 50 MGD						
ASCC	0	0	0	0	0.00	0.00
ERCOT	5	28	7	2	0.00	3.28
FRCC	0	18	4	4	0.00	3.49
HICC	0	2	2	0	0.34	1.04
MRO	0	43	4	0	0.00	1.80
NPCC	0	52	11	0	0.00	2.64
RFC	0	151	12	2	0.00	3.54
SERC	0	148	5	5	0.00	3.61
SPP	0	28	6	0	0.00	2.38
WECC	0	19	0	4	0.00	3.38
Total	5	488	49	17	0.00	3.61

[a] No explicitly analyzed facilities are located in the ASCC region. For more information on explicitly and implicitly analyzed in-scope facilities see Appendix 3.A of the EBA report.
[b] Facility counts exclude baseline closures.
[c] IPM and EIA report no revenue for 2 facilities (5 on the weighted basis); consequently, facility-level cost-to-revenue analysis is performed for 257 facilities (559 on the weighted basis).

b. Parent Entity-Level Cost-to-Revenue Analysis

EPA also assessed the economic impact of the options considered for today's proposed rule at the parent entity-level. The cost-to-revenue analysis at the entity level provides insight on the impact of compliance requirements on those entities that own more than one in-scope facility. For this analysis, EPA identified the domestic parent entity of each in-scope facility and obtained the entity's revenue from publicly available data sources. For 5 identified ultimate parent entities that own at least one explicitly analyzed Electric Generator (*i.e.,* Detailed Questionnaire (DQ) facilities and a

subset of the Short Technical Questionnaire (STQ) facilities with re-circulating systems in their baseline) and that are non-U.S. firms EPA could not obtain revenue for a domestic entity but did obtain revenue at the level of the international parent entity; for these 5 entities, EPA used this international entity revenue in the cost-to-revenue analysis. EPA compared the total annualized after-tax compliance costs, as of 2015 to the identified parent entity's total sales revenue (see Chapter 5 of the EBA report).

Because compliance costs for the regulatory options were directly attributable to only a subset of the in-scope facilities (*i.e.,* the explicitly analyzed, Detailed Questionnaire (DQ) facilities and a subset of the Short Technical Questionnaire (STQ) facilities with re-circulating systems in their baseline) and were therefore able to be linked with only a subset of the parent entities that own in-scope facilities, EPA developed and used entity-level sample weights for this analysis, as outlined in the Appendix 3.A of the EBA report. EPA defined two cases combining entity-level sample weights with facility-level weights to yield approximate estimates of the numbers of parent entities incurring costs in specific cost-to-revenue ranges. Each case addresses a specific element of the understanding of entity-level effects (see Chapter 5 of the EBA report for a discussion of the entity-level cost-to-revenue analysis):

- Estimation of facility costs at the level of the parent entity, accounting for the potential ownership of implicitly analyzed, sample-represented facilities by an identified parent entity and
- Estimation of the number of parent entities, accounting for the potential presence of parent entities that own only (an) implicitly analyzed facility(ies) and thus cannot be associated with the explicitly analyzed facilities.

The two analysis cases and the findings from their analysis are as follows:

- *Using facility-level weights:* For this case, facility-level weights were applied to the estimated compliance costs for facilities identified as being owned by a given parent entity.[75] This calculation may overstate the number of facilities and compliance costs at the level of any given parent entity, but also likely underestimates the number of parent entities. This analysis indicates that 97 unique parent entities own 559 facilities subject to today's proposal. From this analysis, EPA estimates that the majority of parent entities will incur annualized costs of less than one percent of revenues under Option 1 (85 out of 97 parent entities or 89 percent), Option 2 (54 out of 97 parent entities or 56 percent), and Option 4 (86 out of 97 parent entities or 91 percent). Under the more costly Option 3, a nearly equal number of entities are expected to incur costs above and below 1 percent of revenue, *i.e.,* 46 and 45 out of 91 parent entities, respectively, not taking into account 6 parent entities with unknown revenue (see Exhibit VII–8).

EXHIBIT VII–8—ENTITY-LEVEL COST-TO-REVENUE ANALYSIS RESULTS, USING FACILITY-LEVEL WEIGHTS

Parent entity type	Total number of facilities[b]	Total number of entities	Number of entities with cost-to-revenue ratio of[a]			
			< 1%	1–3%	> 3%	Unknown
Option 1: IM Everywhere						
Cooperative	25	11	10	0	1	0
Federal	16	1	1	0	0	0
Investor-owned	306	38	38	0	0	0
Municipality	25	13	9	4	0	0
Nonutility	170	30	23	0	1	6
Other political subdivision	0	0	0	0	0	0
State	17	4	4	0	0	0
Total	559	97	85	4	2	6
Option 2: IM Everywhere and EM for Facilities With DIF > 125 MGD						
Cooperative	25	11	7	1	3	0
Federal	16	1	0	0	1	0
Investor-owned	306	38	20	14	4	0
Municipality	25	13	6	5	2	0
Nonutility	170	30	18	2	4	6
Other political subdivision	0	0	0	0	0	0
State	17	4	3	0	1	0
Total	559	97	54	22	15	6
Option 3: I&E Mortality Everywhere						
Cooperative	25	11	4	3	4	0
Federal	16	1	0	0	1	0
Investor-owned	306	38	20	14	4	0
Municipality	25	13	2	5	6	0
Nonutility	170	30	18	2	4	6
Other political subdivision	0	0	0	0	0	0
State	17	4	2	1	1	0
Total	559	97	46	25	20	6

[75] Parent entity weights were not used in this calculation because the combination of facility weights and entity weights would overstate, perhaps substantially, the estimate of in-scope facilities and compliance costs assigned to parent entities.

EXHIBIT VII–8—ENTITY-LEVEL COST-TO-REVENUE ANALYSIS RESULTS, USING FACILITY-LEVEL WEIGHTS—Continued

Parent entity type	Total number of facilities [b]	Total number of entities	Number of entities with cost-to-revenue ratio of [a]			
			< 1%	1–3%	> 3%	Unknown
Option 4: IM for Facilities With DIF > 50 MGD						
Cooperative	25	11	10	0	1	0
Federal	16	1	1	0	0	0
Investor-owned	306	38	38	0	0	0
Municipality	25	13	10	3	0	0
Nonutility	170	30	23	0	1	6
Other political subdivision	0	0	0	0	0	0
State	17	4	4	0	0	0
Total	559	97	86	3	2	6

[a] EPA was unable to determine entity-level revenues for 6 (8 weighted) parent entities; consequently, for the purpose of this analysis, EPA used the sum of facility-level revenues for facilities owned by these parent entities.
[b] Facility counts exclude baseline closures.

• *Using entity-level weights:* For this case, entity-level weights were applied to the calculated number of parent entities estimated to incur costs in each cost-to-revenue range.[76] This calculation may understate the number of facilities and compliance costs at the level of any given parent entity, but accounts more comprehensively for the number of parent entities owning in-scope facilities. This analysis found that 140 unique domestic parent entities own 257 facilities subject to today's proposal (see Exhibit VII–9).[77] From this analysis, EPA estimates that the majority of parent entities will incur annualized costs of less than one percent of revenues regardless of the option.

EXHIBIT VII–9—ENTITY-LEVEL COST-TO-REVENUE ANALYSIS RESULTS, USING ENTITY-LEVEL WEIGHTS

Parent entity type	Total number of facilities [b]	Total number of entities [c]	Number of entities with cost-to-revenue ratio of [a]			
			< 1%	1–3%	> 3%	Unknown
Option 1: IM Everywhere						
Cooperative	13	20	18	2	0	0
Federal	7	1	1	0	0	0
Investor-owned	138	42	42	0	0	0
Municipality	13	35	35	0	0	0
Nonutility	78	38	29	0	1	8
Other political subdivision	0	0	0	0	0	0
State	8	4	4	0	0	0
Total	257	140	129	2	1	8
Option 2: IM Everywhere and EM for Facilities With DIF > 125 MGD						
Cooperative	13	20	13	5	2	0
Federal	7	1	0	0	1	0
Investor-owned	138	42	35	6	1	0
Municipality	13	35	24	8	3	0
Nonutility	78	38	25	4	1	8
Other political subdivision	0	0	0	0	0	0
State	8	4	3	0	1	0
Total	257	140	101	23	9	8
Option 3: I&E Mortality Everywhere						
Cooperative	13	20	9	9	2	0
Federal	7	1	0	0	1	0
Investor-owned	138	42	35	6	1	0
Municipality	13	35	13	11	11	0
Nonutility	78	38	25	4	1	8
Other political subdivision	0	0	0	0	0	0
State	8	4	3	0	1	0

[76] In the same way as stated above, facility weights were not used in conjunction with entity weights because the combination of facility weights and entity weights would overstate, perhaps, the estimate of in-scope facilities and compliance costs assigned to parent entities.

[77] The NERC regions used to summarize these findings are as of 2004, which is the NERC region basis used in the utility-level EIA 2007 database. Some NERC regions have been re-defined over the past few years. The NERC region definitions used in these analyses vary by analysis depending on which region definition aligns better with the data elements underlying the analysis.

EXHIBIT VII–9—ENTITY-LEVEL COST-TO-REVENUE ANALYSIS RESULTS, USING ENTITY-LEVEL WEIGHTS—Continued

Parent entity type	Total number of facilities [b]	Total number of entities [c]	Number of entities with cost-to-revenue ratio of [a]			
			< 1%	1–3%	> 3%	Unknown
Total	257	140	86	29	17	8
Option 4: IM for Facilities With DIF > 50MGD						
Cooperative	13	20	18	2	0	0
Federal	7	1	1	0	0	0
Investor-owned	138	42	42	0	0	0
Municipality	13	35	36	0	0	0
Nonutility	78	38	29	0	1	8
Other political subdivision	0	0	0	0	0	0
State	8	4	4	0	0	0
Total	257	140	130	2	1	8

[a] EPA was unable to determine entity-level revenues for 6 (8 weighted) parent entities; consequently, for the purpose of this analysis, EPA used the sum of facility-level revenues for facilities owned by these parent entities.
[b] Facility counts exclude baseline closures.
[c] There are a total of 143 parent entities on an unweighted basis, 3 of which are other political subdivision entities. These entities own only implicitly analyzed facilities; consequently, there is no explicitly analyzed other political subdivision parent entity to represent these implicitly analyzed parent entities and total weighted entity counts do not include 3 other political subdivision entities.

As discussed above, because compliance costs for the regulatory options were directly attributable to only a subset of the in-scope facilities and were therefore able to be linked with only a subset of the parent entities that own in-scope facilities, EPA conducted entity cost-to-revenue analysis using two weighting approaches. Using facility-level weights is likely to underestimate the number of parent entities and overstate the number of facilities and compliance costs at the level of any given parent entity. At the same time, using entity-level weights is likely to account more comprehensively for the number of parent entities owning in-scope facilities but understate the number of facilities and compliance costs at the level of any given parent entity.

Under these alternative approaches, at the 1–3 percent of revenue impact level, EPA estimates that 4 and 2 firms (4.1 percent and 1.4 percent of firms owning in-scope facilities, respectively) would fall in this impact range under Option 1, 22 and 23 firms (22.7 percent and 16.4 percent, respectively) under Option 2, and 25 and 29 firms (25.8 percent and 20.7 percent, respectively) under Option 3. At the 3 percent of revenue impact level, the Agency estimates that 2 and 1 firms (2.1 percent and 0.7 percent, respectively) would fall in this impact range under Option 1, 15 and 9 firms (15.5 percent and 6.4 percent, respectively) under Option 2, and 20 and 17 firms (20.6 percent and 12.1 percent, respectively) under Option 3. The results for Option 4 are virtually identical to those of Option 1, with one fewer entity incurring costs between 1 and 3 percent of revenue.

2. Assessment of Potential Electricity Price Effects

As an additional measure of economic impact, EPA assessed the potential electricity price effects from today's Proposed Existing Facilities Regulation in two ways: (1) An assessment of the potential annual increase in household electricity costs and (2) an assessment of the potential annual increase in electricity costs per MWh of total electricity sales. These analyses assume that all compliance costs will be passed through on a pre-tax basis as increased electricity prices as opposed to the treatment in the facility- and firm-level analyses discussed in Section VII.D.b.1, which assume that *none* of the compliance costs will be passed to consumers through electricity rate increases. For discussion of the reasonableness of this assumption see EBA Chapter 5.

a. Cost to Residential Households

Using the assumptions outlined above, EPA estimated the potential annual increase in electricity costs per household by NERC region. The analysis uses the total annualized pre-tax compliance cost per megawatt hour (MWh) for the year 2015, in conjunction with the reported total electricity sales quantity for each NERC region as reported by the EIA for 2007 for all NERC regions except ASCC and HICC, for which total 2015 electricity sales projections came from the Department of Energy's *Annual Energy Outlook 2009* (AEO 2009).[78] This analysis also uses the quantity of residential electricity sales per household as reported by the 2007 EIA for all NERC regions 2007.

To calculate the average cost per household, by region, EPA divided total compliance costs for each NERC region by the reported total MWh of sales within the region. The potential annual cost impact per household was then calculated by multiplying the estimated average cost per MWh by the average MWh per household, by NERC region.[79]

Exhibit VII–10 below, summarizes the annual household impact results for each option, by NERC region. These results show that for Option 1, the average annual cost per residential household is expected to range from $0.05 in WECC to $3.93 in SPP, for Option 2 from $0.09 in WECC to $27.11 in SERC, and for Option 3 from $0.11 in WECC to $27.88 in SERC. Overall, for a typical U.S. household, Option 4 is expected to result in the lowest annual cost of $1.37 per household, while Option 3 is expected to result in the highest annual cost of $17.60 per household. Option 1 and Option 2 are estimated to result in annual costs of $1.41 per household and $17.09 per household, respectively.

[78] AEO does not provide information for ASCC and HICC.

[79] The NERC regions used for summarizing these findings are as of 2004, which is the NERC region basis used in the utility-level EIA 2006 database. Some NERC regions have been re-defined over the past few years. The NERC region definitions used in today's Proposed Existing Facilities Regulation analyses vary by analysis depending on which region definition aligns better with the data elements underlying the analysis.

EXHIBIT VII–10—AVERAGE ANNUAL COST PER RESIDENTIAL HOUSEHOLD IN 2015 BY REGULATORY OPTION AND NERC REGION [A] [B]

NERC Region [c]	Option 1	Option 2	Option 3	Option 4
ASCC	$0.00	$0.00	$0.00	$0.00
ECAR	1.23	20.00	20.47	1.22
ERCOT	1.76	26.52	26.52	1.74
FRCC	2.37	17.89	18.21	2.37
HICC	3.16	23.82	23.82	3.16
MAAC	2.11	18.97	19.31	1.95
MAIN	1.46	19.18	20.18	1.41
MAPP	1.79	16.00	17.04	1.74
NPCC	1.38	19.89	21.13	1.37
SERC	1.64	27.11	27.88	1.61
SPP	3.93	21.56	21.56	3.86
WECC	0.05	0.09	0.11	0.01
U.S.	1.41	17.09	17.60	1.37

[a] The rate impact analysis assumes full pass-through of all compliance costs to electricity consumers.
[b] Cost estimates exclude baseline closures.
[c] No explicitly analyzed facilities are located in the ASCC region. For more information on explicitly and implicitly analyzed in-scope facilities see Appendix 3.A of the EBA report.

As stated above, this analysis assumes that all of the compliance costs will be passed onto consumers through increased electricity rates. However, at least some facilities and firms are likely to absorb some of these costs, thereby reducing the impact of today's proposed rule on electricity consumers. At the same time, EPA recognizes that Electric Generators that operate as regulated public utilities are generally permitted to pass on environmental compliance costs as rate increases to consumers.

b. Compliance Cost per Unit of Electricity Sales

EPA also calculated the per unit of electricity sales cost of the regulatory options. EPA used two data inputs in this analysis (1) total pre-tax compliance cost by NERC region, and (2) estimated total electricity sales, from the AEO 2009 for 2015, by NERC region, for all NERC regions except ASCC and HICC; for ASCC and HICC EPA used 2007 EIA. The Agency summed sample-weighted pre-tax annualized compliance costs as of 2015 over complying facilities by NERC region to calculate an approximate total estimated annual cost in each region. EPA then calculated the approximate average price impact per unit of electricity consumption by dividing total compliance costs by the reported total MWh of sales in each NERC region.

As reported in Exhibit VII–11, annualized compliance costs (in dollars per KWh sales) range from 0.001¢ in the WECC region to 0.040¢ in the HICC region for Option 1, from 0.001¢ in the WECC region to 0.303¢ in the HICC region for Options 2 and 3, and from less than 0.001¢ in the WECC region to 0.040¢ in the HICC region for Option 4. On average, across the United States, Option 4 results in the lowest cost of 0.012¢ per KWh, while Option 3 results in the highest cost of 0.157¢ per KWh. Option 1 and Option 2 result in national costs of 0.013¢ per KWh and 0.153¢ per KWh, respectively.

EXHIBIT VII–11—COMPLIANCE COST PER UNIT OF ELECTRICITY SALES IN 2015 BY REGULATORY OPTION AND NERC REGION (2009 ¢/KWH SALES) [A] [B]

NERC Region [c]	Annualized pre-tax compliance costs (2009 $)	Total electricity sales (KWh)	Compliance cost per unit of electricity sales (2009 ¢/KWh sales)
Option 1: IM Everywhere			
ASCC	$0	6,326,610,000	0.000
ECAR	62,390,503	569,849,487,305	0.011
ERCOT	40,029,111	313,395,965,576	0.013
FRCC	41,259,203	242,320,907,593	0.017
HICC	4,259,468	10,585,038,000	0.040
MAAC	61,468,467	294,365,234,375	0.021
MAIN	41,292,594	275,415,008,545	0.015
MAPP	27,565,966	165,189,056,396	0.017
NPCC	51,647,619	284,990,412,176	0.018
SERC	99,360,633	887,073,303,223	0.011
SPP	63,811,175	204,172,271,729	0.031
WECC	4,015,273	701,826,043,025	0.001
U.S.	497,100,012	3,960,424,804,688	0.013
Option 2: IM Everywhere and EM for Facilities with DIF > 125 MGD			
ASCC	0	6,326,610,000	0.000
ECAR	1,010,953,670	569,849,487,305	0.177
ERCOT	602,721,709	313,395,965,576	0.192
FRCC	311,699,736	242,320,907,593	0.129
HICC	32,074,166	10,585,038,000	0.303

EXHIBIT VII–11—COMPLIANCE COST PER UNIT OF ELECTRICITY SALES IN 2015 BY REGULATORY OPTION AND NERC REGION (2009 ¢/KWH SALES) [A] [B]—Continued

NERC Region [c]	Annualized pre-tax compliance costs (2009 $)	Total electricity sales (KWh)	Compliance cost per unit of electricity sales (2009 ¢/KWh sales)
MAAC	551,710,436	294,365,234,375	0.187
MAIN	542,786,160	275,415,008,545	0.197
MAPP	246,541,770	165,189,056,396	0.149
NPCC	744,738,535	284,990,412,176	0.261
SERC	1,643,059,866	887,073,303,223	0.185
SPP	350,239,021	204,172,271,729	0.172
WECC	6,930,361	701,826,043,025	0.001
U.S.	6,043,455,430	3,960,424,804,688	0.153
Option 3: I&E Mortality Everywhere			
ASCC	0	6,326,610,000	0.000
ECAR	1,035,075,751	569,849,487,305	0.182
ERCOT	602,721,709	313,395,965,576	0.192
FRCC	317,419,881	242,320,907,593	0.131
HICC	32,074,166	10,585,038,000	0.303
MAAC	561,627,430	294,365,234,375	0.191
MAIN	571,233,958	275,415,008,545	0.207
MAPP	262,582,596	165,189,056,396	0.159
NPCC	791,203,354	284,990,412,176	0.278
SERC	1,689,520,164	887,073,303,223	0.190
SPP	350,239,021	204,172,271,729	0.172
WECC	8,641,891	701,826,043,025	0.001
U.S.	6,222,339,919	3,960,424,804,688	0.157
Option 4: IM for Facilities with DIF > 50MGD			
ASCC	0	6,326,610,000	0.000
ECAR	61,651,375	569,849,487,305	0.011
ERCOT	39,560,948	313,395,965,576	0.013
FRCC	41,259,203	242,320,907,593	0.017
HICC	4,259,468	10,585,038,000	0.040
MAAC	56,749,132	294,365,234,375	0.019
MAIN	40,018,375	275,415,008,545	0.015
MAPP	26,744,938	165,189,056,396	0.016
NPCC	51,290,663	284,990,412,176	0.018
SERC	97,785,654	887,073,303,223	0.011
SPP	62,721,433	204,172,271,729	0.031
WECC	913,556	701,826,043,025	0.000
U.S.	482,954,744	3,960,424,804,688	0.012

[a] This analysis assumes full pass-through of all compliance costs to electricity consumers.
[b] Cost values exclude baseline closures.
[c] There are no explicitly analyzed facilities located in the ASCC region. For more information on explicitly and implicitly analyzed in-scope facilities see Appendix 3.A of the EBA report.

3. Assessment of the Impacts in the Context of Electricity Markets

In the analyses for the previous 316(b) regulations, EPA used the Integrated Planning Model (IPM), a comprehensive electricity market optimization model, to assess the economic impact of regulatory options within the context of regional and national electricity markets. For its economic impact assessment of today's proposed regulatory options, EPA used an updated version of this same analytic system, Integrated Planning Model Version 3.02 EISA (IPM V3.02), to assess facility and market-level effects of the options.

Use of a comprehensive, market analysis system is important in assessing the potential impact of the options because of the interdependence of electricity generating units in supplying power to the electric transmission grid. Increases in electricity production costs and potential reductions in electricity output at directly affected facilities—whether due to the temporary shutdown of electric generating units during technology installation and/or the energy production penalties that can result from compliance system operation—can have a range of broader market impacts that extend beyond the effect on complying facilities and their direct customers. In addition, the impact of compliance requirements on directly affected facilities may be seen differently when the analysis considers the impact on those facilities in the context of the broader electricity market instead of looking at the impact on a standalone, single-facility basis.

IPM V3.02 provides outputs for the North American Electric Reliability Corporation (NERC) regions that lie within the continental United States. IPM V3.02 does not analyze electric power operations in Alaska and Hawaii because these states' electric power operations are not connected to the continental U.S. power grid.

IPM V3.02 is based on an inventory of U.S. utility- and non-utility-owned boilers and generators that provide power to the integrated electric transmission grid, as recorded in the Department of Energy's Energy Information Administration databases as

of 2005.[80] The IPM baseline universe of facilities includes 533, or nearly all, of the 559 electric generating facilities that EPA estimates will be within the scope of today's proposed rule.[81] IPM Version 3.02 embeds a baseline energy demand forecast that is derived from the Department of Energy's *Annual Energy Outlook 2008* (AEO2008). IPM V3.02 incorporates in its analytic baseline the expected compliance response for the following air regulations affecting the power sector: Title IV of the Clean Air Act (the Acid Raid Program); the NO_X SIP Call; various New Source Review (NSR) settlements; [82] and several state rules [83] affecting emissions of SO_2 and NO_X that were finalized through February 3, 2009. IPM also includes state rules that have been finalized and/or approved by a state's legislature or environmental agency, and in certain instances, facility-level compliance technology installations that have already been undertaken because of CAIR requirements.[84] [85]

EPA recognizes that due to downtime or connection outages estimated to occur in conjunction with installation of several of the technologies, and the number of facilities that will need to come into compliance over the years after today's rule is promulgated, short-term electric reliability issues could occur unless care is taken within each region to coordinate outages with NERC and, where possible, with normal scheduled maintenance operations. Based on this concern, EPA's options were developed with flexibility provided to the permit authority to tailor compliance timelines. EPA anticipates in those instances where local electric reliability could be affected, facilities would notify the Director via provisions in the permit application. Once approved, facilities would receive workable construction schedules from permit writers to schedule installation down times without negatively impacting electric supply reliability.

In performing analyses based on IPM V3.02, EPA first developed a baseline—*i.e.,* without regulation—projection of electricity markets and facility operations over the period from the expected promulgation date, 2012, through 2028 (pre-regulation baseline case). EPA then overlaid this analysis with the estimated compliance costs and other operating effects—downtime for installation of compliance technology and energy penalty—for in-scope facilities under selected regulatory options (post-compliance cases).

For the IPM analysis, EPA analyzed three options that closely correspond to those discussed elsewhere in this document: (1) Non-Cooling Tower-Based Impingement and Entrainment requirements at all in-scope facilities (Option 1: IM Everywhere), (2) Impingement Mortality Controls at all in-scope facilities, and Cooling Towers at all in-scope facilities with DIF exceeding 125 MGD (Option 2: IM Everywhere and EM for Facilities with DIF>125MGD), and (3) Cooling Towers at all in-scope facilities (Option 3: I&E Mortality Everywhere).[86] The fourth option discussed elsewhere in this document—Option 4: Non-Cooling Tower-Based Impingement and Entrainment requirements at all in-scope facilities with DIF of 50 MGD or more—was not analyzed in IPM due to time constraints. Since this option mimics the requirements of Option 1, but only applies them to a subset of in-scope facilities, the findings for this option in the IPM analysis would be lower than those estimated for Option 1.

The IPM V3.02 runs provide analysis results for selected run-years. EPA specified these analysis years taking into account the expected promulgation date for today's Proposed Existing Facilities Regulation (2012), the years in which facilities would be expected to install compliance technology and achieve compliance (2013–2027),[87] and the years in which all complying facilities would be expected to achieve compliance (2028 and subsequent years). In the following sections, EPA reports results for the analysis year 2028, which is the first year after promulgation in which all in-scope facilities would be expected to have achieved compliance and thus represents a steady state of post-compliance operations, *i.e.*, the steady-state year.[88] In addition, EPA also analyzed potential electricity market-level effects for years during which facilities would be expected to shut down operations temporarily to complete technology installation. For the IPM-based analyses of IM-only installations, the specified compliance window is from 2013 to 2017, for cooling tower installations by fossil fuel electric power generating facilities from 2018 to 2022, and for cooling tower installations by nuclear electric power generating facilities from 2023 to 2027. Consequently, the analysis of compliance technology installation downtime used output from model run-years 2015 for IM technology installations and 2020 and 2025 for CT installations by fossil fuel and nuclear electric power generating facilities, respectively. The impacts of the analysis options are measured as the difference between key economic and operational impact metrics between the pre-regulation baseline case and the post-compliance case.

[80] In some instances, facility information has been updated to reflect known material changes in a plant's generating capacity since 2005.

[81] The exclusions of facilities from the IPM analysis include 4 facilities that are located in Alaska or Hawaii (and thus not included in IPM), 4 "lower-48" facilities that are not connected to the integrated electric transmission grid, 7 facilities excluded from the IPM baseline as the result of custom adjustments made by ICF, and 11 facilities that are not explicitly present in the 316(b) facility dataset for this analysis. See Chapter 6 of the EBA report for more details.

[82] Include agreements between EPA and Southern Indiana Gas and Electric Company (Vectren), Public Service Enterprise Group, Tampa Electric Company, We Energies (WEPCO), Virginia Electric & Power Company (Dominion), Santee Cooper, Minnkota Power Coop, American Electric Power (AEP), East Kentucky Power Cooperative (EKPC), Nevada Power Company, Illinois Power, Mirant, Ohio Edison, and Kentucky.

[83] Include current and future state programs in Connecticut, Delaware, Georgia, Illinois, Maine, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, North Carolina, New Jersey, New York, Oregon, Texas, and Wisconsin.

[84] For a detailed description of IPM Version 3.02, see Chapter 6 of the EBA report.

[85] At the time that EPA began analyzing the Proposed Existing Facilities Rule options, the Agency was still developing the regulatory standards to replace CAIR requirements. The Transport Rule, which replaces CAIR, was proposed on July 6, 2010, i.e., after EPA began to develop the baseline for the current 316(b) existing facilities rule analyses. Consequently, the IPM baseline used for the analysis of the Proposed existing facilities rule options does not reflect requirements under the newly proposed Transport Rule. However, because EPA used IPM v3.02 EISA, i.e., the same IPM version used for the market model analysis of 316(b) regulatory options, to assess the impact of the proposed Transport Rule on the U.S. electric power sector, the 316(b) baseline includes other important existing regulations currently affecting this industry sector. Consequently, on balance, EPA judges that the performance of the market model analyses against the v3.02 EISA constitutes a reasonable cost and economic impact analysis for the Proposed Existing Facilities Rule—in particular, given the uncertainties regarding the final standards promulgated, and the specific requirements that States will adopt in implementing the Transport Rule.

[86] The costs as analyzed in IPM differ slightly from those used in the non-IPM analyses. For more details on these differences see Chapter 6 of the EBA report.

[87] For the IPM-based analyses of IM-only installations, the specified compliance window is from 2013 to 2017, for cooling tower installations by fossil fuel electric power generating facilities from 2018 to 2022, and for cooling tower installations by nuclear electric power generating facilities from 2023 to 2027.

[88] The first year of full compliance is 2028 for Options 2 and 3, and 2018 for Option 1. To facilitate comparison of market-level impacts across options, this presentation focuses on 2028 as the steady state comparison year.

a. Analysis Results for the Year 2028—To Reflect Steady State, Post-Compliance Operations

For the steady-state analysis (year 2028), EPA considered impact metrics of interest at three levels of aggregation: (1) Impact on national and regional electricity markets, (2) impact on the group of in-scope power generating facilities (*i.e.,* facilities that are expected to be within the scope of today's proposed regulation but do not necessarily incur technology cost), and (3) impact on individual in-scope facilities.

(1) Impact on National and Regional Electricity Markets

For the assessment of market level impacts, EPA considered five output metrics from IPM V3.02: (1) Incremental capacity closures, calculated as the difference between capacity under the regulatory options and capacity under the base case, which includes both full facility closures and partial facility closures (*i.e.,* unit closures) in aggregate capacity terms; (2) incremental capacity closures as a percentage of baseline capacity; (3) post-compliance changes in variable production costs per MWh, calculated as the sum of total fuel and variable O&M costs divided by net generation; (4) post-compliance changes in energy price, where energy prices are defined as the wholesale prices received by facilities for the sale of electric generation; and (5) post-compliance changes in pre-tax income, where pre-tax income is defined as total revenue minus the sum of fixed and variable O&M costs, fuel costs, and annualized capital costs.

Exhibit VII–12 reports results for the three market model analysis Options for each of the five metrics above, with national totals and detail at level of regional electricity markets defined on the basis of the current NERC regions. These market model analysis options correspond to regulatory Options 1, 2, and 3 (EPA did not run Option 4 separately because EPA assumes baseline MW capacity basis Options 1 and 4 are similar, and Option 4 is less stringent than Option 1. Results for Option 1 can be viewed as an upper bound estimate of the market impacts of Option 4 in Exhibits VII–12, VII–13, VII–14, and VII–15). The NERC regions are as follows: ERCOT (Electric Reliability Council of Texas), FRCC (Florida Reliability Coordinating Council), MRO (Midwest Reliability Organization), NPCC (Northeast Power Coordination Council), RFC (ReliabilityFirst Corporation), SERC (Southeastern Electricity Reliability Council), SPP (Southwest Power Pool), and WECC (Western Electricity Coordinating Council).

Additional results are presented in Chapter 6 of the EBA report. Chapter 6 also presents a more detailed interpretation of the results of the market-level analysis.

EXHIBIT VII–12—IMPACT OF MARKET MODEL ANALYSIS OPTIONS ON NATIONAL AND REGIONAL MARKETS AT THE YEAR 2028

NERC region	Baseline capacity (MW)	Incremental closures		Change in variable production cost per MWh (%)	Change in energy price per MWh (%)	Change in pre-tax income (2009 $) (%)
		Capacity (MW)	Percent of baseline capacity			
Option 1: IM Everywhere						
ERCOT	98,757	151	0.2	−0.1	0.0	−0.4
FRCC	79,298	75	0.1	0.3	0.0	−0.4
MRO	71,200	29	0.0	−0.4	0.0	−1.0
NPCC	79,688	682	0.9	−0.4	0.1	0.3
RFC	244,700	−279	−0.1	0.2	0.1	−0.1
SERC	286,461	−79	0.0	−0.1	0.0	−0.4
SPP	67,703	13	0.0	0.0	0.0	−0.5
WECC	219,764	9	0.0	0.0	0.0	−0.1
Total	1,147,571	601	0.1	0.0	NA	−0.3
Option 2: IM Everywhere and EM for Facilities with DIF > 125 MGD						
ERCOT	98,757	4,462	4.5	−1.1	0.2	−9.5
FRCC	79,298	36	0.0	1.2	0.1	−4.7
MRO	71,200	806	1.1	1.5	0.1	−8.4
NPCC	79,688	3,862	4.8	−2.6	−1.6	−10.4
RFC	244,700	3,197	1.3	2.7	0.3	−10.3
SERC	286,461	903	0.3	2.0	−0.1	−8.9
SPP	67,703	969	1.4	0.9	−0.1	−8.6
WECC	219,764	184	0.1	0.1	−0.3	−0.8
Total	1,147,571	14,418	1.3	1.0	NA	−7.6
Option 3—I&E Mortality Everywhere						
ERCOT	98,757	4,498	4.6	−1.2	0.2	−9.5
FRCC	79,298	36	0.0	1.3	0.1	−4.8
MRO	71,200	801	1.1	1.5	0.1	−9.1
NPCC	79,688	3,861	4.8	−2.7	−1.7	−11.0
RFC	244,700	3,195	1.3	2.7	0.5	−10.2
SERC	286,461	997	0.3	2.0	0.0	−8.9
SPP	67,703	1,004	1.5	0.9	0.0	−8.7
WECC	219,764	183	0.1	0.1	−0.3	−0.9
Total	1,147,571	14,576	1.3	1.0	NA	−7.7

As reported in Exhibit VII–12, the market model analysis indicates that Option 1 would have very small effects on overall electricity markets, on both a national and regional sub-market basis, in the year 2028, the first analysis year of full compliance with the regulation. At the national level, the analysis indicates a total reduction in capacity from closures of 601 MW, or less than 0.1 percent of the total capacity baseline in 2028. At the regional level, the greatest capacity reduction, 682 MW, occurs in the NPCC region; this reduction would be approximately 0.9 percent of baseline capacity. Two NERC regions—RFC and SERC—are estimated to experience avoided capacity closures—*i.e.,* one or more generating units that are otherwise projected to cease operations in the baseline become more economically attractive sources of electricity in the post-compliance case, because of relative changes in the economics of electricity production across the full market, and thus avoid closure. This counterintuitive result is due to the integrated nature of electricity markets.

At the national level, the variable production cost of electricity stays essentially the same, but with small variations by region. The greatest increase occurs in FRCC (0.3 percent) and the largest decline occurring in MRO and NPCC (0.4 percent). Energy prices also change little across NERC regions, with NPCC and RFC recording small increases of 0.1 percent—these very small estimated changes in energy prices are essentially within the analytic "noise" of the market model analysis system. Given the additional costs from compliance with almost no change in electricity prices, national sector-level pre-tax income is projected to decline slightly, by 0.3 percent. All regions except NPCC experience a decrease in pre-tax income; the greatest decrease, approximately 1.0 percent, occurs in MRO.[89]

Option 2 requires that facilities with cooling water design intake of 125 MGD or less meet non-cooling tower-based impingement mortality requirements and site-specific entrainment mortality BTA (*i.e.,* Option 1 specifications), while facilities with cooling water design intake exceeding 125 MGD install cooling towers. As expected, the market model analysis projects that the more expensive Option 2 with some facilities installing cooling towers would have a greater impact than Option 1 on national and regional electricity markets. Under Option 2, capacity closures total 14,418 MW, or 1.3 percent of the baseline capacity value, with all regions projected to incur closures. The largest percentage impact occurs in NPCC, with a loss of approximately 4.8 percent of the baseline capacity value. Similarly, variable production costs for electricity generation increase nationally by approximately 1.0 percent, with the largest increase occurring in RFC, at 2.7 percent; only two of the 8 NERC regions—ERCOT and NPCC—experience a decline of 1.1 percent and 2.6 percent, respectively. The effect on energy prices varies across regions, with RFC recording the largest increase, at 0.3 percent, and NPCC recording the largest decline, 1.6 percent. Finally, as would be expected with the higher compliance outlays, longer installation downtimes, and energy penalties with some facilities installing cooling towers under Option 2, total sector pre-tax income is more materially affected compared to Option 1: At the national level, pre-tax income declines by 7.6 percent. All regions experience a loss in pre-tax income, with the largest loss occurring in NPCC, at 10.4 percent.

The market model analysis projects that the most expensive option, Option 3 (I&E Mortality Everywhere), would have a slightly greater impact on national and regional electricity markets than Option 2, as more in-scope facilities are required to install cooling towers (nearly all) to meet compliance requirements. Under Option 3, capacity loss is nearly the same as under Option 2—14,576 MW or 1.3 percent of the baseline capacity value—with all regions projected to incur closures. As under Option 2, the largest percentage impact under Option 3 occurs in NPCC, with a loss of approximately 4.8 percent of the baseline capacity value. Similarly, the impact on variable production costs for electricity generation under Option 3 is approximately the same as under Option 2 at the national and regional level. At the national level, variable production costs increase by 1.0 percent, with the largest increase also occurring in RFC, at 2.7 percent; again, only two of the 8 NERC regions—ERCOT and NPCC—record a decline of 1.2 percent and 2.7 percent, respectively. The effect on energy prices also varies across regions, with RFC recording the largest increase of 0.5 percent and NPCC recording the largest decline of 1.7 percent. The impact on total sector pre-tax income under Option 3 is also similar to the impact under Option 2; at the national level, pre-tax income declines by 7.7 percent with all regions experiencing a loss in pre-tax income.

(2) Impact on In-Scope Facilities

EPA used IPM V3.02 results for 2028 to assess the potential impact of the regulatory Options on the subset of electric generating facilities that are estimated to be within the scope of today's proposed regulation compliance requirements. Only results for in-scope facilities are reported in this analysis.

Exhibit VII–13 reports results for the first three of the regulatory Options for in-scope facilities, as a group. Chapter 6 of the EBA presents a more detailed interpretation of the results of the analysis of today's Proposed Existing Facilities Regulation.

EXHIBIT VII–13—IMPACT OF MARKET MODEL ANALYSIS OPTIONS ON IN-SCOPE FACILITIES, AT THE YEAR 2028

NERC region	Baseline capacity (MW)	Incremental closures		Change in variable production cost per MWh (percent)
		Capacity (MW)	Percent of baseline capacity	
Option 1—IM Everywhere				
ERCOT	35,985	−99	−0.3	−0.2
FRCC	27,210	−11	0.0	0.0

[89] IPM does not model traditional utility rate regulation but attempts to capture price effects as though they occur in competitive, deregulated markets. As a result, the price effects estimated in IPM may be less than those that would actually occur, given that most States continue to operate under traditional utility regulation. Likewise, the proposed rule's impact on electric generators' net income may be overstated. In contrast, the electricity rate impact analyses presented earlier in this section (Section VII. 2), assume full pass-through of compliance costs as increased electricity prices, which may more closely approximate the price effect in regulated markets, but could overstate the price effect in deregulated markets.

EXHIBIT VII–13—IMPACT OF MARKET MODEL ANALYSIS OPTIONS ON IN-SCOPE FACILITIES, AT THE YEAR 2028—Continued

NERC region	Baseline capacity (MW)	Incremental closures		Change in variable production cost per MWh (percent)
		Capacity (MW)	Percent of baseline capacity	
MRO	29,131	298	1.0	−0.3
NPCC	33,618	859	2.6	−1.2
RFC	138,519	−95	−0.1	0.1
SERC	151,806	198	0.1	0.0
SPP	23,879	−102	−0.4	−0.2
WECC	38,906	9	0.0	−0.1
Total	479,054	1,056	0.2	−0.1
Option 2—IM Everywhere and EM for Facilities With DIF 125 MGD				
ERCOT	35,985	5,486	15.2	−4.3
FRCC	27,210	−336	−1.2	0.1
MRO	29,131	969	3.3	2.6
NPCC	33,618	4,415	13.1	−8.8
RFC	138,519	3,329	2.4	1.9
SERC	151,806	433	0.3	2.1
SPP	23,879	2,285	9.6	−1.2
WECC	38,906	234	0.6	0.7
Total	479,054	16,815	3.5	0.5
Option 3—I&E Mortality Everywhere				
ERCOT	35,985	5,528	15.4	−4.9
FRCC	27,210	−336	−1.2	0.0
MRO	29,131	1,016	3.5	2.7
NPCC	33,618	4,415	13.1	−9.0
RFC	138,519	3,329	2.4	2.0
SERC	151,806	699	0.5	2.1
SPP	23,879	2,259	9.5	−2.3
WECC	38,906	234	0.6	0.8
Total	479,054	17,144	3.6	0.4

The market model analysis results for in-scope facilities show a greater degree of adverse impact than that observed over all generating units. These more substantial adverse impacts among the directly affected in-scope units are offset by generally positive changes in capacity and energy production at the facilities that are not directly by the proposed rule's requirements, and which are not included in this section's analysis.

Under Option 1, today's preferred option, looking over all in-scope facilities, the total capacity loss from early retirements is 1,056 MW at the national level, or 0.2 percent of baseline capacity in the in-scope units. The impact on capacity retirements varies across NERC regions with 4 out of 8 regions recording capacity closures and the remaining 4 experiencing *avoided* capacity closures. Some closures (or avoided closures) are full facility closures (*i.e.,* all generating units at the facility close or avoid closure), while others are partial closures (*i.e.,* at least one generating unit at the facility is assessed as closing, or avoiding closure, in the post-compliance case). Overall, 39 generating units close (approximately 9,874 MW) and 30 generating units avoid closure (approximately 8,819 MW) in the post-compliance case, resulting in net closure of 9 generating units (approximately 1,055 MW). The 39 generating unit closures reflect full closure of 20 units in 13 facilities (5,647 MW) and partial closure of 19 units in 16 facilities (4,227 MW). The largest capacity loss occurs in NPCC (859 MW or 2.6 percent of baseline capacity).

As described in the preceding section, these net losses of capacity due to early retirements among in-scope facilities are offset at the total market level by capacity increases among other facilities. These capacity increases typically occur through "earlier" construction of new generating units or repowering of existing units. These new units also typically operate with higher energy efficiency and lower electricity production cost. As a result, the early retirements among in-scope facilities under the proposed regulatory option have little impact at the level of national and regional electricity markets.

Finally, at the national level, variable production costs decline by approximately 0.1 percent as older, less-efficient plants close and are replaced by newer plants in the IPM model. These effects vary by region, with some regions experiencing slight increases, while other regions experience slight decreases. These findings of very small national and regional effects in these impact metrics confirm EPA's assessment, stated in the preceding paragraph, that the assessed capacity closures among in-scope facilities are of little economic consequence in national and regional electricity markets.

Again, the findings for the more expensive Option 2 (IM Everywhere and EM for Facilities with DIF > 125MGD) are of greater consequence, as some facilities would be required to incur the cost of cooling tower installation. The total loss in capacity in 2028 is assessed at 16,815 MW, with the largest capacity loss of 15.2 percent occurring in NPCC.

In the same way as reported for Option 1, the capacity loss of 16,815 MW under Option 2 also reflects a combination of early retirements and avoided retirements of generating units. Under Option 2, 149 generating units close (36,163 MW) and 86 generating units avoid closure (19,186 MW), leading to an estimated net closure of 63 generating units (16,977 MW). Out of the 149 closed units, 72 units (22,976 MW) are in 35 fully closed facilities and 77 units (13,186 MW) are in 46 partially closed facilities.

Under Option 2, the findings for the change in variable production cost are also considerably larger compared to Option 1. At the national level, Option 2 results in a 0.5 percent increase in variable production cost. This effect varies considerably by region, with NPCC recording the largest decrease in variable production costs (8.8 percent) and MRO incurring the largest increase (2.6 percent).

The analysis results for Option 3 are similar to those for Option 2, and again show a greater degree of impact on capacity and electricity generation among in-scope facilities compared to the degree of impact observed at the market level. At the national level, Option 3 results in 17,144 MW of retired capacity (compared to 16,815 MW under Option 2), which is approximately 3.6 percent of total baseline in-scope capacity (compared to 3.5 percent under Option 2). As is the case for Options 1 and 2, the net capacity reduction of 17,144 MW reported for Option 3 includes early retirement and avoided retirement of generating units. Under Option 2, 162 generating units close (37,255 MW) and 88 generating units avoid closure (20,258 MW), leading to an estimated net closure of 74 generating units (16,997 MW). Out of the 162 closed units, 79 units (23,262 MW) are in 39 fully closed facilities and 83 units (13,992 MW) are in 50 partially closed facilities.

The impact on variable production costs observed for Option 3 is similar in magnitude to that observed for Option 2. At the national level, variable production costs decline by approximately 0.4 percent. Under Option 3, this effect also varies considerably by region, with NPCC, again, recording the largest decrease in variable production costs (9.0 percent) and MRO incurring the largest increase (2.7 percent).

(3) Impact on Individual In-Scope Facilities

Results for the group of in-scope facilities as a whole may mask shifts in economic performance among individual facilities subject to today's proposed rule. To assess potential facility-level effects, EPA analyzed facility-specific changes between the base case and the post-compliance cases for the following metrics: (1) Capacity utilization (defined as annual generation (MWh) divided by [capacity (MW) times 8,760 hours]), (2) electricity generation, (3) revenue, (4) variable production costs per MWh, defined as variable O&M cost plus fuel cost divided by net generation, and (5) pre-tax income, defined as total revenues minus the sum of fixed and variable O&M costs, fuel costs, and capital costs.

Exhibit VII–14 presents the estimated number of in-scope facilities with specific degrees of change in operations and financial performance as a result of today's regulatory options. This exhibit excludes in-scope facilities with estimated significant status changes in 2028 that render these metrics of change not meaningful—*i.e.,* under the analyzed Option, a facility that is assessed as either a full or partial closure between the base case and the post-compliance case. This is done because the measures presented in Exhibit VII–11 such as change in revenue would not be meaningful for these facilities. For example, for a facility that is projected to close in the post-compliance case, the reduction in revenue would be 100 percent. On this basis, 118 facilities are excluded from assessment under Option 1, 159 facilities under Option 2, and 165 facilities under Option 3.

In addition, the change in variable production cost per MWh of generation could not be developed for facilities that have zero generation in either the baseline or post-compliance cases. For these facilities—28, 21, and 18 facilities under Options 1, 2, or 3, respectively—variable production cost per MWh cannot be calculated for one or other of the two cases (because the divisor, MWh, is zero), and therefore the change in variable production cost per MWh cannot be meaningfully determined. Facilities excluded from this assessment are recorded in the "N/A" column.

EXHIBIT VII–14—IMPACT OF MARKET MODEL ANALYSIS OPTIONS ON INDIVIDUAL IN-SCOPE FACILITIES AT THE YEAR 2028—NUMBER OF FACILITIES BY IMPACT MAGNITUDE

Economic measures	Reduction			No change	Increase			N/A [b]
	> 3%	1–3%	< 1%		< 1%	1–3%	> 3%	
Option 1—IM Everywhere								
Change in Capacity Utilization [a]	0	1	23	398	41	5	3	118
Change in Generation	6	7	39	391	26	0	2	118
Change in Revenue	5	3	164	4	282	13	0	118
Change in Variable Production Costs/MWh	0	2	91	22	319	6	3	146
Change in Pre-Tax Income	40	126	243	0	55	4	3	118
Option 2—IM Everywhere and EM for Facilities With DIF > 125 MGD								
Change in Capacity Utilization [a]	13	18	102	147	104	24	22	159
Change in Generation	154	89	6	146	8	12	15	159
Change in Revenue	139	103	51	0	73	54	10	159
Change in Variable Production Costs/MWh	3	5	24	14	107	55	201	180
Change in Pre-Tax Income	267	33	55	0	28	23	24	159
Option 3—I&E Mortality Everywhere								
Change in Capacity Utilization [a]	10	16	132	96	118	25	27	165
Change in Generation	184	110	6	95	9	10	10	165
Change in Revenue	158	127	44	0	49	38	8	165
Change in Variable Production Costs/MWh	4	8	15	9	74	63	233	183

EXHIBIT VII–14—IMPACT OF MARKET MODEL ANALYSIS OPTIONS ON INDIVIDUAL IN-SCOPE FACILITIES AT THE YEAR 2028—NUMBER OF FACILITIES BY IMPACT MAGNITUDE—Continued

Economic measures	Reduction			No change	Increase			N/A [b]
	> 3%	1–3%	< 1%		< 1%	1–3%	> 3%	
Change in Pre-Tax Income	315	12	41	0	24	11	21	165

[a] The change in capacity utilization is the difference between the capacity utilization percentages in the base case and post-compliance cases. For all other measures, the change is expressed as the percentage change between the base case and post-compliance values.

[b] Facilities with status changes in either base case or post-compliance scenario have been excluded from these calculations. In addition, the change in variable production cost per MWh could not be developed for 28, 21, and 18 facilities with zero generation in either base case or Options 1, 2, or 3 post-compliance scenarios, respectively.

For Option 1, which corresponds to EPA's proposed option, the analysis of changes in individual facilities indicates that most facilities experience very slight effects—no change, or less than a 1 percent reduction or 1 percent increase—in all of the impact metrics except Change in Pre-Tax Income. Only 1 facility is estimated to incur a reduction in capacity utilization exceeding 1 percent; 13 facilities incur a reduction in generation exceeding 1 percent; and 8 facilities incur a reduction in revenue exceeding 1 percent. Only 9 facilities incur an increase in variable production costs exceeding one percent. The estimated change in pre-tax income is more consequential as 126 facilities are projected to incur reductions in pre-tax income of 1–3 percent and 40 facilities are projected to incur reductions in pre-tax income exceeding 3 percent of the baseline value.

The findings for Option 2 are substantially more consequential compared to those estimated for Option 1. For 243 facilities, the reduction in generation is estimated to exceed 1 percent; for 242 facilities, the reduction in revenue is estimated to exceed 1 percent; for 256 facilities, the increase in variable production costs is estimated to exceed 1 percent. Again, the change in pre-tax income is more substantial, with 33 facilities expected to incur reductions in pre-tax income of 1–3 percent and 267 facilities, greater than 3 percent.

As in the preceding discussions, the findings for Option 3 are slightly more consequential than those estimated for Option 2. For 294 facilities, the reduction in generation is estimated to exceed 1 percent; for 285 facilities, the reduction in revenue is estimated to exceed 1 percent; for 296 facilities, the increase in variable production costs is estimated to exceed 1 percent. The change in pre-tax income is more substantial, with 12 facilities expected to incur reductions in pre-tax income of 1–3 percent and 315 facilities, greater than 3 percent.

b. Analysis Results for the Years 2015, 2020, and 2025—To Capture the Effect of Installation Downtime

This section presents market-level results for today's proposed rule options for model run years 2015, 2020, and 2025. As discussed above, run year 2015 captures the period when in-scope facilities install IM technologies, while run years 2020 and 2025 capture the period when fossil fuel and nuclear facilities install cooling towers, respectively, and may incur installation downtime. Of particular importance as a potential impact, the additional unit downtime from installation of compliance technology would manifest as increased electricity production costs resulting from the dispatch of higher production cost generating units during the periods when units are taken offline to install compliance technologies. Because these effects are of most concern in terms of potential impact on national and regional electricity markets, this section presents results only for the total set of facilities analyzed in IPM (Exhibit VII–15) and does not present results for the subset of only in-scope facilities.

For the assessment of compliance technology installation downtime impacts at the national level, EPA considered five output metrics from IPM V3.02: (1) Changes in electricity generation, (2) changes in revenue, (3) cost changes, including changes in fuel costs, variable O&M costs, fixed O&M costs, and capital costs, (4) changes in pre-tax income, and (5) changes in variable production costs per MWh. For each measure of concern, Exhibit VII–15 presents the results for the base case and the existing facilities rule options for each downtime year, *i.e.,* 2015, 2020, and 2025 and the percentage difference between the two. This section of the preamble discusses downtime impact at the national level only; for regional-level results see Appendix 6.A of EBA report.

EXHIBIT VII–15—IMPACT OF MARKET MODEL ANALYSIS OPTIONS DURING THE PERIOD OF INSTALLATION DOWNTIME

Economic measures (all dollar values in $2009)	Baseline value	Option 1		Option 2		Option 3	
		Value	% Change	Value	% Change	Value	% Change
2015 (2013–2017)							
Generation (TWh)	4,320	4,320	0.0	4,320	0.0	4,320	0.0
Revenue ($Millions)	$212,857	$212,883	0.0	$214,124	0.6	$214,201	0.6
Costs ($Millions)	$144,212	$144,764	0.4	$144,251	0.0	$144,244	0.0
Fuel Cost	$81,076	$81,080	0.0	$80,896	−0.2	$80,895	−0.2
Variable O&M	$12,034	$12,080	0.4	$12,056	0.2	$12,054	0.2
Fixed O&M	$43,697	$44,140	1.0	$43,683	0.0	$43,680	0.0
Capital Cost	$7,405	$7,463	0.8	$7,616	2.8	$7,614	2.8
Pre-Tax Income ($Millions)	$68,646	$68,119	−0.8	$69,873	1.8	$69,957	1.9
Variable Production Cost ($/MWh)	$21.55	$21.57	0.1	$21.52	−0.2	$21.52	−0.2

EXHIBIT VII–15—IMPACT OF MARKET MODEL ANALYSIS OPTIONS DURING THE PERIOD OF INSTALLATION DOWNTIME—Continued

Economic measures (all dollar values in $2009)	Baseline value	Option 1		Option 2		Option 3	
		Value	% Change	Value	% Change	Value	% Change
2020 (2018–2022)							
Generation (TWh)	4,530	.....	.....	4,530	0.0	4,530	0.0
Revenue ($Millions)	$261,531	.....	.....	$270,507	3.4	$270,709	3.5
Costs ($Millions)	$160,340	.....	.....	$167,450	4.4	$167,719	4.6
Fuel Cost	$83,418	.....	.....	$82,295	−1.3	$82,295	−1.3
Variable O&M	$13,349	.....	.....	$13,661	2.3	$13,673	2.4
Fixed O&M	$46,160	.....	.....	$50,888	10.2	$51,016	10.5
Capital Cost	$17,413	.....	.....	$20,605	18.3	$20,736	19.1
Pre-Tax Income ($Millions)	$101,191	.....	.....	$103,057	1.8	$102,990	1.8
Variable Production Cost ($/MWh)	$21.36	.....	.....	$21.18	−0.8	$21.18	−0.8
2025 (2023–2027)							
Generation (TWh)	4,746	.....	.....	4,746	0.0	4,746	0.0
Revenue ($Millions)	$280,613	.....	.....	$282,363	0.6	$282,381	0.6
Costs ($Millions)	$174,856	.....	.....	$184,900	5.7	$185,148	5.9
Fuel Cost	$86,633	.....	.....	$86,812	0.2	$86,834	0.2
Variable O&M	$13,907	.....	.....	$14,295	2.8	$14,299	2.8
Fixed O&M	$47,561	.....	.....	$53,500	12.5	$53,625	12.7
Capital Cost	$26,755	.....	.....	$30,294	13.2	$30,390	13.6
Pre-Tax Income ($Millions)	$105,757	.....	.....	$97,463	−7.8	$97,233	−8.1
Variable Production Cost ($/MWh)	$21.18	.....	.....	$21.30	0.6	$21.31	0.6

Because in-scope facilities would be required to meet compliance requirements not later than 5 years following rule promulgation, Option 1 has downtime effects during only the five-year period of 2013–2017. Results for the year 2015 are indicative of annual effects during each of these years. With few facilities having an increase in net downtime under Option 1, the estimated effects of downtime are relatively minor. Variable production costs increase by less than 0.1 percent. Another potential market level impact due to the incurrence of downtime is the possible increase in electricity prices and, consequently, revenue. At the market level, the change in total revenue is nearly zero, indicating very small overall effects on consumer prices. While these effects vary at the regional level, these effects are overall very small (see *Appendix 6.A* of the EBA).

Unlike Option 1, Option 2 would be expected to have downtime effects during each of the three five-year periods, as IM-only facilities comply during the first five years (2012–2017) following rule promulgation, fossil fuel facilities installing cooling tower technology comply during the second five years (2018–2022), and nuclear facilities installing cooling tower technology comply during the third five years (2023–2027).

During the first five-year period (2012–2017), downtime effects under Option 2, although larger than those under Option 1, remain small. Variable production costs decline by a very minor amount, 0.2 percent, as the market begins to adjust overall in anticipation of the larger effects on capacity availability as the result of cooling tower installation in later years. Total market-level revenue increases by $1.2 billion, or 0.6 percent, indicating small effects on consumer prices.

During the second five-year period (2018–2022), downtime effects are more pronounced under Option 2. At the market level, variable production costs decline again, by 0.8 percent, but revenue increases by nearly $9.0 billion, or 3.4 percent. Thus, the impact on consumer prices is greater during this period than during the preceding five years. Again, the reduction in variable production costs and revenue reflect replacement of generation from older, less efficient and higher fuel cost capacity, with generation from more energy efficient, lower production cost capacity.

The greatest impact on variable production cost under Option 2 occurs during the third five-year period (2023–2027), when nuclear facilities incur downtime during technology installation. Net downtime for cooling tower installation at nuclear facilities is estimated at 24 weeks compared to 0.3–4 weeks for installations at fossil fuel facilities. During this period, variable production costs increase by $0.12 per MWh or approximately 0.6 percent. Although variable production cost increases during this period (while declining during the preceding two five-year periods), annual revenue increases by a smaller amount, $1.8 billion, or a 0.6 percent increase above baseline. The smaller increase in revenue, and by inference in consumer prices, results from the ongoing market adjustment with replacement of less efficient, higher fuel cost generation with more efficient, lower fuel cost capacity. The effects at the national level vary at the regional level (see *Appendix 6.A* of the EBA).

Like Option 2, Option 3 would be expected to have downtime effects during each of the three five-year periods. During the first five-year period (2012–2017), impacts are nearly identical to those of Option 2 at the national and regional level. At the national level, variable production costs decline by 0.2 percent, and total revenue increases by $1.2 billion, or 0.6 percent, indicating small effects on consumer prices. While under Option 2, revenue declines by 0.2 percent, under Option 3 it increases by 0.5 percent. Further, under Option 3, the decline in variable production costs as well as the drop in electricity prices are slightly more significant.

During the second five-year period (2018–2022), downtime effects of Option 3 are again similar to, but slightly higher than, those of Option 2.

At the national level, variable production costs decline by 0.8 percent, while revenue increases by $9.2 billion, or 3.4 percent. Again, the impact on consumer prices under Option 3 is greater during this period than during the preceding five years.

As with Option 2, under Option 3 the greatest impact on variable production cost occurs during the third five-year period (2023–2027). During this period, market-level variable production costs increase by $0.13 per MWh or approximately 0.6 percent. Although variable production cost increases during this period (while declining during the preceding two five-year periods), annual revenue increases by a smaller amount, $1.8 billion, or a 0.6 percent increase above baseline.

At the regional level, as is the case for Option 2, under Option 3, these effects vary across regions. For all three analyzed five-year periods, the direction of the change in variable production costs, revenue, and electricity prices under Option 3 is the same as that under Option 2 for all NERC regions; the difference in the magnitude of change is not very pronounced either (see *Appendix 6.A* of the EBA).

5. Summary of Economic Impacts

EPA performed cost and economic impact assessment in two parts. The first set of cost and economic impact analyses—entity level impacts (at both the facility and parent company levels), an assessment of the potential electricity rate impact of compliance costs to the residential sector, and across sectors—reflects baseline operating characteristics of in-scope facilities and assumes no changes in those baseline operating characteristics—*e.g.,* level of electricity generation and revenue—as a result of the requirements of the proposed regulatory options. The second set of analyses look at broader electricity market impacts—taking into account the interconnection of regional and national electricity markets, for the full industry, for in-scope facilities only, and as the distribution of impacts at the facility level. No single metric or impact level definitively measures economic impacts. Rather, EPA has considered the totality of these measures of economic impacts in concluding that there are no significant economic impacts associated with Option 1 (the preferred option) or Option 4, while there are considerably greater economic impacts associated with Options 2 and 3.

VIII. Benefits Analysis

A. Introduction

This section presents EPA's estimates of the national environmental benefits of the options analyzed for 316(b) facilities. In this section, EPA describes how it calculated values for those benefits it could monetize. It also presents descriptive information for those benefits for which it could not develop a monetary value. The benefits assessed occur because of reductions in impingement, where fish and other aquatic life are trapped on equipment at the entrance to the CWIS, and entrainment, where aquatic organisms, eggs, and larvae are taken into the cooling system, passed through the heat exchanger, and then discharged back into the source water body, (I&E mortality) at cooling water intake structures (CWIS) affected by the proposed rulemaking. I&E mortality kills or injures large numbers of aquatic organisms at all life stages. Based on impingement mortality and entrainment data presented in I&E mortality facility studies, EPA assumes a mortality rate of 100% for both impinged and entrained individuals. Mortality rates are then adjusted based on the efficiency of technology in place.[90] By reducing I&E mortality rates, the proposed options are likely to increase the number of fish, shellfish, and other aquatic organisms in affected water bodies. In turn, this increased number of aquatic organisms directly improves welfare for individuals using the affected aquatic resources, generating so-called "use benefits" such as increases to the value of recreational and commercial fisheries. Reductions to I&E mortality also improve welfare for individuals absent any use of the affected resources, so-called "nonuse benefits," such as improved ecosystem function and resource bequest values. Section VIII.D provides an overview of the types and sources of benefits anticipated, how these benefits are estimated, the level of benefits that the proposed options would achieve, and how monetized benefits compare to costs.

EPA derived national benefit estimates for the proposed options from a series of regional studies representing a range of water body types and aquatic resources. Section VIII.B provides detail on the regional study design. Sections VIII.C through VIII.E briefly describe the methods EPA used to evaluate I&E mortality impacts at Section 316(b) facilities, and to derive an economic value associated with these losses.

[90] See discussion in Section III on entrainment mortality data and assumptions.

Further, because IPM does not predict where new capacity occurs, and EPA has not identified any other information projecting where new units would be located, EPA did not estimate benefits associated with new capacity (*i.e.* new units at an existing facility). As noted above, EPA also did not include costs for these new units in its social cost analysis. This is consistent with EPA's treatment of new facilities, such as new offshore oil and gas facilities in the Phase III rule.

The methodologies used to estimate benefits of proposed options are largely built upon those used to estimate benefits for the suspended Phase II regulation and the remanded rule for 316(b) Phase III existing facilities. In addition to updating these analyses, EPA more fully investigated the effects of I&E mortality on threatened and endangered (T&E) species, and improved its estimation of nonuse benefits. The 2011 Environmental and Economic Benefits Analysis document for the proposed 316(b) Existing Facility rule (hereafter EEBA) provides detailed descriptions of the these new methodologies used to analyze the benefits of proposed regulatory options, and provides references to (i) Part A of the 2004 Regional Benefits Analysis for the suspended Final Section 316(b) Phase II Rule, and (ii) Part A of the 2006 Regional Benefits Analysis Document for the Final Section 316(b) Phase III Existing Facilities Rule for analyses using similar methodologies.

The EEBA document provides EPA's benefit estimates for the proposed options. EPA relied on information on cooling water systems and intake structures already in place collected in the Section 316(b) Industry Surveys (the Industry Screener Questionnaire (SQ) and the Detailed Industry Questionnaire (DQ)) to estimate the number of manufacturing facilities that would potentially be in-scope of the regulatory options considered for the Proposed Existing Facilities Rule. Because the DQs were sent to a sample of the manufacturing industries that use cooling water, the respondents were assigned sample weights designed to represent other facilities that were not covered in the survey. For the analysis of in-scope Electric Generators, EPA used information on cooling water systems and intake structures already in place, from 656 in-scope facilities that responded to the 2000 Section 316(b) Surveys (the Industry Short Technical Questionnaire (STQ) and the Detailed Industry Questionnaire (DQ)). All in-scope facilities have design intake flow of at least 2 million gallons per day (MGD). Regional benefits are estimated

from the sample of facilities for which there is sufficient DQ information to estimate the environmental impacts of regulatory options. The environmental impacts from the set of explicitly analyzed facilities are then extrapolated to the universe of facilities within a region using statistical weights developed for this analysis. National benefits are estimated as the sum of all regional benefits.

B. Regional Study Design

EPA evaluated the benefits of today's rule in seven study regions (California,[91] North Atlantic, Mid Atlantic, South Atlantic, Gulf of Mexico, Great Lakes, and Inland). Regions were defined based on ecological similarities within regions (*e.g.* similar communities of aquatic species), and on characteristics of commercial and recreational fishing activities. The five coastal regions identified (California, North Atlantic, Mid-Atlantic, South Atlantic, and Gulf of Mexico) correspond to those of the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS). The Great Lakes region includes Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian border) as defined in 33 U.S.C. 1268, Sec. 118(a)(3)(b). The Inland region includes all remaining facilities that withdraw water from freshwater lakes, rivers, and reservoirs. Notably, of the 521 facilities that are located on freshwater streams or rivers, 31 percent (164) of these facilities have average intake greater than 5 percent of the mean annual flow of the source waters. During periods of low river flow, or during periods of higher than average withdrawals of cooling water, the proportionate withdrawal of source waters may be much higher. Thus, the potential for adverse environmental impacts may increase. The number and total operational intake flow of all 316(b) facilities by study region is presented in Exhibit VIII–1.

EXHIBIT VIII–1—NUMBER OF FACILITIES AND TOTAL MEAN OPERATIONAL FLOW (BGD), BY REGION

Region	Number of potentially regulated facilities [a]	Once-through flow	Closed-cycle flow	Total flow
California [b]	8	1.2	0.0	1.2
Great Lakes	67	18.8	0.2	19.0
Inland [c]	669	134.9	3.9	138.8
Mid-Atlantic	54	28.1	0.1	28.2
Gulf of Mexico	30	12.9	0.0	12.9
North Atlantic	26	7.0	0.0	7.0
South Atlantic	17	7.4	< 0.1	7.5
All Regions	871	210.3	4.2	214.5

[a] This table presents the unweighted number of facilities because weighted facilities counts are not estimated separately by benefits region. The estimated total weighted number of potentially regulated facilities is 1152 (including baseline closures).

[b] The California region includes manufacturing facilities in the state of California and four facilities in Hawaii. It excludes coastal electric generating facilities in the state of California due to state regulation of cooling water intakes for these facilities. There are no coastal facilities in Oregon and a single facility in Washington classified as a baseline closure.

[c] A facility in Texas has intakes located in both the Inland and Gulf of Mexico regions. It is included within the Inland region in the current table to prevent double-counting.

To estimate regional I&E mortality, EPA extrapolated loss data from 97 facilities that conducted I&E mortality studies (model facilities) to all in-scope facilities within the same region. EPA judged these 97 studies include the most representative studies with the best available data. EPA used regions to account for differences in ecosystems, aquatic species, and characteristics of commercial and recreational fishing activities. Extrapolation was conducted on the basis of actual intake flow reported for the period 1996–1998 by facilities in response to EPA's Section 316(b) Detailed Questionnaire and Short Technical Questionnaire. Chapter 3 of the EEBA document provides details of the extrapolation procedure. Because the goal of the analysis was to provide estimates of I&E mortality losses at regional and national scales, EPA recognizes that there may be substantial variability in the number of actual losses (and benefits) of individual facilities. However, EPA concludes that extrapolation is a reasonable basis for developing estimates of regional- and national-level benefits for the purposes of this proposed rulemaking.

C. Physical Impacts of I&E Mortality

EPA's benefits analysis is based on facility-provided I&E mortality monitoring data. Facility data consist of records of impinged and entrained organisms sampled at intake structures and cover organisms of all ages and life stages. Sampling protocols were not standardized across facilities. Differences among facility protocols included sampling methods and equipment used, the number of samples taken, sampling duration, and the unit of time and volume of intake flow used to express I&E mortality losses. To standardize estimates across facilities, EPA converted sampling counts into annual I&E mortality losses. Using standard fishery modeling techniques,[92] EPA constructed models that combined facility-derived I&E mortality counts with life history data from the scientific literature to derive annual estimates of:

- Age-one equivalent losses (A1Es)—the number of individuals of different ages impinged and entrained by facility

[91] The California region includes manufacturing facilities in the state of California and four facilities in Hawaii. It excludes coastal electric generating facilities in the state of California due to state regulation of cooling water intakes for these facilities. There are no coastal facilities in Oregon and a single facility in Washington classified as a baseline closure.

[92] Ricker, W.E. 1975. Computation and interpretation of biological statistics of fish populations. Fisheries Research Board of Canada, Bulletin 191; Hilborn, R. and C.J. Walters. 1992. Quantitative Fisheries Stock Assessment, Choice, Dynamics and Uncertainty. Chapman and Hall, London and New York.; Quinn, T.J., II. and R.B. Deriso. 1999. Quantitative Fish Dynamics. Oxford University Press, Oxford and New York; Dixon, D.A. 1999. Catalog of Assessment Methods for Evaluating the Effects of Power Plant Operations on Aquatic Communities. Final Report. Report number TR_112013.

intakes, standardized to equivalent numbers of 1-year old fish. A conversion rate between all life history stages and age 1 is calculated using species-specific survival tables. The loss of an individual younger than age 1 results in a conversion rate less than 1 while the loss of an individual older than age 1 results in a conversion rate greater than 1.

- Foregone fishery yield—pounds of commercial harvest and numbers of recreational fish and shellfish that are not harvested due to I&E mortality. EPA used the Thompson-Bell equilibrium yield model (Ricker, 1975) to convert I&E mortality losses to forgone fishery yield assuming that (1) I&E mortality losses reduce the future yield of harvested adults, and (2) reductions in I&E mortality rates will lead to an increase in harvested biomass. The general procedure involves multiplying age-specific harvest rates by age-specific weights to calculate an age-specific expected yield.
- Biomass Production Foregone—biomass that would have been produced had individuals not been impinged or entrained (Rago, 1984), calculated for all forage species from species- and age-specific growth rates and survival probabilities. It refers to the weight of impinged and entrained forage species that are not commercial or recreational fishery targets but serve as valuable components of aquatic food webs, particularly as an important food supply to other aquatic species, including commercial and recreational species.

Estimates of foregone fishery yield include direct and indirect losses of impinged and entrained species that are harvested. Indirect losses represent the yield of harvested species lost due to reductions in prey availability based on a simple trophic transfer model (*i.e.* forage species).[93] A detailed methodology for these analyses is provided in Chapter 3 of the EEBA document.

Studies from individual facilities may under or overestimate I&E mortality rates. For example, facility studies typically focus on a subset of fish species impacted by I&E mortality, resulting in some species being ignored, and thereby number of individuals lost to I&E mortality being underestimated. Due to the low number of replicate studies, estimating the magnitude of this underestimate is not possible. Moreover, studies often do not count early life stages of organisms that are difficult to identify. In addition, many of the I&E mortality studies used by the Agency were conducted over 30 years ago, prior to the improvement to aquatic conditions that have resulted from implementation of the Clean Water Act. In locations where water quality was degraded at the time of I&E mortality sampling relative to current conditions, the abundance and diversity of fish populations may have been depressed, resulting in low I&E mortality estimates. Therefore, use of these data may underestimate the magnitude of current I&E mortality losses. Alternatively, studies may have occurred in locations where local fish populations are currently lower than they were when the study occurred. Such a shift in fish populations may have occurred due to natural variability in populations, because of other anthropogenic effects (*i.e.,* pollution, over-harvesting, etc.), or because of competition from invasive species. In such cases, the use of these data may overestimate the magnitude of current I&E mortality losses.

The use of linear methods for projecting losses to fish and shellfish in the waterbody may also overstate or understate impacts. Nevertheless, EPA believes that the data from facility studies were sufficient to estimate the relative magnitude of I&E mortality losses nationwide. Exhibit VIII–2 presents EPA's estimates of baseline annual I&E mortality losses, and reductions to annual I&E mortality losses estimated to occur under various regulatory options. Option 3 results in the greatest reduction in I&E mortality, followed by Option 2, Option 1, and Option 4, respectively. EPA did not model the entrainment reductions for Option 1 and Option 4 because these are based on site-specific determinations of BTA, which are impossible to predict. While EPA does estimate potential ranges of costs for these site-specific determinations in section VII (though not as part of the primary cost estimates), EPA cannot estimate comparable ranges of monetized benefits because benefits are location specific and EPA has no way of predicting what entrainment technology would be adopted at any specific facility. However, EPA believes the entrainment reductions resulting from site-specific BTA determinations could be significant, depending on the technologies adopted.

VIII–2—Baseline I&E Mortality Losses and Reductions for All In-Scope Facilities by Regulatory Option

Loss mode	Baseline I&E losses	Reduction in losses by regulatory option			
		Option 1	Option 2	Option 3	Option 4
Individuals (millions)					
IM	517.46	421.62	500.44	504.14	413.70
EM	527,968.21	0.00	400,351.83	407,417.58	0.00
E Mortality	528,485.67	421.62	400,852.27	407,921.72	413.70
Age-One Equivalents (millions)					
IM	747.40	614.97	722.53	728.35	602.42
EM	1,441.52	0.00	1,259.02	1,285.20	0.00
I&E Mortality	2,188.92	614.97	1,981.55	2,013.55	602.42
Forgone Fishery Yield (million lbs)					
IM	15.21	11.99	14.86	14.93	11.86
EM	56.30	0.00	43.66	44.31	0.00
I&E Mortality	71.50	11.99	58.52	59.24	11.86

[93] Indirect losses account for about 9 percent of commercial and recreational harvest reductions at baseline.

VIII–2—BASELINE I&E MORTALITY LOSSES AND REDUCTIONS FOR ALL IN-SCOPE FACILITIES BY REGULATORY OPTION—Continued

Loss mode	Baseline I&E losses	Reduction in losses by regulatory option			
		Option 1	Option 2	Option 3	Option 4
Production Forgone (million lbs)					
IM	152.71	126.44	148.09	149.32	123.81
EM	485.07	0.00	393.39	406.88	0.00
I&E Mortality	637.78	126.44	541.48	556.20	123.81

Scenarios: Option 1 = IM limitations based on modified traveling screens for all facilities with flow greater than 2 million gallons per day (MGD); Option 2 = Intake flow commensurate with closed-cycle cooling for facilities that have a design intake flow of greater than 2 MGD and IM limitations based on modified traveling screens for all facilities with flow greater than 2 MGD; Option 3 = Intake flow commensurate with closed-cycle cooling for all facilities and IM limitations based on modified traveling screens for all facilities with flow greater than 2 MGD; Option 4 = IM limitations based on modified traveling screens for all facilities with flow greater than 50 million gallons per day (MGD).

Exhibit VIII–3 presents EPA's estimates of annual I&E mortality losses by option and by fish category. Estimates of annual forgone fishery yield include both direct losses to harvested species as well as indirect losses due to reductions in prey fish species. Because the vast majority of the biomass moving through food webs is lost due to low trophic transfer efficiency (*i.e.,* does not reach the higher trophic levels with direct use value to humans), the portion of I&E mortality losses with direct human use values (*i.e.,* those that contribute to forgone harvest) represent only a small percentage of all organisms suffering I&E mortality losses at CWIS. Neither forage species nor the unlanded portion of recreational and commercial species were assigned direct use values in this analysis, though losses in forage species did contribute to the overall losses in recreational and commercial species as noted above. Because the majority of annual I&E mortality losses include unharvested recreational and commercial fish and forage fish, considering nonuse values in the final Section 316(b) rule benefits analysis is particularly important.

EXHIBIT VIII–3—DISTRIBUTION OF ANNUAL BASELINE I&E MORTALITY LOSSES AND REDUCTIONS BY SPECIES CATEGORY AND REGULATORY OPTION, FOR ABSOLUTE LOSSES AND AGE-1 EQUIVALENTS

I&E loss metric	Baseline I&E losses	Reduction in losses by regulatory option			
		Option 1	Option 2	Option 3	Option 4
Individuals (millions)					
All Species	528,485.67	421.62	400,852.27	407,921.72	413.70
Forage Species	360,431.51	307.89	278,690.45	283,584.80	301.21
Commercial & Recreational Species	168,054.16	113.73	122,161.82	124,336.91	111.49
Commercial & Recreational Harvest	59.41	15.66	53.28	54.05	15.51
Lost Individuals with Direct Use Value (%)	0.01	3.71	0.01	0.01	3.75
Age-One Equivalents (millions)					
All Species	2,188.92	614.97	1,981.55	2,013.55	602.42
Forage Species	1,654.78	525.66	1,512.64	1,535.44	514.11
Commercial & Recreational Species	534.15	89.31	468.91	478.11	88.31
Commercial & Recreational Harvest (million fish)	59.41	15.66	53.28	54.05	15.51
A1E Losses with Direct Use Value (%)	2.71	2.55	2.69	2.68	2.57

Scenarios: Option 1 = IM limitations based on modified traveling screens for all facilities with flow greater than 2 million gallons per day (MGD); Option 2 = Intake flow commensurate with closed-cycle cooling for facilities that have a design intake flow of greater than 2 MGD and IM limitations based on modified traveling screens for all facilities with flow greater than 2 MGD; Option 3 = Intake flow commensurate with closed-cycle cooling for all facilities and IM limitations based on modified traveling screens for all facilities with flow greater than 2 MGD; Option 4 = IM limitations based on modified traveling screens for all facilities with flow greater than 50 million gallons per day (MGD).

D. National Benefits of Today's Considered Options

1. Overview

Economic benefits of the proposed options for in-scope facilities can be broadly defined into use and nonuse benefit categories of goods and services.

Use values include benefits that pertain to the use (direct or indirect) of affected fishery resources. Use value reflects the value of all current direct and indirect uses of a good or service. Direct use benefits can be further categorized according to whether or not affected goods and services are traded in the market (*e.g.* commercially-captured fish are traded, recreational catch is not). Likewise, indirect use benefits can be linked to either market or nonmarket goods and services. For example, reductions to I&E mortality losses of forage fish will enhance the biomass of species targeted for commercial (market) and recreational (nonmarket) uses.

Nonuse benefits are those benefits that are independent of any current or anticipated use of a resource. Nonuse benefits reflect human values associated with existence and bequest motives.

EPA estimated the economic benefits from national regulatory options using a range of valuation methods. Commercial fishery benefits were valued using market data. Recreational angling

benefits were valued using a benefits transfer approach. To estimate indirect use benefits from reduced I&E mortality losses to forage species, EPA used a simple trophic transfer model. This model translated changes in I&E mortality losses of forage fish into changes in the harvest of commercial and recreational species. All benefits for fish saved under today's proposed rule are estimates based on projected numbers of age-one equivalent fish, converted to harvestable age equivalents on a species-by-species basis for those commercial species analyzed.

EPA calculated the monetary value of use benefits of the national categorical regulatory options for existing facilities using two discount rate values: 3% and 7%. All dollar values presented are in 2009$. Because avoided fish deaths occur mainly in fish that are younger than harvestable age (eggs, larvae, and juveniles), the benefits from avoided I&E mortality would be realized typically 3–4 years after their avoided death. A detailed description of the approaches used to address this can be found in Appendix C of the EEBA.

Neither forage species nor the unlanded portion of recreational and commercial were assigned direct use values in this analysis. Their potential value to the public is derived from several alternative sources: Their indirect use as both food and breeding population for those fish that are harvested, the willingness of individuals to pay for the protection of fish based on a sense of altruism, stewardship, bequest, or vicarious consumption, and their support of ecosystem stability and function (nonuse benefits). To estimate a subset of nonuse benefits from reducing losses to forage species, and landed and unlanded commercial and recreational species, EPA explored benefits transfer from nonmarket valuation studies of nonuse values of aquatic ecosystem improvements. These efforts generated partial estimates of nonuse values for resource changes expected to result in the North Atlantic and Mid-Atlantic benefits regions from the proposed options, but EPA was unable to estimate reliable nonuse valuations for changes expected to result in other study regions. EPA is in the process of developing a stated preference survey to estimate total willingness to pay (WTP) for improvements to fishery resources affected by I&E mortality from in-scope 316(b) facilities (75 FR 42,438). However EPA did not have sufficient time to fully develop and implement this survey for the proposed regulation. EPA will issue a Notice of Data Availability pending completing survey implementation and data analysis. As a consequence of the challenges associated with estimating nonuse benefits, some non-monetized benefits are described only qualitatively or quantitatively.

2. Timing of Benefits

Discounting refers to the economic conversion of future benefits and costs to their present values, thereby accounting for the fact that individuals value future outcomes less than comparable near-term outcomes. Discounting enables a valid comparison of benefits and costs that occur across different time periods. For the analysis of the proposed options, monetized benefits are calculated in a manner that makes the timing comparable to the annualized cost estimates. The benefits of the proposed options are estimated as the typical benefits expected once the rule takes effect. The need to discount arises from two different delays in the realization of benefits.

First, facilities will not always achieve compliance in the same year that costs are incurred. Facilities will face regulatory requirements once the rule takes effect, but it will take time to make the required changes. It is assumed that facilities installing impingement technology will achieve compliance sooner than facilities installing cooling towers. Facilities installing only impingement technology are assumed to have an average compliance year of 2015, non-nuclear electric generating facilities installing towers have an average compliance year of 2020, and nuclear electric generating facilities and manufacturing facilities installing towers have an average compliance year of 2025. To account for the lag between the incurrence of costs and the realization of benefits, benefits are discounted to a greater extent compared to the costs.

Second, an additional time lag will result between technology implementation and increased fishery yields. This lag occurs because several years may pass between the time an organism is spared from I&E mortality and the time of its potential harvest. For example, a larval fish spared from entrainment (in effect, at age 0) may be caught by a recreational angler at age 3, meaning that a 3-year time lag arises between the incurred technology cost and the realization of the estimated recreational benefit. Likewise, if a 1-year-old fish is spared from impingement and is then harvested by a commercial waterman at age 2, there is a 1-year lag between the incurred cost and the subsequent commercial fishery benefit. To account for this growth period, EPA applied discounting by species groups in each regional study.

3. Recreational Fishing Valuation

a. Recreational Fishery Methods

To estimate recreational benefits of the proposed options, EPA developed a benefits transfer approach based on a meta-analysis of recreational fishing valuation studies designed to measure the various factors that determine willingness to pay for catching an additional fish per trip. Regional benefits are summarized as follows (see Chapter 7 of the EEBA document for details):

1. Estimate annual foregone catch of recreational fish (number of fish) attributable to I&E mortality under current conditions.

2. Estimate the marginal value per fish.

3. Multiply forgone catch by the marginal value per fish to estimate the total annual value of forgone catch.

4. Estimate the annual value of reductions in forgone catch attributable to the regulatory analysis options.

5. Discount benefits at 3% and 7% to reflect the time lag between I&E mortality reductions and increased harvests.

b. Estimated Benefits to Recreational Anglers

Decreasing I&E mortality increases the number of fish available to be caught by recreational anglers, thereby increasing angler welfare. Exhibit VIII–4 shows the estimated benefits resulting from reduced I&E mortality under today's options. The total annualized recreational fishing benefit for all regions, discounted at 3% (I&E mortality combined), ranges from $15.3 to $44.9 million; and the total for all regions, discounted at 7%, ranges from $13.9 to $33.3 million.

EXHIBIT VIII–4—ANNUAL RECREATIONAL FISHING BENEFITS FROM ELIMINATING OR REDUCING I&E MORTALITY LOSSES AT ALL IN-SCOPE FACILITIES BY REGULATORY OPTION

Regulatory Option	Increased harvest *(million fish)*	3% Discount rate *(million 2009$)*	7% Discount rate *(million 2009$)*
Baseline	26.79	$76.89	$75.64
Option 1	5.77	15.62	14.21
Option 2	23.55	43.52	32.40
Option 3	24.06	44.94	33.30
Option 4	5.65	15.34	13.94

Scenarios: Baseline = Eliminating Baseline I&E Mortality Losses; Option 1 = IM limitations based on modified traveling screens for all facilities with flow greater than 2 million gallons per day (MGD); Option 2 = Intake flow commensurate with closed-cycle cooling for facilities that have a design intake flow of greater than 2 MGD and IM limitations based on modified traveling screens for all facilities with flow greater than 2 MGD; Option 3 = Intake flow commensurate with closed-cycle cooling for all facilities and IM limitations based on modified traveling screens for all facilities with flow greater than 2 MGD; Option 4 = IM limitations based on modified traveling screens for all facilities with flow greater than 50 million gallons per day (MGD).

4. Commercial Fishing Valuation

Reductions in I&E mortality at cooling water intake structures are expected to benefit the commercial fishing industry. By reducing the number of fish killed, the number of fish available for harvest is expected to increase. The next section summarizes the methods EPA used to estimate benefits to the commercial fishing sector. The following section presents the estimated commercial fishing benefits.

a. Commercial Fishing Valuation Methods

The total loss to the economy from I&E mortality impacts on commercially harvested fish species is determined by the sum of changes in both producer and consumer surplus. EPA assumed a linear relationship between stock and harvest, such that if 10% of the current commercially targeted stock were harvested, then 10% of the commercially targeted fish lost to I&E mortality would have been harvested, absent I&E mortality. The percentage of fish harvested is based on data of historical fishing mortality rates.

Producer surplus provides an estimate of the economic damages to commercial fishers, but welfare changes can also be expected to accrue to final consumers of fish and to commercial consumers (including processors, wholesalers, retailers, and middlemen) if the projected increase in harvest is accompanied by a change in price. The analysis of market impacts involves the following steps (see Chapter 6 of the EEBA for details):

1. Assessing the net welfare changes for fish consumers due to changes in fish harvest and the corresponding change in fish price.

2. Assessing net welfare changes for fish harvesters due to the change in total revenue, which could be positive or negative.

3. Calculating the increase in net social benefits when the fish harvest changes by combining the welfare changes for consumers and harvesters.

For a more detailed description of the methodology for commercial fishing, see Chapter 6 of the EEBA.

b. Commercial Fishing Valuation Results

Exhibit VIII–5 presents the estimated annual commercial fishing benefits attributable to the proposed options. The results reported include the total reduction in losses in pounds of fish, and the value of this reduction discounted at 3%, and 7%. With a 3% discount rate, total estimated annualized commercial fishing benefits for the U.S., range from $1.0 to $4.5 million. Applying a 7% rate, these benefits range from $0.9 to $3.3 million. EPA estimated the expected price changes from eliminating baseline levels of I&E mortality losses and found them to be small, ranging from 0.13 percent to 2.1 percent.

EXHIBIT VIII–5 ANNUAL COMMERCIAL FISHING BENEFITS FROM ELIMINATING OR REDUCING I&E MORTALITY LOSSES AT ALL IN-SCOPE FACILITIES BY REGULATORY OPTION

Regulatory Option	Increased harvest *(million fish)*	3% Discount rate *(million 2009$)*	7% Discount rate *(million 2009$)*
Baseline	32.62	$8.05	$7.89
Option 1	9.89	0.99	0.89
Option 2	29.72	4.47	3.31
Option 3	29.99	4.52	3.34
Option 4	9.86	0.99	0.89

Scenarios: Baseline = Eliminating Baseline I&E Mortality Losses; Option 1 = IM limitations based on modified traveling screens for all facilities with flow greater than 2 million gallons per day (MGD); Option 2 = Intake flow commensurate with closed-cycle cooling for facilities that have a design intake flow of greater than 2 MGD and IM limitations based on modified traveling screens for all facilities with flow greater than 2 MGD; Option 3 = Intake flow commensurate with closed-cycle cooling for all facilities and IM limitations based on modified traveling screens for all facilities with flow greater than 2 MGD; Option 4 = IM limitations based on modified traveling screens for all facilities with flow greater than 50 million gallons per day (MGD).

5. Nonuse Benefits

Aquatic organisms without any direct uses account for the majority of cooling water intake structure losses (Exhibit VIII–6.). Although individuals do not use these resources directly, they may value changes in their status or quality. To assess the public policy significance of the ecological gains from the national categorical regulatory options for existing facilities, EPA developed a benefit transfer approach to partially monetize nonuse benefits associated with reductions in I&E mortality of fish, shellfish, and other aquatic organisms under the categorical regulatory options for the North Atlantic and Mid-Atlantic benefits regions. EPA applied estimated values from a study occurring in Rhode Island; these estimates are likely to be

representative of nonuse values held by individuals residing in the Northeast US, and less accurate in other regions. EPA was unable to identify comparable studies occurring in other regions which could be used to estimate nonuse values. Chapter 8 of the EEBA provides further detail on this analysis.

a. Nonuse Valuation Methods

The preferred techniques for estimating total resource values (use plus nonuse) are to use values from the existing studies or conduct original stated preference surveys. There are many studies in the environmental economics literature that quantify benefits or willingness to pay (WTP) associated with various types of water quality and aquatic habitat changes. However, none of these studies allows the isolation of non-market WTP associated with quantified reductions in fish losses for forage fish. Most available studies estimate WTP for broader, and sometimes ambiguously defined, policies that simultaneously influence many different aspects of aquatic environmental quality and ecosystem services, but for which WTP associated with fish or aquatic life alone cannot be identified. Stated preference methods rely on surveys which ask people to state their willingness to pay (WTP) for particular ecological improvements, such as increased protection of aquatic species or habitats with particular attributes. EPA is in the process of developing a stated preferences survey to estimate total willingness to pay (WTP) for improvements to fishery resources affected by I&E mortality from in-scope 316(b) facilities. The survey will provide estimates of total values, will allow estimates of value associated with specific choice attributes (following standard methods for choice experiments), and will also allow the flexibility to provide insight into the relative importance of use versus nonuse values in the 316(b) context. However EPA did not have sufficient time to fully develop and deploy this survey and derive reliable estimates of the monetary value of reducing those impacts at the national level. Benefit transfer of values from existing stated preference studies was used by EPA in the absence of an original study.

EPA identified a recent study conducted by Johnston *et al.,* (2009) that is closely related to the 316(b) policy context. Both Johnston *et al.,* (2009) and the present context address policy changes that increase the number of forage fish in aquatic habitat with unknown effects on overall fish populations. Originally developed for a case study addressing Rhode Island residents' preferences for the restoration of migratory fish passage over dams in the Pawtuxet and Wood-Pawcatuck watersheds of Rhode Island, Johnston *et al.,* (2009) estimates nonuse values by asking respondents to consider changes in ecological indicators reflecting quantity of habitat, abundance of wildlife, ecological condition, and abundance of migratory fish species. Within this study, estimated values were based on the relative change in abundance of fish species impacted to the greatest extent by restoration.

Estimated benefit functions from the Johnston *et al.,* (2009) choice experiment survey allows one to distinguish benefits associated with resource uses from those associated primarily with nonuse motives. Within the benefit transfer application, WTP is quantified for increases in non-harvested fish alone, based on the implicit price for migratory fish changes. This transfer holds all effects related to identifiable human uses constant (*e.g.,* effects on catchable fish, public access, observable wildlife, etc.). The remaining welfare effect—derived purely from effects on forage fish with little or no direct human use—may therefore be most accurately characterized as a nonuse benefit realized by households.

The estimation of nonuse values involved the following steps:

1. Use a variant of the Johnston *et al.,* (2009) model (the survey variant which characterizes effects on the number of migratory fish passing upstream) to estimate household WTP per percent increase in the number of fish in a given watershed.

2. Calculate the relative change in abundance for the fish species impacted to the greatest extent by the regulation. By comparing increases in age-1 equivalent fish to estimates of biomass at species' carrying capacity, EPA found that of all species with habitats inside the boundaries of the North Atlantic and Mid-Atlantic benefits regions, winter flounder is likely to experience the largest percent change in population. This species is harvested; however fish and commercial species may be forage during early life-stages and have nonuse values.

3. Estimate total household WTP by applying model results for WTP per percentage to estimated winter flounder losses. Total regional WTP is the product of household WTP and the number of households within the affected region (see Chapter 8 of the EEBA for details.)

b. Estimated Nonuse Benefits for the North Atlantic and Mid Atlantic Regions

EPA expects that decreasing I&E mortality will lead to increased fish abundance in affected waterbodies, thus increasing nonuse benefits. Exhibit VIII–6 shows the benefits that would result from reducing I&E mortality losses through today's proposed options. Estimates of WTP were calculated based on the increase in age-1 equivalent winter flounder relative to estimated current biomass. Discounted at 3%, the total annualized nonuse benefit for the North Atlantic and Mid-Atlantic regions, ranges from $0.5 to $75.5 million. When discounted at 7%, annualized nonuse benefits range from $0.5 to $58.5 million.

EXHIBIT VIII–6—ANNUAL NONUSE BENEFITS FROM ELIMINATING OR REDUCING I&E MORTALITY LOSSES AT ALL IN-SCOPE FACILITIES BY REGULATORY OPTION

Regulatory option	Winter flounder I&E losses (million A1E)	Increased winter flounder age-1 equivalent abundance relative to virgin biomass (%)	3% Discount rate (millions 2009$)	7% Discount rate (millions 2009$)
Baseline	6.50	6.56	$128.64	$130.78
Option 1	0.03	0.03	0.52	0.48
Option 2	5.32	5.37	72.09	55.93
Option 3	5.57	5.63	75.48	58.52

EXHIBIT VIII–6—ANNUAL NONUSE BENEFITS FROM ELIMINATING OR REDUCING I&E MORTALITY LOSSES AT ALL IN-SCOPE FACILITIES BY REGULATORY OPTION—Continued

Regulatory option	Winter flounder I&E losses (million A1E)	Increased winter flounder age-1 equivalent abundance relative to virgin biomass (%)	3% Discount rate (millions 2009$)	7% Discount rate (millions 2009$)
Option 4	0.03	0.03	0.52	0.48

Scenarios: Baseline = Eliminating Baseline I&E Mortality Losses; Option 1 = IM limitations based on modified traveling screens for all facilities with flow greater than 2 million gallons per day (MGD); Option 2 = Intake flow commensurate with closed-cycle cooling for facilities that have a design intake flow of greater than 2 MGD and IM limitations based on modified traveling screens for all facilities with flow greater than 2 MGD; Option 3 = Intake flow commensurate with closed-cycle cooling for all facilities and IM limitations based on modified traveling screens for all facilities with flow greater than 2 MGD; Option 4 = IM limitations based on modified traveling screens for all facilities with flow greater than 50 million gallons per day (MGD).

6. Threatened and Endangered Species

This section summarizes methods and results of EPA's analysis of benefits from improved protection of threatened and endangered (T&E) species from the national categorical regulatory options considered in today's Proposal. Chapter 5 of the EEBA provides further detail on this analysis.

For T&E species, mortality due to I&E mortality from CWISs may represent a substantial portion of annual reproduction because of the reduced population levels that cause a species to be protected. Consequently, I&E mortality may either lengthen recovery time, or hasten the demise of these species. Adverse effects of CWIS on T&E species may occur in several ways:

- Populations of T&E species may suffer direct harm as a consequence of I&E mortality
- T&E species may suffer indirect harm if CWIS alters food webs
- CWIS may alter habitat critical to the long-term survival of T&E species (*e.g.,* thermal discharges associated with once through cooling)

Consequently, EPA believes that 316(b) regulation may help preserve a number of threatened and endangered species.

a. Qualitative Assessment of I&E Mortality Impacts to T&E Species

By definition, T&E species are characterized by low population levels. As such, it is unlikely that these species are recorded in I&E mortality monitoring studies which sample only a portion of all I&E mortality losses. Thus, losses are difficult to identify and quantify within a framework developed for common species. Consequently, EPA developed a qualitative methodology to estimate the number of T&E species affected by I&E mortality.

To qualitatively assess the potential for CWIS impacts on aquatic T&E species, EPA constructed a database that assessed the geographical overlap of CWIS and habitat used by aquatic T&E species. This database identified the number of T&E species potentially impacted by each in-scope 316(b) facility, and the number of facilities potentially impacting each T&E species. Additional details can be found in Chapter 5 of the EEBA document.

Using this database, EPA found 89 federally-listed T&E species that overlap with at least one in-scope 316(b) CWIS (Exhibit VIII–7) Species included freshwater, marine, and anadromous fish, freshwater mussels, and sea turtles. On average, the habitat of each T&E species overlapped with 20 in-scope facilities (Exhibit VIII–7), suggesting that the regulation of 316(b) facilities may have substantial positive benefits on ensuring the long-term sustainability and recovery of T&E species.

EXHIBIT VIII–7—NUMBER OF IN-SCOPE 316(B) CWIS WITHIN T&E SPECIES HABITAT ON A PER-SPECIES BASIS

Subset of affected species [1] [2]	Species	Interactions [3]	Facilities per T&E species [4]	
			Avg	Max
All T&E Species	88	1,734	19.70	135
Sea Turtles	6	652	108.67	135
T&E Freshwater Mussels	43	836	19.44	85
T&E Anadromous Fish	13	115	8.85	64
T&E Freshwater Fish	21	64	3.05	7
T&E Marine Fish	3	17	5.67	11

[1] T&E species included species of concern and species under review for listing by the US Fish and Wildlife Service (freshwater) or NOAA National Marine Fisheries Service (marine). Only species overlapping with a minimum of one CWIS are included.
[2] Two species of coral are included in the 'All Species' category, and not in any subcategory.
[3] Each interaction represents an overlap between the range of a T&E species and CWIS.
[4] Avg = average, Max = maximum.

b. Quantitative Assessment of I&E Mortality Impacts to T&E Species

Although difficult to observe and quantify, EPA identified 15 T&E species with confirmed I&E mortality losses. In addition to documented species-level instances of T&E mortality, EPA identified I&E mortality losses at the level of genera [94] when these genera contain a T&E species whose habitat range overlapped the reporting facility's CWIS. Although these are not confirmed I&E mortality losses of T&E species, they provide evidence that additional T&E species are likely to be directly affected by I&E mortality. A total of 19 genus-level matches were reported, suggesting that the 15 T&E species suffering I&E mortality losses may be an underestimate.

[94] Genera is the plural of genus. Genus is the rank superior to species in taxonomic biological classification. For example, the genus of Atlantic salmon (*Salmo falar*) is *Salmo.*

Of the 15 federally-listed T&E species for which losses were documented within I&E mortality studies, EPA was able to quantify losses for 2 species. Data were either qualitative or of insufficient quality to quantify regional losses for the remaining 13 federally-listed T&E species. EPA also quantified losses for the American Paddlefish (*Polyodon spathula*), listed as threatened or endangered on several state lists, using facility I&E mortality loss studies. Exhibit VIII–8 presents EPA's estimates of baseline annual I&E mortality losses, and reductions to I&E mortality losses estimated to occur under various regulatory options.

EXHIBIT VIII–8—BASELINE ANNUAL I&E MORTALITY LOSSES FOR T&E SPECIES AND REDUCTIONS FOR ALL IN-SCOPE FACILITIES BY REGULATORY OPTION (A1ES)

Species	Value	Baseline	Option 1	Option 2	Option 3	Option 4
Pallid Sturgeon	Use, Nonuse	88	73	85	86	72
American Paddlefish	Use, Nonuse	17,628	8,631	15,946	16,317	8,420
Topeka Shiner	Nonuse	3,669	3,069	3,546	3,581	2,994
Total		21,384	11,773	19,577	19,984	11,486

Scenarios: Baseline = Baseline I&E Mortality Losses; Option 1 = IM limitations based on modified traveling screens for all facilities with flow greater than 2 million gallons per day (MGD); Option 2 = Intake flow commensurate with closed-cycle cooling for facilities that have a design intake flow of greater than 2 MGD and IM limitations based on modified traveling screens for all facilities with flow greater than 2 MGD; Option 3 = Intake flow commensurate with closed-cycle cooling for all facilities and IM limitations based on modified traveling screens for all facilities with flow greater than 2 MGD; Option 4 = IM limitations based on modified traveling screens for all facilities with flow greater than 50 million gallons per day (MGD).

I&E mortality is only one of many factors that adversely affect T&E species. Estimating total population impacts from changes in I&E losses requires estimates of current populations of these fish and estimates of other anthropogenic effects which were not readily available for all T&E species with quantified I&E mortality losses at the time of this analysis. Therefore, EPA was unable to quantify effects on T&E population from the 316(b) regulation.

c. Valuation Methods of T&E Fish Species

EPA believes that for T&E species, the primary value is non-use value. Harvest of these species is prohibited (or at least restricted), reflecting a societal judgment that protection and preservation of these species is of greater value than harvest. As noted above, EPA had sufficient data from I&E mortality studies to quantify I&E mortality loss estimates for three T&E species (Exhibit VIII–8). EPA applied estimates from a Random Utility Model (RUM) analysis conducted for the suspended 316(b) Phase II regulation to evaluate recreational fishing benefits for I&E loss reductions for two of these species. EPA applied transfer values from this analysis to monetize I&E mortality losses for these species (see Chapter 5 for details). EPA emphasizes that nonuse values for T&E fish species are likely to be significantly greater than any use values, and these EPA was not able to quantify. With this caveat, the results of the analysis of recreational fishing benefits for two T&E species are shown below.

d. Estimated Monetary Benefits From Reduced Mortality of T&E Fish Species

Using a 3% discount rate, total annualized use benefits for the two T&E species with monetized I&E mortality losses are estimated to range from $0.5 to $0.7 million. Applying a 7% discount rate, annualized benefits range from $0.4 to $0.6 million.

EXHIBIT VIII–9—ANNUAL USE BENEFITS FROM ELIMINATING OR REDUCING I&E MORTALITY LOSSES OF T&E SPECIES AT ALL IN-SCOPE FACILITIES BY REGULATORY OPTION

Regulatory option	Increased harvest *(number of fish)*	3% Discount rate *(million 2009$)*	7% Discount rate *(million 2009$)*
Baseline	17,715.55	$1.14	$1.14
Option 1	8,704.08	0.50	0.45
Option 2	16,030.56	0.72	0.56
Option 3	16,403.11	0.72	0.55
Option 4	8,491.59	0.49	0.44

Note: Values are included for pallid sturgeon and paddlefish in the Inland region.

Scenarios: Baseline = Eliminating Baseline I&E Mortality Losses; Option 1 = IM limitations based on modified traveling screens for all facilities with flow greater than 2 million gallons per day (MGD); Option 2 = Intake flow commensurate with closed-cycle cooling for facilities that have a design intake flow of greater than 2 MGD and IM limitations based on modified traveling screens for all facilities with flow greater than 2 MGD; Option 3 = Intake flow commensurate with closed-cycle cooling for all facilities and IM limitations based on modified traveling screens for all facilities with flow greater than 2 MGD.; Option 4 = IM limitations based on modified traveling screens for all facilities with flow greater than 50 million gallons per day (MGD).

EPA notes that the benefit values presented in Exhibit VIII–9 represent only a fraction of values for T&E species potentially affected by the proposed regulation: the Agency was able to obtain use values for only a small subset of all affected T&E species. Moreover, because of the nature of T&E species, even a small increase in population may yield economic and ecological benefits (*e.g.,* Richardson and Loomis 2008, Huppert *et al.,* 2004; Berrens *et al.,* 1996)

e. Valuation Methods for T&E Sea Turtles

In addition to estimating values of T&E fish with quantitative estimates of I&E mortality losses, EPA estimated the WTP for sea turtle conservation. In this analysis, EPA applied estimates from a

study using a stated preference valuation approach to estimate total economic value of a management program that reduces the risk of extinction of loggerhead sea turtles (Whitehead 1993).

Although I&E mortality is relatively low compared to mortality from shrimp trawling and other fisheries (Plotkin 1995), it is known that low levels of turtle mortality during juvenile and subadult life stages can have a substantial effect on population growth (Crouse *et al.,* 1987). EPA believes that the marginal decrease in extinction probability of sea turtles due to 316(b) regulatory options is likely to be at least 0.01, or a 1% decrease in the probability of extinction over 25 years. This assessment is based upon reports that I&E mortality may result in the loss of more than 100 turtles per year, and because turtle population growth rates are known to be sensitive to changes in juvenile and subadult life stages (Crouse *et al.,* 1987).

f. Estimated Monetary Benefits From Reduced Mortality of T&E Sea Turtles

The U.S. range of loggerhead sea turtles includes the Gulf of Mexico, South Atlantic, Mid-Atlantic, and North Atlantic 316(b) regions (USFWS 2010). To calculate national WTP for an increased 25-year survival probability of loggerhead sea turtles, EPA assumed the affected population to include households in states with in-scope 316(b) facilities that occur within loggerhead sea turtle habitat. Using this assumption, EPA determined 53.4 million households would be willing to pay for improved protection of loggerhead sea turtles. Although incidences of mortality have been reported at facilities in California, Texas, Florida, South Carolina, North Carolina, and New Jersey EPA does not have sufficient information to quantify total sea turtle losses due to intakes, or the reductions in such losses that might occur from the various options. But as an illustrative example, assuming that the survival probability of loggerhead sea turtles over 25 years was increased by 1%, and applying a mean household value of $0.35 (2009$, see the EEBA Chapter 5), the monetized value would be $16.6 million and $16.0 million using discount rates of 3% and 7%, respectively. Because EPA does not currently have accurate national estimates of I&E mortality for turtle species, nor are population models available that estimate the effect of 316(b) regulation on population size and extinction risk, these estimates are presented only as an illustrative example, and are not included in national totals.

g. Other Indications of Society's WTP for Protection of T&E Species

Many sources provide information that indicates that society places significant value on protecting T&E species. These include, but are not limited to:

- The Endangered Species Act of 1973 which provides for the conservation of T&E species of fish and wildlife. To comply with this law the federal government and state governments spent a total of $467.6 million during fiscal year 2008 on protection of federally listed T&E species with habitat overlapping CWIS.
- Restrictions placed on the habitat occupied by T&E species. For example, water diversions on the San Joaquin-Sacramento River delta, in place to protect the Delta Smelt (*Hypomesus transpacificus*), limit the extraction of water for drinking and agriculture.
- The willingness of individuals to volunteer their time to conserve T&E species. For example, dozens of organizations recruit thousands of volunteers every year to participate in sea turtle conservation and research projects; volunteers are often required to undergo substantial training and commit to long hours.

While costs to replace, protect or enhance stocks, and costs to users affected by efforts to conserve stocks are not direct measures of economic benefits, they indicate that society is willing to pay significant sums to protect and restore populations of T&E species. Although I&E mortality is only one of many stressors on these species, reducing the magnitude of these losses may contribute to the recovery of populations over time, thereby eliminating some costs associated with conserving threatened and endangered species.

7. Assessment of Thermal Discharge Impacts

Since thermal discharges are a product of once-through cooling water systems, the impacts of thermal discharges are a relevant consideration when assessing appropriate technologies to reduce the effects of cooling water intakes. Thermal pollution has long been recognized to cause harm to the structure and function of aquatic ecosystems. Concerns about the impacts of thermal discharges are addressed by provisions of CWA Section 316(a) regulations. NPDES permits are required to limit thermal discharges in order to ensure that that there is no appreciable harm to a balanced, indigenous population of shellfish, fish and wildlife. Permit requirements, however, may not totally eliminate all adverse impacts in all cases. In addition to reducing total I&E mortality, closed cycle cooling reduces thermal pollution. Most retrofit installations of cooling towers at electric generating facilities have been required by NPDES permits for the sole purpose of reducing thermal discharges.

EPA did not quantify nationally the impacts of thermal discharges. However, numerous studies have shown that thermal discharges may substantially alter the structure of aquatic communities by modifying photosynthetic, metabolic, and growth rates. Thermal discharges also harm aquatic life by reducing levels of dissolved oxygen, altering the location and timing of fish behavior such as spawning, aggregation, and migration, and may cause thermal shock-induced mortality for some species. Adverse temperature effects may also be more pronounced in aquatic ecosystems that are already subject to other environmental stressors such as high levels of biochemical oxygen demand, sediment contamination, or pathogens. Within mixing zones, which often extend several miles downstream from outfalls, thermal discharges may impair efforts to restore and protect the waterbody. For example, permit requirements to limit nitrogen discharges in a watershed, and thereby reduce harmful algal blooms, may be counteracted by thermal discharges which promote growth of harmful algae. Thermal discharges may have indirect effects on fish and other vertebrate populations through increasing pathogen growth and infection rates.

Thermal discharges may thus alter the ecological services, and reduce the benefits, of aquatic ecosystems that receive heated effluent. The magnitude of thermal effects on ecosystem services is related to facility-specific factors, including the volume of the waterbody from which cooling water is withdrawn and returned, other heat loads, the rate of water exchange, the presence of nearby refugia, and the assemblage of nearby fish species. Again, EPA emphasizes that thermal impacts are supposed to be minimized through implementation of Section 316(a), but to the extent that any impacts remain after the requirements in 316(a) have been satisfied, replacing once-through cooling with closed-cycle cooling may provide additional benefits.

8. National Monetized Benefits

Quantifying and monetizing reductions in I&E mortality losses due to

the regulatory options is extremely challenging. National benefit estimates are subject to uncertainties inherent in valuation approaches used to assess the benefits categories (See Chapters 5, 6, 7, and 8 of the EEBA document.). The combined effect of these uncertainties is of unknown magnitude or direction—that is, the estimates may over- or understate the anticipated national-level benefits. While EPA has no data to indicate that the results for each benefit category are atypical or unreasonable, EPA believes that some potentially significant benefit categories have not been fully monetized, and thus the national monetized benefits presented below likely underestimate total benefits, challenging the Agency's ability to base BTA decision making on the relationship of quantified costs and benefits alone.

Exhibit VIII–10 presents EPA's estimates of the partial monetized benefits from I&E mortality reduction of the considered regulatory options. These monetized values represent use values from increased commercial and recreational catch, recreational fishing benefits from increased catch of threatened and endangered species, and nonuse values associated with an increase in fish abundance (those fish that are not caught) in the North and Mid-Atlantic benefit regions. Partial estimated benefits from reducing I&E mortality under the proposed rule and alternative options range from $17.3 to $125.6 million (2009$) per year, discounted at 3%, and from $15.8 to $95.7 million (2009$) per year when discounted at 7%. EPA was not able to fully monetize the benefits for this proposal. Thus, the estimates presented represent a conservative (*i.e.* low) estimate of total regulatory benefits.

EXHIBIT VIII–10—SUMMARY OF NATIONAL BENEFITS FOR ALL IN-SCOPE FACILITIES BY REGULATORY OPTION

Regulatory option	Monetized benefit categories				
	Recreational fishing	Commercial fishing	Nonuse	T&E Species [a]	Total
3% Discount Rate (Millions 2009$)					
Baseline	76.89	8.05	12.64	1.14	214.72
Option 1	15.62	0.99	0.52	0.50	17.63
Option 2	43.52	4.47	72.09	0.72	120.79
Option 3	44.94	4.52	75.48	0.72	125.65
Option 4	15.34	0.99	0.52	0.49	17.33
7% Discount Rate (Millions 2009$)					
Baseline	75.64	7.89	130.78	1.14	215.45
Option 1	14.21	0.89	0.48	0.45	16.04
Option 2	32.40	3.31	55.93	0.56	92.20
Option 3	33.30	3.34	58.52	0.55	95.71
Option 4	13.94	0.89	0.48	0.44	15.76

[a] Benefits estimates for T&E species are restricted to recreational fishing benefits from increased catch of T&E species. They do not include benefits for reduced mortality of T&E sea turtles and other nonuse values associated with T&E species.

Scenarios: Baseline = Eliminating Baseline I&E Mortality Losses; Option 1 = IM Everywhere; Option 1 = IM limitations based on modified traveling screens for all facilities with flow greater than 2 million gallons per day (MGD); Option 2 = Intake flow commensurate with closed-cycle cooling for facilities that have a design intake flow of greater than 2 MGD and IM limitations based on modified traveling screens for all facilities with flow greater than 2 MGD; Option 3 = Intake flow commensurate with closed-cycle cooling for all facilities and IM limitations based on modified traveling screens for all facilities with flow greater than 2 MGD; Option 4 = IM limitations based on modified traveling screens for all facilities with flow greater than 50 million gallons per day (MGD).

E. Uncertainty and Limitations

EPA recognizes that its estimates of ecological and economic benefits projected to occur under regulation are impacted by uncertainty at many levels (uncertainty and limitations are discussed in detail in Chapters 2, 3, 4, 5, 6, 7, and 8). Moreover, due to incomplete data availability, and limited resources, the Agency recognizes that there are limitations to the analyses presented above and in the EEBA. Examples of uncertainty and limitations include, but are not limited to:

- Not all ecological goods and services impacted by CWIS at in-scope 316(b) facilities are modeled or monetized, suggesting that the total benefits of regulation may be underestimated. For example, potential increases to ecosystem stability that may occur as a result of regulation is not explicitly estimated nor monetized, though it is difficult to parse out what exactly is or is not included in WTP estimates for non-use values, which were included for the North Atlantic and Mid-Atlantic regions.
- When particular ecological goods and services are monetized, data is not always available at a national scale. For example, EPA was able to estimate nonuse benefits of I&E mortality reductions only within the North and Mid-Atlantic regions, suggesting that nonuse values are significantly underestimated.
- EPA makes simplifying assumptions that allow for I&E mortality losses and benefits to be estimated on a national scale. For example, EPA assumes that I&E mortality losses from model facilities are representative of all facilities within a region. The effect of these assumptions are unknown, and may lead to over- or under-estimates of modeled losses and benefits. However, EPA notes that the age of the studies and likely improvements to waters make them less representative of current conditions.
- EPA relies on biological and economic data of various scope, duration, and date to estimate regional and national baseline and benefits. The effect of these various differences on total regional and national benefits is uncertain.
- EPA developed methodologies to estimate regional and national baselines and benefits of 316(b) regulation. As such, location- and species-specific quantitative estimates may not be precise. Overall, however, EPA believes its approach is valid for regional and national-scale analyses that incorporate a large number of facilities and species.

Overall, EPA recognizes many sources of uncertainty in its models, and is aware of the limitations of analysis. However, EPA has used the best available scientific and economic methodologies to partially monetize benefits using available resources. As noted above, EPA expects to improve its benefits estimates by incorporating the results of a national survey of WTP to protect fish and aquatic resources into the analysis for the final rule. Because EPA was only able to partially monetize non-use benefits, EPA expects that true benefits are greater than the estimates presented here.

IX. Implementation

The following sections describe how the Agency expects the proposed rule requirements to be implemented.

A. How would the proposed requirements be applied?

The requirements of today's proposal would be applied to individual facilities through NPDES permits issued by the EPA or authorized States under Section 402 of the Clean Water Act. Today's proposed requirements would apply to each cooling water intake structure located at a facility subject to the requirements. In cases where a facility has more than one cooling water intake structure, and each cooling water intake structure provides cooling water to one or more generating or manufacturing units, the proposed requirements would apply to each cooling water intake structure individually and compliance would be required at each cooling water intake structure.

B. When would affected facilities be required to comply?

These promulgated regulations would become effective sixty (60) days after the date of publication in the **Federal Register**. After the effective date of a regulation, permitting authorities often allow facilities some time period to come into compliance. As proposed, facilities would have to comply with the impingement mortality requirements as soon as possible. Facilities may request additional time (not to exceed eight years as described below) to comply with the requirements for impingement mortality. With respect to entrainment requirements, under the proposal, existing facilities must comply as soon as possible under a schedule of compliance established by the permitting authority.

EPA found during site visits that the vast majority of facilities indicated they could comply with the impingement requirements of the Phase II rule within a single permit term (5 years), with most sites needing less time and some sites needing slightly more. For example, facilities that already have traveling screens should be able to modify the existing traveling screens, add fish return systems, conduct necessary testing, and achieve the IM limits within a few years. On the other hand, EPA identified certain technical and logistical issues at some facilities that may warrant additional time, such as replacing intake structures to utilize wedgewire screens, adding additional intake bays to reduce intake velocity, or pilot testing of other technologies. As discussed in section 6, the need for outages by multiple facilities in one geographic area would need to be coordinated so as to minimize any impacts on the consistency and reliability of power generation; this could also result in the need for slightly more time. In these circumstances EPA expects a facility could reasonably require as long as 8 years to attain compliance.

For those existing facilities that will be subject to both impingement mortality and entrainment mortality requirements, the Director should take this into account when establishing a deadline for compliance, which may also result in the facility needing more time to comply with the IM requirements. For example, if a facility plans to retrofit to wet cooling towers to both reduce entrainment mortality and to use the resulting lower intake velocity to comply with requirements for impingement mortality, the Director may be able to allow for compliance with the IM requirements to extend to the same schedule as the entrainment mortality requirements. However, where the Director determines a facility would need longer than 8 years to comply with the EM requirements established by the Director, the proposed rule would not allow the compliance schedule for IM to extend beyond 8 years. EPA recognizes that this limitation may penalize facilities that might install cooling towers to meet both IM and EM requirements but are unable to complete installation within 8 years. EPA requests comment on this limitation.

The Director would have the discretion to implement a shorter (*i.e.,* more stringent) timeline for compliance, but in no event should the Director allow a compliance schedule to extend beyond the dates specified at § 125.93. Furthermore, EPA expects today's proposal gives advance notice to affected facilities what the Agency's expectations are regarding compliance schedules.

The record demonstrates that biological organisms subject to impingement and entrainment from cooling water intake structures may vary considerably from site to site with respect to types of species, quantity of organisms, distribution of life stages, feeding habits, and other factors. As a result, EPA envisions that each facility subject to today's proposal would study available technologies and operational measures, and subsequently install, incorporate and optimize the technology most appropriate for each site. EPA believes the proposed § 125.93 affords flexibility for a reasonable amount of time to conduct biological studies, assess and select appropriate technologies, apply for necessary permits, complete construction, and optimize the technologies' performance. The permitting authority would establish any additional interim milestones within these timelines in accordance with the existing NPDES provisions at § 122.47.

C. What are my requirements?

As proposed, all existing facilities subject to the proposed rule that withdraw a DIF of greater than two MGD would be required to comply with the impingement mortality requirements at § 125.94(b). EPA estimates that 1262 facilities would be subject to impingement mortality requirements. As many as 93 percent of electric generators and 73 percent of manufacturers already employ traveling or other intake screens which could be modified to meet today's proposed requirements. In addition, 374 facilities already have full or partial cooling towers, and most of these facilities already have a maximum intake velocity of less than 0.5 feet per second. As a result, half of all manufacturers and more than three-fourths of all electric generators may already meet some or all of today's proposed requirements for impingement mortality.

To provide flexibility in meeting proposed rule IM requirements, EPA is offering facilities two options for compliance with IM requirements. Facilities may install technologies and demonstrate that they are meeting the impingement mortality restrictions at § 125.94(b)(1), or demonstrate compliance with the monthly and annual intake velocity standards as described at § 125.94(b)(2). As discussed in Section VI, intake velocity is an important parameter for minimizing impingement and therefore reducing impingement mortality. Data in the record demonstrate that facilities with a maximum intake velocity of 0.5 feet per second significantly reduce the potential for impingement and impingement mortality to a level equal

to or better than the impingement mortality restrictions. EPA is therefore proposing an alternative standard that would allow facilities to demonstrate to the Director that either the maximum design intake velocity, or the maximum actual intake velocity as it passes through the structural components of a screen measured perpendicular to the mesh (under § 125.94(b)(2)(i)) or through the opening of the intake (under § 125.94(b)(2)(ii)), will not exceed 0.5 feet per second.

Under either option for compliance with the Impingement Mortality standard, facilities that withdraw water from an ocean or estuary would also be required to reduce IM of shellfish to a level commensurate with properly deployed barrier nets. EPA expects passive screens would meet or exceed this level of performance, and has identified passive screens in the proposed regulations as being pre-approved for purposes of meeting this requirement. Also, under either option, facilities would be required to ensure that their intakes are structured so as to avoid entrapment (*i.e.,* organisms being trapped in an intake bay or canal and unable to escape). Facilities with traveling screens located in a forebay would be expected to install fish handling and return systems to meet this requirement. EPA expects passive screens such as cylindrical wedgewire would also meet this requirement.

In addition, facilities would be required to meet entrainment mortality standards as determined by the Director on a case-by-case basis. Under today's proposal, facilities with an actual intake flow of 125 MGD or greater would be required to submit with their application studies as described in this section to assist the Director in establishing appropriate entrainment mortality controls for that facility. The Director would evaluate each facility's application materials to make a site-specific determination of BTA for entrainment mortality for the facility. In some cases, the Director may determine that additional requirements are not necessary to satisfy BTA for entrainment.

Cooling water intakes with flows totaling less than two MGD are not subject to the proposed requirements. In addition, intakes where less than 25% of flow is used for cooling are also not subject to these requirements. Emergency back-up water flows would not be considered cooling water for purposes of this calculation. Furthermore, EPA seeks to promote water reuse in the proposed rule by specifically exempting wastewater, process water, and other gray water (even when used for cooling) from the definition of cooling water used in this calculation. However, once an intake satisfies these threshold requirements, all flow from the intake is subject to the impingement requirements. To the extent that any entrainment requirements are based on flow commensurate with closed cycle cooling, these would be applied to the non-contact cooling portion of the intake only, and could be met, in full or in part, by reusing water for non-cooling purposes. Intakes not subject to the rule may still be subject to requirements under other Federal, state, or local authorities.

New units at existing facilities would be required to meet the impingement mortality requirements at § 125.94(b) and entrainment mortality requirements at § 125.94(d). The impingement mortality requirements would be the same as those identified for existing facilities, *i.e.* either numerical restrictions on impingement mortality or a maximum intake velocity. The entrainment mortality requirements are based on the level of EM reductions achieved by closed-cycle cooling. The proposed rule would allow facilities to demonstrate performance commensurate with the closed-cycle cooling identical to the Phase I rule provision for new facilities.

D. What information must I submit in my permit application?

All existing facilities would be required to complete and submit application studies to describe the source water body, cooling water intake structures, cooling water system; characterize the biological community in the vicinity of the cooling water intake structure; develop a plan for controlling impingement mortality; describe biological survival studies that address technology efficacy and other studies on impingement and entrainment at the facility; and, discuss the operational status of the facility. The application studies would be used by the Director to assess the impingement and entrainment impacts of the cooling water intake structure and determine appropriate technological and/or operational controls, as necessary. Facilities withdrawing more than 125 MGD and existing facilities with new units would also complete and submit studies to characterize entrainment mortality and assess the costs and benefits of installing various potential technological and operational controls. A list of the proposed application materials is presented below. EPA request comment on the practicability and burden for facilities to prepare and submit this information. EPA is particularly interested in the burden to facilities with DIF < 50 MGD. EPA also requests comment on the practical utility of this information.

List of Proposed Application Materials

Facilities that already employ closed-cycle cooling and new units at existing facilities that plan to employ closed cycle would submit:
- 122.21(r)(2) Source water physical data
- 122.21(r)(3) Cooling water intake structure data
- 122.21(r)(4) Source water baseline biological characterization data
- 122.21(r)(6) Proposed Impingement Mortality Reduction Plan

All other existing facilities *would submit:*
- 122.21(r)(2) Source water physical data
- 122.21(r)(3) Cooling water intake structure data
- 122.21(r)(4) Source water baseline biological characterization data
- 122.21(r)(5) Cooling water system data
- 122.21(r)(6) Proposed Impingement Mortality Reduction Plan
- 122.21(r)(7) Performance studies
- 122.21(r)(8) Operational status

Facilities withdrawing more than 125 MGD (except those with closed cycle), and existing facilities with new units that plan to demonstrate performance equivalent to closed cycle would also submit:
- 122.21(r)(9) Entrainment characterization study
- 122.21(r)(10) Comprehensive technical feasibility and cost evaluation study
- 122.21(r) (11) Benefits valuation study
- 122.21(r) (12) Non-water quality impacts assessment

A summary of each application requirement follows. The proposed timeline for submittal of the application materials is outlined in the next section.

Section 122.21(r)(2) Source Water Physical Data

This requirement is unchanged from the Phase I rule and the suspended Phase II rule. The facility would be required to submit data to characterize the facility and evaluate the type of waterbody and species potentially affected by the cooling water intake structure. The applicant would be required to submit: A narrative description and scaled drawings showing the physical configuration of all source water bodies used by the facility, including areal dimensions, depths, salinity and temperature regimes, and other documentation that supports the determination of the water body type where each cooling water intake structure is located; identification and characterization of the source waterbody's hydrological and geomorphological features, as well as the methods used to conduct any physical studies to determine the

intake's area of influence within the waterbody and the results of such studies; and locational maps. The Director would use this information to evaluate the appropriateness of any design or technologies proposed by the applicant.

Section 122.21(r)(3) Cooling Water Intake Structure Data

This requirement is unchanged from the Phase I rule and the suspended Phase II rule. This data would be used to characterize the cooling water intake structure and evaluate the potential for impingement and entrainment of aquatic organisms. Information on the design of the intake structure and its location in the water column would allow evaluation of which species and life stages would potentially be subject to impingement and entrainment. A diagram of the facility's water balance would be used to identify the proportion of intake water used for cooling, make-up, and process water. The water balance diagram also provides a picture of the total flow in and out of the facility, and would be used to evaluate gray water, waste water, and other reuses within the facility. The applicant would be required to submit: A narrative description of the configuration of each of cooling water intake structure and where it is located in the water body and in the water column; latitude and longitude in degrees, minutes, and seconds for each cooling water intake structure; a narrative description of the operation of each of cooling water intake structure, including design intake flows, daily hours of operation, number of days of the year in operation and seasonal changes, if applicable; a flow distribution and water balance diagram that includes all sources of water to the facility, recirculating flows, and discharges; and engineering drawings of the cooling water intake structure.

Section 122.21(r)(4) Source Water Baseline Biological Characterization Data

This information would be required to characterize the biological community in the vicinity of the cooling water intake structure and to characterize the operation of the cooling water intake structures. This supporting information must include existing data if they are available. However, the facility may supplement the data using newly conducted field studies if it chooses to do so. The information the applicant would submit includes: Identification of data that are not available and efforts made to identify sources of the data; a list of species (or relevant taxa) for all life stages and their relative abundance in the vicinity of the cooling water intake structure; identification of the species and life stages that would be most susceptible to impingement and entrainment. Species evaluated should include the forage base as well as those most important in terms of significance to commercial and recreational fisheries. In addition, the applicant must provide identification and evaluation of the primary period of reproduction, larval recruitment, and period of peak abundance for relevant taxa; data representative of the seasonal and daily activities (*e.g.,* feeding and water column migration) of biological organisms in the vicinity of the cooling water intake structure; identification of all threatened, endangered, and other protected species that might be susceptible to impingement and entrainment at your cooling water intake structures; and documentation of any public participation or consultation with Federal or State agencies undertaken in development of the plan. If the applicant supplements the information with data collected using field studies, supporting documentation for the Source Water Baseline Biological Characterization would include a description of all methods and quality assurance procedures for sampling, and data analysis including a description of the study area; taxonomic identification of sampled and evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods. The sampling and/or data analysis methods used must be appropriate for a quantitative survey and based on consideration of methods used in other biological studies performed within the same source water body. The study area should include, at a minimum, the area of influence of the cooling water intake structure. The applicant may also identify protective measures and stabilization activities that have been implemented, and describe how these measures and activities affected the baseline water condition in the vicinity of the intake. Existing facilities with closed-cycle cooling would not be required to submit this information under the proposed rule.

Section 122.21(r)(5) Cooling Water System Data

This data would be used by the Director in determining the appropriate standards that would be applied to the facility. Facilities would be able to use this information, along with the water balance diagram required by 122.21(r)(5), to demonstrate the extent to which flow reductions have already been achieved. The applicant would provide the following information for each cooling water intake structure they use: A narrative description of the operation of the cooling water system and its relationship to cooling water intake structures; the proportion of the design intake flow that is used in the system including a distribution of water used for contact cooling, non-contact cooling, and process uses; a distribution of water reuse (to include cooling water reused as process water, process water reused for cooling, and the use of gray water for cooling); description of reductions in total water withdrawals including cooling water intake flow reductions already achieved through minimized process water withdrawals; description of any cooling water that is used in a manufacturing process either before or after it is used for cooling, including other recycled process water flows; the proportion of the source waterbody withdrawn (on a monthly basis); the number of days of the year the cooling water system is in operation and seasonal changes in the operation of the system, if applicable. The applicant would also submit a description of existing impingement and entrainment technologies or operational measures and a summary of their performance, including but not limited to reductions in entrainment mortality due to intake location and reductions in total water withdrawals and usage, and efficiencies in energy production for each producing unit that result in the use of less cooling water, including but not limited to combined cycle and cogeneration. For example, the applicant may provide comparative density data for the intake to demonstrate the extent to which location of the intake has reduced adverse environmental impact.

Section 122.21(r)(6) Proposed Impingement Mortality Reduction Plan

The facility's proposed Impingement Mortality Reduction Plan would identify the approach the facility would use to meet proposed rule IM requirements, *i.e.,* direct measure of impingement mortality through sampling, or demonstration that the maximum intake velocity is equal to or less than 0.5 fps. For the former, the Plan would include the duration and frequency of monitoring (which EPA assumes would generally be conducted on a biweekly basis, although the exact frequency would be determined case-by-case), the monitoring location, the organisms to be monitored, and the method in which naturally moribund organisms would be identified and taken into account. The Plan would also address the impingement mortality of

shellfish, as appropriate, for intakes that withdraw from oceans and tidal waters, *e.g.,* seasonal deployment of barrier nets, passive screens, or an appropriate handling and return system. The Plan would document all methods and quality assurance/quality control procedures for sampling and data analysis. The proposed sampling and data analysis methods would be appropriate for a quantitative survey and include consideration of the methods used in other studies performed in the source waterbody. The Plan would include a description of the study area (including the area of influence of the cooling water intake structure(s)), and provide a taxonomic identification of the sampled or evaluated biological assemblages (including all life stages of fish and shellfish).

For facilities that plan to meet IM requirements by demonstrating that the maximum intake velocity is equal to or less than 0.5 fps, the Plan would provide for each intake either, (1) documentation that the design intake velocity is equal to or less than 0.5 feet per second, as described at § 125.94(b)(2)(i–ii), or, (2) documentation of the facility's proposed method for demonstrating the required maximum intake velocity (equal to or less than 0.5 feet per second) in accordance with § 125.94(b)(2)(i–ii). This velocity must be maintained while as much as 15 percent of the intake surface area is blocked due to debris, ice, plant growth, or any other clogging materials. EPA notes that its proposed definition of intake velocity at § 125.92 provides that this requirement would be applicable for screen/mesh type intakes as well as offshore intakes. For facilities with traveling screens, EPA believes the low cost and ease of installing an effective fish handling and return system warrants the retrofit of such controls, even if the maximum intake velocity is less than 0.5 feet per second, however, this is not required by the proposed rule. If intake velocity is not maintained at less than 0.5 feet per second, the regulation requires modified traveling screens to include collection buckets designed to minimize turbulence to aquatic life, the addition of a guard rail or barrier to prevent loss of fish from the collection bucket, replacement of screen panel materials with smooth woven mesh, a low pressure wash to remove fish prior to any high pressure spray to remove debris on the ascending side of the screens, and a fish handling and return system with sufficient water flow to return the fish to the source water in a manner that does not promote predation or re-impingement of the fish.

Under the proposed impingement requirements, the owner or operator of the facility must ensure that there is a means for impingeable fish or shellfish to escape the cooling water intake system or be returned to the waterbody through a fish return system. Thus, a facility would need to demonstrate that their cooling water intake structure does not lead to entrapment. This provision is intended to avoid the collection of impingeable organisms into a cooling water intake system where there is neither a fish handling and return system nor an opportunity for the organisms to escape the cooling water intake system. For example, a facility may have an offshore intake with a velocity cap that meets the maximum velocity requirements for IM. The intake then leads to a pipe, canal, or forebay for which there is no means to return the organisms to the source water. In this example, this provision would require that the facility implement a fish handling and return system. Note since the facility would meet the maximum velocity requirements for IM, the facility would not have to conduct biological monitoring to demonstrate compliance with the IM limits. EPA anticipates facilities that already employ closed-cycle cooling would document the maximum intake velocity is equal to or less than 0.5 feet per second. EPA requests comment on the additional controls to address entrapment at facilities that employ closed-cycle cooling or other technologies with velocity equal to or less than 0.5 feet per second.

Section 122.21(r)(7) Performance Studies

Under the proposal, the applicant would submit a description of any biological survival studies conducted at the facility and a summary of any conclusions or results, including: Site-specific studies addressing technology efficacy, through-plant entrainment survival, and other impingement and entrainment mortality studies; studies conducted at other locations including a justification as to why the data is relevant and representative of conditions at the facility. Due to changes in the water body over time, studies older than 10 years should include an explanation of why (or why not) the data is still relevant and representative of conditions at the facility. The Director would use such studies when assessing the facility's approach to IM and when establishing technology based requirements for EM. Permit applicants are not required to conduct new studies to fulfill this requirement. This requirement is rather aimed at obtaining results for studies that have already been conducted as part of past permit proceedings or for other purposes.

Section 122.21(r)(8) Operational Status

Under the proposal, the applicant would submit a description of the operational status of each unit including: Descriptions of each individual unit's operating status including age of the unit, capacity utilization for the previous 5 years, and any major upgrades completed within the last 15 years (*e.g.,* boiler or condenser replacement, changes to fuel type); a description of completed, approved, or scheduled uprates and NRC relicensing status for nuclear facilities; a description of plans or schedules for decommissioning or replacement of units; and a description of current and future production schedules for manufacturing facilities. The Director would use such information in determining compliance schedules. Further, such information would be used to determine flow reductions due to unit closures, which may affect a facility's DIF or AIF, and therefore may result in changes to a facility's regulatory status and requirements. Where the remaining useful plant life is considerably shorter than the useful life of an EM technology, this information would also be used to support a discussion of benefits for that EM technology.

Section 122.21(r)(9) Entrainment Characterization Study

Under the proposal, this study would include a plan for collecting entrainment mortality data, requires a peer review process, and then requires the owner or operator of the facility to carry out the data collection. This study would provide data necessary to evaluate EM for that facility. EPA envisions the information already collected to meet 122.21(r)(4) requirements would be used in developing the Entrainment Characterization Study. For all species and life stages identified under the requirements of 122.21(r)(4), the owner or operator of the facility would develop and submit an entrainment mortality data collection plan for review by the Director. The entrainment mortality data collection plan would include: The duration and frequency of monitoring; the monitoring location, including a description of the study area and the area of influence of the cooling water intake structure(s); a taxonomic identification of the sampled or

evaluated biological assemblages (including all life stages of fish and shellfish); the organisms to be monitored, including species of concern and threatened or endangered species; any other organisms identified by the Director; the method in which latent mortality would be identified; and documentation of all methods and quality assurance/quality control procedures for sampling and data analysis. The proposed sampling and data analysis methods must be appropriate for a quantitative survey.

The owner or operator of the facility must also provide for peer review of the entrainment mortality data collection plan. The Director may consult with Federal, State and Tribal fish and wildlife management agencies with responsibility for fish and wildlife potentially affected by the cooling water intake structure(s). Further, the Director may require the owner or operator of the facility to include additional peer reviewers of the plan. EPA expects peer reviewers would have appropriate qualifications (*e.g.,* in the fields of biology, engineering, etc.) for the subject matter. An explanation for any significant reviewer comments not accepted must be included in the final plan submission. Additional guidance on conducting peer review may be found in EPA's Peer Review handbook, available online at *http://www.epa.gov/peerreview/pdfs/Peer%20Review%20HandbookMay06.pdf.*

The Entrainment Characterization Study would include the following components:

1. Taxonomic identifications of all life stages of fish, shellfish, and any species protected under Federal, State, or Tribal Law (including threatened or endangered species) that are in the vicinity of the cooling water intake structure(s) and are susceptible to entrainment;

2. Characterization of all life stages of fish, shellfish, and any species protected under Federal, State, or Tribal Law (including threatened or endangered species), including a description of the abundance and temporal and spatial characteristics in the vicinity of the cooling water intake structure(s), based on sufficient data to characterize annual, seasonal, and diel variations in entrainment (*e.g.,* related to climate and weather differences, spawning, feeding and water column migration). These may include historical data that are representative of the current operation of your facility and of biological conditions at the site; and,

3. Documentation of the current entrainment of all life stages of fish, shellfish, and any species protected under Federal, State, or Tribal Law (including threatened or endangered species). The documentation may include historical data that are representative of the current operation of your facility and of biological conditions at the site. Entrainment samples to support the facility's calculations would be collected during periods of representative operational flows for the cooling water intake structure and the flows associated with the samples would be documented.

EPA expects this information would be used to help determine the site-specific BTA for EM. For facilities with no EM technologies, this information would characterize the potential for EM. The information would also be used to demonstrate that technologies and other measures already in place, or site-specific factors such as intake location or design, already reduce EM. For example, abundance data may demonstrate lower comparative densities which can significantly lower entrainment rates. The information could also be used by new units to demonstrate that alternative technologies or a combination of technologies reduce EM at that site to a level commensurate with closed-cycle cooling.

Section 122.21(r)(10) Comprehensive Technical Feasibility and Cost Evaluation Study

Under the proposal, the owner or operator of the facility would submit an engineering study of the technical feasibility and incremental costs of candidate entrainment mortality control technologies. The study would include an evaluation of technical feasibility of closed-cycle cooling and fine mesh screens with a mesh size of 2mm or smaller, as well as any other entrainment reduction technologies identified by the applicant or requested by the Director. This study would include: a description of all technologies and operational measures considered (which could include alternative designs of closed-cycle recirculating systems such as natural draft cooling towers, hybrid designs, and compact or multi-cell arrangements); documentation of factors that make a candidate technology impractical or infeasible for further evaluation. For example, a discussion of land availability might include an evaluation of adjacent land and acres potentially available due to generating unit retirements, production unit retirements, other buildings and equipment retirements, ponds, coal piles, rail yards, transmission yards, and parking lots; decommissioning of existing units; repurposing of existing land uses; documentation that insufficient acres are available on-site; and evidence that the purchase or other acquisition of property adjacent to the facility is not feasible. EPA is exploring providing guidance on assessing land availability that might suggest a threshold ratio of acres/capcity that could serve as a guideline for when sufficient land may not be available. EPA has not identified any electric generating facilities with more than the 160 acres per GW capacity that EPA believes would be unable to construct retrofit cooling towers. EPA specifically solicits comment on this ratio, and solicits data for determining whether alternative thresholds are more appropriate.

The proposed rule would require that costs be presented as the net present value (NPV) of the social costs and the corresponding annual value. In addition to the required social costs, the owner or operator may choose to provide facility level compliance costs, however such costs must be provided and discussed separately from social costs. The cost evaluation component of this study would include engineering cost estimates of all technologies considered above and also discuss and provide documentation of any outages, downtime, energy penalties or other impacts to revenue. The cost evaluation should be based on least-cost approaches to implementing each candidate technology while meeting all regulatory and operational requirements of the plant. Depreciation schedules, interest rates, further consideration of remaining useful life of the facility as discussed in 122.21(r)(8), and any related assumptions would be identified.

The owner or operator of the facility must obtain peer review of the Comprehensive Technical Feasibility and Cost Evaluation Study, as described above for the Entrainment Characterization Study. EPA expects peer reviewers would have appropriate qualifications (*e.g.,* engineering, hydrology, planning and design, etc.) for the subject matter.

Section 122.21(r)(11) Benefits Valuation Study

Under the proposal, the owner or operator of the facility would submit a detailed discussion of the magnitude of water quality benefits, both monetized and non-monetized, of the candidate entrainment mortality reduction technologies evaluated in 122.21(r)(8), including incremental changes in the impingement mortality and entrainment mortality of fish and shellfish; and

monetization of these changes to the extent appropriate and feasible using the best available scientific, engineering, and economic information. This may include monetization using market values, market proxies (e.g., models based on travel costs or other methodologies), and stated preference methods. Benefits that cannot be monetized should be quantified where feasible and discussed qualitatively. The study would also include discussion of recent mitigation efforts already completed and how these have affected fish abundance and ecosystem viability in the intake structure's area of influence. Finally, the study would identify other benefits to the environment and the community, including improvements for mammals, birds, and other organisms and aquatic habitats. The owner or operator of the facility must obtain peer review of the benefits evaluation study, as described above for the Entrainment Characterization Study. EPA expects peer reviewers would have appropriate qualifications (*e.g.,* biologist, hydrologist) for the subject matter.

Section 122.21(r)(12) Non-Water Quality Impacts Assessment

The owner or operator of the facility would submit a detailed discussion of the changes in non-water quality factors attributed to technologies and/or operational measures considered. These changes may include, but are not limited to, increases or decreases in the following: Energy consumption; thermal discharges including an estimate of increased facility capacity, operations, and reliability due to relaxed permitting constraints related to thermal discharges; air pollutant emissions and their health and environmental impacts; noise; safety such as the potential for plumes, icing, and availability of emergency cooling water; grid reliability including an estimate of changes to facility capacity, operations, and reliability due to cooling water availability; consumptive water use, and facility reliability such as production of steam and impacts to production based on process unit heating or cooling. The owner or operator of the facility would provide for peer review of the Non-water Quality Impacts Assessment as described above for the Entrainment Characterization Study. EPA expects peer reviewers would have appropriate qualifications (*e.g.,* biologist, safety engineer, power engineer, hydrologist) for the subject matter. EPA recognizes that in some cases it may be efficient for permit applicants to combine several of the required studies into a single document and have them reviewed holistically by a single set of peer reviewers. Such an approach is not precluded by the proposed rule as long as the peer review panel has the background appropriate to conduct the combined review and the permitting authority approves. EPA requests comment on the peer review requirements and the level of specificity regarding peer review in the draft rule text.

EPA is aware that specialized experience may be useful or appropriate in assessing some of the factors indentified in 122.21(r). EPA solicits comment on further guidance or rule language that could assist in the consistent development of these studies and more uniform review of these factors by the Director. For example, EPA could establish modeling of plume drift as part of the assessment of icing and safety. This requirement could also be included as part of the technical feasibility and costs analysis required at 122.21 (r)(10). Similarly, required emissions estimates could include more specific criteria under 122.21(r)(11).

Facilities Demonstrating Flow Reduction Commensurate With Closed-Cycle Recirculating System

Under § 125.94(d), new units at existing facilities would be subject to entrainment mortality requirements. These facilities may choose to demonstrate that they have already reduced actual intake flow (AIF) to a level commensurate with a closed-cycle recirculating system in their permit application to meet rule requirements. In general, flow reduction may be achieved through the use of a closed-cycle cooling system such as a wet cooling tower (mechanical or natural draft), a dry cooling system, variable speed pumps, or operational measures such as seasonal reductions in flow. Under today's proposal, each facility would have the flexibility to select the flow reduction technique or combinations thereof that best meets their operational needs, so long as the total reduction in flow is commensurate with that of a closed-cycle cooling system.[95]

For today's proposal, EPA is clarifying the term "commensurate" in the context of flow reductions. EPA examined its record to clarify how a facility could demonstrate a reduced flow "commensurate" with a closed-cycle recirculating system. EPA's record demonstrates that for the traditional steam electric utility industry, facilities located in freshwater areas (with a salinity of less than 0.5 parts per thousand) that have closed-cycle recirculating cooling water systems typically reduce water use by 97.5% percent from the amount they would use if they had once-through cooling water systems.[96] Similarly, facilities that have closed-cycle recirculating cooling systems using salt (or brackish) water [97] typically reduce water usage by 94.9 percent.[98] Therefore, if a facility selects to demonstrate flow reduction commensurate with closed-cycle cooling using flow reduction technologies and controls other than through closed-cycle cooling (*e.g.,* through seasonal flow reductions, unit retirements, and other flow reductions), EPA is proposing that it would have to demonstrate total flow reductions approximating 97.5% for freshwater withdrawals and 94.9% for saltwater withdrawals. Today's proposal includes these criteria in the definition of closed-cycle recirculating systems at § 125.92. EPA solicits comment on whether to establish these metrics as a binding requirement, or whether the determination of what flow measure is commensurate with closed-cycle cooling should be left to the Director for each facility.

EPA expects the Director to carefully consider the approach proposed by the facility to ensure that it is reasonable. For example, many facilities have two pumps installed per unit, but typically only operate one pump at a time. The second pump may provide additional pumping capacity (such as may be required in summer) or it may only serve as a back-up or for use during maintenance of the main pump. In the former case, the facility's intake flow

[95] The term "commensurate" is intended to be viewed in terms of a reduction in the facility's actual intake flow. The facility's DIF reflects the maximum volume of water that the facility can withdraw (and would be the basis for applicability) but the AIF (based on the facility's average flows over the previous 3 year period) represents the impacts to aquatic communities. Reducing the AIF is the most appropriate approach, as it represents actual impacts and is most representative of a facility's actual operational schedule. EPA fully expects, however, that many facilities would construct a closed-cycle cooling system based on its DIF to comply with the proposed rule, as this enables the facility to utilize its full DIF at any given time, thereby maintaining full operational flexibility. EPA's costs reflect the costs for the entire DIF. See below for more information on how a facility can demonstrate that it has achieved a reduction in flow that is commensurate with closed-cycle cooling.

[96] Assuming a cycle of concentration of 3.0 and a condenser delta T of 20°F. See Section V for more information.

[97] Saltwater also includes brackish water, tidal rivers, and estuaries where the water has a salinity of equal to or greater than 0.5 parts per thousand (by mass) at a time of annual low flow.

[98] Assuming a cycle of concentration of 1.5 and a condenser delta T of 20°F. See Section V for more information.

(both DIF and AIF) should properly account for the pumping capacity of both pumps. In the latter, the true flow for the intake structure may be equivalent to the pumping capacity of only a single pump.[99] Also, EPA is aware that some facilities may elect to retire units to demonstrate a reduced flow and wants to ensure that such facilities would qualify for this alternative provided they meet the applicable requirements.[100] EPA is proposing that these credits for unit closures be valid for 10 years from the date of the closure.[101] EPA believes this approach reasonably allows facilities to get credit for flow reductions attributable to unit closures, but also requires such facilities to make future progress to ensure its operations reflect best available technology to control entrainment. EPA is seeking comment on this approach.

Under 125.94(d)(2), EPA would allow facilities to implement technologies other than closed-cycle cooling systems that reduce entrainment mortality by at least 90 percent of what would have been obtained via flow reduction commensurate with closed-cycle cooling under 125.94(d)(1). This compliance provision mirrors the Track II provision of the Phase I rule, and is intended to provide opportunities for facilities to consider technologies such intake relocation or fine mesh screens, or operational measures such as the recyle and reuse of cooling water for other purposes. Further, facilities could adopt a combination of such technologies and practices, provided the facility can demonstrate reductions in entrainment mortality of 90 percent or better as compared to closed-cycle cooling. EPA seeks comment on this provision.

E. When are application studies due?

EPA recognizes that facilities previously subject to the withdrawn Phase II rule (existing electric generating facilities with a DIF greater than 50 MGD) should have already compiled much of the proposed application information and expects that these data would be used to meet many of the requirements under today's proposal. In some cases the information may have been collected, but reports may not have been generated or finalized. EPA also understands that many other facilities may not have collected this information, *e.g.,* smaller power plants and manufacturers, and in those cases facilities would have to initiate new data collection efforts. For this reason, EPA is proposing two different timelines for application submittal, as illustrated in Exhibits IX–1 and IX–2. EPA is proposing that facilities previously subject to the Phase II rule would be required to submit some application studies six months after rule promulgation. Other studies would follow in sequence over a period of time not to exceed five years. Other existing facilities not previously subject to the withdrawn Phase II rule (*e.g.,* small power plants and all existing manufacturers) would begin submitting application studies three years after rule promulgation. Additional required studies would be submitted over a period not to exceed seven years and six months. EPA believes that these proposed schedules will afford facilities ample time to plan, complete, and submit application materials as well as provide Directors time to evaluate the submissions and develop appropriate permit conditions. These schedules are linked to the effective date of the rule in order to establish a level playing field and to avoid delays implementing the rule regardless of a facility's current permit status. EPA solicits comment on the proposed schedule, and specifically seeks comment and data on the appropriate amount of time to collect data, write reports, conduct peer reviews, obtain comment, provide for public participation, and issue final permit conditions.

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[99] In this scenario, EPA does not envision that a facility would be able to remove the second pump to demonstrate a reduction in flow, as the pump is simply redundant equipment and would not reduce the overall water withdrawals.

[100] As a point of clarification, EPA notes that flow reduction credit would be available to a facility regardless of the rationale for maintaining the reduced flow. In other words, a facility may have ceased operation of a unit for reasons other than today's proposed regulation, and as such, withdraws much less water than before. Nevertheless, the net effect is that entrainment would be reduced.

[101] Some facilities have intake systems for units that have not operated for an extended time period. These units have essentially ceased operations; such facilities may include the pumping capacity associated with these units in their DIF even though it may not accurately represent their actual operations (i.e., it may be inappropriate to consider these units under 125.94(c)(5)(ii)).

Exhibit IX-1: Application Requirements and Due Dates for Initial Permit Term* - Power Plants with DIF of 50 MGD or more

Application Requirement and Submittal Date	Submittal Date (all dates from rule promulgation)	Existing Facility Category: Power Plants with DIF of 50 MGD or more
	6 months	§ 122.21(r)(2) *Source water physical data* § 122.21(r) (3) *Cooling water intake structure data* § 122.21(r) (4) *Source water baseline biological characterization data* § 122.21(r) (5) *Cooling water system data* § 122.21(r) (6) *Proposed IM reduction plan* § 122.21(r) (7) *Performance studies* § 122.21(r) (8) *Operational status* AIF>125 MGD and facilities with new units: § 122.21(r) (9) *Entrainment characterization study:(i) EM plan with peer reviewers identified*
	1 year	AIF>125 MGD and facilities with new units: § 122.21(r) (9) *Entrainment characterization study:(ii) peer reviewed EM plan and (iii) implement EM plan*
	3.5 years	§ 122.21(r) (6) *Proposed IM reduction plan results*
	4 years	AIF>125 MGD and facilities with new units: § 122.21(r) (9) *Entrainment characterization study: (iii) completed study*
	5 years	AIF>125 MGD and facilities with new units: § 122.21(r) (10) *Comprehensive technical feasibility and cost evaluation study* § 122.21(r) (11) *Benefits valuation study* § 122.21(r) (12) *Non-water quality and other environmental impacts study*
	*Subsequent Permit Terms After the initial submission of the §122.21(r) application studies, the owner or operator of a facility may submit a request to reduce the information required, if conditions at the facility and in the waterbody remain substantially unchanged since the previous application such that relevant previously submitted information remains representative of current source water, intake structure, cooling water system, and operating conditions. The request for reduced information requirements must be submitted to the Director at least one year prior to the expiration of its NPDES permit. The Director may accept or reject any part of the request. (See § 125.95(c)). For subsequent permit terms, information collection activities required under §122.21(r) must begin no later than eighteen months prior to permit expiration (see § 125.95(d)). For subsequent permit terms, all permit application materials are expected to be submitted to the Director with the application for permit renewal at least 6 months prior to permit expiration.	

Exhibit IX-2: Application Requirements and Due Dates for Initial Permit Term* - Other Existing Facilities with DIF > 2 MGD

Application Requirement and Submittal Date	Submittal Date (all dates from rule promulgation)	Existing Facility Category: Other Existing Facilities with DIF > 2 MGD
	3 years	§ 122.21(r)(2) *Source water physical data* § 122.21(r) (3) *Cooling water intake structure data* § 122.21(r) (4) *Source water baseline biological characterization data* § 122.21(r) (5) *Cooling water system data* § 122.21(r) (6) *Proposed IM reduction plan* § 122.21(r) (7) *Performance studies* § 122.21(r) (8) *Operational status* AIF>125 MGD and facilities with new units: § 122.21(r) (9) *Entrainment characterization study:(i) EM plan with peer reviewers identified*
	3.5 years	AIF>125 MGD and facilities with new units: § 122.21(r) (9) *Entrainment characterization study:(ii) peer reviewed EM plan and (iii) implement EM plan*
	6 years	§ 122.21(r) (6) *Proposed IM reduction plan results*
	6.5 year	AIF>125 MGD and facilities with new units: § 122.21(r) (9) *Entrainment characterization study: (iii) completed study*
	7.5 years	AIF>125 MGD and facilities with new units: § 122.21(r) (10) *Comprehensive technical feasibility and cost evaluation study* § 122.21(r) (11) *Benefits valuation study* § 122.21(r) (12) *Non-water quality and other environmental impacts study*
	*Subsequent Permit Terms After the initial submission of the §122.21(r) application studies, the owner or operator of a facility may submit a request to reduce the information required, if conditions at the facility and in the waterbody remain substantially unchanged since the previous application such that relevant previously submitted information remains representative of current source water, intake structure, cooling water system, and operating conditions. The request for reduced information requirements must be submitted to the Director at least one year prior to the expiration of its NPDES permit. The Director may accept or reject any part of the request. (See § 125.95(c)). For subsequent permit terms, information collection activities required under §122.21(r) must begin no later than eighteen months prior to permit expiration (see § 125.95(d)). For subsequent permit terms, all permit application materials are expected to be submitted to the Director with the application for permit renewal at least 6 months prior to permit expiration.	

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F. What are the monitoring requirements in today's proposal for existing facilities?

1. Monitoring Requirements for Impingement Mortality

Today's proposed rule proposes impingement mortality requirements for all existing facilities. As such, facilities would be required to monitor to demonstrate compliance with the impingement mortality restrictions at § 125.94(b)(1), demonstrating a monthly average of fish impingement mortality of 31% or less, and an annual average of 12% or less. (Different monitoring requirements apply for compliance with the alternative requirements at § 125.94(b)(2) for design intake velocity; these are discussed in a later section.) To demonstrate compliance with the impingement mortality standards at § 125.94(b)(1), the facility would be required to monitor at a frequency specified by the Director. EPA assumes the facility would monitor no less than

once per week during primary periods of impingement as determined by the Director, and no less than biweekly during all other times. For each monitoring event, the facility would determine the number of organisms that are collected or retained on a ⅜ inch sieve (*i.e.,* that are impinged [I]), and the number that die within 24–48 hours of impingement (*i.e.,* impingement mortality [IM]). Fish that are included in any carryover from a traveling screen or removed from a screen as part of debris removal would be counted as fish impingement mortality. Under the proposed definition at 125.92, naturally moribund fish and invasive species would be excluded from the totals for both impingement and impingement mortality. The percentage of impingement mortality is defined by the following equation:

$$\%\,IM = \left(\frac{IM}{I}\right) x\ 100$$

For each calendar month, the facility would calculate the arithmetic average of the percentage impingement mortalities observed during each of the sampling events. For example, if a facility conducted four sampling events in December, it would calculate the monthly average from the weekly values. If a facility's calculated monthly average is less than the monthly average limitation (31%), then it would be in compliance that month. To demonstrate compliance with the annual average limit, the facility would calculate the arithmetic average of all of its sampling events during the year. If the facility's calculated annual average percentage impingement mortality is less than the annual average limitation, then it would be in compliance.

EPA envisions that the permitting authority would review and approve the Impingement Mortality Reduction Plan including the frequency and duration of monitoring, the monitoring location, the organisms to be monitored, and the method in which naturally moribund organisms would be identified and taken into account. In establishing the monitoring requirements, EPA expects facilities and permitting authorities would consider whether data collection should cover the entire daily and (where appropriate) tidal cycles. Typically, facilities have collected impingement samples continuously for 6 or 8 hours, and repeated this cycle to cover an entire 24-hour period. Stratifying collection in this manner allows an analysis of the diel variation exhibited by many aquatic organisms. EPA expects that facilities would continue to conduct sampling in such a manner to account for diel variations, where appropriate. EPA also expects the plan would ensure that sampling occurs during periods of representative flow and not during periods of non-peak flow or scheduled outages. The sampling plan would cover all five years of the permit term.

EPA is not proposing a list of the species to be monitored due to the site-specific nature of the biological organisms impacted by an intake structure. Rather, EPA is proposing that a facility provide data on the composition of all species in its waterbody as part of its NPDES permit application (information from the source water baseline characterization data required at § 122.21(r)(4) and impingement plan at § 125.95(b)) to help inform the Director's determination of the species that would be monitored for compliance with the proposed impingement mortality limitations. In addition, the permitting authority may impose additional monitoring requirements such as consideration of threatened or endangered species, as appropriate. EPA is also not including provisions for reducing the monitoring frequency in the future; given that the source waterbody may change over time (including hosting different or increased numbers of individuals or species), EPA believes that weekly monitoring at a minimum is appropriate.

The ideal point to measure impingement mortality is the location where organisms are returned to the waterbody. However, for ease of sampling and access, EPA envisions most facilities would collect samples from the fish return system(s) at some point prior to the fish return discharge point.[102] Based on the studies in EPA's database, EPA envisions facilities would either (1) divert some or all of the flow from the fish return into a fish collection and holding area or (2) place a net or debris basket fitted with 3/8" mesh spacing in the fish return and collect and transfer the retained organisms to a holding tank. Facilities would handle the organisms in the collection device as little as possible and transfer them to a holding area with conditions as close as practicable to the source water. Facilities would count the number of living organisms in the holding area and subsequently hold the sample using proper technique [103] to maintain the health of the collected organisms.[104] At a time period of 48 hours after the initial collection, the facility would count the number of dead organisms. The facility would then determine the percentage of organisms that died after 48 hours in comparison to the total number of living organisms measured initially. Any organisms not collected by the fish handling and return system, such as organisms in the carryover of a traveling screen or organisms collected by a high pressure wash and sent to debris bins, would be counted as 100% mortality. Naturally moribund organisms would be excluded from the calculation. The facility would keep records of this information and subsequently compare its result to today's proposed impingement mortality limitations.

EPA requests comment on all aspects of these monitoring requirements. In particular, EPA requests comment on whether EPA should specific minimum sampling frequencies or leave this determination to the Director. EPA also requests comment on methods for evaluating latent mortality effects resulting from impingement. EPA's record demonstrates that a holding time of no more than 48 hours is optimal for evaluating the latent mortality associated with impingement while at the same time minimizing mortality associated with holding the organisms. In the majority of recent studies, 48 hours appears to be the standard holding time. EPA specifically requests comment and supporting data on whether it should: Specifically establish 48 hours after initial impingement as the time at which to monitor impingement mortality; allow a range such as 24 to 48 hours; establish 24 hours as the standard holding time; or adopt some other technique for standardizing results. EPA also requests comment on whether survival under monitored holding conditions as discussed above is reflective of survival in the wild and thus an appropriate measure of the impingement mortality achieved by the facility.

As explained in Section VI, the impingement mortality restrictions proposed today are based on the

[102] Based on EPA's site visits and other data, even facilities with multiple intakes (and multiple screens, etc.) typically only have one fish handling and return system. This is consistent with EPA's proposed approach to determine compliance at the facility level. For facilities with more than one return system (including those that are bi-directional in tidal waters), compliance is still determined at the facility level.

[103] EPA recognizes that there are no standard methods for conducting impingement and entrainment studies and that there can be variability in designing a sampling plan between sites. However, there are elements that should be incorporated into any sampling plan, as outlined in DCN 10–6708.

[104] Facilities that divert the flow directly would similarly pass the flow through a net or debris basket fitted with 3/8" mesh spacing or would only count organisms that would have been collected with such a basket or net.

operation of a modified coarse mesh traveling screen with a fish return. Because EPA wants to ensure that a facility's monitoring plan is consistent with the technical basis for today's restrictions, EPA is proposing to require facilities to monitor impingement mortality using a sample that has been passed through a sieve or net with a ⅜" mesh size, so that only organisms that do not pass through this mesh size are counted.[105] In doing so, facilities would only retain (and therefore count) organisms that would have been impinged on a coarse mesh screen, which was the technological basis used for developing the proposed impingement mortality limits.[106] Facilities could similarly apply a "hypothetical net" in that they could elect to only count organisms that would not have passed through a net with ⅜" mesh. For example, a facility that uses a fine-mesh screen or diverts the flow directly to a sampling bay would only need to count organisms that would remain if the flow passed through a net, screen, or debris basket fitted with 3/8" mesh spacing. EPA further believes the IM restrictions could be applied to other screen-based fish protection technologies, and allows for future better performing technologies. EPA solicits comment on this approach to measuring impingement mortality. EPA specifically solicits comment on ways to ensure that the procedures used to collect and analyze samples do not inadvertently lead to greater mortality than would occur among organisms that were returned to the water body without being sampled.

If the Director has approved a plan for compliance with the velocity requirements specified in § 125.94(b)(2) and the facility has documented a maximum design intake flow for the intake equal to or less than 0.5 feet per second, there are no compliance monitoring requirements. If the facility cannot document a design intake flow for the intake equal to or less than 0.5 feet per second under all conditions, including during minimum ambient source water surface elevations (based on the Director's judgment using hydrological data) and maximum head loss across the screens, the permit must require compliance monitoring for intake velocity to demonstrate the intake velocity is consistent with the requirements of § 125.94(b)(2). The frequency of monitoring would be no less than twice per week. In this circumstance facilities would not be subject to the impingement mortality monitoring requirements otherwise specified in § 125.96(a)(1) and (2). EPA requests comment on whether it should specify a minimum frequency for intake velocity monitoring or leave this determination to the Director.

EPA notes the proposed rule does not specify the owner or operator of a facility with a cooling water intake structure that supplies cooling water exclusively for operation of a wet or dry cooling tower(s) and that meets the definition of closed-cycle recirculating system at § 125.92 is deemed to meet this impingement mortality standard. This is because the largest facilities with closed cycle cooling still have the potential to withdraw 100 MGD or more in makeup water. EPA's record shows virtually all facilities with wet cooling towers have a maximum intake velocity of 0.5 feet per second. EPA expects a facility that operates a cooling tower would be able to demonstrate the maximum design intake velocity does exceed 0.5 feet per second, and the proposed rule already provides that such facilities do not have any additional monitoring requirements for impingement mortality.

2. Monitoring Requirements for Entrainment Mortality

Existing Facilities

Whenever the Director is establishing entrainment control, monitoring requirements must also be developed. As proposed, the permit application studies at § 122.21(r) would be required for each permit renewal. EPA expects the Director would use these studies, including the Entrainment Characterization Study at § 122.21 (r)(9), as a basis for any additional monitoring requirements for entrainment mortality.

New Units at Existing Facilities

Under § 125.96(c), existing facilities with new units would be required to conduct compliance monitoring to demonstrate flow reductions consistent with the requirements of § 125.94(d)(1) and (2), or equivalent I&E reductions. For facilities required to demonstrate flow reductions consistent with the requirements of § 125.94(d)(1), the frequency of monitoring would be no less than once per week and would be representative of normal operating conditions. Flow monitoring would include measuring cooling water withdrawals, make-up water, and blowdown volume. The Director may require additional monitoring necessary to demonstrate compliance with both § 125.94(d) as well as any more stringent standards under § 125.94(f).

To meet requirements under § 125.94(d)(1), EPA expects facilities would first measure AIF in order to establish a site-specific baseline prior to installing any new technologies or employing new operational measures. EPA has defined AIF as the average volume of water withdrawals on an annual basis over the past three calendar years (see § 125.92). Facilities would then conduct flow monitoring which would include measuring cooling water withdrawals, make-up water, and blowdown volume. The Director may require additional monitoring necessary to demonstrate compliance with § 125.94(d). These flows would be used to document the facility has minimized make-up and blowdown flows.

To meet requirements under § 125.94(d)(2), facilities would again measure AIF in order to establish a site-specific baseline prior to installing any new technologies or employing new operational measures. The facility would also measure the density of entrainable organisms (E_D) at a proximity to the intake that is representative of the entrainable organisms present in the absence of the cooling water intake structure and is representative of annual average abundance. For the purpose of today's rule, entrainable is defined as any organism that passes through a ⅜ inch sieve. As discussed in Section VI, this would avoid any confusion as to which organisms would be subject to which standards. Facilities would also monitor the latent entrainment mortality in front of the intake structure. Entrainable organisms passing the cooling water intake structure would be counted as 100 percent entrainment mortality unless the facility demonstrates to the approval of the Director that the mortality for each species of concern is less than 100 percent. Samples would be collected at a minimum to monitor each species of concern or other species as required by the Director over a 24-hour period. Samples would be collected no less than biweekly during the primary period of reproduction, larval recruitment, and peak abundance identified during the source water

[105] See section 3 for a discussion of how EPA has changed its view of screen mesh size. EPA recognizes that fine mesh screens may simply "convert" smaller organisms that previously would have passed through the screen to impinged organisms.

[106] EPA's analysis of impingement survival rates is based on data from facilities with coarse mesh screens; these limits may be applied differently at facilities with smaller mesh size. Therefore, these limits do not provide a disincentive to facilities from using finer-meshed screens (i.e., screens with a mesh opening smaller than 3/8") on their traveling screens. As long as the organisms that are large enough to have been impinged upon a coarse mesh screen achieve the required survival rates, the facility would be considered to meet the impingement mortality requirements.

baseline characterization required under § 122.21(r)(4). Samples would be representative of the cooling water intake when the structure is in operation. In addition, sufficient samples would be collected to allow for calculation of annual average entrainment levels. The sampling would measure the total count of entrainable organisms or density of organisms, unless the Director approves of a different metric for such measurements. In addition, facilities would monitor the AIF for each intake. The AIF would be measured at the same time as the samples of entrainable organisms are collected.

The following equation illustrates how to calculate a baseline level of entrainment (E_B):

$E_B = E_D \times AIF$

Performance commensurate with a closed-cycle cooling system (E_{BTA}) can therefore be determined by reducing E_B by the percentage of flow reduced through the use of a closed-cycle cooling system. For example, a facility withdrawing makeup water from a freshwater source (as described above, would achieve a reduction of 97.5 percent) would calculate its performance as:

$E_{BTA} = (E_B) \times (100 - 97.5) \div 100$

The resulting value, E_{BTA}, is the required level of entrainment performance (as measured by entrainment mortality). The facility could implement any combination of flow reduction, technologies, and operational measures to meet the required level of entrainment performance. For example, a facility withdraws 200 MGD AIF from a freshwater river. The annual average entrainment density in the proximity of the intake structure is 6,400 organisms per 100 cubic meters withdrawn.

$E_B = E_D \times AIF$

$6{,}400 \text{ organisms}/100m^3 \times (100m^3/26{,}417 \text{ gallons}) \times 200{,}000{,}000 \text{ gallons per day} = 48 \text{ million organisms per day}$

The maximum entrainment mortality for a closed-cycle cooling system is thus

$E_{BTA} = (E_B) \times (100 - 97.5) \div 100 = (48 \times 10^6 \text{ organisms per day}) \times (100 - 97.5) \div 100 = 1.2 \times 10^6 \text{ organisms.}$

The minimum required level of performance for demonstrating entrainment mortality at a comparable level (E_C) to a closed-cycle cooling system is the level corresponding to 90 percent [107] of the reduction that a facility with a closed-cycle cooling system could achieve:

$E_C = (E_B) \times (100 - (97.5 \times .9)) \div 100 = (48 \times 10^6 \text{ organisms per day}) \times (100 - (97.5 \times .9)) \div 100 = 5.9 \times 10^6 \text{ organisms.}$

The Director may require additional monitoring necessary to demonstrate compliance with both § 125.94(d) as well as any more stringent standards under § 125.94(f).

EPA requests comment on all aspects of these monitoring requirements. EPA specifically requests comment on whether it should specify minimum monitoring frequencies or leave this to the determination of the Director.

Visual or Remote Inspections—All Existing facilities

All facilities would either conduct visual inspections or employ remote monitoring devices during the period the cooling water intake structure is in operation. The facility would conduct such inspections at least weekly to ensure that any technologies installed to comply with § 125.94 are maintained and operated to ensure that they will continue to function as designed. EPA is aware that for some facilities, this requirement could pose a feasibility challenge (*i.e.,* ice cover during the winter season, inability of divers to *see* through more than a few inches of water, or certain intakes located in deep water during rough weather). The proposed rule therefore authorizes the Director to establish alternative procedures during periods of inclement weather. EPA solicits comment and data on this provision. EPA specifically requests comment on whether it should establish minimum frequencies for inspections, or leave this to the determination of the Director.

G. What reports would I be required to submit?

1. Status Reports

Facilities that establish a compliance schedule (under § 125.93) would submit (at a minimum) quarterly status reports as to the progress of the facility towards meeting the terms of the compliance schedule and the applicable limits. These reports may include updates on biological monitoring, technology testing results, construction schedules, or other appropriate topics.

2. Monitoring Reports

As described above, facilities would have ongoing impingement mortality monitoring requirements; some facilities would also have entrainment mortality monitoring requirements. The proposed monitoring activities are similar to monitoring required for other effluent discharges already included in NPDES permits. Facilities would be required to include impingement mortality monitoring reports with their Discharge Monitoring Reports (DMRs) (or equivalent) and their permit annual report to the Director. As described at § 125.97, those reports would be required to include:

- The compliance measurement location;
- Identification of species of concern;
- Counts and percentage mortality of organisms sampled, as well as the average for all measurements taken during the preceding 12-month period (*i.e.,* a 12-month "rolling" average);
- Time period for evaluating latent mortality effects;
- Intake velocity measurements, as appropriate, to determine compliance with the design intake velocity requirement of 0.5 fps or less; and
- Any other monitoring requirements specified in the permit.

The Director would evaluate these reports for compliance with monthly and annual impingement mortality limits, velocity limits, and other permit requirements where appropriate.

For facilities that require entrainment mortality controls, the Director would require ongoing entrainment mortality flow monitoring. Facilities would be required to include entrainment mortality flow monitoring reports with their DMRs (or equivalent) and their annual report to the Director. Those reports would be required to include:

- The compliance measurement location;
- A description of the flow monitoring procedure;
- Documentation of flow reductions; and
- Any other monitoring requirements specified in the permit.

The Director would evaluate these reports for compliance with monthly entrainment mortality limits, flow reductions and flow monitoring, and permit requirements as required.

3. Annual Certifications

Today's proposal would require a facility to submit an annual certification statement signed by the responsible corporate officer. This statement would indicate each technology is being maintained and operated as set forth in its permit, or a justification to allow modification of the practices listed in the facility's most recent annual certification. If the Director has approved impingement mortality or

[107] § 125.86 specifies "reduced both impingement mortality and entrainment of all life stages of fish and shellfish to 90 percent or greater of the reduction that would be achieved through § 125.84(b)(1) and (2)."

entrainment mortality compliance alternatives, the statement would specify the information submitted in the most recent annual certification is still valid and appropriate, or provide a justification to allow modification of the practices listed in the most recent annual certification. For example, the statement would include data and information documenting compliance with the requirement in § 124.94(d)(1) that flow commensurate with a closed-cycle recirculating system is met. If the Director has approved the IM maximum intake velocity compliance alternative and the facility cannot document a design intake velocity for the intake equal to or less than 0.5 feet per second, the statement would include data and information documenting compliance with the maximum allowable intake velocity.

If the information contained in the previous year's annual certification is still applicable, the statement would simply state as such and, along with any applicable data submission requirements specified in this section, would constitute the annual certification. However, if the facility has substantially modified its operation of any unit that impacts cooling water withdrawals or operation of cooling water intake structures, it would submit revisions to the information required in the permit application.

H. What records would I be required to keep?

As described at § 125.97(d), facilities would be required to keep all application, status, monitoring, and annual reports and related supporting information and materials for a minimum of 5 years, but facilities may wish to keep records for a longer period to maintain a complete regulatory history of the facility. For example, existing source water biological studies submitted with a facility's permit application may contain data that has been collected within the past 10 years. The proposed rule requires that records be kept from the preceding permit term when the Director has approved a request for reduced information collection in the permit application. The Director may establish additional record keeping requirements in the permit, such as additional records documenting the EM determination and related compliance monitoring or data collection.

I. Are there other Federal statutes that could be incorporated into a facility's permit?

EPA's NPDES permitting regulations at § 122.49 contain a list of Federal laws that might apply to Federally-issued NPDES permits. These include the Wild and Scenic Rivers Act, 16 U.S.C. 1273 *et seq.;* the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.;* the Endangered Species Act, 16 U.S.C. 1531 *et seq.;* the Coastal Zone Management Act, 16 U.S.C. 1451 *et seq.;* and the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* See § 122.49 for a brief description of each of these laws. In addition, the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.,* relating to essential fish habitat might be relevant. Nothing in this proposal would authorize activities that are not in compliance with these or other applicable Federal laws (*e.g.,* Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.,* and Migratory Bird Treaty Act, 16 U.S.C. 703 *et seq.*).

J. What is the Director's role under today's proposal?

Under today's proposed rule, the Director would need to review all materials submitted by an existing facility with its permit application each permit term to determine appropriate NPDES permit requirements for impingement mortality, entrainment mortality for new units at existing facilities, and site-specific entrainment mortality, as necessary. The Director is encouraged to provide any comments expeditiously on submitted materials so the facility can make responsive modifications to its information gathering activities. More specific responsibilities are described below:

(1) The Director would review materials to determine compliance with the applicable requirements. The proposed rule also provides some discretion to the Director to waive the submittal requirements under certain conditions. First, if the circumstances at the facility have not changed after a five year permit cycle, the Director can reduce the submission requirements. Second, if the Director has made a BTA determination prior to the effective date of the rule, and substantially the same information was already submitted and considered by the Director in making that determination, the Director can reduce the submission requirements. To clarify further, EPA has included a "transition" provision in the submission requirements of today's proposed rule that makes it clear that for any facility that has submitted a permit application before the effective date of the regulation, the Director can select the best approach to permit development and implementation. These provisions are further intended to avoid any unnecessary delay in recently issued permits. EPA expects facilities would continue with any monitoring requirements, study requirements, and compliance schedules in recently issued permits.

(2) If the Director establishes an alternate schedule under § 125.93, the Director would establish a schedule that is as expeditious as possible, but does not extend beyond the dates specified in § 125.93. In establishing the schedule, the Director is encouraged to consider the extent to which those technologies proposed to be implemented to meet the requirements of § 125.95(c) and/or (d) will be used, or may otherwise affect a facility's choice of technology(ies), to meet the requirements of § 125.95(b). Impacts of thermal discharges, along with other stressors, may be a relevant consideration when assessing benefits of technologies to reduce impacts of cooling water intakes or discharges. See EEA for more information. The Director is also encouraged to consider energy reliability and grid requirements when establishing a schedule for electric power generating facilities. The Director may consult with local and regional electric power agencies when establishing a schedule for electric power generating facilities. The Director may determine that extenuating circumstances (*e.g.,* lengthy scheduled outages, future production schedules) warrant establishing a different compliance date for any manufacturing facility.

(3) The Director would review and approve the species of fish and shellfish identified as species of concern.

(4) The Director would review and approve the site-specific impingement mortality plan including the duration and frequency of any monitoring beyond the minimum specified by the rule, the monitoring location, the organisms to be monitored, and the method in which naturally moribund organisms would be identified and taken into account. EPA solicits comment on whether the Director should review, but not approve, the identified plans.

(5) The Director would review the permit application materials and studies submitted under § 122.21(r) on a case-by-case basis and determine which entrainment requirements are necessary.

(6) The Director would review and approve the site-specific entrainment mortality sampling plan for new units at existing facilities (other than those employing closed cycle cooling) including the duration and frequency of monitoring, the monitoring location, the organisms to be monitored, and the method in which latent mortality would

be identified. EPA solicits comment on whether the Director should review, but not formally approve, the identified plans.

(7) The Director would issue a written explanation for the BTA determination and make this determination, and any other information submitted by third parties, available along with the draft permit for public review. This determination is discussed in more detail in Section VI above. In addition, the following discussion guides the Director when considering cost-benefit analysis for permit determinations.

Social Cost-Benefit Analysis for Permit Determinations

In deciding whether and which technology to require a permittee to install to address entrainment mortality, the Director may undertake an evaluation of social costs and benefits of implementing such requirements. This analysis would be based on the information submitted by the applicant, supplemented by information submitted by third parties, and additional information as determined appropriate by the Director. EPA recognizes the resource limitations faced by permitting authorities and does not generally expect that the Director would develop additional information on which to base the evaluation of social benefits and costs, though the Director may opt to do so. This analysis should evaluate benefits and costs from the perspective of society as a whole.

A number of cost elements should be accounted for in assessing the social cost of entrainment technology implementation. These are summarized below.

• *Technology installation cost.* These peer reviewed engineering cost estimates of the physical construction of candidate entrainment technologies at the facility are required in section 122.21(r)(10). These costs would be provided by the applicant under 122.21(r)(10).

• *Installation downtime cost.* Installation of closed cycle cooling systems will often require generating facilities to take additional downtime beyond ordinary annual maintenance downtime. An estimate of downtime cost to the facility is required under 122.21(r)(10). Downtime costs include the value of lost production minus any variable cost savings, as well as any other costs to the facility associated with downtime (shutdown and startup routines, special maintenance protocols, etc) minus any savings associated with downtime.

• *Energy penalty cost.* Operation of closed cycle cooling systems generally imposes an energy penalty, which means additional energy input is required to generate the same quantity of electricity otherwise available for sale to end-use consumers. Again, an assessment of these costs to the facility would be determined under the section 122.21(r)(10) demonstration. The appropriate cost measure is the cost of additional production costs to the facility, if the permittee's facility has sufficient capacity to make up the lost electricity production, or the net revenue loss to the permittee, if the permittee's facility cannot make up the lost electricity production.

• *Operation and maintenance costs* for the entrainment technology equipment. The cost of energy to operate the entrainment technology for electric generators would be accounted for in the assessment of energy penalty costs and should not reappear in the O&M costs. These cost which would be estimated as part of the 122.21(r)(10) assessment would enter the social cost framework unchanged.

• *Other administrative expenses—e.g.,* additional permitting and/or reporting expenses. Being a social cost concept the estimate must include not only the costs to the facility but those expected to be incurred by the permitting authority as well. Permitting costs would generally be lower if a facility opts to install a closed cycle cooling system without going through the BTA site-specific determination, as this allows the facility to minimize the amount of permit application information submitted.

For the assessment of social cost, the cost elements outlined above would typically be accounted for on a real cost basis—that is, pre-tax and excluding the effects of inflation. Costs are tallied over an appropriate timeframe, which will typically be the expected useful life of the technology installation or the remaining life of the facility, if less. Costs should be calculated as both net present value and annualized values, using an appropriate discount rate. The applicant should document the basis for the discount rate chosen.

In assessing the benefits of entrainment technology installation, the Director would assess the value to society from the reductions in I&E mortality that would result from installation of a closed cycle cooling system or alternative entrainment technology. All benefits, including quantified and non-quantified benefits, should be considered in this assessment. The benefits assessment would typically look at a range of potential benefit mechanisms, including increased harvest for commercial fisheries, increased use values for recreational fisheries, and non-use values (existence and bequest values). The latter may be difficult to quantify and/or monetize. If appropriate data are available from stated preference studies or other sources that can be applied to the site being evaluated, these should be used to monetize non-use values. Otherwise, non-use values should be evaluated qualitatively. Quantitative analysis, even in the absence of monetization, can be quite useful in evaluating non-use benefits. For example, quantifying impacts to forage and T&E species, and other indirect impacts on the aquatic environment, may allow the permitting authority to derive a more complete understanding of benefits.

Quantifying and valuing the benefit categories listed above involves significant challenges, as described in the Environmental and Economic Benefits Analysis report. For example, assessing the productivity and value of commercial fisheries involves estimating the expected increases in commercial yield of economically valued species over time as a result of reduced I&E mortality, and valuing these at market prices minus any incremental production costs associated with the incremental catch. Similarly, the assessment of recreational use benefits involves estimating the improvements in recreational fishing opportunities resulting from reduced I&E mortality, and assigning a value to these improvements. The assignment of value is based on the estimated population profile—in particular, number and proximity to affected water resources—of recreational users, the availability of alternative competing water resources for recreational usage, and the resulting estimated change in demand for use and value of the affected water resources based on reduced I&E mortality and increased recreational fishing performance. EPA acknowledges this may be hard to do on a site-specific basis, and solicits comment on tools EPA could consider producing to aid this process.

Non-use benefits, which encompass existence and bequest values, include impacts in such areas as population resilience and support, nutrient cycling, natural species assemblages, and ecosystem health and integrity. These may be assessed on the basis of benefits transfer analysis (using findings from prior analyses involving a similar study context) or by performance of a peer reviewed stated preference survey to assess the value assigned for the environmental improvements resulting from the technology installation. Non-

use values include improving the survival probability of a threatened or endangered species if present in the vicinity of the facility. Benefits may also need to be assessed beyond the vicinity of the facility's intake if migratory species are affected by the intake. Residual impacts of thermal discharges may also be appropriate to consider in the social benefits calculation.

In much the same way as described for the social cost assessment, social benefits are tallied on a year-by-year basis over the expected performance life of the compliance technology. If possible, this tallying should account for the "phase-in" of benefits (*e.g.,* benefits may build up over time as the I&E mortality reductions affect commercial fisheries productivity) and "phase-down" of benefits at the end of the technology equipment's performance life (*e.g.,* the I&E mortality reduction benefits may continue beyond the performance life of the compliance technology). Benefits are computed on a present value basis and annualized using an appropriate discount rate as described above. The same discount rate should be used for benefits and costs. Often, it is appropriate to calculate benefits and costs using more than one discount rate. For example, for regulatory impact analysis, the Office of Management and Budget recommends that costs and benefits be annualized using both a 7% and a 3% rate. However, comparisons between specific benefit and cost numbers should always involve values computed using the same rate.

The resulting estimates of social cost and benefits must be taken into account in reaching determinations on whether to require a permittee to install entrainment technology and the specific level of entrainment technology to be installed. The Director may reject an otherwise available technology as BTA standards for entrainment mortality if the social costs of compliance are not justified by the social benefits, or if there are adverse impacts that cannot be mitigated that the Director deems to be unacceptable. If all technologies considered have social costs not justified by the social benefits, or have unacceptable adverse impacts that cannot be mitigated, the Director may determine that no additional control requirements are necessary beyond what the facility is already doing. The director should document the basis for this determination and include it in the public notice for the draft permit. (8) The Director would review I&E mortality monitoring reports. EPA is shifting towards an electronic DMR system, and many of the IM and EM standards could be incorporated into the DMR itself, rather than requiring a separate report. EPA solicits comment on whether such reports should accompany monthly Discharge Monitoring Reports (DMRs). EPA expects the more detailed monitoring information would be submitted in annual reports and as part of the facility's subsequent permit application submission.

X. Related Acts of Congress, Executive Orders, and Agency Initiatives

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under section 3(f)(1) of Executive Order (EO) 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 EO 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in Chapter 12 of the EA report. A copy of the analysis is available in the docket for this action and the analysis is briefly summarized here.

Exhibit X–1 (drawn from Table 12–2 of the EA) provides the results of the benefit-cost analysis. Placeholders for nonmonetized benefits are represented by B_1, B_2, B_3, and B_4 which are expected to be option specific in value. EPA's analysis using a habitat equivalence approach (see EEBA, Chapter 9) suggests that B_1, B_2, B_3, and B_4 have the potential to be significant, though EPA does not have the same confidence in those estimates as in the monetized estimates, and is therefore using placeholders.

EXHIBIT X–1—TOTAL ANNUALIZED BENEFITS AND COSTS OF THE REGULATORY OPTIONS

[Millions; 2009 $] [a]

Option	Social costs [b]	Benefits
1. IM Everywhere	$384	$18 + B_1
2. IM Everywhere, EM for Facilities with DIF > 125 MGD	4,463	121 + B_2
3. I&E Mortality Everywhere	4,632	126 + B_3
4. IM for Facilities with DIF > 50 MGD	327	17 + B_4

[a] All costs and benefits were annualized over 50 years and discounted using 3 percent rate.

[b] Total Social Costs include compliance costs to facilities and government administrative costs. Costs and benefits for Options 1, 2, and 4 do not include costs or benefits associated site-specific BTA determinations. In section VI.I, EPA presents several scenarios to illustrate potential costs associated with these determinations for Options 1 and 4. EPA believes the costs and benefits of these determinations could be substantial, and could be significantly larger than the costs and benefits shown for Options 1 and 4. For Option 2, only facilities with AIF < 125 MGD would be subject to site-specific BTA and additional costs and benefits for these facilities are likely to be small relative to the costs and benefits already estimated for this option.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2060.05.

Compliance with the applicable information collection requirements imposed under a final rule based on this proposal would be mandatory. Today's proposed rule would require several distinct types of information collection as part of the NPDES permit application. In general, the information will be used to identify how a 316(b) existing facility would meet the impingement mortality and entrainment requirements. Today's rule would also require other reporting and recordkeeping requirements to demonstrate and document compliance with the proposed requirements.

The OMB previously approved information collection requirements contained in the 2004 Phase II final rule and assigned OMB control number 2040–0257. The 2004 Phase II final rule required applicable facilities to perform several data-gathering activities as part of the permit renewal application process. It also required certain monitoring and reporting after permit issuance. The previously-approved information collection requirements included one-time burden associated with the initial permit application and those activities associated with monitoring and reporting once the permit was issued. The total average annual burden associated with the 2004 Phase II rule information collection requirements for the entire Phase II industry was estimated at 1,700,392 hours. The annual average reporting and record keeping burden associated with the 2004 Final Phase II rule for a 316(b) existing facility was estimated to be 5,428 hours per respondent (*i.e.,* total annual average burden of 1,595,786 hours divided by an anticipated 294 respondents). The Director's reporting and record keeping burden for the review, oversight, and administration of the 2004 final Phase II rule was estimated to average 2,615 hours per respondent (*i.e.,* a total annual average burden of 104,606 hours divided by an anticipated 40 States).

Today's proposal streamlines some aspects of the permit application and implementation process and would impose reduced information collection requirements in comparison to the 2004 Phase II rule (for existing power plants with DIF > 50 MGD). For example, under the 2004 Phase II rule, facilities would have been required to submit a Technology Implementation and Operations Plan, which is not required as part of today's proposed rule. Like the 2004 Phase II rule, today's proposal would require facilities to collect and report impingement mortality compliance monitoring data. Under certain alternatives provided in today's proposed rule, design documentation and flow data would be provided instead of biologically monitoring data. The information reporting requirements under today's proposed compliance alternatives, described at § 125.95, include some additional requirements such as submission of an initial certification statement and annual certification statements thereafter, submission of monitoring reports along with DMRs, and submission of annual reports, as well as maintenance of various records.

Facilities that were not part of Phase II would have additional reporting and recordkeeping requirements relative to the current BPJ permitting approach. EPA is currently preparing a revised ICR that will estimate the total burden of the proposed rule using the Phase II burden estimates as a starting point. These will be adjusted to account for differences in what is required under the proposed rule, as well as the extension of new requirements to Phase III facilities. EPA will announce in the **Federal Register** when this information has been placed in the docket for today's rule and will allow a separate 60-day comment period on the proposed paperwork requirements, including the revised burden estimates.

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 in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OW–2008–0667. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this proposed rule for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after April 20, 2011, a comment to OMB is best assured of having its full effect if OMB receives it by May 20, 2011. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act (RFA)

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.

1. Definition of Small Entities and Estimation of the Number of Small Entities Subject to Today's Proposed Regulation

For EPA's assessment of the impact of today's proposed rule on small entities, small entity is defined as either a: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Federal or State entities owning in-scope facilities are not small entities.

a. Electric Generators

For assessing the impacts of today's rule on small Electric Generator entities, small entity is defined in accordance with SBA criteria for identifying small, non-government entities in the electric power industry, as follows:

- For non-government entities with electric power generation as a primary business, small entities are those with total annual electric output less than 4 million MWh; small governments are those serving a population of less than 50,000.
- For entities with a primary business other than electric power generation, the relevant size criteria are based on revenue or number of employees by NAICS sector (*see* Exhibit X–2).

EXHIBIT X–2—NAICS CODES AND SBA ENTITY SIZE STANDARDS FOR IN-SCOPE ELECTRIC GENERATORS WITH A PRIMARY BUSINESS OTHER THAN ELECTRIC POWER GENERATION [108]

NAICS code	NAICS description	SBA size standard
221112	Fossil Fuel Electric Power Generation	4,000,000 MWh.
221113	Nuclear Electric Power Generation	4,000,000 MWh.
221119	Other Electric Power Generation	4,000,000 MWh.
221122	Electric Power Distribution	4,000,000 MWh.

EXHIBIT X–2—NAICS CODES AND SBA ENTITY SIZE STANDARDS FOR IN-SCOPE ELECTRIC GENERATORS WITH A PRIMARY BUSINESS OTHER THAN ELECTRIC POWER GENERATION [108]—Continued

NAICS code	NAICS description	SBA size standard
221210	Natural Gas Distribution	500 Employees.
238210	Electrical Contractors	$14,000,000 Revenue.
331111	Iron and Steel Mills	1,000 Employees.
331315	Aluminum Sheet, Plate, and Foil Manufacturing	750 Employees.
523910	Miscellaneous Intermediation	$7,000,000 Revenue.
486210	Pipeline Transportation of Natural Gas	$7,000,000 Revenue.
523920	Portfolio Management	$7,000,000 Revenue.
523930	Investment Advice	$7,000,000 Revenue.
524126	Direct Property and Casualty Insurance Carriers	1,500 Employees.
525990	Other Financial Vehicles	$7,000,000 Revenue.
525910	Open-End Investment Funds	$7,000,000 Revenue.
541990	All Other Professional, Scientific, and Technical Services	$7,000,000 Revenue.
551112	Offices of Other Holding Companies	$7,000,000 Revenue.
561499	All Other Business Support Services	$7,000,000 Revenue.
562212	Solid Waste Landfill	$12,500,000 Revenue.
562219	Other Nonhazardous Waste Treatment and Disposal	$12,500,000 Revenue.
562920	Materials Recovery Facilities	$12,500,000 Revenue.
611310	Colleges, Universities, and Professional Schools	$7,000,000 Revenue.

For this analysis, EPA identified the domestic parent entity of each electric generating facility subject to today's proposed rule (for a discussion on determination of parent entities of in-scope Electric Generators see Chapter 5 of the EA report). To determine whether these entities are small entities based on the size criteria outlined above, EPA compared the relevant measure for the identified parent entities to the appropriate SBA size criterion.

From this analysis, EPA estimates that 33 small entities (out of a total of 143 entities that own in-scope Electric Generators) own Electric Generators that would be subject to today's proposed rule, representing 1.6 percent of total estimated small entities in the electric power industry (see Exhibit X–3). Municipalities make up the largest number of small entities owning in-scope facilities (17 out of 33); these small entities represent 1.8 percent of all small entities in that category. Small entities owning in-scope facilities as a percentage of total small entities range, by ownership category, from 0.9 percent for rural electric cooperatives and other political subdivisions, to 10.9 percent for the investor-owned utilities.[109]

EXHIBIT X–3—NUMBER OF SMALL ENTITIES OWNING IN-SCOPE ELECTRIC GENERATING FACILITIES AS A PERCENTAGE OF THE TOTAL NUMBER OF SMALL ENTITIES IN THE INDUSTRY, BY OWNERSHIP TYPE

Ownership type	Total number of small entities in the industry [a]	Small entities owning in-scope facilities	
		Number of in-scope entities [b]	Small in-scope entities as percentage of all in-scope entities in the industry
Investor-Owned Utilities	18	2	10.9
Nonutilities	130	5	3.8
Rural Electric Cooperatives	848	8	0.9
Municipality	968	17	1.8
Other Political Subdivision	113	1	0.9
Federal	0	0	0
State	0	0	0
All Entity Types	2,078	33	1.6

[a] State and Federal entities are considered large.
[b] The entity counts include entities owning known 316(b) Electric Generators and are not weighted estimates.

b. Manufacturers

For purposes of assessing the impacts of today's rule on small Manufacturers, small entity is defined in accordance with SBA criteria. Exhibit X–4 lists the SBA size threshold guidelines for entities owning Manufacturers facilities.

[108] Certain in-scope facilities are owned by entities whose primary business is not electric power generation.

[109] The entity counts include entities owning known 316(b) Electric Generators and are not weighted estimates.

EXHIBIT X–4—NAICS CODES AND SBA ENTITY SIZE STANDARDS FOR IN-SCOPE ENTITIES IN MANUFACTURERS SECTORS

NAICS Code	NAICS Description	SBA Size standard
111930	Sugarcane Farming	$750,000 in Revenue
113110	Timber Tract Operations	$7,000,000 in Revenue
211111	Crude Petroleum and Natural Gas Extraction	500 Employees
212210	Iron Ore Mining	500 Employees
212391	Potash, Soda, and Borate Mineral Mining	500 Employees
221119	Other Electric Power Generation	4,000,000 MWh of Electric Generation
311221	Wet Corn Milling	750 Employees
311311	Sugarcane Mills	500 Employees
311312	Cane Sugar Refining	750 Employees
311313	Beet Sugar Manufacturing	750 Employees
311942	Spice and Extract Manufacturing	500 Employees
313210	Broadwoven Fabric Mills	1,000 Employees
321113	Sawmills	500 Employees
322121	Paper (except Newsprint) Mills	750 Employees
322122	Newsprint Mills	750 Employees
322130	Paperboard Mills	750 Employees
322211	Corrugated and Solid Fiber Box Manufacturing	500 Employees
322222	Coated and Laminated Paper Manufacturing	500 Employees
322291	Sanitary Paper Product Manufacturing	500 Employees
324110	Petroleum Refineries	1,500 Employees
324191	Petroleum Lubricating Oil and Grease Manufacturing	500 Employees
325120	Industrial Gas Manufacturing	1,000 Employees
325181	Alkalis and Chlorine Manufacturing	1,000 Employees
325188	All Other Basic Inorganic Chemical Manufacturing	1,000 Employees
325199	All Other Basic Organic Chemical Manufacturing	1,000 Employees
325211	Plastics Material and Resin Manufacturing	750 Employees
325311	Nitrogenous Fertilizer Manufacturing	1,000 Employees
325320	Pesticide and Other Agricultural Chemical Manufacturing	500 Employees
325412	Pharmaceutical Preparation Manufacturing	750 Employees
325510	Paint and Coating Manufacturing	500 Employees
325992	Photographic Film, Paper, Plate and Chemical Manufacturing	500 Employees
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing	500 Employees
331111	Iron and Steel Mills	1,000 Employees
331112	Electrometallurgical Ferroalloy Product Manufacturing	750 Employees
331210	Iron and Steel Pipe and Tube Manufacturing from Purchased Steel	1,000 Employees
331221	Rolled Steel Shape Manufacturing	1,000 Employees
331222	Steel Wire Drawing	1,000 Employees
331312	Primary Aluminum Production	1,000 Employees
331315	Aluminum Sheet, Plate and Foil Manufacturing	750 Employees
332312	Fabricated Structural Metal Manufacturing	500 Employees
337910	Mattress Manufacturing	500 Employees
339999	All Other Miscellaneous Manufacturing	500 Employees
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	100 Employees
423930	Recyclable Material Merchant Wholesalers	100 Employees
424510	Grain and Field Bean Merchant Wholesalers	100 Employees
424690	Other Chemical and Allied Products Merchant Wholesalers	100 Employees
424710	Petroleum Bulk Stations and Terminals	100 Employees
447190	Other Gasoline Stations	$9,000,000 in Revenue
522220	Sales Financing	$7,000,000 in Revenue
523910	Miscellaneous Intermediation	$7,000,000 in Revenue
523930	Investment Advice	$7,000,000 in Revenue
524126	Direct Property and Casualty Insurance Carriers	1,500 Employees
525990	Other Financial Vehicles	$7,000,000 in Revenue
531110	Lessors of Residential Buildings and Dwellings	$7,000,000 in Revenue
551112	Offices of Other Holding Companies	$7,000,000 in Revenue
561110	Office Administrative Services	$7,000,000 in Revenue

To determine entity size, EPA started with information reported in the Detailed Industry Questionnaire and Industry Screener Questionnaire, and updated information on each owner's primary NAICS, current revenue, and employment size data from SEC filings, Dun & Bradstreet (D&B, 2009), and corporate Web sites. For details of this process, see Chapter 4 of the EA report. EPA compared the relevant measure for the identified parent entities to the appropriate SBA size criterion.

Because EPA undertook this assessment for the sample of Manufacturers facilities and related owning entities responding to the previous 316(b) questionnaires, it was necessary to estimate the number of owning entities and to assess whether these entities are small, based on application of sample weights. Because the sample weights are based on facilities instead of entities, the facility-based weights do not provide statistically precise estimates of the numbers of owning entities. As a result, EPA applied alternative sample-weighting assumptions that yield lower and upper bound estimates of the

numbers of small entities in the Primary Manufacturing Industries owning in-scope Manufacturers facilities, as reported in Exhibit X–5. Because the analysis of facilities in Other Industries is not based on a statistically valid sample, EPA could not estimate the number of entities in Other Industries that would be subject to the requirements of the regulatory analysis options, or the percentage that are small entities. However, based on a review of nationwide water withdrawals and cooling water use, the *Census of Manufacturers,* and comments received on the Phase III proposed rule, EPA does not expect a significant number of additional small entities would be subject to today's proposed regulatory requirements.

EXHIBIT X–5—NUMBER AND PERCENTAGE OF SMALL ENTITIES IN PRIMARY MANUFACTURING INDUSTRIES SUBJECT TO THE PROPOSED REGULATION, BY INDUSTRY

Sector	Total sector small entities [a]	Lower bound estimate of number of entities		Upper bound estimate of number of entities	
		Estimated 316(b) small entities	Percentage of small entities subject to regulation	Estimated 316(b) small entities	Percentage of small entities subject to regulation
Paper	218	9	4.1	29	13.2
Chemicals	2,506	4	0.2	18	0.7
Petroleum	188	4	2.1	4	2.2
Steel	1,149	3	0.3	8	0.7
Aluminum	227	2	0.9	5	2.0
Food	23,546	1	0.0	1	0.0
Total for primary manufacturing industries [b]	27,834	23	0.1	64	0.2

[a] Includes all firms with less than 500 employees from 2006 Statistics of U.S. Businesses (SUSB) of the U.S. Department of Commerce (U.S. DOC). The Small Business Administration defines firms in nearly all profiled NAICS codes according to the firm's number of employees; however, for some in-scope manufacturing NAICS codes this threshold is 500 employees while for others this threshold is 750, 1,100, or 1,500 employees. Because the SUSB employment size categories do not correspond to the SBA entity size classifications, EPA used the 500 employee threshold for all in-scope NAICS.

[b] Due to rounding columns may not sum.

From this analysis, EPA estimates that 23 to 64 small entities own Manufacturers facilities that are subject to today's proposed rule, representing 0.1 to 0.2 percent of total estimated small entities in the Primary Manufacturing Industries (see Exhibit X–5). Of the six Primary Manufacturing Industries, Paper has the largest number of small entities (9 to 29), and these small entities also account for the largest percentage of total small entities in any of the six industries—4.1 to 13.2 percent of estimated total small entities in the Paper industry. The percentage of estimated total small entities subject to regulation reaches 2 percent for two of the remaining Primary Manufacturing Industries (Petroleum and Aluminum).

From the 316(b) survey data, EPA identified an additional 4 entities in the Other Industries that are also small entities; however, as noted, EPA is unable to estimate the total number of small in-scope entities in the Other Industries.

c. Total Estimate of Small In-Scope Entities

On a combined basis, EPA estimates that 56–96 small entities would be within the scope of the existing facilities rule options. These counts do not include the additional known 4 small entities in the Other Industries.

2. Statement of Basis

As described above, EPA began its assessment of the impact of today's proposed regulatory options on small entities by first estimating the number of small entities within the two industry segments subject to the proposed rule—Electric Generators and Manufacturers—that would be expected to be within the scope of today's proposed rule. EPA then assessed whether these small entities would be expected to incur costs that constitute a significant impact; and assessed whether the number of those small entities estimated to incur a significant impact represent a substantial number of small entities.

To assess whether small entities' compliance costs might constitute a significant impact, EPA summed annualized compliance costs [110] for the Electric Generators and Manufacturers facilities estimated to be owned by a given small entity and calculated these costs as a percentage of entity revenue (Cost-to-Revenue Test). EPA compared the resulting percentages to impact criteria of 1 percent and 3 percent of revenue. Small entities estimated to incur compliance costs exceeding one or more of these impact thresholds were identified as potentially incurring a significant impact.

For both Electric Generators and Manufacturers, EPA used alternative sample-weighting approaches, which provide a range of estimates of the numbers of small entities and in-scope facilities owned by these small entities.

The results of this analysis using both weighting approaches are summarized below. In the following summary table (Exhibit X–6), the estimated numbers of small entities incurring costs exceeding 1 percent and 3 percent of revenue are presented as ranges, based on the alternative sample weighting approaches. In addition, EPA compared the estimated numbers of small entities with costs exceeding a given impact threshold with the estimated number of small in-scope entities. The resulting estimated numbers and percentages of small in-scope entities that may incur a significant impact, as reported in Exhibit X–6, provide a measure of the potential impact of the existing facilities rule options on small in-scope entities.

From these analyses, EPA estimates under Option 1, the proposed option, that 5 to 7 small entities will incur costs exceeding 1 percent of revenue, and 3 small entities will incur costs exceeding 3 percent of revenue. As percentages of the estimated total of 56 to 96 small in-scope entities,[111] these small entities

[110] Option 1 does not include an assessment of site-specific entrainment costs. However, Option 3 includes EM based on closed-cycle cooling at all existing facilities.

[111] The estimated total of small in-scope entities does not include the known 4 small Manufacturers

represent 5 to 13 percent of small in-scope entities at the 1 percent of revenue threshold, and 3 to 5 percent of small in-scope entities at the 3 percent of revenue threshold. Both the number of small in-scope entities incurring a potential impact and the total of small in-scope entities are estimated as ranges. EPA calculated the range of percentage of total small in-scope entities incurring a potential impact by comparing (1) the lower of the estimated number of small in-scope entities incurring a potential impact with the higher of the estimated total of small in-scope entities (yields the lower value of the percentage range) and (2) the higher of the estimated number of small in-scope entities incurring a potential impact with the lower of the estimated total of small in-scope entities (yields the higher value of the percentage range).

For Option 2, EPA estimates that 5 to 7 small entities will incur costs exceeding 1 percent of revenue (5–13 percent of small in-scope entities), and 3 to 7 small entities will incur costs exceeding 3 percent of revenue (3–13 percent of small in-scope entities). For Option 3, EPA estimates that 10 to 22 small entities will incur costs exceeding 1 percent of revenue (10–39 percent of small in-scope entities), and 7 to 15 small entities will incur costs exceeding 3 percent of revenue (7–27 percent of small in-scope entities). For Option 4, EPA estimates that 4 to 6 small entities will incur costs exceeding 1 percent of revenue (4–11 percent of small in-scope entities), and 2 small entities will incur costs exceeding 3 percent of revenue (2–4 percent of small in-scope entities) (see Exhibit X–6).

For more details on this analysis see EA Chapter 7: Regulatory Flexibility Act (RFA) Analysis.

EXHIBIT X–6—ESTIMATED COST-TO-REVENUE IMPACT FOR SMALL IN-SCOPE ENTITIES

Regulatory option	Cost impact category			
	Cost > 1% of revenue		Cost >3% of revenue	
	Number of small entities	% of small in-scope entities [c]	Number of small entities [a,c]	% of small in-scope entities [b]
Option 1: IM Everywhere	5–7	5%–13%	[b] 3	3%–5%
Option 2: IM Everywhere and EM for Facilities with DIF>125 MGD	5–7	5%–13%	3–7	3%–13%
Option 3: I&E Mortality Everywhere	10–22	10%–39%	7–15	7%–27%
Option 4: IM for Facilities with DIF > 50 MGD	4–6	4%–11%	[b] 2	2%–4%

[a] The number of entities with cost-to-revenue ratios exceeding 3 percent is a subset of the number of entities with such ratios exceeding 1 percent.

[b] The estimated number of small entities exceeding the impact threshold is the same under both estimation approaches; however, the total number of entities differs.

[c] For both Electric Generators and Manufacturers, EPA used alternative sample-weighting approaches, which provide a range of estimates of the numbers of small entities and in-scope facilities owned by these small entities (*see* Section VII(D)(a)(iv) for manufacturers and see Section VII(D)(b)(1)(b) for electric generator weighting approaches).

As described in the preamble above, EPA eliminated 115 facilities from the analysis that are projected to close as a result of baseline financial conditions. Of the 115 baseline closures, 18 are small entities.

To summarize, for the Proposed Option [112]—Option 1, EPA estimates that 5 to 7 small entities would incur costs exceeding 1 percent of revenue and 3 small entities would incur costs exceeding 3 percent of revenue. These numbers of adversely affected small entities represent 5–13 percent of the estimated total of small in-scope entities for the 1 percent of revenue threshold, and 3–5 percent of the estimated total of small in-scope entities for the 3 percent of revenue threshold. Given the small number and percentage of small in-scope entities estimated to incur a potentially significant economic impact, EPA judges that the Proposed Option, Option 1, will not cause a significant economic impact on a substantial number of small entities (SISNOSE).

3. Certification Statement

After considering the economic impacts of this proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (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. 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 (see Chapter 8 of the EA report).

1. Summary of Written Statement

a. Authorizing Legislation

Today's proposed rule is issued under the authority of sections 101, 301, 304, 306, 308, 316, 401, 402, 501, and 510 of the Clean Water Act (CWA), 33 U.S.C. 1251, 1311, 1314, 1316, 1318, 1326, 1341, 1342, 1361, and 1370. See section III of this preamble for detailed information on the legal authority of this rule.

b. Cost-Benefit Analysis

Today's proposed options are expected to have total annualized pre-tax (social) costs of $383.80 million (2009 $) under Option 1, of $4,462.90 million under Option 2, $4,631.62 million under Option 3, and of $326.55 under Option 4, including direct costs incurred by facilities and implementation costs incurred by federal, State, and local governments (annualized over 50 years and discounted at 3 percent).[113] The total monetized use and non-use benefits of

entities in the Other Industries. EPA assessed the potential impact of the regulatory options on these 4 small entities; none were found to incur a significant impact under any of the four regulatory options.

[112] Option 1 does not include an assessment of site-specific entrainment costs.

[113] These social cost estimates use a different estimate of downtime than the private cost estimates cited above, and are thus lower. For more details see Chapter 11 in the EA report.

today's proposed options are estimated to be $17.63 million under Option 1, $120.79 million under Option 2, $125.65 million under Option 3, and $17.33 million under Option 4 (annualized over 50 years and discounted at 3 percent).[114] Thus, the total social costs exceed the total monetized benefits of the proposed options by $366.17 million for Option 1, by $4,342.11 million for Option 2, by $4,505.97 million for Option 3, and by $309.22 under Option 4. EPA notes that these differences are based on a comparison of a partial measure of benefits with a more complete measure of costs;[115] therefore, the results must be interpreted with caution. After considering the monetized and non-monetized benefits of the proposed option, EPA has determined that the benefits of this option justify the costs. For a more detailed comparison of the costs and benefits of today's proposed rule, see Chapter 12 of the EA report.

EPA notes that States may be able to use existing sources of financial assistance to revise and implement this proposed rule. Section 106 of the Clean Water Act authorizes EPA to award grants to States, Tribes, intertribal consortia, and interstate agencies for administering programs for the prevention, reduction, and elimination of water pollution. These grants may be used for various activities to develop and carry out a water pollution control program, including permitting, monitoring, and enforcement. Thus, State and Tribal NPDES permit programs represent one type of State program that can be funded by section 106 grants.

c. Summary of State, Local, and Tribal Government Input

EPA consulted with State governments and representatives of local governments in developing the rule. The outreach activities are discussed in section III.A.3 of this preamble.

d. Least Burdensome Option

EPA considered and analyzed several alternative regulatory options to determine the best technology available for minimizing adverse environmental impact. These regulatory options are discussed in today's proposed rule at 67 FR 17154–17168, as well as in section VIII of this preamble. These options included a range of technology-based approaches including impingement mortality technology at all facilities with a DIF greater than 50 MGD to additionally requiring impingement mortality controls and intake flow commensurate with closed-cycle cooling for all facilities.[116] As discussed in detail in section VI, EPA did not select options exclusively because they were the most cost-effective among the options that fulfill the requirements of section 316(b). EPA selected the preferred option because it meets the requirement of section 316(b) of the CWA that the location, design, construction, and capacity of CWIS reflect the best technology available for minimizing adverse environmental impact. In addition, EPA has determined that the benefits of this option justify the costs, taking quantified and non-quantified costs and benefits into account. The preferred option reflects a flexible approach among the options considered that allows consideration of costs and benefits on a site-specific basis in determining BTA.

2. Impact of Compliance Requirements on Small Governments

This rule is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments (*i.e.,* governments with a population of less than 50,000). For its assessment of the impact of compliance requirements on small governments, EPA compared total costs and costs per facility as estimated to be incurred by small governments with those values as estimated to be incurred by large governments. EPA also compared costs for small government-owned facilities with those of non-government-owned facilities. The Agency evaluated costs per facility on the basis of both average and maximum annualized cost per facility. In these comparisons, both for the cost totals and, in particular, for the average and maximum cost per facility, the costs for small government-owned facilities were less than those for large government-owned facilities or for small non-government-owned facilities. On this basis, EPA concluded that the compliance cost requirements of the proposed 316(b) Existing Facilities Rule would not significantly or uniquely affect small governments.

Because no Manufacturers facility is government-owned, EPA conducted this analysis for Electric Generators only.

a. Government-Owned Electric Generator Facilities by Ownership and Entity Size Category

Exhibit X–8 provides an estimate of the number of non-Federal Government entities that operate Electric Generators subject to today's proposed rule, by ownership type and size of government entity. As reported in Exhibit X–8, 24 large government entities operate 41 Electric Generators subject to this proposed rule, and 18 small government entities operate 18 Electric Generators subject to the rule. Of the 59 facilities that are owned by government entities, 43 are owned by Municipalities, 9 are owned by State Governments, and 7 are owned by an Other Political Subdivision.

EXHIBIT X–8—NUMBER OF GOVERNMENT ENTITIES AND GOVERNMENT-OWNED ELECTRIC GENERATOR FACILITIES

Ownership Type	Number of government entities (by Size) [a]			Number of facilities (by government entity size) [b]		
	Large	Small	*Total*	Large	Small	*Total*
Municipality	18	17	*35*	26	17	*43*
State Government	4	0	*4*	9	0	*9*
Other Political Subdivision	2	1	*3*	6	1	*7*
Total	24	18	*42*	41	18	*59*

[a] Counts of entities owning explicitly and implicitly analyzed Electric Generators; these are not weighted entity counts.
[b] Counts of explicitly and implicitly analyzed Electric Generators; these are not weighted estimates.

[114] EPA was able to estimate nonuse benefits for the North Atlantic and Mid-Atlantic benefit regions.

[115] The costs reflect the costs for facilities do comply with the primary BTA requirements, and do not reflect any facilities with reduced costs due to the available compliance alternatives and flexibilities. Since EPA anticipates a facility would generally participate in a compliance alternative if it was less burdensome or less costly to do so, today's costs may be overstated.

[116] All options also require site-specific determinations of BTA where uniform national controls are not included.

b. Compliance Costs for Small Government-Owned Electric Generators Facilities

EPA estimates that 10 of the 41 (24%) non-federal government-owned Electric Generators facilities subject to today's proposed rule are owned by small governments (Table X–9).[117,118] Exhibit X–9 summarizes total, average annualized compliance costs, and maximum annualized compliance costs for government (State, local, and Tribal governments) and non-government-owned facilities for the three regulatory options and by size category of owning entity.

EPA first looked at the relationship between costs incurred by small governments and small government-owned Electric Generators in comparison to those incurred by large governments and large government-owned facilities. As reported in Exhibit X–9, the estimated total annualized compliance costs for all non-federal government-owned Electric Generators are $10.8 million for Option 1, $102.3 million for Option 2, $120.1 million for Option 3, and $9.5 million for Option 4. The 31 facilities owned by large governments would incur costs of $9.2 million under Option 1, $100.7 million under Option 2, $107.6 million under Option 3, and $8.1 million under Option 4. In comparison, the 10 facilities owned by small governments would incur costs of $1.5 million under Options 1 and 2, $12.5 million under Option 3, and $1.4 million under Option 4. On an average cost per facility basis, these costs are $0.1 million under Options 1, 2, and 4, and $1.2 million under Option 3, for facilities owned by small governments, with large government-owned facility costs of $0.3 million under Options 1 and 4, $3.2 million under Option 2, and $3.4 million under Option 3. In addition, the maximum per facility costs owned by small governments are $0.2 million under Options 1, 2, and 4, and $2.1 million under Option 3. The comparable values for large government-owned facilities are $1.0 million under Options 1 and 4, and $17.8 million under Options 2 and 3. Accordingly, the costs for small government-owned facilities are considerably lower than those for large governments on the basis of total costs, average cost per-facility, and maximum cost per-facility. EPA therefore concludes that the compliance requirements of today's proposed rule do not significantly or uniquely affect small governments in comparison to large governments.

EXHIBIT X–9—ELECTRIC GENERATORS FACILITIES AND COMPLIANCE COSTS BY OWNERSHIP TYPE AND SIZE FOR 316(B) EXISTING FACILITIES RULE OPTIONS

[Millions; 2009$]

Ownership type	Entity size	Number of facilities (weighted)	Total compliance costs	Average cost per facility	Maximum facility cost [c]
Option 1: IM Everywhere					
Government (excluding Federal)	Small	10	$1.5	$0.1	$0.2
	Large	31	9.2	0.3	1.0
Private	Small	16	7.7	0.5	2.5
	Large	485	354.4	0.7	7.2
All Facilities [b]		559	394.2	0.7	7.2
Option 2: IM Everywhere and EM for Facilities with DIF > 125 MGD					
Government (excluding Federal)	Small	10	$1.5	$0.1	$0.2
	Large	31	100.7	3.2	17.8
Private	Small	16	32.3	2.0	10.9
	Large	485	4,171.7	8.6	59.9
All Facilities [b]		559	4,811.3	8.6	59.9
Option 3: I&E Mortality Everywhere					
Government (excluding Federal)	Small	10	$12.5	$1.2	$2.1
	Large	31	107.6	3.4	17.8
Private	Small	16	34.0	2.2	10.9
	Large	485	4,300.3	8.9	59.9
All Facilities [b]		559	4,959.4	8.9	59.9
Option 4: IM for Facilities with DIF > 50MGD					
Government (excluding Federal)	Small	10	$1.4	$0.1	$0.2
	Large	31	8.1	0.3	1.0
Private	Small	16	6.0	0.4	2.5
	Large	485	346.1	0.7	7.2

[117] A small governmental jurisdiction is defined " as the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000 (5 U.S.C. 601(5)).

[118] The entity counts described in this section were developed on a weighted basis and differ from the values reported in the preceding section, where were developed on an un-weighted basis. The values in this section were developed on a weighted basis because compliance costs were estimated only for explicitly analyzed facilities and facility weights are used to extend these results to the full set of in-scope facilities.

EXHIBIT X–9—ELECTRIC GENERATORS FACILITIES AND COMPLIANCE COSTS BY OWNERSHIP TYPE AND SIZE FOR 316(B) EXISTING FACILITIES RULE OPTIONS—Continued

[Millions; 2009$]

Ownership type	Entity size	Number of facilities (weighted)	Total compliance costs	Average cost per facility	Maximum facility cost [c]
	Small	559	383.0	0.7	7.2

a. Facility counts are weighted estimates and differ from the values reported in Exhibit X–8, above, which are un-weighted counts. Sample weighted values are needed in this table because costs were developed only for the explicitly analyzed Electric Generators facilities. See EA Appendix A.3: Used of Sample Weights in the Proposed Existing Facilities Rule Analysis for more detail.

b. The *All Facilities* counts and cost values include 15 federal government-owned facilities and 10 private facilities owned by entities of unknown size. The individual facility count and cost estimates for the small and large entity categories exclude the values for these 25 facilities.

c. Reflects maximum of un-weighted costs to explicitly analyzed facilities only.

EPA's analysis also considered whether this proposed rule may significantly or uniquely affect small governments in relation to non-government-owned Electric Generators. As reported in Exhibit X–9 the total compliance cost for 10 small government-owned Electric Generators incurring costs under today's proposed rule are $1.5 million under Options 1 and 2, $12.5 million under Option 3, and $1.4 million under Option 4, or on a per facility basis, approximately $0.1 million for Options 1, 2, and 4, and $1.2 million for Option 3. In addition, the highest annualized compliance cost for a small government-owned facility is $0.2 million under Options 1, 2, and 4, and $2.1 million under Option 3. In comparison, all small non-government-owned Electric Generators subject to today's proposed rule are expected to incur annualized compliance costs of $7.7 million under Option 1, $32.3 million under Option 2, $34.0 million under Option 3, and $6.0 million under Option 4, or $0.5, $2.0, $2.2, and $0.4 million per facility, respectively by regulatory option. The highest annualized cost for a small non-government-owned facility is $2.5 million under Options 1 and 4, and $10.9 million under Options 2 and 3. On the basis of this comparison, as well, EPA further concludes that the compliance requirements of the proposed rule do not significantly or uniquely affect small governments. The EA report provides more detail on EPA's analysis of impacts on governments.

3. Administrative Costs

The requirements of Section 316(b) are implemented through the NPDES (National Pollutant Discharge Elimination System) permit program. Forty-six States and territories with NPDES permitting authority under section 402(b) of the CWA are expected to incur costs to administer the Existing Facilities Rule in their jurisdictions. EPA estimates that States and territories will incur costs associated with five types of activities for implementing the requirements of today's proposed rule: (1) Start-Up activities to learn and understand the requirements of today's regulation and to implement administrative structures and procedures for administering the regulation; (2) first permit issuance activities; (3) permit reissuance activities; (4) entrainment study costs, and (5) annual activities. EPA estimates that the total annualized cost for these activities will be $5.31 million for Option 1, $2.19 for Option 2, $1.28 million for Option 3, and $4.06 for Option 4. Monitoring costs comprise the largest share of administrative costs under all three regulatory options. Exhibit X–10 presents the annualized costs of the major administrative activities.

EXHIBIT X–10—ANNUALIZED GOVERNMENT ADMINISTRATIVE COSTS

[Millions; 2009$]

Activity	Cost		
	Electric Generators	Manufacturers	Total In-Scope
Option 1: IM Everywhere			
Start-up Activities	$0.02	$0.02	$0.04
First Permit Issuance Activities	$0.23	$0.24	$0.45
Annual Monitoring Activities	$1.17	$1.12	$2.29
Entrainment Study	$1.19	$0.97	$2.16
Permit Reissuance Activities	$0.18	$0.18	$0.36
Total	$2.79	$2.52	$5.31
Option 2: IM Everywhere and EM for Facilities with DIF > 125 MGD			
Start-up Activities	$0.02	$0.02	$0.04
First Permit Issuance Activities	$0.17	$0.23	$0.35
Annual Monitoring Activities	$0.36	$1.07	$1.37
Entrainment Study	$0.00	$0.00	$0.00
Permit Reissuance Activities	$0.14	$0.17	$0.31
Total	$0.69	$1.48	$2.19

EXHIBIT X–10—ANNUALIZED GOVERNMENT ADMINISTRATIVE COSTS—Continued

[Millions; 2009$]

Activity	Cost		
	Electric Generators	Manufacturers	Total In-Scope
Option 3: I&E Mortality Everywhere			
Start-up Activities	$0.02	$0.02	$0.04
First Permit Issuance Activities	$0.16	$0.13	$0.29
Annual Monitoring Activities	$0.20	$0.52	$0.72
Entrainment Study	$0.00	$0.00	$0.00
Permit Reissuance Activities	$0.13	$0.10	$0.23
Total	$0.51	$0.77	$1.28
Option 4: IM for Facilities with DIF > 50MGD			
Start-up Activities	$0.02	$0.02	$0.04
First Permit Issuance Activities	$0.23	$0.06	$0.29
Annual Monitoring Activities	$1.04	$0.31	$1.35
Entrainment Study	$1.19	$0.97	$2.16
Permit Reissuance Activities	$0.18	$0.05	$0.23
Total	$2.65	$1.41	$4.06

E. Executive Order 13132: Federalism

Under Executive Order 13132, EPA may not issue an action that has federalism implications, that imposes substantial direct compliance costs on the State and local governments, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed action.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule would not alter the basic State-federal scheme established in the Clean Water Act under which EPA authorizes States to carry out the NPDES permitting program. EPA expects today's proposed rule would have little effect on the relationship between, or the distribution of power and responsibilities among, the federal and State governments. EPA expects an average annual burden of 21,785 hours with total average annual cost of $1.1 million under Option 1, 6,538 hours and $346,000 under Option 2, and 20,395 hours and $1.0 million under Option 3, for States to collectively administer this rule during the compliance period.[119] After the initial compliance period, EPA expects an average annual burden of 23,550 hours with an average annual cost of $1.2 million for Option 1, 2,528 hours and $154,000 for Option 2, and 16,988 hours and $841,000 for Option 3. EPA has identified 47 Phase II facilities that are owned by State or local government entities. The estimated average annual compliance cost incurred by these facilities is approximately $452,000 per facility under Option 1, $4.5 million under Option 2, and $1.1 million under Option 3. EPA does not expect Option 4 to impose substantial direct compliance costs on the State and local governments higher than Option 1, and therefore is not expected to pose Federalism implications. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

[119] Because of late revisions to the Existing Facilities Rule's administrative requirements, EPA was unable to update these values from those developed earlier in the regulatory analysis. In addition, EPA did not estimate administrative costs for Option 4, but expects that these costs would be very similar to those estimated for Option 1.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It would not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or the distribution of power and responsibilities between the Federal government and Indian tribes as specified in Executive Order 13175. The national cooling water intake structure requirements would be implemented through permits issued under the NPDES program. No tribal governments are currently authorized pursuant to section 402(b) of the CWA to implement the NPDES program. In addition, EPA's analyses show that no facility subject to today's proposed rule is owned by tribal governments and thus this rule does not affect Tribes in any way in the foreseeable future. Thus, Executive Order 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule establishes requirements for cooling

water intake structures to protect aquatic organisms.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 (66 FR 28355 (May 22, 2001)) requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for actions identified as "significant energy actions." Based on the Office of Management and Budget's guidance for assessing the potential energy impact of regulations (*http://www.whitehouse.gov/omb/memoranda/m01_27.html*), the Agency does not anticipate that today's rule will have a significant adverse effect on the supply, distribution, or use of energy and thus will not constitute a significant regulatory action under Executive Order 13211.

The Agency analyzed the potential energy effects of today's rule and other regulatory options considered for proposal. The potentially significant effects of today's rule on energy supply, distribution or use concern the electric power sector. This analysis found that the rule's compliance requirements would not cause effects in the electric power sector that would constitute a significant adverse effect under Executive Order 13211. Namely, the Agency's analysis found that today's rule would not reduce electricity production in excess of 1 billion kilowatt hours per year or in excess of 500 megawatts of installed capacity, and therefore would not constitute a significant regulatory action under Executive Order 13211.

For more detail on the potential energy effects of this proposal, see Section VII of this preamble or Chapter 9 in the EA report.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking may involve technical standards, for example in the measurement of impingement and entrainment. Nothing in this proposed rule would prevent the use of voluntary consensus standards for such measurement where available, and EPA encourages permitting authorities and regulated entities to do so.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Because EPA expects that this proposed rule will help to preserve the health of aquatic ecosystems located in reasonable proximity to 316(b) Existing Facilities, EPA believes that all populations, including minority and low-income populations, will benefit from improved environmental conditions as a result of this rule.[120]

To meet the objectives of Executive Order 12898, EPA assessed whether today's proposed rule could distribute benefits among population sub-groups in a way that is significantly unfavorable to low-income and minority populations. EPA compared key demographic characteristics of affected sub-state populations to those demographic characteristics at the level of the state. If the demographic profile of the sub-state "benefit population" were found to differ in a statistically significant and unfavorable[121] way from the demographic profile of the state, generally, then the proposed rule might be assessed as yielding an unfavorable distribution of benefits, from the perspective of the public policy principles of Executive Order 12898. The two demographic variables of interest for this EJ analysis are those within the Fish Consumption Pathway (FCP) Module that best capture the minority and low-income aspects of the populations affected, which are annual household income and race.[122] [123] Variable averages at the sub-state and state levels were compared to determine whether or not the demographic profile of the affected population was consistent with the state profile (for details see Chapter 9 of the EA report).

The comparison of minority populations affected by the 316(b) Existing Facilities to the affected states' overall populations found no statistically significant difference between these groups. While low-income populations were less present in the benefit population than in the State's overall population in many states, the differences were generally very small and the two groups were not found to be significantly different. EPA thus believes that the proposed regulation does not systematically discriminate against, or exclude or deny participation of, the lower income population group or the minority population group in the benefits of the proposed regulation in a way that would be contrary to the intent of E.O. 12898. Because today's proposed regulation requires all 316(b) Existing Facilities to achieve compliance regardless of

[120] Affected populations include all individuals who live within a 50-mile radius of the facility who will be receiving a non-use benefit from the improved health of the aquatic ecosystem in the area, and any additional anglers who live outside of the 50-mile facility buffer and within a 50-mile radius of the reaches nearest to 316(b) Existing Facilities, who will be receiving the use benefit of improved catches as a result of the proposed rule.

[121] That is, the estimated benefit population is comprised of a significantly lower share of low-income and/or minority populations than the general population of the state.

[122] Annual household income data in the FCP Module is available for the following categories: Less than $10,000; $10,000 to $19,999; $20,000 to $24,999; $25,000 to $29,999; $30,000 to $34,999; $35,000 to $39,999; $40,000 to $49,999; $50,000 to $74,999; $75,000 to $99,999; and more than $100,000. For this analysis as well as previous 316(b) rule analyses, these categories were combined into low- and not low-income groups based on the U.S. Department of Health and Human Services' poverty guidelines for a family of four living in the contiguous United States or D.C. The current (2009) poverty guideline is $22,050, which falls within the $20,000 to $24,999 income range (U.S. HHS, 2009). For the current analysis, EPA used $20,000 as the threshold for separating populations into low- and not low-income groups.

[123] Race categories used in the analysis include white, black or African American, Asian or Native Hawaiian or Other Pacific Islander, American Indian or Alaska Native, and some other race.

location, there can be no systematic discrimination or exclusion of low income or minority populations from participation in the rule's benefits, based, for example, on selection of only specific facilities to which the regulation would apply.[124] EPA thus concludes, overall, that the proposed regulation is consistent with the policy intent of E.O. 12898. Anecdotally, minority (*e.g.,* Native American) and low-income populations may be more likely to include a larger proportion of subsistence fishermen. Since this rule will increase abundance of all fish species in the areas affected by cooling water intakes, it may provide a particular benefit to subsistence fishermen. To the extent that minority and low-income populations are over-represented in this group, they may especially benefit from this rule.

K. Executive Order 13158: Marine Protected Areas

Executive Order 13158 (65 FR 34909, May 31, 2000) requires EPA to "expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment." EPA may take action to enhance or expand protection of existing marine protected areas and to establish or recommend, as appropriate, new marine protected areas. The purpose of the Executive Order is to protect the significant natural and cultural resources within the marine environment, which means "those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law."

Today's proposed rule recognizes the biological sensitivity of tidal rivers, estuaries, oceans, and the Great Lakes and their susceptibility to adverse environmental impact from cooling water intake structures. This rule provides requirements to minimize adverse environmental impact for cooling water intake structures located on these types of waterbodies.

EPA used GIS data of the locations of Marine Protected Areas (MPAs) from the national MPA program (*http://www.mpa.gov/helpful_resources/inventory.html*) to locate 316(b) existing facilities with intakes within MPAs. Under Option 1, 87 percent of in-scope facilities within MPAs obtain reductions in impingement mortality, while reductions in entrainment mortality cannot be estimated because they will be based on site-specific determinations of BTA. Under Options 2 and 3, impingement mortality is reduced at 92 and 97 percent of 316(b) facilities in MPAs, while the addition of closed-cycle cooling towers results in reduced entrainment mortality at 72 and 92 percent of in-scope facilities found in MPAs, respectively. Therefore, EPA expects today's proposed regulation would advance the objective of the Executive Order to protect marine areas. For more details of the methodology used in this analysis and the specific water bodies expected to be improved, *see* Section 5 in Chapter 9 in the EA report.

XI. Solicitation of Data and Comments

A. General Solicitation of Comment

EPA encourages public participation in this rulemaking. EPA asks that commenters address any perceived deficiencies in the record supporting this proposal and that suggested revisions or corrections to the rule, preamble or record be supported by data. EPA invites all parties to coordinate their data collection activities with the Agency to facilitate cost-effective data submissions. Please refer to the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this preamble for technical contacts at EPA.

Requests for comment on specific issues are scattered throughout this preamble in the sections where such issues are discussed. In addition, EPA specifically requests comment on the issues discussed below.

B. Specific Solicitation of Comments and Data

Definition of "Design Intake Flow"

EPA requests comment on whether the definition of DIF should be further revised to clarify that EPA intends for the design intake flow to reflect the maximum volume of water that a plant can physically withdraw from a source waterbody over a specific time period. This would mean that a facility that has permanently taken a pump out of service or has flow limited by piping or other physical limitations should be able to consider such constraints when reporting its DIF. See Section V.G.

2. National BTA Categorical Standards for Offshore Oil and Gas Extraction and Seafood Processing Facilities

EPA requests comment and data on the appropriateness of a single BTA categorical standards for offshore oil and gas extraction facilities and seafood processing facilities. Today's rule would continue to require that the BTA for existing offshore oil and gas extraction facilities and seafood processing facilities be established by NPDES permit directors on a case-by-case basis using best professional judgment. See Section V.H.

3. Cost-cost Alternative From Phase II Rule

EPA does not have technical data for all existing facilities. EPA concluded that the Phase II rule costs provided in Appendix A are not appropriate for use in a facility-level cost-cost test. See Section III. Moreover, under the national requirements EPA is proposing today, EPA concluded that a specific cost-cost variance is not necessary because the Director already has the discretion to consider such factors. EPA requests comment on these conclusions.

4. Entrainment Survival

There are circumstances where certain species of eggs have been shown to survive entrainment under certain conditions, however EPA has not received any new data for either the most common species or the species of concern most frequently identified in available studies. For purposes of today's national rulemaking, entrainment is still presumed to lead to 100 percent mortality. See Section VI. Today's proposed rule would allow facilities to demonstrate, on a site-specific basis, that entrainment mortality of one or more species of concern is not 100 percent. EPA requests comment on this approach.

5. Alternative Impingement Mortality Compliance Requirements

EPA requests comment and data on a provision that would require facilities seeking to comply with the impingement mortality standard by meeting an intake velocity requirement either to demonstrate that the species of concern is adequately protected by the maximum intake velocity requirements, or else to employ fish friendly protective measures including a fish handling and return system. EPA is considering this provision because the Agency is concerned that some facilities that comply with the impingement mortality requirements by reducing intake velocity to 0.5 fps or less, may still impact species of concern. See Section VI.D.1.a.

6. Monthly and Annual Limits on Impingement Mortality

EPA requests comment on the need to tailor the impingement mortality requirements of today's proposal to

[124] Additionally, in states in which low-income populations are less present in the benefits group than in the state population overall, these populations are not subject to the environmental damages today's rule *see*ks to ameliorate to the same extent as other income groups.

account for site-specific circumstances and/or technologies, including location of cooling water intakes that impinge relatively few fish or other approaches that achieve impingement mortality reductions equivalent to the proposed performance standards. For example, if EPA were to consider number of fish killed as an alternative, it might statistically model the data or select the minimum observed value. Studies and information supporting these alternatives would be most helpful. EPA also requests comment on the monthly and annual limits in the proposed rule and way in which they were calculated.

7. Flow Basis for Option

EPA requests comment on both the threshold and the flow basis for a variation of option 2 that would use 125 MGD Actual Intake Flow (AIF) rather than a 125 MGD Design Intake Flow (DIF) as the threshold. See Section VI.D.2.

8. Waterbody Type as a Basis for Different Standards

EPA's reanalysis of impingement and entrainment data does not support the premise that the difference in the density of organisms between marine and fresh waters justifies different standards. More specifically, the average density of organisms in fresh waters may be less than that found on average in marine waters, but the actual density of aquatic organisms in some specific fresh water systems exceeds that found in some marine waters. EPA also believes the different reproduction strategies of freshwater versus marine species make broad characterizations regarding the density less valid a rationale for establishing different standards for minimizing adverse environmental impact. EPA requests comment on its proposal not to differentiate requirements by water body type.

9. Capacity Utilization Rating as a Basis for Different Standards

Electric generating facilities may still continue to withdraw significant volumes of water when not generating electricity. Further, EPA found that load-following and peaking plants operate at or near 100 percent capacity (and therefore 100 percent design intake flow) when they are operating. Peaking facilities (those with a CUR of less than 15 percent, as defined in the 2004 Phase II rule) may withdraw relatively small volumes on an annual basis, but if they operate during biologically important periods such as spawning seasons or migrations, then they may have nearly the same adverse impact as a facility that operates year round. EPA requests comment on its decision not to exclude facilities with a low capacity utilization rate. Comments who believe that EPA should include a CUR threshold in the final rule should provide a suggested threshold and explain the basis for it.

10. Flow Commensurate With Closed-Cycle Cooling

EPA requests comment on whether the demonstration that a facility's flow reduction will be commensurate with closed-cycle cooling should be based on a defined metric, or determined by the permitting authority on a site-specific basis for each facility. EPA is proposing that a facility seeking to demonstrate flow reduction commensurate with closed-cycle cooling using flow reduction technologies and controls other than through closed-cycle cooling (*e.g.,* through seasonal flow reductions, unit retirements, and other flow reductions) would have to demonstrate total flow reductions approximating 97.5% for freshwater withdrawals and 94.9% for saltwater withdrawals. *See* Section IX.D.

11. Credits for Unit Closures

EPA requests comments on the proposed approach to allow credits for unit closures to be valid for 10 years from the date of the closure. In EPA's current thinking this approach reasonably allows facilities to get credit for flow reductions attributable to unit closures, but also requires such facilities to make future progress to ensure its operations reflect best available entrainment controls. See Section IX.D.

12. Land Constraints

EPA requests comment on the use of a ratio for determining the land constraint threshold for retrofit construction of cooling tower, as well as data for determining alternative thresholds. EPA has not identified any facilities with more than 160 acres/1000MWs that EPA believes would be unable to construct retrofit cooling towers. EPA is exploring the use of such a ratio to support determinations regarding adequate land area to construct retrofit cooling towers. See Section IX.D (footnote 1).

13. Proposed Implementation Schedule

EPA requests comment on its proposed schedule for implementing the proposed rule. The proposed schedule uses a phased approach for information submittal, requiring some facilities to submit application materials as soon as six months after rule promulgation. The longest timeframe for information submittal would not exceed seven years and six months. EPA solicits comment on the proposed schedule, and specifically seeks comment and data on the appropriate amount of time to collect data, conduct reviews, obtain comment, provide for public participation, and issue final permit conditions. See Section IX.E.

14. Methods for Evaluating Latent Mortality Effects Resulting From Impingement

EPA requests comment on methods for evaluating latent mortality effects resulting from impingement. EPA requests comment on whether it should specifically establish 24 or 48 hours after initial impingement as the time at which to monitor impingement mortality. EPA's record demonstrates that a holding time of no more than 48 hours is optimal for evaluating the latent mortality associated with impingement while at the same time minimizing mortality associated with holding the organisms. See Section IX.F.1.

15. Counting Impinged Organisms With the "Hypothetical Net"

EPA requests comment on the "hypothetical net" approach to measuring impingement mortality. Facilities could apply a "hypothetical net" in that they could elect to only count organisms that would not have passed through a net with 3/8" mesh. For example, a facility that uses a fine-mesh screen or diverts the flow directly to a sampling bay would only need to count organisms that could be collected if the flow passed through a net, screen, or debris basket fitted with 3/8" mesh spacing. See Section IX.F.1. EPA further solicits comment on alternative approaches that would not penalize facilities for employing fine mesh screens.

16. Incentives for Reducing I&E by Reducing Water Withdrawals

EPA requests comment on incentives or alternative requirements for exceptionally energy efficient or water efficient facilities. See Section III. EPA also solicits comment on the regulatory provisions that encourage the use of recycled water as cooling water, including reclaimed water from wastewater treatment plants and process water from manufacturing facilities, EPA solicits comment on other incentives to encourage use of recycled water to supplement or replace marine, estuarine, or freshwater intakes.

17. Options Which Provide Closed-Cycle Cooling as BTA

EPA solicits comment on regulatory options that establish closed-cycle cooling as BTA. EPA specifically requests comment on the regulatory options 2 and 3 included in today's proposal, which would establish closed-cycle cooling as BTA for EM at a DIF of 2 MGD and 125 MGD, respectively. See Section VI and VII. EPA further solicits comment and supporting data on alternative thresholds, including whether such alternative thresholds should be based on DIF or AIF. EPA also solicits comment and supporting data for alternative criteria that would establish closed-cycle cooling as BTA for some facilities.

18. Costs of Controls To Eliminate Entrapment

EPA assumes facilities with modified traveling screens including a fish handling and return system would meet the proposed requirements to eliminate entrapment of fish and shellfish. EPA believes those facilities with an offshore velocity cap leading to a forebay but without a fish return system would incur costs to meet the proposed requirements for entrapment. For facilities with closed-cycle cooling systems, EPA does not have data on the number of facilities that also have a fish handling and return system. Further, EPA does not have data on the number of facilities that have less than 0.5 feet per second intake velocity but have a cooling water intake system that may cause entrapment. EPA solicits comment and data on the types and numbers of facilities with a cooling water intake system that may cause entrapment, and the costs to eliminate entrapment.

19. Analysis of New Capacity

EPA requests comment on the number of new units and the amount of new capacity construction projected. See Section VII.

20. Monitoring Reports

EPA solicits comment on how frequently I&E mortality monitoring reports should be submitted. EPA further solicits comment on incorporating the monitoring reports into monthly DMRs, or whether less frequent reporting is appropriate. EPA also requests comment on whether minimum monitoring frequencies should be established in this rule or left to the discretion of the Director. See Section IX.

21. Seasonal Operation of Cooling Towers

EPA solicits comment on an option that would require cooling towers on some or all facilities but recognize the site-specific nature of EM by allowing seasonal operation of cooling towers during peak entrainment season. EPA also requests comment on including a similar provision for new units at existing facilities, which are required to achieve I&E reductions commensurate with closed cycle cooling in the proposed rule.

22. New Unit Provision

EPA solicits comment on the new unit provision. Specifically, EPA solicits comment on the clarity of the definition of new unit, and whether it should be expanded to include other units such as those that are repowered or rebuilt. EPA also solicits comment on whether the new unit provision should be deleted, therefore subjecting these units to the same site-specific entrainment BTA determination required of existing units.

23. Review Criteria To Guide Evaluation of Entrainment Feasibility Factors

EPA solicits comment on the criteria specified in the regulation for guiding the evaluation of closed-cycle cooling as BTA for EM. EPA further solicits comment on additional criteria that EPA should address, and whether such criteria should be developed in the regulation or provided in guidance.

24. Alternative Procedures for Visual or Remote Inspections

EPA requests comment on its proposal to permit the Director to establish alternative procedures for conducting visual or remote inspections during periods of inclement weather. EPA also requests comment on whether the rule should specific minimum frequencies for visual or remote inspections, or leave this to the determination of the permitting authority. See Section IX.F.

25. Threshold for In-Scope Facilities

EPA requests comment on the threshold of DIF greater than 2 MGD for identifying facilities in-scope of this rule.

26. Application Requirements

EPA requests comment on the burden and practical utility of all of the proposed application requirements. EPA is particularly interested in the burden of application requirements to facilities with DIF < 50 MGD. EPA also requests comment on its proposal to limit application requirements for facilities that have already installed closed-cycle cooling, or opt to do so without a site-specific assessment of BTA, and whether there are additional requirements that could be relaxed for this group.

27. Comment From State and Local Officials

EPA specifically requests comment on this proposed rule from State and local officials. See Section X.E.

28. Comment From Tribal Officials

EPA specifically requests additional comment on this proposed action from Tribal officials. See Section X.F.

List of Subjects

40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 125

Environmental protection, Cooling water intake structure, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: March 28, 2011.

Lisa P. Jackson,

Administrator.

For reasons set out in the preamble, Chapter I of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. The suspension of 40 CFR 122.21(r)(1)(ii) and (r)(5), published on July 9, 2007 (72 FR 37109) is lifted.

3. Section 122.21 is amended as follows:

a. Revising paragraph (r)(1)(ii).

b. Revising paragraphs (r)(2) introductory text, (r)(2)(i) though (iii), and (r)(3) through (5).

c. Adding paragraphs (r)(6) through (12).

§ 122.21 Application for a permit (applicable to State programs, see § 123.25)

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(r) * * *

(1) * * *

(ii) *Existing facilities.* (A) The owner or operator of an existing facility as

defined in 40 CFR part 125, subpart J, with a cooling water intake structure that supplies cooling water exclusively for operation of a wet or dry cooling system and that meets the definition of closed cycle recirculating system at 40 CFR 125.92 must submit to the Director for review the information required under paragraphs (r)(2), (3), and (6) of this section. The owner or operator of all other existing facilities as defined in part 125, subpart J, of this chapter must also submit to the Director for review the information required under paragraphs (r) (5), (7), and (8) of this section as part of its permit application.

(B) The owner or operator of an existing facility as defined in 40 CFR part 125, subpart J, of this chapter that withdraws greater than 125 MGD actual intake flows (AIF) of water for cooling purposes must submit to the Director for review the information required under paragraphs (r)(9), (10), (11), and (12) of this section.

(C) *New units at existing facilities.* New units at existing facilities with cooling water intake structures as defined in part 125, subpart J, of this chapter must provide an update to the information required under paragraphs (r)(2), (3), and (6) of this section and § 125.95 of this chapter. Requests for alternative requirements under § 125.94(d)(4) of this chapter must be submitted with your permit application.

* * * * *

(2) *Source water physical data.* The owner or operator of the facility must submit:

(i) A narrative description and scaled drawings showing the physical configuration of all source water bodies used by your facility, including areal dimensions, depths, salinity and temperature regimes, and other documentation that supports your determination of the water body type where each cooling water intake structure is located;

(ii) Identification and characterization of the source waterbody's hydrological and geomorphological features, as well as the methods you used to conduct any physical studies to determine your intake's area of influence within the waterbody and the results of such studies;

(iii) Locational maps; and

* * * * *

(3) *Cooling water intake structure data.* The owner or operator of the facility must submit:

(i) A narrative description of the configuration of each of your cooling water intake structures and where it is located in the water body and in the water column;

(ii) Latitude and longitude in degrees, minutes, and seconds for each of your cooling water intake structures;

(iii) A narrative description of the operation of each of your cooling water intake structures, including design intake flows, daily hours of operation, number of days of the year in operation and seasonal changes, if applicable;

(iv) A flow distribution and water balance diagram that includes all sources of water to the facility, recirculating flows, and discharges; and

(v) Engineering drawings of the cooling water intake structure.

(4) *Source water baseline biological characterization data.* The owner or operator of each facility must submit the following information in order to characterize the biological community in the vicinity of the cooling water intake structure and to characterize the operation of the cooling water intake structures. This supporting information must include any available existing data. However, you may also supplement the data using newly conducted field studies. In the case of a new facility, the Director may also use this information in subsequent permit renewal proceedings to determine if your Design and Construction Technology Plan as required in § 125.86(b)(4) of this chapter should be revised. The information you submit must include:

(i) A list of the data in paragraphs (r)(4)(ii) through (vi) of this section that are not available and efforts made to identify sources of the data;

(ii) A list of species (or relevant taxa) for all life stages and their relative abundance in the vicinity of the cooling water intake structure;

(iii) Identification of the species and life stages that would be most susceptible to impingement and entrainment. Species evaluated must include the forage base as well as those most important in terms of significance to commercial and recreational fisheries;

(iv) Identification and evaluation of the primary period of reproduction, larval recruitment, and period of peak abundance for relevant taxa;

(v) Data representative of the seasonal and daily activities (*e.g.,* feeding and water column migration) of biological organisms in the vicinity of the cooling water intake structure;

(vi) Identification of all threatened, endangered, and other protected species that might be susceptible to impingement and entrainment at your cooling water intake structures;

(vii) Documentation of any public participation or consultation with Federal or State agencies undertaken in development of the plan; and

(viii) If you supplement the information requested in paragraph (r)(4)(i) of this section with data collected using field studies, supporting documentation for the Source Water Baseline Biological Characterization must include a description of all methods and quality assurance procedures for sampling, and data analysis including a description of the study area; taxonomic identification of sampled and evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods. The sampling and/or data analysis methods you use must be appropriate for a quantitative survey and based on consideration of methods used in other biological studies performed within the same source water body. The study area should include, at a minimum, the area of influence of the cooling water intake structure.

(ix) Identification of protective measures and stabilization activities that have been implemented, and a description of how these measures and activities affected the baseline water condition in the vicinity of the intake.

(5) *Cooling water system data.* The owner or operator of the facility must provide the following information for each cooling water intake structure used:

(i) A narrative description of the operation of the cooling water system and its relationship to cooling water intake structures; the proportion of the design intake flow that is used in the system including a distribution of water used for contact cooling, non-contact cooling, and process uses; a distribution of water reuse (to include cooling water reused as process water, process water reused for cooling, and the use of gray water for cooling); description of reductions in total water withdrawals including cooling water intake flow reductions already achieved through minimized process water withdrawals; description of any cooling water that is used in a manufacturing process either before or after it is used for cooling, including other recycled process water flows; the proportion of the source waterbody withdrawn (on a monthly basis); the number of days of the year the cooling water system is in operation and seasonal changes in the operation of the system, if applicable;

(ii) Design and engineering calculations prepared by a qualified professional and supporting data to support the description required by paragraph (r)(5)(i) of this section;

(iii) Description of existing impingement and entrainment

technologies or operational measures and a summary of their performance, including but not limited to reductions in entrainment mortality due to intake location and reductions in total water withdrawals and usage.

(6) *Impingement Mortality Reduction Plan.* The Impingement Mortality Reduction Plan must identify the approach the owner or operator of the facility will use to meet the BTA standards for impingement mortality at 40 CFR 125.94(b), including:

(i) Identification of the method of intended compliance with the BTA standards for impingement mortality for each intake by either conducting a direct measure of impingement mortality through sampling, by demonstrating that the maximum design intake velocity is equal to or less than 0.5 feet per second, or by measuring the intake velocity and demonstrating that the actual intake velocity is equal to or less than 0.5 feet per second.

(ii) If you plan to comply with the BTA standards for impingement mortality requirements by conducting a direct measure of impingement mortality through sampling, you must provide a description of the study area including the area of influence of each cooling water intake structure and a taxonomic identification of the sampled or evaluated biological assemblages including all life stages of fish and shellfish that may be susceptible to impingement.

(iii) If you plan to comply with the BTA standards for impingement mortality requirements by conducting a direct measure of impingement mortality through sampling, you must also provide a description of any sampling or monitoring approach to be used in measuring impingement mortality, including:

(A) The duration and frequency of monitoring, subject to the minimum monitoring requirements established by the Director under 40 CFR 125.96 but in no case less frequently than a biweekly basis;

(B) The monitoring locations;

(C) The organisms to be monitored, and

(D) The method in which naturally moribund organisms are identified and taken into account.

(iv) If you plan to comply with the BTA standards for impingement mortality requirements by demonstrating that the design intake velocity is equal to or less than 0.5 feet per second, documentation including:

(A) A demonstration that the maximum design intake velocity is equal to or less than 0.5 feet per second;

(B) A description of technologies or operational measures to keep any debris from blocking the intake at no more than 15 percent of the opening of the intake; and

(C) A description of technologies or operational measures to prevent entrapment of fish or shellfish by the cooling water intake system.

(v) If you plan to comply with the BTA standards for impingement mortality by measuring the intake velocity to demonstrate the intake velocity is equal to or less than 0.5 feet per second, documentation including:

(A) Velocity monitoring to demonstrate that the actual intake velocity is equal to or less than 0.5 feet per second;

(B) Documentation of the technologies and operational measures taken to ensure the actual intake velocity will not exceed 0.5 feet per second; and,

(C) A description of technologies or operational measures to prevent entrapment of impingeable fish or shellfish by the cooling water intake system.

(vi) For intakes that withdraw from oceans and tidal waters, a description of the measures and technologies to reduce impingement mortality of shellfish to a level comparable to that achieved by properly deployed and maintained barrier nets, including but not limited to cylindrical wedgewire screens, seasonal deployment of barrier nets, intake location, and/or an appropriate handling and return system.

(vii) You must demonstrate that the cooling water intake structure does not lead to entrapment. This demonstration must include documentation that organisms are excluded from entering any portion of the intake where there is not an opportunity for them to escape. If your cooling water intake structure results in entrapment and the only way for fish to escape is by being impinged upon the screens or to pass through the facility (in the case of open intakes), you must document that additional protective measures will be deployed such as, for example, modification of traveling screens with collection buckets designed to minimize turbulence to aquatic life, addition of a guard rail or barrier to prevent loss of fish from the collection bucket, replacement of screen panel materials with smooth woven mesh, a low pressure wash to remove fish prior to any high pressure spray to remove debris on the ascending side, and a fish return with adequate flow to ensure fish return to the source water body. If you cannot document these additional protective measures, you must count all entrapment of organisms as mortality.

(viii) Documentation of all methods and quality assurance/quality control procedures for sampling and data analysis. The proposed sampling and data analysis methods must be appropriate for a quantitative survey.

(7) *Performance studies.* If the owner or operator has conducted studies, or chooses to use previously conducted studies obtained from other facilities, you must submit a description of those biological survival studies conducted, together with underlying data, and a summary of any conclusions or results, including but not limited to:

(i) Site-specific studies addressing technology efficacy, through-plant entrainment survival, and other impingement and entrainment mortality studies;

(ii) Studies conducted at other locations including an explanation as to why the data from other locations is relevant and representative of conditions at your facility;

(iii) Studies older than 10 years must include an explanation of why the data is still relevant and representative of conditions at your facility.

(8) *Operational status.* The owner or operator of the facility must submit a description of its operational status for each generating, production, or process unit, including but not limited to:

(i) Descriptions of individual unit operating status including age of each unit, capacity utilization (or equivalent) for the previous 5 years, and any major upgrades completed within the last 15 years, including but not limited to boiler replacement, condenser replacement, turbine replacement, or changes to fuel type;

(ii) Descriptions of completed, approved, or scheduled uprates and NRC relicensing status of each unit at nuclear facilities;

(iii) Descriptions of plans or schedules for decommissioning or replacement of units;

(iv) Descriptions of current and future production schedules at manufacturing facilities; and

(v) Descriptions of plans or schedules for any new units planned within the next 5 years.

(9) *Entrainment characterization study.* For all species and life stages identified under the requirements of paragraph (r)(4) of this section, the owner or operator of the facility must:

(i) Develop and submit an entrainment mortality data collection plan for review and comment by the Director. The entrainment mortality data collection plan must include, at a minimum:

(A) The duration and frequency of monitoring;

(B) The monitoring locations, including a description of the study area and the area of influence of the cooling water intake structure(s);

(C) A taxonomic identification of the sampled or evaluated biological assemblages;

(D) Identification of all life stages of fish and shellfish, including identification of any surrogate life stages used, and identification of data representing both motile and non-motile life-stages of organisms;

(E) The organisms to be monitored, including species of concern and threatened or endangered species;

(F) Any other organisms identified by the Director;

(G) The method by which latent mortality would be identified;

(H) Documentation of all methods and quality assurance/quality control procedures for sampling and data analysis. The proposed sampling and data analysis methods must be appropriate for a quantitative survey.

(ii) Obtain peer review of the entrainment mortality data collection plan. You must select peer reviewers in consultation with the Director, including that the Director may require additional peer reviewers. The Director may consult with EPA and Federal, State and Tribal fish and wildlife management agencies with responsibility for fish and wildlife potentially affected by the cooling water intake structure(s) to determine which peer review comments must be addressed by the final plan. You must provide an explanation for any significant reviewer comments not accepted. Peer reviewers must have appropriate qualifications in biology, engineering, hydrology, or other fields and their names and credentials must be included in the peer review report.

(iii) Implement the entrainment mortality data collection plan no later than 6 months after submission of the entrainment mortality data collection plan to the Director.

(iv) The Entrainment Characterization Study must include all of the following components:

(A) Taxonomic identifications of all life stages of fish, shellfish, and any species protected under Federal, State, or Tribal Law (including threatened or endangered species) that are in the vicinity of the cooling water intake structure(s) and are susceptible to entrainment;

(B) Characterization of all life stages of fish, shellfish, and any species protected under Federal, State, or Tribal Law (including threatened or endangered species), including a description of the abundance and temporal and spatial characteristics in the vicinity of the cooling water intake structure(s), based on sufficient data to characterize annual, seasonal, and diel variations in entrainment, and including but not limited to variations related to climate and weather differences, spawning, feeding and water column migration. These may include historical data that are representative of the current operation of your facility and of biological conditions at the site; and,

(C) Documentation of the current entrainment of all life stages of fish, shellfish, and any species protected under Federal, State, or Tribal Law (including threatened or endangered species). The documentation may include historical data that are representative of the current operation of your facility and of biological conditions at the site. Entrainment samples to support the facility's calculations must be collected during periods of representative operational flows for the cooling water intake structure and the flows associated with the samples must be documented. Data for specific organism mortality or survival that is applied to other life-stages or species must be identified. The owner or operator of the facility must identify and document all assumptions and calculations used to determine the total entrainment and entrainment mortality for that facility.

(D) Information collected to meet paragraphs (r)(4) and (r)(7) of this section may be used in developing the Entrainment Characterization Study.

(10) *Comprehensive technical feasibility and cost evaluation study.* The owner or operator of the facility must submit an engineering study of the technical feasibility and incremental costs of candidate entrainment mortality control technologies. The study must include the following:

(i) *Technical feasibility.* At a minimum, the owner or operator of the facility must conduct a study to evaluate the technical feasibility of closed-cycle recirculating systems (cooling towers) and fine mesh screens with a mesh size of 2mm or smaller. This study must include:

(A) A description of all technologies and operational measures considered (including alternative designs of closed-cycle recirculating systems—such as natural draft cooling towers, mechanical draft cooling towers, hybrid designs, and compact or multi-cell arrangements);

(B) A discussion of land availability, including an evaluation of adjacent land and acres potentially available due to generating unit retirements, production unit retirements, other buildings and equipment retirements, and ponds, coal piles, rail yards, transmission yards, and parking lots, and

(C) Documentation of factors other than cost that may make a candidate technology impractical or infeasible for further evaluation.

(ii) *Other entrainment mortality control technologies.* Following submission of the engineering study, the Director may require evaluation of additional technologies for reducing entrainment mortality.

(iii) *Cost evaluations.* The study must include engineering cost estimates of all technologies considered in paragraphs (r)(10)(i) and (ii) of this section. All costs must be presented as the net present value (NPV) of the social costs and the corresponding annual value. In addition to the required social costs, you may choose to provide facility level compliance costs, however you must separately discuss facility level compliance costs and social costs. You must discuss and provide documentation for:

(A) Any outages, downtime, or other impacts to facility revenue. Depreciation schedules, interest rates and related assumptions must be identified.

(B) Costs and explanation of any additional facility modifications necessary to support construction and operation of technologies considered in paragraphs (r)(10)(i) and (ii) of this section, including but not limited to relocation of existing buildings or equipment, reinforcement or upgrading of existing equipment, and additional construction and operating permits. Depreciation schedules, interest rates, useful life of the technology considered, and any related assumptions must be identified.

(C) Costs and explanation for addressing any non-water quality impacts identified in paragraph (r)(12) of this section. The cost evaluation must include a discussion of all reasonable attempts to mitigate each of these impacts.

(iv) *Peer review.* Obtain peer review of the comprehensive technical feasibility and cost evaluation study. You must select peer reviewers in consultation with the Director, including that the Director may require additional peer reviewers. The Director may consult with EPA and Federal, State and Tribal fish and wildlife management agencies with responsibility for fish and wildlife potentially affected by the cooling water intake structure(s) to determine which peer review comments must be addressed by the final study. You must provide an explanation for any significant reviewer comments not accepted. Peer reviewers must have

appropriate qualifications in biology, engineering, hydrology, or other fields and their names and credentials must be included in the peer review report.

(11) *Benefits valuation study.* The owner or operator of the facility must submit an evaluation of the magnitude of water quality benefits, both monetized and non-monetized, of the candidate entrainment mortality reduction technologies and operational measures evaluated in paragraph (r)(10) of this section, including but not limited to:

(i) Incremental changes in the numbers of fish and shellfish, for all life stages, lost due to impingement mortality and entrainment mortality as defined in 40 CFR 125.92;

(ii) Identification of basis for any monetized values you assigned to changes in commercial and recreational species, forage fish, and shellfish, and to any other ecosystem or non-use benefits;

(iii) Discussion of recent mitigation efforts already completed;

(iv) Identification of other benefits to the environment and local communities, including but not limited to improvements for mammals, birds, and other organisms and aquatic habitats.

(v) Peer review. Obtain peer review of the benefits valuation study. You must select peer reviewers in consultation with the Director, including that the Director may require additional peer reviewers. The Director may consult with EPA and Federal, State and Tribal fish and wildlife management agencies with responsibility for fish and wildlife potentially affected by the cooling water intake structure(s) to determine which peer review comments must be addressed by the final study. You must provide an explanation for any significant reviewer comments not accepted. Peer reviewers must have appropriate qualifications in biology, engineering, hydrology, or other fields and their names and credentials must be included in the peer review report.

(12) *Non-water Quality and Other Environmental Impacts Study.* The owner or operator of the facility must submit a detailed site-specific discussion of the changes in non-water quality factors and other environmental impacts attributed to each technology and operational measure considered in paragraph (r)(10) of this section, including but not limited to both increases and decreases of each factor. The study must include the following:

(i) Estimates of changes to energy consumption, including but not limited to parasitic load and turbine backpressure energy penalties;

(ii) Estimates of changes to thermal discharges, including an estimate of any increased facility capacity, operations, and reliability that may be possible due to relaxed permitting constraints related to thermal discharges;

(iii) Estimates of air pollutant emissions and of the human health and environmental impacts associated with such emissions;

(iv) Estimates of changes in noise;

(v) Discussion of impacts to safety, including documentation of the potential for plumes, icing, and availability of emergency cooling water;

(vi) Impacts to grid reliability for the facility and for each power generating unit, including an estimate of changes to facility capacity, operations, and reliability due to cooling water availability;

(vii) Facility reliability, including but not limited to facility availability, production of steam, and impacts to production based on process unit heating or cooling;

(viii) Significant changes in consumption of water, including a site-specific comparison of the evaporative losses of both once-through cooling and closed cycle recirculating systems, and documentation of impacts attributable to changes in water consumption;

(ix) A discussion of all reasonable attempts to mitigate each of these factors.

(x) Peer review. Obtain peer review of the non-water quality and other environmental impacts study. You must select peer reviewers in consultation with the Director, including that the Director may require additional peer reviewers. The Director may consult with EPA and Federal, State and Tribal fish and wildlife management agencies with responsibility for fish and wildlife potentially affected by the cooling water intake structure(s) to determine which peer review comments must be addressed by the final study. You must provide an explanation for any significant reviewer comments not accepted. Peer reviewers must have appropriate qualifications in biology, engineering, hydrology, or other fields and their names and credentials must be included in the peer review report.

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

4. The authority citation for part 125 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.;* unless otherwise noted.

Subpart I—[Amended]

5. Section 125.84 is amended as follows:

a. In the heading of paragraph (c) by removing the words "equal to or greater than 2 MGD" and adding in their place the words "greater than 2 MGD."

b. By revising paragraph (d)(1).

§ 125.84 As an owner or operator of a new facility, what must I do to comply with this subpart?

* * * * *

(d) * * *

(1) You must demonstrate to the Director that the technologies employed will reduce the level of adverse environmental impact from your cooling water intake structures to a comparable level to that which you would achieve were you to implement the requirements of paragraphs (b)(1) and (2) of this section. This demonstration must include a showing that the impacts to fish and shellfish, including important forage and predator species, within the watershed will be comparable to those which would result if you were to implement the requirements of paragraphs (b)(1) and (2) of this section. The Director may consider information provided by any fishery management agency(ies) along with data and information from other sources.

* * * * *

6. Section 125.86 is amended as follows:

a. Revise paragraph (b)(3) introductory text.

b. Revise paragraph (b)(4)(iii).

b. Remove and reserve paragraph (c)(2)(iv)(C).

c. Remove and reserve paragraph (c)(2)(iv)(D)(*2*).

§ 125.86 As an owner or operator of a new facility, what must I collect and submit when I apply for my new or reissued NPDES permit?

* * * * *

(b) * * *

(3) *Source waterbody flow information.* You must submit to the Director the following information to demonstrate that your cooling water intake structure meets the flow requirements in § 125.84(b)(3) or (c)(2).

* * * * *

(4) * * *

(iii) The owner or operator of a new facility required to install design and construction technologies and/or operational measures must develop a plan explaining the technologies and measures selected that is based on information collected for the Source Water Biological Baseline Characterization required by 40 CFR 122.21(r)(4). (Examples of appropriate technologies include, but are not limited to, wedgewire screens, fine mesh

screens, fish handling and return systems, barrier nets, aquatic filter barrier systems, etc. Examples of appropriate operational measures include, but are not limited to, seasonal shutdowns or reductions in flow, continuous operations of screens, etc.) The plan must contain the following information:

* * * * *

7. Section 125.87 is amended by revising paragraph (a) introductory text and paragraph (a)(2) to read as follows:

§ 125.87 As an owner or operator of a new facility, must I perform monitoring?

* * * * *

(a) *Biological monitoring.* You must monitor both impingement and entrainment of the commercial, recreational, and forage base fish and shellfish species identified in either the Source Water Baseline Biological Characterization data required by 40 CFR 122.21(r)(4) or the Comprehensive Demonstration Study required by § 125.86(c)(2), depending on whether you chose to comply with Track I or Track II. The monitoring methods used must be consistent with those used for the Source Water Baseline Biological Characterization data required in 40 CFR 122.21(r)(4) or the Comprehensive Demonstration Study required by § 125.86(c)(2). You must follow the monitoring frequencies identified below for at least two (2) years after the initial permit issuance. After that time, the Director may approve a request for less frequent sampling in the remaining years of the permit term and when the permit is reissued, if the Director determines the supporting data show that less frequent monitoring would still allow for the detection of any seasonal and daily variations in the species and numbers of individuals that are impinged or entrained.

* * * * *

(2) *Entrainment sampling.* You must collect samples at least biweekly to monitor entrainment rates (simple enumeration) for each species over a 24-hour period during the primary period of reproduction, larval recruitment, and peak abundance identified during the Source Water Baseline Biological Characterization required by 40 CFR 122.21(r)(4) or the Comprehensive Demonstration Study required in § 125.86(c)(2). You must collect samples only when the cooling water intake structure is in operation.

* * * * *

8. Section 125.89 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 125.89 As the Director, what must I do to comply with the requirements of this subpart?

* * * * *

(b) * * *

(1) * * *

(ii) For a facility that chooses Track II, you must review the information submitted with the Comprehensive Demonstration Study required in § 125.86(c)(2), evaluate the suitability of the proposed design and construction technologies and operational measures to determine whether they will reduce both impingement mortality and entrainment of all life stages of fish and shellfish to 90 percent or greater of the reduction that could be achieved through Track I. In addition, you must review the Verification Monitoring Plan in § 125.86(c)(2)(iv)(D) and require that the proposed monitoring begin at the start of operations of the cooling water intake structure and continue for a sufficient period of time to demonstrate that the technologies and operational measures meet the requirements in § 125.84(d)(1). Under subsequent permits, the Director must review the performance of the additional and/or different technologies or measures used and determine that they reduce the level of adverse environmental impact from the cooling water intake structures to a comparable level that the facility would achieve were it to implement the requirements of § 125.84(b)(1) and (2).

* * * * *

9. The suspension of 40 CFR 125.90(a), (c), and (d), published on July 9, 2007 (72 FR 37109) is lifted.

10. The suspension of 40 CFR 125.91 through 125.99, published on July 9, 2007 (72 FR 37109) is lifted.

11. Subpart J to part 125 is revised to read as follows:

Subpart J—Requirements Applicable to Cooling Water Intake Structures for Existing Facilities Under Section 316(b) of the Clean Water Act

Sec.

125.90 Purpose of this subpart.
125.91 Applicability.
125.92 Special definitions.
125.93 Compliance.
125.94 As an owner or operator of an existing facility, what must I do to comply with this subpart?
125.95 Permit application and supporting information requirements.
125.96 Monitoring requirements.
125.97 Other permit reporting and recordkeeping requirements.
125.98 Director requirements.
125.99 [Reserved]

Subpart J—Requirements Applicable to Cooling Water Intake Structures for Existing Facilities Under Section 316(b) of the Clean Water Act

§ 125.90 Purpose of this subpart.

(a) This subpart establishes the section 316(b) requirements that apply to cooling water intake structures at existing facilities that are subject to this subpart. These requirements include a number of components. These include standards for minimizing adverse environmental impact associated with the use of cooling water intake structures and required procedures (*e.g.,* permit application requirements, information submission requirements) for establishing the appropriate technology requirements at certain specified facilities as well as required monitoring, reporting, and recordkeeping requirements to demonstrate compliance. In combination, these components represent the best technology available for minimizing adverse environmental impact associated with the use of cooling water intake structures. These requirements are to be established and implemented in National Pollutant Discharge Elimination System (NPDES) permits issued under authority of sections 301, 308, and 402 of the Clean Water Act (CWA).

(b) Cooling water intake structures not subject to requirements under this or another subpart of this part must meet requirements under section 316(b) of the CWA established by the Director on a case-by-case, best professional judgment (BPJ) basis.

(c) Nothing in this subpart shall be construed to preclude or deny the right of any State or political subdivision of a State or any interstate agency under section 510 of the CWA to adopt or enforce any requirement with respect to control or abatement of pollution that is more stringent than those required by Federal law.

§ 125.91 Applicability.

(a) An existing facility, as defined in § 125.92, is subject to this subpart if it meets each of the following criteria:

(1) It is a point source;

(2) It uses or proposes to use cooling water intake structures with a total design intake flow (DIF) of greater than 2 million gallons per day (MGD) to withdraw water from waters of the United States; and

(3) Twenty-five percent or more of the water it withdraws is used exclusively for cooling purposes, measured on an average annual basis for each calendar year.

(b) Use of a cooling water intake structure includes obtaining cooling water by any sort of contract or arrangement with one or more independent suppliers of cooling water if the independent supplier withdraws water from waters of the United States but is not itself a new or existing facility as defined in subparts I or J of this part, except as provided in paragraph (d) of this section. An owner or operator of an existing facility may not circumvent these requirements by creating arrangements to receive cooling water from an entity that is not itself a facility subject to subparts I or J of this part.

(c) Notwithstanding paragraph (b) of this section, obtaining cooling water from a public water system, using reclaimed water from wastewater treatment facilities or desalination plants, or recycling treated effluent as cooling water does not constitute use of a cooling water intake structure for purposes of this subpart.

(d) This subpart does not apply to seafood processing facilities, offshore liquefied natural gas terminals, and offshore oil and gas extraction facilities that are existing facilities as defined in § 125.92. The owners and operators of such facilities must meet requirements established by the Director on a case-by-case, best professional judgment (BPJ) basis.

§ 125.92 Special definitions.

In addition to the definitions provided in § 122.2 of this chapter, the following special definitions apply to this subpart:

Actual Intake Flow (AIF) means the average volume of water withdrawn on an annual basis by the cooling water intake structures over the past three calendar years.

All life stages means eggs, larvae, juveniles, and adults. All life stages of fish and shellfish does not include members of the infraclass Cirripedia in the subphylum Crustacea (barnacles), green mussels (*Perna viridis*), or zebra mussels (*Dreissena polymorpha).* The Director may determine that all life stages of fish and shellfish does not include specified invasive species and naturally moribund species.

Closed-cycle recirculating system means a system designed, using minimized make-up and blowdown flows, to withdraw water from a natural or other water source to support contact or noncontact cooling uses within a facility, or a system designed to include cooling ponds that are not themselves a waters of the U.S. and that does not rely upon continuous intake flows of water. New source water (make-up water) is added to the system to replenish losses that have occurred due to blowdown, drift, and evaporation. *Closed-cycle recirculating system* includes, but is not limited to, wet or dry cooling towers. For cooling towers where the source for make-up water is freshwater or has a salinity equal to or less than 0.5 parts per thousand, minimized make-up and blow down means operating at a minimum cycles of concentration of 3.0. For cooling towers where the source for make-up water is saltwater, brackish water, or has a salinity of greater than 0.5 parts per thousand, minimized make-up and blow down means operating at a minimum cycles of concentration of 1.5. For facilities with a closed-cycle recirculating system other than a cooling tower, minimized make-up and blowdown flows means a reduction in actual intake flow of 97.5 percent for freshwater, and 94.9 percent for salt water or brackish water.

Contact cooling water means water used for cooling which comes into direct contact with any raw material, product, or byproduct. Examples of contact cooling water may include but are not limited to quench water at iron and steel plants, cooling water in a cracking unit, and cooling water directly added to food and agricultural products processing.

Cooling pond means a man-made canal, channel, lake, pond or other impoundment designed and constructed to provide cooling for a nearby electric generating or manufacturing unit. A cooling pond may comprise a closed-cycle recirculating system when waters of the U.S. are withdrawn only for the purpose of replenishing losses of cooling water due to blowdown, drift, and evaporation.

Cooling water means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water obtained from a public water system, reclaimed water from wastewater treatment facilities or desalination plants, treated effluent from a manufacturing facility, or cooling water that is used in a manufacturing process either before or after it is used for cooling as process water, is not considered cooling water for the purposes of calculating the percentage of a facility's intake flow that is used for cooling purposes in § 125.91(a)(3).

Cooling water intake structure means the total physical structure and any associated constructed waterways used to withdraw cooling water from waters of the United States. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, but not limited to, the intake pumps.

Design intake flow (DIF) means the value assigned during the cooling water intake structure design to the maximum volume of water the cooling water intake system is capable of withdrawing from a source waterbody over a specific time period. The facility's DIF may be adjusted to reflect permanent changes to the maximum capabilities of the cooling water intake system to withdraw cooling water, including but not limited to pumps permanently removed from service, flow limit devices, and physical limitations of the piping. DIF does not include values associated with emergency and fire suppression capacity or redundant pumps (*i.e.,* back-up pumps).

Entrainment means the incorporation of any life stages of fish and shellfish with the intake water flow entering and passing through a cooling water intake structure and into a cooling water system. Entrainable organisms includes any organisms potentially subject to *entrainment.* For purposes of this subpart, *entrainment* includes those organisms that pass through a ⅜ inch sieve, and excludes those organisms collected or retained on a ⅜ inch sieve.

Entrainment mortality means death as a result of entrainment through the cooling water intake structure, or death as a result of exclusion from the cooling water intake structure by fine mesh screens or other protective devices intended to prevent the passage of entrainable organisms through the cooling water intake structure.

Entrapment means the condition where impingeable fish and shellfish lack the means to escape the cooling water intake system. Entrapment includes but is not limited to: organisms caught in the bucket of a traveling screen and unable to reach a fish return; organisms caught in the forebay of a cooling water intake system without any means of being returned to the source waterbody without experiencing mortality; or cooling water intake systems where the velocities in the intake pipes or in any channels leading to the forebay prevent organisms from being able to return to the source waterbody through the intake pipe or channel.

Existing facility means any facility that commenced construction as described in 40 CFR 122.29(b)(4) on or before January 17, 2002; and any modification of, or any addition of a

unit at such a facility that is not a new facility at § 125.83.

Flow reduction means any modification that serves to reduce the volume of cooling water withdrawn. Examples include, but are not limited to, variable speed pumps, seasonal flow reductions, wet cooling towers, dry cooling towers, hybrid cooling towers, and unit closures.

Impingement means the entrapment of any life stages of fish and shellfish on the outer part of an intake structure or against a screening device during periods of intake water withdrawal. *Impingement* includes those organisms collected or retained on a 3/8 inch sieve, and excludes those organisms that pass through a 3/8 inch sieve.

Impingement mortality means death as a result of impingement.

Independent supplier means an entity, other than the regulated facility, that owns and operates its own cooling water intake structure and directly withdraws water from waters of the United States. The supplier provides the cooling water to other facilities for their use, but may also use a portion of the water itself. An entity that provides potable water to residential populations (*e.g.,* public water system) is not a supplier for purposes of this subpart.

Moribund means dying; close to death.

New unit means any addition of an operating unit at an existing facility where the construction begins after [effective date of the final rule], including but not limited to a new unit added to a new or existing facility for the same general industrial operation, but that does not otherwise meet the definition of a new facility at § 125.83. *New unit* includes any additional unit where that unit is not subject to the requirements of Subpart I. For purposes of this subpart, new unit refers to newly built units added to increase capacity at the facility and does not include any rebuilt, repowered or replacement unit, including any units where the generation capacity of the new unit is equal to or greater than the unit it replaces.

Operational measure means a modification to any operation that serves to minimize impact to all life stages of fish and shellfish from the cooling water intake structure. Examples of operational measures include, but are not limited to, more frequent rotation of traveling screens, use of a low pressure wash to remove fish prior to any high pressure spray to remove debris on the ascending side of a traveling screen, maintaining adequate volume of water in a fish return, and debris minimization measures such as air sparging of intake screens and/or other measures taken to maintain the design intake velocity.

§ 125.93 Compliance.

(a) The owner or operator of a facility subject to this subpart must comply with the applicable BTA standards for impingement mortality in § 125.94(b) as soon as possible based on the schedule of requirements set by the Director, but in no event later than [date 8 years after the effective date of the final rule].

(b) The owner or operator of a facility subject to this subpart must comply with the applicable BTA standards for entrainment mortality in § 125.94(c) as soon as possible, based on the schedule of requirements set by the Director.

(c) The owner or operator of an existing facility subject to this subpart that commences construction of a new unit after [effective date of the final rule] must comply with the BTA standards with respect to the new unit in § 125.94(b) and § 125.94(d) upon commencement of the new unit's operation. With respect to the existing units at the existing facility, the owner or operator must comply with paragraphs (a) and (b) of this section.

§ 125.94 As an owner or operator of an existing facility, what must I do to comply with this subpart?

(a) *Applicable BTA standards.* (1) The owner or operator of an existing facility with a design intake flow (DIF) greater than 2 MGD is subject to the impingement mortality standard under paragraph (b) of this section.

(2) The owner or operator of an existing facility with a design intake flow (DIF) greater than 2 MGD is subject to the BTA standards for entrainment mortality under paragraph (c) of this section. The owner or operator may choose instead to comply with the entrainment mortality standard at paragraph (d) of this section.

(3) New units at an existing facility that are not a new facility under § 125.83 and that have a design intake flow (DIF) greater than 2 MGD are subject to the BTA standards for impingement mortality at paragraph (b) of this section and the entrainment mortality standards at paragraph (d) of this section.

(b) BTA Standards for Impingement Mortality. By the dates specified in § 125.93, the owner or operator of an existing facility subject to this subpart must achieve the impingement mortality standards provided in paragraphs (b)(1), or (2), of this section:

(1) The owner or operator of an existing facility must:

(i) Achieve the following impingement mortality limitations for all life stages of fish that are collected or retained in a 3/8 inch sieve and held for a period of 24 to 48 hours to assess latent mortality. The annual average comprises the average for all measurements taken during the preceding 12-month period. The compliance period for the annual average will be established by the Director.

IMPINGEMENT MORTALITY NOT TO EXCEED

Regulated parameter	Annual average (percent)	Monthly average (percent)
Fish Impingement Mortality	12	31

(ii) The owner or operator of a facility that withdraws water from an ocean or tidal waters must also reduce impingement mortality of shellfish at a minimum to a level comparable to that achieved by properly deployed and maintained barrier nets. Passive screens such as cylindrical wedgewire screens, and through-flow or carry-over free intake screens such as dual-flow screens and drum screens, will meet this requirement.

(iii) The owner or operator of a facility that employs traveling screens or equivalent active screens must:

(A) Count any fish that are included in carryover from a screen or removed from a screen as part of debris removal as fish impingement mortality.

(B) Incorporate protective measures including but not limited to: modified traveling screens with collection buckets designed to minimize turbulence to aquatic life, addition of a guard rail or barrier to prevent loss of fish from the collection bucket,

replacement of screen panel materials with smooth woven mesh, a low pressure wash to remove fish prior to any high pressure spray to remove debris on the ascending side of the screens, and a fish handling and return system with sufficient water flow to return the fish to the source water in a manner that does not promote predation or re-impingement of the fish.

(iv) The owner or operator of the facility must ensure that there is a means for impingeable fish or shellfish to escape the cooling water intake system or be returned to the waterbody through a fish return system. Passive screens such as cylindrical wedgewire screens, and through-flow or carry-over free intake screens such as dual-flow screens and drum screens, will meet this requirement;

(2) The owner or operator of an existing facility must demonstrate to the Director that its cooling water intake system has a maximum intake velocity of 0.5 feet per second. In addition, you must meet the following criteria:

(i) The maximum velocity must be demonstrated as either the maximum actual intake velocity or the maximum design intake velocity as water passes through the structural components of a screen measured perpendicular to the screen mesh;

(ii) The maximum velocity limit must be achieved under all conditions, including during minimum ambient source water surface elevations (based on BPJ using hydrological data) and during periods of maximum head loss across the screens or other devices during normal operation of the intake structure. If the intake does not have a screen, the maximum intake velocity perpendicular to the opening of the intake must not exceed 0.5 feet per second during minimum ambient source water surface elevations.

(iii) Each intake must be operated and maintained to keep any debris blocking the intake at no more than 15 percent of the opening of the intake. A demonstration that the actual intake velocity is less than 0.5 feet per second through velocity measurements will meet this requirement;

(iv) The owner or operator of a facility that withdraws water from the ocean or tidal waters must also reduce impingement mortality of shellfish at a minimum to a level comparable to that achieved by properly deployed and maintained barrier nets. Passive screens such as cylindrical wedgewire screens, and through-flow or carry-over free intake screens such as dual-flow screens and drum screens, will meet this requirement.

(v) The owner or operator of a facility that employs traveling screens or equivalent active screens must:

(A) Count any fish that are included in carryover from a screen or removed from a screen as part of debris removal as fish impingement mortality.

(B) Incorporate protective measures including but not limited to: modified traveling screens with collection buckets designed to minimize turbulence to aquatic life, addition of a guard rail or barrier to prevent loss of fish from the collection bucket, replacement of screen panel materials with smooth woven mesh, a low pressure wash to remove fish prior to any high pressure spray to remove debris on the ascending side of the screens, and a fish handling and return system with sufficient water flow to return the fish to the source water in a manner that does not promote predation or re-impingement of the fish.

(vi) The owner or operator of the facility must ensure that there is a means for impingeable fish or shellfish to escape the cooling water intake system or be returned to the waterbody through a fish return system. Passive screens such as cylindrical wedgewire screens, and through-flow or carry-over free intake screens such as dual-flow screens and drum screens, will meet this requirement;

(c) *BTA standards for entrainment mortality for existing facilities.* The Director must establish BTA standards for entrainment mortality on a case-by-case basis. These standards must reflect the Director's determination of the maximum reduction in entrainment mortality warranted after consideration of all factors relevant for determining the best technology available at each facility, including the factors specified in § 125.98.

(d) *BTA standards for entrainment mortality for new units at existing facilities.* The owner or operator of a new unit at an existing facility must achieve the entrainment standards provided in either paragraph (d)(1) or (d)(2) of this section.

(1) The owner or operator of a facility must reduce actual intake flow (AIF) at a new unit, at a minimum, to a level commensurate with that which can be attained by the use of a closed-cycle recirculating system for the same level of cooling. The owner or operator of a facility with a cooling water intake structure that supplies cooling water exclusively for operation of a wet or dry cooling tower(s) and that meets the definition of closed cycle recirculating system at § 125.92 meets this entrainment mortality standard.

(2) The owner or operator of a facility must demonstrate to the Director that it has installed, and will operate and maintain, technologies for each intake at the new unit that reduce entrainment mortality of all stages of fish and shellfish that pass through a 3/8 inch sieve. The owner or operator of a facility must demonstrate entrainment mortality reductions equivalent to 90 percent or greater of the reduction that could be achieved through compliance with paragraph (d)(1) of this section.

(3) This standard does not apply to:

(i) Process water, gray water, waste water, reclaimed water, or other waters reused as cooling water in lieu of water obtained by marine, estuarine, or freshwater intakes;

(ii) Cooling water used by manufacturing facilities for contact cooling purposes;

(iii) Portions of those water withdrawals for auxiliary plant cooling uses totaling less than two MGD;

(iv) Any volume of cooling water withdrawals used exclusively for make-up water at existing closed-cycle recirculating systems. For facilities with a combination of closed-cycle recirculating systems and other cooling water systems the entrainment mortality standard does not apply to that portion of cooling water withdrawn as make-up water for the closed-cycle recirculating system;

(v) Any quantity of emergency back-up water flows.

(4) The Director may establish alternative requirements if:

(i) The data specific to the facility indicate that compliance with the requirements of paragraphs (d)(1) or (2) of this section for the new unit would result in compliance costs wholly out of proportion to the costs EPA considered in establishing the requirements at issue or would result in significant adverse impacts on local air quality, significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on local energy markets;

(ii) The alternative requirements must achieve a level of performance as close as practicable to the requirements of paragraphs (d)(1) or (2) of this section;

(iii) The alternative requirements will ensure compliance with other applicable provisions of the Clean Water Act and any applicable requirement of state law;

(iv) The burden is on the owner or operator of the facility requesting the alternative requirement to demonstrate that alternative requirements should be authorized for the new unit.

(5) For cooling water flows specified in paragraph (d) of this section that are

not subject to this standard, the Director may establish additional BTA standards for entrainment mortality on a case by case basis.

(e) *Nuclear facilities.* If the owner or operator of a nuclear facility demonstrates to the Director, upon the Director's consultation with the Nuclear Regulatory Commission, that compliance with this subpart would result in a conflict with a safety requirement established by the Commission, the Director must make a site-specific determination of best technology available for minimizing adverse environmental impact that would not result in a conflict with the Commission's safety requirement.

(f) *More stringent standards.* The Director may establish more stringent requirements as best technology available for minimizing adverse environmental impact if the Director determines that your compliance with the applicable requirements of this section would not meet the requirements of applicable State and Tribal law, or other Federal law.

(g) The owner or operator of a facility subject to this subpart must:

(1) Submit and retain permit application and supporting information as specified in § 125.95;

(2) Conduct compliance monitoring as specified in § 125.96; and

(3) Report information and data and keep records as specified in § 125.97.

§ 125.95 Permit application and supporting information requirements.

(a) The Director may waive some or all of the information requirements of 40 CFR 122.21(r)(8), (9), (10), (11), and (12) in the first permit application submitted after [effective date of the final rule] if:

(1) The Director has already made a BTA determination requiring operation commensurate with a closed-cycle recirculating system;

(2) The owner or operator of the facility uses cooling water exclusively for operation of a wet or dry cooling system that meets the definition of closed cycle recirculating system at 40 CFR 125.92; or

(3) The Director determines substantially all of the information requirements specified at 40 CFR 122.21(r)(8), (9), (10), (11), and (12) have already been submitted by the owner or operator.

(b) *Permit application submittal timeframe for existing facilities.* The owner or operator of a facility subject to this subpart must submit to the Director the following according the following schedule:

(1) For existing power producers with a DIF of 50 MGD or above:

(i) Information required in 40 CFR 122.21(r)(2), (r)(3), (r)(4), (r)(5), (r)(6), (r)(7), and (r)(8) must be submitted to the Director no later than six months after [effective date of the final rule].

(ii) Results of the Impingement Mortality Reduction Plan as required in 40 CFR 122.21(r)(6) must be submitted to the Director no later than 3 years and six months after [effective date of the final rule].

(2) For existing power producers with an AIF of greater than 125 MGD:

(i) Information required in 40 CFR 122.21(r)(9)(i), including the Entrainment Mortality Data Collection Plan with peer reviewers identified must be submitted to the Director no later than six months after [effective date of the final rule].

(ii) Information required in 40 CFR 122.21(r)(9)(ii), including the peer reviewed Entrainment Mortality Data Collection Plan, must be submitted to the Director no later than 12 months after [effective date of the final rule].

(iii) Information required in 40 CFR 122.21(r)(9)(iii), including the completed Entrainment Characterization Study, must be submitted to the Director no later than 4 years after [effective date of the final rule].

(iv) Information required in 40 CFR 122.21(r)(10), including the Comprehensive Technical Feasibility and Cost Evaluation Study, 40 CFR 122.21(r)(11), including the Benefits Valuation Study, and 40 CFR 122.21(r)(12), including the Non-water Quality and Other Environmental Impacts Study, must be submitted to the Director no later than 5 years after [effective date of the final rule].

(3) For the owner or operator of all other existing facilities subject to this subpart, with the exception of those facilities identified in § 125.95(b):

(i) Information required in 40 CFR 122.21(r)(2), (r)(3), (r)(4), (r)(5), (r)(6), (r)(7), and (r)(8) must be submitted to the Director no later than three years after [effective date of the final rule].

(ii) Results of the Impingement Mortality Reduction Plan as required in 40 CFR 122.21(r)(6) must be submitted to the Director no later than 6 years after [effective date of the final rule].

(4) For the owner or operator of all other existing facilities subject to this subpart with an actual intake flow (AIF) of greater than 125 MGD, with the exception of those facilities identified in § 125.95(b)(2):

(i) Information required in 40 CFR 122.21(r)(9)(i), including the Entrainment Mortality Data Collection Plan, with peer reviewers identified, must be submitted to the Director no later than three years after [effective date of the final rule].

(ii) Information required in 40 CFR 122.21(r)(9)(ii), including the peer reviewed Entrainment Mortality Data Collection Plan, must be submitted to the Director no later than three years and six months after [effective date of the final rule].

(iii) Information required in 40 CFR 122.21(r)(9)(iii), including the completed Entrainment Characterization Study, must be submitted to the Director no later than 6 years and six months after [effective date of the final rule].

(iv) Information required in 40 CFR 122.21(r)(10), including the Comprehensive Technical Feasibility and Cost Evaluation Study, 40 CFR 122.21(r)(11), including the Benefits Valuation Study, and 40 CFR 122.21(r)(12), including the Non-water Quality and Other Environmental Impacts Study, must be submitted to the Director no later than 7 years and six months after [effective date of the final rule].

(c) *Permit application submittal timeframe for new units.* For the owner or operator of any new units at existing facilities subject to this subpart:

(1) Information required in 40 CFR 122.21(r)(2), (r)(3), r(4)and (r)(6) specific to the new unit must be submitted to the Director 6 months prior to the commencement of operation of the new unit.

(2) *Application requirements.* To demonstrate compliance of the new unit with requirements in § 125.94(b) and (d), you must collect and submit to the Director the information in paragraphs (c)(2)(i), (ii), (iii) and (iv) of this section 6 months prior to the start of facility operations.

(i) *Impingement information.* If you choose to comply with the impingement mortality requirements in § 125.94(b)(1), you must submit a plan to implement a monitoring program as specified in § 125.96(a) upon the start of the new unit operation.

(ii) *Velocity information.* If you choose to comply with the impingement mortality requirements in § 125.94(b)(2), you must submit the following information 6 months prior to the start of facility operations:

(A) A narrative description of the design, structure, equipment, and operation used to meet the velocity requirement; and

(B) Design calculations showing that the velocity requirement will be met at minimum ambient source water surface elevations (based on best professional judgment using available hydrological data) and maximum head loss across the screens or other device.

(iii) *Flow reduction information.* If you choose to comply with the flow reduction requirements in § 125.94(d)(1), you must submit the following information to the Director to demonstrate that you have reduced your flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system:

(A) A narrative description of your system that has been designed to reduce your intake flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system and any engineering calculations, including documentation demonstrating that your make-up and blowdown flows have been minimized consistent with the definition of closed-cycle recirculating system at § 125.92; and

(B) If the flow reduction requirement is met entirely, or in part, by reusing or recycling water withdrawn for cooling purposes in subsequent industrial processes, you must provide documentation that the reused or recycled water, along with other technologies you employ, including additional flow reductions, meets the flow reduction requirement of § 125.94(d)(1) or the entrainment mortality reduction requirement of § 125.94(d)(2).

(iv) *Comprehensive Demonstration Study.* If you choose to comply with the entrainment mortality requirements in § 125.94(d)(2), you must perform and submit the results of a Comprehensive Demonstration Study (Study). This information is required to characterize the source water baseline in the vicinity of the cooling water intake structure(s), characterize operation of the cooling water intake(s), and to confirm that the technology(ies) proposed and/or implemented at your cooling water intake structure reduce the impacts to fish and shellfish to levels comparable to those you would achieve were you to implement the requirements in § 125.94(d)(1). To meet the "comparable level" requirement, you must demonstrate that:

(A) You have reduced entrainment mortality of all life stages of fish and shellfish to 90 percent or greater of the reduction that would be achieved through § 125.94(d)(1); and

(B) You must develop and submit a plan to the Director containing a proposal for how information will be collected to support the study. The plan must include:

(*1*) A description of the proposed and/or implemented technology(ies) to be evaluated in the Study;

(*2*) A list and description of any historical studies characterizing the physical and biological conditions in the vicinity of the proposed or actual intakes and their relevancy to the proposed Study. If you propose to rely on existing source water body data, it must be no more than 5 years old, you must demonstrate that the existing data are sufficient to develop a scientifically valid estimate of potential entrainment impacts, and provide documentation showing that the data were collected using appropriate quality assurance/quality control procedures;

(*3*) Any public participation or consultation with Federal or State agencies undertaken in developing the plan; and

(*4*) A sampling plan for data that will be collected using actual field studies in the source water body. The sampling plan must document all methods and quality assurance procedures for sampling, and data analysis. The sampling and data analysis methods you propose must be appropriate for a quantitative survey and based on consideration of methods used in other studies performed in the source water body. The sampling plan must include a description of the study area (including the area of influence of the cooling water intake structure and at least 100 meters beyond); taxonomic identification of the sampled or evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods.

(C) You must submit documentation of the results of the Study to the Director. Documentation of the results of the Study must include:

(*1*) *Source Water Biological Study.* If your new unit will use a new cooling water intake structure, you must update your Source Water Biological Study to include:

(*i*) A taxonomic identification and characterization of aquatic biological resources including: a summary of historical and contemporary aquatic biological resources; determination and description of the target populations of concern (those species of fish and shellfish and all life stages that are most susceptible to impingement and entrainment); and a description of the abundance and temporal/spatial characterization of the target populations based on the collection of multiple years of data to capture the seasonal and daily activities (*e.g.,* spawning, feeding and water column migration) of all life stages of fish and shellfish found in the vicinity of the cooling water intake structure;

(*ii*) An identification of all threatened or endangered species that might be susceptible to entrainment by the proposed cooling water intake structure(s); and

(*iii*) A description of additional chemical, water quality, and other anthropogenic stresses on the source waterbody.

(*2*) *Evaluation of potential cooling water intake structure effects.* This evaluation will include:

(*i*) Calculations of the reduction in entrainment mortality of all life stages of fish and shellfish that would need to be achieved by the technologies you have selected to implement to meet requirements under § 125.94(d)(1). To do this, you must determine the reduction in entrainment mortality that would be achieved by implementing the requirements of § 125.94(d)(1) at your site.

(*ii*) An engineering estimate of efficacy for the proposed and/or implemented technologies used to minimize entrainment mortality of all life stages of fish and shellfish. You must demonstrate that the technologies reduce entrainment mortality of all life stages of fish and shellfish to a comparable level to that which you would achieve were you to implement the requirements in § 125.94(d)(1). The efficacy projection must include a site-specific evaluation of technology(ies) suitability for reducing impingement mortality and entrainment based on the results of the Source Water Biological Study of this section. Efficacy estimates may be determined based on case studies that have been conducted in the vicinity of the cooling water intake structure and/or site-specific technology prototype studies.

(3) Verification monitoring plan. You must include in the Study the following: A plan to conduct, at a minimum, two years of monitoring to verify the full-scale performance of the proposed or implemented technologies, operational measures. The verification study must begin at the start of operations of the cooling water intake structure and continue for a sufficient period of time to demonstrate that the facility is reducing the level of entrainment to the level documented in paragraph (c)(2) of this section. The plan must describe the frequency of monitoring and the parameters to be monitored. The Director will use the verification monitoring to confirm that you are meeting the level of entrainment mortality reduction required in § 125.94(d), and that the operation of the technology has been optimized.

(d) After the initial submission of the 40 CFR 122.21(r) application studies, the owner or operator of a facility may, in subsequent permit applications, request to reduce the information

required, if conditions at the facility and in the waterbody remain substantially unchanged since the previous application so long as the relevant previously submitted information remains representative of current source water, intake structure, cooling water system, and operating conditions. The owner or operator of a facility must submit its request for reduced cooling water intake structure and waterbody application information to the Director at least one year prior to the expiration of its NPDES permit. The owner or operator's request must identify each element in this subsection that it determines has not substantially changed since the previous permit application and the basis for the determination. The Director has the discretion to accept or reject any part of the request.

(e) After issuance of the first permit pursuant to this subpart, the owner or operator of a facility must:

(1) Commence information collection activities pursuant to this subsection no later than eighteen months prior to permit expiration;

(2) Submit all required 40 CFR 122.21(r) application studies, or the reduced permit application studies if approved by the Director under § 125.95, to the Director no later than six months prior to permit expiration.

(f) The Director has the discretion to request or determine additional information to supplement the permit application process, including inspection of the facility.

(g) *Permit application records.* The owner or operator of a facility must keep records of all submissions that are part of its permit application for a minimum of 5 years to document compliance with the requirements of this section. If the Director approves a request for reduced permit application studies under § 125.95(d), the owner or operator of a facility must keep records of all submissions that are part of the previous permit application for an additional 5 years.

§ 125.96 Monitoring requirements.

(a) *Monitoring requirements for impingement mortality.* The owner or operator of an existing facility subject to § 125.94(b) must monitor as follows:

(1) Permit compliance monitoring is required at each intake, or where appropriate other points of compliance as approved by the Director including but not limited to forebays, barrier nets, or fish handling and return systems, to demonstrate compliance with the impingement mortality limitations listed in § 125.94(b).

(2) You must collect samples to monitor impingement rates (simple enumeration) for each species over a 24-hour period and no less than once per month when the cooling water intake structure is in operation.

(3) If the Director has approved a compliance alternative provided under § 125.94(b)(2), the monitoring requirement in paragraphs (a)(1) and (a)(2) of this section is waived.

(4) *Compliance monitoring for intake velocity.* If your facility is subject to § 125.94(b)(2) and you cannot document a design intake flow for the intake equal to or less than 0.5 feet per second under all conditions, including during minimum ambient source water surface elevations (based on BPJ using hydrological data) and maximum head loss across the screens, compliance monitoring is required to demonstrate the intake velocity is consistent with the requirements of § 125.94(b)(2). The frequency of monitoring must be no less than twice per week.

(b) *Monitoring requirements for entrainment mortality for new units.* Monitoring is required to demonstrate compliance with the requirements of § 125.94(d).

(1) If you are required to demonstrate flow reductions consistent with the requirements of § 125.94(d)(1), the frequency of monitoring must be no less than once per week and must be representative of normal operating conditions. Flow monitoring must include measuring cooling water withdrawals, make-up water, and blowdown volume. The Director may require additional monitoring necessary to demonstrate compliance with § 125.94(d).

(2) If you are required to demonstrate reductions consistent with the requirements of § 125.94(d)(2), you must monitor entrainable organisms that pass through a 3/8-inch sieve at a proximity to the intake that is representative of the entrainable organisms in the absence of the intake structure. You must also monitor the latent entrainment mortality in front of the intake structure. Mortality after passing the cooling water intake structure must be counted as 100 percent mortality unless you have demonstrated to the approval of the Director that the mortality for each species of concern is less than 100 percent. Samples must be representative of the cooling water intake when the structure is in operation. In addition, sufficient samples must be collected to allow for calculation of annual average entrainment levels of all life stages of fish and shellfish. Specific sampling protocols and frequency of sampling will be determined by the Director. The sampling must measure the total count of entrainable organisms or density of organisms, unless the Director approves of a different metric for such measurements. In addition, you must monitor the AIF for each intake. The AIF must be measured at the same time as the samples of entrainable organisms are collected. The Director may require additional monitoring necessary to demonstrate compliance with § 125.94(d).

(c) *Visual or remote inspections.* You must either conduct visual inspections or employ remote monitoring devices during the period the cooling water intake structure is in operation. You must conduct such inspections at least weekly to ensure that any technologies installed to comply with § 125.94 are maintained and operated to ensure that they will continue to function as designed. The Director may establish alternative procedures for use during periods of inclement weather.

§ 125.97 Other permit reporting and recordkeeping requirements.

The owner or operator of an existing facility subject to this subpart is required to submit to the Director the following information:

(a) *Monitoring reports.* You must include the applicable impingement mortality and entrainment mortality monitoring reports with both your Discharge Monitoring Reports (DMRs) (or equivalent State reports) and your permit annual report to the Director.

(1) *Impingement mortality.* If you intend to comply with the Impingement Mortality requirements by biological measurements, your report must describe the compliance measurement location for each intake, the species of concern, the counts and percentage mortality of organisms sampled, the time period for evaluating latent mortality effects, and other information specified in the permit. If you intend to comply with the Impingement Mortality requirements by demonstrating an intake velocity of less than 0.5 feet per second, your report must describe the compliance measurement location for each intake, the method for velocity measurements, the intake velocity measurements and calculations, and other information specified in the permit.

(2) *Impingement mortality compliance monitoring.* Your report must contain impingement mortality compliance monitoring data to document compliance with the requirements of § 125.94(b) for each intake. If you intend to comply with the Impingement Mortality requirements by biological measurements, you must also

update and submit your calculated annual average for each month covered by the report. The annual average comprises the average for all measurements taken during the preceding 12-month period.

(3) *Entrainment mortality at existing facilities.* The Director will determine what (if any) other reporting requirements are necessary.

(4) *Entrainment mortality for new units at existing facilities.* The owner or operator of a facility complying with § 125.94(d) must describe the compliance measurement location for the facility, the species of concern, the counts and percentage mortality of organisms sampled, and other information specified in the permit.

(5) *Entrainment mortality compliance monitoring for new units at existing facilities.* The owner or operator of a facility must submit monthly reports containing compliance monitoring data to document compliance with the requirements of § 125.94(d)(1) or (d)(2).

(i) For compliance with § 125.94(d)(1), flow measurements of water withdrawn for make-up and blowdown.

(ii) For compliance with § 125.94(d)(2), measurements of entrainment mortality, and your monthly actual intake flow. You must also update and submit your calculated annual average of entrainment mortality. The annual average comprises the average for all measurements taken during the preceding 12-month period.

(b) *Status reports.* If you have a schedule established under § 125.93 you must submit a quarterly status report as to the progress of meeting the applicable standards. These reports may include updates on pilot study results, construction schedules, maintenance outages, or other appropriate topics.

(c) *Annual certification statement and report.* You must submit an annual certification statement signed by the responsible corporate officer as defined in 40 CFR 403.12(l) or 40 CFR 122.22. This statement must include, at a minimum the following information:

(1) An annual certification statement which indicates that each technology as approved by the Director is being maintained and operated as set forth in its permit, or a justification to allow modification of the practices listed in the facility's most recent annual certification.

(2) If your facility is subject to BTA standards for impingement mortality or entrainment mortality specified in § 124.94(b)(2) or (d)(2), you must include a statement in your annual certification that specifies the information submitted in your most recent annual certification is still valid and appropriate or a justification to allow modification of the practices listed in the most recent annual certification.

(i) If you cannot document that you are operating a closed-cycle recirculating system, you must also submit data and information in the annual certification statement documenting compliance with the requirement in § 124.94(d)(1) that flow commensurate with a closed-cycle recirculating system is met.

(ii) If your facility is subject to the Impingement Mortality Standard specified in § 125.94(b)(2) and you cannot document a design intake velocity for the intake equal to or less than 0.5 feet per second, you must also submit data and information in the annual certification documenting compliance with the intake velocity requirements.

(3) If the information contained in the previous year's annual certification is still applicable, you may simply state as such in a letter to the Director, and the letter, along with any applicable data submission requirements specified in this section shall constitute the annual certification. However, if you have substantially modified operation of any unit at your facility that impacts cooling water withdrawals or operation of your cooling water intake structures, you must submit revisions to the information required in the permit application.

(d) *Permit reporting records retention.* You must keep records of all submissions that are part of the permit reporting requirements of this section for a period of at least five (5) years from the date of permit issuance.

(e) The Director has the discretion to require additional supplemental permit reporting when necessary to establish permit compliance and may provide for periodic inspection of the facility.

§ 125.98 Director requirements.

(a) *Permit application.* The Director must review the materials submitted on a timely basis by the applicant under § 122.21(r) before each permit renewal or reissuance to determine compliance with all applicable requirements. The Director is encouraged to provide comments expeditiously so that the permit applicant may modify its information gathering activities and provide any necessary supplemental materials.

(b) *Alternate schedule.* When the Director establishes an alternate schedule under § 125.93, the schedule must provide for compliance as expeditiously as possible. In no event may the schedule provide for compliance beyond the dates specified in § 125.93. In establishing the schedule, the Director is encouraged to consider the extent to which those technologies proposed to be implemented to meet the requirements of § 125.94(c) and/or (d) will be used, or may otherwise affect choice of technology(ies), to meet the requirements of § 125.94(b). When establishing a schedule for electric power generating facilities, the Director should consider measures to maintain adequate energy reliability and necessary grid reserve capacity during any facility outage. These may include establishing a staggered schedule for multiple facilities serving the same localities. The Director may consult with local and regional electric power agencies when establishing a schedule for electric power generating facilities. The Director may determine that extenuating circumstances (*e.g.,* lengthy scheduled outages, future production schedules) warrant establishing a different compliance date for any manufacturing facility. In no event may the schedule provide for compliance beyond the dates specified in § 125.93.

(c) *Species of concern.* The Director must review and approve the species of fish and shellfish identified as species of concern, including but not limited to:

(1) Any species of concern identified using the source water baseline biological characterization data submitted under 40 CFR 122.21(r)(4);

(2) Any fish and shellfish identified for evaluation under § 125.94;

(3) Data submitted as part of the impingement mortality reduction plan under 40 CFR 122.21(r)(6);

(4) Data submitted as part of the site-specific entrainment mortality data collection plan under 40 CFR 122.21(r)(9);

(5) The Director may request additional information in determining the site-specific species of concern and any additional fish and shellfish to be included in the impingement mortality reduction plan and, where applicable, the entrainment mortality data collection plan;

(6) The Director may determine invasive species, naturally moribund species, and other specific species may be excluded from any monitoring, sampling, or study requirements of 40 CFR 122.21 and § 125.94.

(7) The Director may consider data submitted by other interested parties.

(d) *Site-specific impingement mortality reduction plan.* The Director must review and approve the site-specific Impingement Mortality Reduction Plan required under 40 CFR 122.21(r)(6). The plan must include, at a minimum, the duration and frequency

of required monitoring, the monitoring location, the organisms to be monitored and, where appropriate, the method in which naturally moribund organisms would be identified and taken into account.

(e) *Site-specific entrainment mortality controls.* The Director must establish case-by-case BTA standards for entrainment mortality for any facility subject to such requirements after reviewing the information submitted under 40 CFR 122.21(r) and § 125.95. These entrainment mortality controls must reflect the Director's determination of the maximum reduction in entrainment mortality warranted after consideration of factors relevant for determining the best technology available at each facility. Prior to any permit renewal, the Director must review the performance of the entrainment mortality technologies used and determine that they continue to meet the BTA requirements of § 125.94(c). The Director must provide a written explanation of the proposed BTA determination in the fact sheet pursuant to 40 CFR 124.8 (or statement of basis pursuant to 40 CFR 124.7) for the proposed permit. The written explanation must describe why the Director has rejected any entrainment mortality control technologies or measures that are better performing than the selected technologies or measures, and must reflect consideration of all reasonable attempts to mitigate any adverse impacts of otherwise available better performing entrainment technologies. The Director may reject an otherwise available technology as BTA standards for entrainment mortality if the social costs of compliance are not justified by the social benefits, or if there are adverse impacts that cannot be mitigated that the Director deems to be unacceptable. If all technologies considered have social costs not justified by the social benefit, or have unacceptable adverse impacts that cannot be mitigated, the Director may determine that no additional control requirements are necessary beyond what the facility is already doing. At a minimum, the proposed determination in the fact sheet or statement of basis must be based on consideration of the following factors:

(1) Numbers and types of organisms entrained;

(2) Entrainment impacts on the waterbody;

(3) Quantified and qualitative social benefits and social costs of available entrainment technologies, including ecological benefits and benefits to any threatened or endangered species;

(4) Thermal discharge impacts;

(5) Impacts on the reliability of energy delivery within the immediate area;

(6) Impact of changes in particulate emissions or other pollutants associated with entrainment technologies;

(7) Land availability inasmuch as it relates to the feasibility of entrainment technology; and

(8) Remaining useful plant life; and

(9) Impacts on water consumption.

(f) *Ongoing permitting proceedings.* Where ongoing permit proceedings have begun prior to [effective date of the final rule] and the Director has determined that the information already submitted by the owner or operator of the facility is substantially the same as required under 40 CFR 122.21(r)(9), (10), (11) and (12), the Director may proceed with any site-specific determination of BTA standards for entrainment mortality without requiring the owner or operator of the facility to resubmit the information required in 40 CFR 122.21(r)(9), (10), (11) and (12), and the Director may choose to address the factors specified in § 125.98(e). If the Director has received permit application information from the owner or operator of the facility, and the Director has determined that the information is substantially the same as required under 40 CFR 122.21(r)(9), (10), (11) and (12) but the Director has not yet made a BTA standards for entrainment mortality determination, the Director must address the factors specified in § 125.98 (e). In all subsequently issued permits for that facility the Director must address the factors specified in § 125.98 (e).

(g) *Site-specific entrainment mortality data collection plan and studies.* The Director must review and approve the site-specific entrainment mortality data collection plan for new units at existing facilities. The plan must include, at a minimum, the duration and frequency of monitoring, the monitoring location, the organisms to be monitored, and the method in which latent mortality would be identified. The Director may require the owner or operator of a facility to include additional peer reviewers for the entrainment mortality data collection plan, the comprehensive technical feasibility and cost evaluation study, the benefits valuation study, and the non-water quality and other environmental impacts assessment.

(h) *Annual certification statement.* The Director must review and verify the Annual Certification Statement required under § 125.97(c).

(i) *Additional information.* In implementing the Director's responsibilities under this provision, the Director is authorized to request additional necessary information and to inspect the facility.

§ 125.99 [Reserved]

[FR Doc. 2011–8033 Filed 4–19–11; 8:45 am]

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FEDERAL REGISTER

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No. 76 April 20, 2011

Part III

The President

Executive Order 13570—Prohibiting Certain Transactions With Respect to North Korea

Federal Register
Vol. 76, No. 76
Wednesday, April 20, 2011

Presidential Documents

Title 3—

The President

Executive Order 13570 of April 18, 2011

Prohibiting Certain Transactions With Respect to North Korea

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act of 1945 (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution (UNSCR) 1718 of October 14, 2006, and UNSCR 1874 of June 12, 2009,

I, BARACK OBAMA, President of the United States of America, in order to take additional steps to address the national emergency declared in Executive Order 13466 of June 26, 2008, and expanded in Executive Order 13551 of August 30, 2010, that will ensure implementation of the import restrictions contained in UNSCRs 1718 and 1874 and complement the import restrictions provided for in the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), hereby order:

Section 1. Except to the extent provided in statutes or in licenses, regulations, orders, or directives that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the date of this order, the importation into the United States, directly or indirectly, of any goods, services, or technology from North Korea is prohibited.

Sec. 2. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. The provisions of Executive Orders 13466 and 13551 remain in effect, and this order does not affect any action taken pursuant to those orders.

Sec. 4. For the purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) the term "North Korea" includes the territory of the Democratic People's Republic of Korea and the Government of North Korea; and

(e) the term "Government of North Korea" means the Government of the Democratic People's Republic of Korea, its agencies, instrumentalities, and controlled entities.

Sec. 5. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President

by IEEPA and the UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 6. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 7. This order is effective at 12:01 a.m. eastern daylight time on April 19, 2011.

THE WHITE HOUSE,
April 18, 2011.

[FR Doc. 2011–9739
Filed 4–19–11; 11:15 am]
Billing code 3195–W1–P

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Federal Register

Vol. 76, No. 76

Wednesday, April 20, 2011

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FEDERAL REGISTER PAGES AND DATE, APRIL

18001–18346 1
18347–18630 4
18631–18860 5
18861–19264 6
19265–19682 7
19683–19898 8
19899–20214 11
20215–20488 12
20489–20834 13
20835–21220 14
21221–21612 15
21613–21804 18
21805–21998 19
21999–22292 20

CFR PARTS AFFECTED DURING APRIL

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR
304 18635

2 CFR
Proposed Rules:
Ch. III 20568
Ch. IX 22058
Ch. XXX 20568

3 CFR
Proclamations:
8641 18629
8642 18631
8643 18633
8644 19259
8645 19261
8646 19262
8647 19265
8648 19899
8649 20215
8650 20829
8651 20831
8652 20833
8653 21221
8654 21223
8655 21999
8656 22001
Executive Orders:
12824 (amended by 13569) 19891
12835 (amended by 13569) 19891
12859 (amended by 13569) 19891
13507 (revoked by 13569) 19891
13532 (amended by 13569) 19891
13569 19891
13570 22291
Administrative Orders:
Memorandums:
Memorandum of April 6, 2011 19893
Memorandum of April 14, 2011 22003
Notices:
Notice of April 7, 2011 19897

5 CFR
4401 19901
Proposed Rules:
Ch. XXIII 18954
Ch. XXIV 18954
Ch. XLII 18104
Ch. XLV 20568
Ch. LXXIII 22058

6 CFR
Proposed Rules:
5 18954

7 CFR
46 20217
253 18861
301 21613
622 19683
624 19683
625 19683
916 21615
917 21615
924 21618
925 21620
946 18001
989 18003
1465 19683
1470 19683
4280 21110
Proposed Rules:
Ch. I 22058
Ch. II 22058
Ch. III 22058
301 18419
319 18419
Ch. IV 22058
Ch. V 22058
Ch. VI 22058
Ch. VII 22058
1260 18422
Ch. XIV 22058
1463 19710
Ch. XV 22058
Ch. XVI 22058
Ch. XVII 22058
Ch. XVIII 22058
Ch. XX 22058
Ch. XXVI 22058
Ch. XXVII 22058
Ch. XXVIII 22058
Ch. XXIX 22058
Ch. XXX 22058
Ch. XXXI 22058
Ch. XXXII 22058
Ch. XXXIII 22058
Ch. XXXIV 22058
Ch. XXXV 22058
Ch. XXXVI 22058
Ch. XXXVII 22058
Ch. XXXVIII 22058
Ch. XLI 22058
Ch. XLII 22058

8 CFR
274a 21225

9 CFR
91 18347
201 18348
391 20220
590 20220
592 20220
Proposed Rules:
11 20569
Ch. I 22058
Ch. II 22058

Ch. III 22058

10 CFR

430 19902
431 21580
835 20489
Proposed Rules:
Ch. II 18965
429 21813
430 ..... 18105, 18425, 19913, 20090
431 ..... 18127, 18428, 21673
Ch. III 18954
Ch. X 18954

12 CFR

213 18349
226 18354
563e 20490
717 18365
748 18365
965 18367
966 18367
969 18367
987 18367
1270 18367
Proposed Rules:
42 21169
204 20892
217 20892
230 20892
234 18445
236 21169
327 21256
329 21265
330 21265
372 21169
563h 21169
741 21169
751 21169
1232 21169

13 CFR

109 18007
120 18376

14 CFR

23 19903
27 20490
39 ..... 18020, 18022, 18024, 18029, 18031, 18033, 18038, 18376, 18865, 20229, 20231, 20493, 20496, 20498, 20501, 20503, 22005, 22007
61 19267
71 ..... 18040, 18041, 18378, 20233, 20835, 22009, 22010, 22011, 22012, 22013, 22014, 22015, 22016
95 21622
97 ..... 18379, 18382, 21232, 21234
Proposed Rules:
33 18130
39 ..... 18454, 18664, 18957, 18960, 18964, 19278, 19710, 19714, 19716, 19719, 19721, 19724, 20894, 20898, 21675, 21815, 21820, 21822, 22059
71 ..... 19281, 20279, 20280, 20281, 21266, 21268, 21269, 21825, 21826, 21827, 21828, 21830, 21831, 21832
121 21270
139 20570

15 CFR

774 22017
730 21628
744 21628
Proposed Rules:
806 19282

16 CFR

305 20233
306 19684
1217 ..... 22019, 22030
1303 18645
Proposed Rules:
1224 19914
1500 19926

17 CFR

Ch. I 20835
240 20506
Proposed Rules:
229 18966
240 18966
248 21169

18 CFR

358 20838
Proposed Rules:
Ch. I 18954
284 20571

19 CFR

Proposed Rules:
4 18132
24 18132

20 CFR

404 ..... 18383, 19692
416 ..... 18383, 19692
Proposed Rules:
404 20282
416 20282
Ch. IV 18104
Ch. V 18104
Ch. VI 18104
Ch. VII 18104
Ch. IX 18104

21 CFR

179 20509
520 18648
610 20513
878 20840
884 21237
1314 20518
Proposed Rules:
Ch. I 20568, 20588
1 20901
7 20901
11 ..... 19192, 19238
16 ..... 20575, 20901
101 ..... 19192, 19238
312 20575
511 20575
812 20575

22 CFR

Proposed Rules:
120 20590
124 20590

23 CFR

1340 18042

25 CFR

Proposed Rules:
Ch. I 20287
Ch. III 18457
Ch. V 20568

26 CFR

1 ..... 19268, 19907, 20524
300 21805
301 ..... 18059, 18385
Proposed Rules:
1 ..... 20593, 20595, 22064
31 ..... 20595, 22064
301 18134

27 CFR

19 19908
30 19908

28 CFR

0 21239
51 21239
94 19909

29 CFR

4 18832
516 18832
531 18832
553 18832
778 18832
779 18832
780 18832
785 18832
786 18832
790 18832
2520 18649
4022 21252
4042 18388
4044 18869
Proposed Rules:
Ch. II 18104
Ch. IV 18104
Ch. V 18104
Ch. XVII 18104
Ch. XXV 18104
2520 19285
Ch. XL 18134

30 CFR

Proposed Rules:
Ch. I 18104
104 18467
938 18467

31 CFR

306 18062
356 18062
357 18062
363 18062

33 CFR

100 22033
110 ..... 20524, 21633
117 ..... 19910, 19911, 20843, 21253, 21636
165 ..... 18389, 18391, 18394, 18395, 18398, 18869, 19698, 20530, 20532, 20843, 21253, 21637, 22033, 22035
Proposed Rules:
100 ..... 19926, 20595
110 20287
165 ..... 18669, 18672, 18674, 19290, 20287, 21677, 22064

34 CFR

600 20534
602 20534
603 20534
668 20534
682 20534
685 20534
686 20534
690 20534
691 20534
Proposed Rules:
99 19726

36 CFR

Proposed Rules:
294 21272
Ch. II 22058

37 CFR

1 18400
Proposed Rules:
1 18990
370 21833
382 21833

39 CFR

Proposed Rules:
3050 20906

40 CFR

51 18870
52 ..... 18650, 18870, 18893, 20237, 20239, 20242, 20846, 20850, 20853, 21639, 21807, 22036, 22038
60 18408
63 18064
75 ..... 18415, 20536
80 18066
85 19830
86 19830
112 ..... 18894, 21652
158 22044
161 22044
180 ..... 18895, 18899, 18906, 18915, 19701, 20537, 20542, 22045
268 18921
271 18927
300 ..... 18066, 20546
1042 20550
Proposed Rules:
52 ..... 19292, 19662, 19739, 20291, 20293, 20296, 20598, 20602, 20906, 20907, 20910, 21682, 21691, 21835
63 21692
122 22174
125 22174
158 21294
168 18995
174 22067
180 ..... 19001, 22067
268 19003
271 19004
281 21299
300 ..... 18136, 20605
355 21299

41 CFR

300 18326
302 18326
Proposed Rules:
Ch. 50 18104
Ch. 60 18104
Ch. 61 18104
Ch. 109 18954

42 CFR

5 20867

413.....18930
417.....21432
422.....21432
423.....21432
433.....21950
Proposed Rules:
Ch. I.....20568
5.....22070
Ch. IV.....20568
424.....18472
425.....19528
441.....21311
Ch. V.....20568

44 CFR

64.....18934
65 .....18938, 20551, 20553, 20554, 20556, 21660, 21662, 22054
67.....21664
Proposed Rules:
67 .....19005, 19007, 19018, 20606, 21693, 21695

45 CFR

2553.....20243
Proposed Rules:
Ch. II.....20568
Ch. III.....20568
Ch. IV.....20568
Ch. X.....20568
Ch. XIII.....20568
1355.....18677
1356.....18677
1357.....18677

46 CFR

115.....19275
170.....19275
176.....19275
178.....19275
520.....19706
532.....19706
Proposed Rules:
502.....19022

47 CFR

73 .....18415, 18942, 19275, 19276, 20248, 20249
74.....18942
300.....18652
Proposed Rules:
1 .....18137, 18476, 18490, 18679, 20297
6.....20297
7.....20297
8.....20297
17.....18679
22.....18679
24.....18679
25.....18679
27.....18679
64.....18490
73.....18497
80.....18679
87.....18679
90.....18679

48 CFR

Ch. 1 18304
1.....18324
2.....18304
4.....18304
6.....18304
13.....18304
14.....18304
15.....18304
18.....18304
19.....18304
26.....18304
33.....18304
36.....18304
42.....18304
52.....18304
53 .....18072, 18304, 18322
202.....21809, 21810
204.....21809
209.....21812
212.....21810
234.....21810
252.....21809, 21812
604.....20249
637.....20249
652.....20249
Proposed Rules:
2.....18497
4.....22070
8.....22070
17.....22070
31.....18497
32.....18497
37.....22070
45.....18497
49.....18497
52.....18497, 22070
53.....18497
204.....21847
212.....21847
213.....21849
236.....21851
245.....21852
252.....21847
Ch. 3 20568
Ch. 4 22058
Ch. 9 18954
Ch. 29 18104

49 CFR

8.....19707
40.....18072
213.....18073
393.....20867
541.....20251
Proposed Rules:
384.....19023
385.....20611
390.....20611
395.....20611
544.....20298

50 CFR

17.....18087, 20558
218.....20257
224.....20870
226.....20180
300.....19708
622.....18416
635.....18417, 18653
648.....18661, 19276
679 .....18663, 19912, 20890, 22057
Proposed Rules:
17 .....18138, 18684, 18701, 19304, 20464, 20613, 20911, 20918
20.....19876
223.....20302
224.....20302
300.....18706
635.....18504
648 .....18505, 19305, 19929
660.....18706, 18709
665.....19028

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 4/P.L. 112–9
Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011 (Apr. 14, 2011; 125 Stat. 36)

H.R. 1473/P.L. 112–10
Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Apr. 15, 2011; 125 Stat. 38)

Last List April 13, 2011

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