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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM464; Notice No. 25–445–SC]

Special Conditions: Boeing Model 737–600, –700, –700C, –800, –900, and –900ER Series Airplanes; Rechargeable Lithium-Ion Battery Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. These airplanes, as modified by Electronic Cable Specialists, Inc., will have a novel or unusual design feature associated with the installation of a dual Class 3 electronic flight bag (EFB) system that contains rechargeable lithium-ion batteries. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is September 9, 2011. We must receive your comments by October 31, 2011.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM464, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM464. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2432; facsimile (425) 227–1232.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on this proposal, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On September 30, 2009, Electronic Cable Specialists, Inc., applied for a supplemental type certificate for a dual Class 3 EFB system on the Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. The EFB system will contain lithium batteries in the EFB electronic display unit (EDU).

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Electronic Cable Specialists, Inc., must show that the Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in A16WE or the applicable regulations in effect on the date of application for the change.

The regulations incorporated by reference in the type certificate are commonly referred to as the "original type-certification basis." The certification basis for the Boeing Model 737 airplanes affected by this modification is as follows:

For 737–600, –700, and –800 series airplanes: 14 CFR part 25 as amended by Amendments 25–1 through 25–77, with the exemptions and special conditions listed on type certificate A16WE.

For 737–700C and –900 series airplanes: 14 CFR part 25 as amended by Amendments 25–1 through 25–91, with the exemptions and special conditions listed on type certificate A16WE.

For 737–900ER series airplanes: 14 CFR part 25 as amended by Amendments 25–1 through 25–108, with the exemptions and special conditions listed on type certificate A16WE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes modified by Electronic Cable Specialists, Inc., because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special

conditions, the Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under 14 CFR 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Electronic Cable Specialists, Inc., apply for a supplemental type certificate to modify any other model included on type certificate A16WE to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

Electronic Cable Specialists, Inc., proposes to use rechargeable lithium-ion batteries in a dual Class 3 EFB system on Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This type of battery possesses certain failure and operational characteristics, and maintenance requirements differ significantly from that of the nickel-cadmium (Ni-Cd) and lead-acid rechargeable batteries currently approved for installation in large, transport-category airplanes. Small, low-capacity, rechargeable lithium batteries are a novel or unusual design feature in transport-category airplanes, and current regulations in 14 CFR part 25 do not address installation of rechargeable lithium batteries.

Discussion

The current regulations governing installation of batteries in large, transport-category airplanes were derived from Civil Air Regulations (CAR) part 4b.625(d) as part of the re-codification of CAR 4b that established 14 CFR part 25 in February 1965. The new battery requirements, § 25.1353(c)(1) through (c)(4), basically reworded the CAR requirements.

Increased use of Ni-Cd batteries in small airplanes resulted in increased frequency of battery fires and failures, which led to additional rulemaking affecting large, transport-category airplanes as well as small airplanes. On September 1, 1977, and March 1, 1978, the FAA issued § 25.1353(c)(5) and (c)(6), respectively, which govern Ni-Cd battery installations on large, transport-category airplanes.

The proposed use of rechargeable lithium batteries for equipment on the Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes has prompted the FAA to review the adequacy of these existing regulations. Our review indicates that the existing regulations do not adequately address several failure, operational, and maintenance characteristics of lithium batteries that could affect the safety and reliability of rechargeable lithium-battery installations on the Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes.

The use of lithium rechargeable batteries in applications involving commercial aviation has limited history. However, other users of this technology, ranging from wireless-telephone manufacturers to the electric-vehicle industry, have noted safety problems with lithium batteries. These problems include overcharging, over-discharging, and lithium-battery cell-component flammability.

1. Overcharging

In general, lithium-ion batteries are significantly more susceptible than their Ni-Cd or lead-acid counterparts to internal failures that can result in self-sustaining increases in temperature and pressure (*i.e.,* thermal runaway). This is especially true for overcharging, which causes heating and destabilization of the components of the lithium-battery cell, which can lead to the formation, by plating, of highly unstable metallic lithium. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion. The severity of thermal runaway due to overcharging increases with increased battery capacity due to the higher amount of electrolyte in large batteries.

2. Over-Discharging

Discharge of some versions of the lithium-battery cell, beyond a certain voltage (typically 2.4 volts), can cause corrosion of the electrodes in the cell, resulting in loss of battery capacity that cannot be reversed by recharging. This loss of capacity may not be detected by the simple voltage measurements commonly available to flight crewmembers as a means of checking battery status, a problem shared with Ni-Cd batteries.

3. Flammability of Cell Components

Unlike Ni-Cd and lead-acid cells, some types of lithium-battery cells use flammable liquid electrolytes. The electrolyte can serve as a source of fuel for an external fire if the cell container is breached.

The problems that lithium-battery users experience raise concerns about the use of these batteries in commercial aviation. The intent of these special conditions is to establish appropriate airworthiness standards for lithium-battery installations in the Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes and to ensure, as required by §§ 25.601 and 25.1309, that these battery installations will not result in an unsafe condition.

To address these concerns, these special conditions adopt the following requirements:

- Those sections of § 25.1353 that are applicable to lithium batteries.
- The flammable-fluid fire-protection requirements of § 25.863. In the past, this rule was not applied to batteries in transport-category airplanes because the electrolytes in lead-acid and Ni-Cd batteries are not considered flammable.
- New requirements to address hazards of overcharging and over-discharging that are unique to rechargeable lithium-ion batteries.
- Section 25.1529, Instructions for Continued Airworthiness, must include maintenance requirements to ensure that batteries used as spares are maintained in an appropriate state of charge, and installed lithium batteries are sufficiently charged at appropriate intervals. These instructions must also describe proper repairs, if allowed, and battery part-number configuration control.

In issuing these special conditions, the FAA requires that:

(1) All characteristics of the lithium batteries and their installation that could affect safe operation of the Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes are addressed, and

(2) Appropriate instructions for continued airworthiness, which include maintenance requirements, are established to ensure the availability of electrical power from the batteries when needed.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. Should Electronic Cable Specialists, Inc., apply at a later date for a supplemental type certificate to modify any other model included on type certificate A16WE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, the Federal Aviation Administration (FAA) issues the following special conditions as part of the type certification basis for Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, as modified by Electronic Cable Specialists, Inc., to install an EFB system including rechargeable lithium batteries.

In lieu of the requirements of § 25.1353(c)(1) through (c)(4) at Amendment 25–42, Lithium-ion batteries and battery installations on Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes must be designed and installed as follows:

(1) Safe lithium-ion battery-cell temperatures and pressures must be maintained during any charging or discharging condition, and during any failure of the battery-charging or battery-monitoring system not shown to be extremely remote. The lithium-battery installation must preclude explosion in the event of those failures.

(2) Design of lithium batteries must preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

(3) No explosive or toxic gases emitted by any lithium battery in normal operation, or as the result of any failure of the battery-charging or battery-monitoring system, or battery installation which is not shown to be extremely remote, may accumulate in hazardous quantities within the airplane.

(4) Installations of lithium batteries must meet the requirements of § 25.863(a) through (d).

(5) No corrosive fluids or gases that may escape from any lithium battery may damage surrounding structure or any adjacent systems, equipment, or electrical wiring of the airplane in such a way as to cause a major or more-severe failure condition, as determined in accordance with § 25.1309(b).

(6) Each lithium-battery installation must have provisions to prevent any hazardous effect on structure or essential systems caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

(7) Lithium-battery installations must have a system to control automatically the charging rate of the battery to prevent battery overheating or overcharging, and

(i) A battery-temperature-sensing and over-temperature-warning system with a means to automatically disconnect the battery from its charging source in the event of an over-temperature condition or,

(ii) A battery-failure sensing-and-warning system with a means to automatically disconnect the battery from its charging source in the event of battery failure.

(8) Any lithium-battery installation, the function of which is required for safe operation of the airplane, must incorporate a monitoring-and-warning feature that will provide an indication to the appropriate flight crewmembers whenever the state-of-charge of the batteries has fallen below levels considered acceptable for dispatch of the airplane.

(9) The instructions for continued airworthiness required by § 25.1529 (and 14 CFR 26.11) must contain maintenance steps to assure that the lithium batteries are sufficiently charged at appropriate intervals specified by the battery manufacturer. The instructions for continued airworthiness must also contain procedures to ensure the integrity of lithium batteries in spares storage to prevent the replacement of batteries, the function of which are required for safe operation of the airplane, with batteries that have experienced degraded charge-retention ability or other damage due to prolonged storage at a low state-of-charge. Precautions should be included in the continued-airworthiness maintenance instructions to prevent mishandling of lithium batteries, which could result in a short circuit or other unintentional damage that could result in personal injury or property damage.

Note 1: The term "sufficiently charged" means that the battery retains enough of a charge, expressed in ampere-hours, to ensure that the battery cells are not damaged. A battery cell may be damaged by reducing the battery's charge below a point where the battery's ability to charge and retain a full charge is reduced. This reduced charging and charge-retention capability would be greater than the reduction that may result from normal operational degradation.

Note 2: These special conditions are not intended to replace § 25.1353(b) at Amendments 25–77 (–600, –700, –800), 25–91 (–700C, –900), and 25–108 (–900ER) in the certification basis of the Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. These special conditions apply only to rechargeable lithium batteries and their use in the dual Class 3 EFB systems and their installation. The requirements of § 25.1353(b) at Amendment 25–77 (–600, –700, –800), 25–91 (–700C, –900), and 25–108 (–900ER) remain in effect for EFB batteries and battery installations on Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes that do not use rechargeable lithium-ion batteries.

Issued in Renton, Washington, on September 9, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–23720 Filed 9–15–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM462; Special Condition No. 25–444–SC]

Special Conditions: Cessna Aircraft Company Model M680 Airplane; Rechargeable Lithium-Ion Battery Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Cessna Aircraft Company Model 680 airplane. This airplane will have a novel or unusual design feature associated with lithium-ion batteries. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* October 17, 2011.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, FAA, Airplane & Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2432; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2006, Cessna Aircraft Company applied for a change to type certification (TC) T00012WI for installation of lithium-ion batteries in the Model 680.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Cessna Aircraft Company must show that the Model 680, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in TC T00012WI or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type-certification basis." The regulations incorporated by reference in TC T00012WI are as follows:

Title 14, Code of Federal Regulations, part 25, effective February 1, 1965, as amended by amendments 25–1 through 25–98. Refer to TC T00012WI, as applicable, for a complete description of the type-certification basis for this model, including special conditions and exemptions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model 680 because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model 680 must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under 14 CFR 21.101.

Novel or Unusual Design Features

The Model 680 will incorporate the following novel or unusual design features:

Cessna Aircraft Company proposes to use rechargeable lithium-ion main batteries and Auxiliary Power Unit (APU) start batteries on the Model 680, and is also considering the use of this lithium-battery technology in several other auxiliary-battery applications in these airplanes. This type of battery possesses certain failure and operational characteristics, and maintenance requirements differ significantly from that of the nickel-cadmium (Ni-Cd) and lead-acid rechargeable batteries currently approved for installation in transport-category airplanes. Large, high-capacity, rechargeable lithium batteries are a novel or unusual design feature in transport-category airplanes, and current regulations in 14 CFR part 25 do not address installation of rechargeable lithium batteries.

Discussion

The current regulations governing the installation of batteries in transport-category airplanes were derived from Civil Air Regulation (CAR) 4b.625(d) as part of the re-codification of CAR 4b that established Federal aviation regulations, in 14 CFR part 25, in February 1965. The new battery requirements, § 25.1353(c)(1) through (c)(4), basically reworded the CAR requirements.

Increased use of Ni-Cd batteries in small airplanes resulted in increased frequency of battery fires and failures, which led to additional rulemaking affecting transport-category airplanes as well as small airplanes. On September 1, 1977, and March 1, 1978, the FAA issued § 25.1353(c)(5) and (c)(6), respectively, which govern Ni-Cd battery installations on transport-category airplanes.

The proposed use of rechargeable lithium batteries for equipment and systems on the Model 680 airplane has prompted the FAA to review the adequacy of existing battery regulations. Our review indicates that the existing regulations do not adequately address several failure, operational, and maintenance characteristics of lithium batteries that could affect the safety and reliability of rechargeable lithium-battery installations on the Model 680 airplane.

The use of lithium rechargeable batteries in applications involving commercial aviation has limited history. However, other users of this technology, ranging from wireless-telephone manufacturers to the electric-vehicle industry, have noted safety problems with lithium batteries. These problems include overcharging, over-discharging, and lithium-battery cell-component flammability.

1. Overcharging

In general, lithium-ion batteries are significantly more susceptible than their Ni-Cd or lead-acid counterparts to internal failures that can result in self-sustaining increases in temperature and pressure (*i.e.,* thermal runaway). This is especially true for overcharging, which causes heating and destabilization of the components of the lithium-battery cell, which can lead to the formation, by plating, of highly unstable metallic lithium. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion. The severity of thermal runaway due to overcharging increases with increased battery capacity due to the higher amount of electrolyte in large batteries.

2. Over-Discharging

Discharge of some versions of the lithium-battery cell, beyond a certain voltage (typically 2.4 volts), can cause corrosion of the electrodes in the cell, resulting in loss of battery capacity that cannot be reversed by recharging. This loss of capacity may not be detected by the simple voltage measurements commonly available to flight crewmembers as a means of checking battery status, a problem shared with Ni-Cd batteries.

3. Flammability of Cell Components

Unlike Ni-Cd and lead-acid cells, some types of lithium-battery cells use flammable liquid electrolytes. The electrolyte can serve as a source of fuel for an external fire if the cell container is breached.

The problems that lithium-battery users experience raise concerns about the use of these batteries in commercial aviation. The intent of these special conditions is to establish appropriate airworthiness standards for lithium-battery installations in the Model 680 airplane, and to ensure, as required by §§ 25.601 and 25.1309, that these battery installations will not result in an unsafe condition.

To address these concerns, these special conditions adopt the following requirements:

- Those sections of § 25.1353 that are applicable to lithium batteries.
- The flammable-fluid fire-protection requirements of § 25.863. In the past, this rule was not applied to batteries in transport-category airplanes because the electrolytes in lead-acid and Ni-Cd batteries are not considered flammable.

• New requirements to address hazards of overcharging and over-discharging that are unique to rechargeable lithium-ion batteries.

• Section 25.1529, Instructions for Continued Airworthiness, must include maintenance requirements to ensure that batteries used as spares are maintained in an appropriate state of charge, and installed lithium batteries are sufficiently charged at appropriate intervals. These instructions must also describe proper repairs, if allowed, and battery part-number configuration control.

In issuing these special conditions, the FAA requires that:

(1) All characteristics of the lithium batteries and their installation that could affect safe operation of the Cessna Model 680 airplane are addressed, and

(2) Appropriate Instructions for Continued Airworthiness, which include maintenance requirements, are established to ensure the availability of electrical power from the batteries when needed.

Discussion of Comments

Notice of proposed special conditions no. 25–11–15–SC for the Model 680 airplane was published in the **Federal Register** on July 1, 2011 (76 FR 41142). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Model 680 airplane. Should Cessna Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Cessna Model 680 airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are part of the type-certification basis for Cessna Aircraft Company Model 680 airplanes.

In lieu of the requirements of § 25.1353(c)(1) through (c)(4) at amendment 25–42, lithium-ion batteries and battery installations on the Cessna Model 680 airplane must be designed and installed as follows:

(1) Safe lithium-ion battery-cell temperatures and pressures must be maintained during any charging or discharging condition, and during any failure of the battery-charging or battery-monitoring system not shown to be extremely remote. The lithium-battery installation must preclude explosion in the event of those failures.

(2) Design of lithium batteries must preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

(3) No explosive or toxic gases emitted by any lithium battery in normal operation, or as the result of any failure of the battery-charging or battery-monitoring system, or battery installation which is not shown to be extremely remote, may accumulate in hazardous quantities within the airplane.

(4) Installations of lithium batteries must meet the requirements of 14 CFR 25.863(a) through (d).

(5) No corrosive fluids or gases that may escape from any lithium battery may damage surrounding structure or any adjacent systems, equipment, or electrical wiring of the airplane in such a way as to cause a major or more-severe failure condition, as determined in accordance with 14 CFR 25.1309(b).

(6) Each lithium-battery installation must have provisions to prevent any hazardous effect on structure or essential systems caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

(7) Lithium-battery installations must have a system to control automatically the charging rate of the battery to prevent battery overheating or overcharging, and

(i) A battery-temperature-sensing and over-temperature-warning system with a means to automatically disconnect the battery from its charging source in the event of an over-temperature condition or,

(ii) A battery-failure sensing-and-warning system with a means to automatically disconnect the battery from its charging source in the event of battery failure.

(8) Any lithium-battery installation, the function of which is required for safe operation of the airplane, must incorporate a monitoring-and-warning feature that will provide an indication to the appropriate flight crewmembers whenever the state-of-charge of the batteries has fallen below levels considered acceptable for dispatch of the airplane.

(9) The instructions for continued airworthiness required by § 25.1529 (and § 26.11) must contain maintenance steps to assure that the lithium batteries are sufficiently charged at appropriate intervals specified by the battery manufacturer. The instructions for continued airworthiness must also contain procedures to ensure the integrity of lithium batteries in spares storage to prevent the replacement of batteries, the function of which are required for safe operation of the airplane, with batteries that have experienced degraded charge-retention ability or other damage due to prolonged storage at a low state-of-charge. Precautions should be included in the continued-airworthiness maintenance instructions to prevent mishandling of lithium batteries, which could result in a short circuit or other unintentional damage that could result in personal injury or property damage.

Note 1: The term "sufficiently charged" means that the battery retains enough of a charge, expressed in ampere-hours, to ensure that the battery cells are not damaged. A battery cell may be damaged by reducing the battery's charge below a point where the battery's ability to charge and retain a full charge is reduced. This reduced charging and charge-retention capability would be greater than the reduction that may result from normal operational degradation.

Note 2: These special conditions are not intended to replace § 25.1353(c) in the certification basis of the Cessna Model 680 airplane. These special conditions apply only to lithium-ion batteries and rechargeable lithium-battery-system installations. The requirements of § 25.1353(c) remain in effect for batteries and battery installations on the Cessna Model 680 airplane that do not use lithium-ion batteries.

Issued in Renton, Washington, on September 9, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–23718 Filed 9–15–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1045; Directorate Identifier 2010–NM–101–AD; Amendment 39–16809; AD 2011–19–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) that applies to the products listed above. 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:

One case of elevator servo-control disconnection has been experienced on an aeroplane of the A320 family. Investigation has revealed that the failure occurred at the servo-control rod eye-end.

Further to this finding, additional inspections have revealed cracking at the same location on a number of other servo-control rod eye-ends. In several cases, both actuators of the same elevator surface were affected. The root cause of the cracking has not yet been determined and tests are ongoing.

A dual servo-control disconnection on the same elevator could result in an uncontrolled surface, the elevator surface being neither actuated nor damped, which could lead to reduced control of the aeroplane.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective October 21, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 21, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 8, 2010 (75 FR 68548), and proposed to supersede AD 2009–17–04, Amendment 39–15995 (74 FR 41611, August 18, 2009). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

One case of elevator servo-control disconnection has been experienced on an aeroplane of the A320 family. Investigation has revealed that the failure occurred at the servo-control rod eye-end.

Further to this finding, additional inspections have revealed cracking at the same location on a number of other servo-control rod eye-ends. In several cases, both actuators of the same elevator surface were affected. The root cause of the cracking has not yet been determined and tests are ongoing.

A dual servo-control disconnection on the same elevator could result in an uncontrolled surface, the elevator surface being neither actuated nor damped, which could lead to reduced control of the aeroplane.

To address this unsafe condition, EASA [The European Aviation Safety Agency] AD 2008–0149 [which corresponds to FAA AD 2009–17–04] was issued to require a one-time inspection of the elevator servo-control rod eye-ends for aeroplanes which have accumulated more than 10,000 total Flight-Cycles (FC) since aeroplane first flight and, in case of findings, the accomplishment of corrective actions. As a result of this one-time inspection campaign, a significant number of rod eye-ends have been found cracked. In addition, some cracks have been reported on rod eye-ends that had not yet accumulated the 10,000 FC of the established threshold.

For the reason described above, this [EASA] AD partially retains the initial inspection requirement of EASA AD 2008–0149, which is superseded, reduces the compliance time of the initial inspections and introduces a repetitive inspection program.

The corrective actions include replacing any cracked rod eye-end with a serviceable unit and re-adjusting the elevator servo-control. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Support for NPRM

US Airways stated that the NPRM (75 FR 68548, November 8, 2010) will help prevent a possible dual servo control disconnection on the same elevator, which would result in an uncontrolled surface.

Request To Change Compliance Time

Delta Air Lines (Delta) recommended that paragraph (g) of the NPRM (75 FR 68548, November 8, 2010) be simplified to accept the compliance specified in Airbus Mandatory Service Bulletin A320–27A1186, Revision 05, dated March 10, 2010. Delta stated that the current NPRM wording is difficult to correlate between service bulletin instructions and the wording of the AD, and as written, it appears the operators are responsible for compliance to both the FAA AD wording and the service bulletin wording. Delta also stated that the FAA AD wording does not give acceptance to the compliance times for OPTION 2 specified in the tables on pages 22 and 23 of Airbus Mandatory Service Bulletin A320–27A186, Revision 05, dated March 10, 2010. Delta stated it has used both options that are allowed under Airbus All Operators Telex (AOT) A320–27A1186 Revision 04, dated April 3, 2009.

We disagree with the request to revise the compliance time specified in paragraph (g) of this AD. This AD allows incorporation of Task 271186–832–803–001, referenced as OPTION 2 in Airbus Mandatory Service Bulletin A320–27A1186, Revision 05, dated March 10, 2010, as a method for doing the inspection of inboard and outboard servo control rod eye-ends required by this AD; however, the task must be done at the compliance time mandated in this AD. In developing an appropriate compliance time for paragraph (g) of this AD, we considered the safety issues as well as the recommendations of EASA. Delta agreed with the FAA position during a teleconference on June 17, 2011. We have not changed the AD in this regard.

Request To Use New Revision of Service Information

Delta requested that we allow Airbus Mandatory Service Bulletin A320–27A1186, Revision 06, dated December 14, 2010, as an acceptable means of compliance with the NPRM (75 FR 68548, November 8, 2010).

We agree. In addition, we have received Airbus Mandatory Service Bulletin A320–27A1186, Revision 07, dated March 2, 2011. We have revised paragraphs (g), (h), (j), and (m), in this final rule to reference Airbus Mandatory

Service Bulletin A320–27A1186, Revision 07, dated March 2, 2011. We have also added table 2 of this AD to provide credit for certain actions done before the effective date of this AD in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–27A1186, Revision 05, dated March 10, 2010, which was cited in the NPRM (75 FR 68548, November 8, 2010) as the appropriate source of service information; and Airbus Mandatory Service Bulletin A320–27A1186, Revision 06, dated December 14, 2010.

Request To Provide Clearer Service Information or Allow Deviation From the Service Information Without an Alternative Methods of Compliance (AMOCs) Request

Delta stated that Airbus Mandatory Service Bulletin A320–27A1186, Revision 05, dated March 10, 2010, as written, is confusing and difficult to comply with. Delta stated that it is poorly written for actual maintenance usage and it intermixes tasks that are accomplished on-wing with tasks that are performed in the shop environment. This makes literal compliance with Airbus Mandatory Service Bulletin A320–27A1186, Revision 05, dated March 10, 2010 (and thus the AD) difficult and unnecessarily places the operator at risk of non-compliance. To support its position, this commenter mentioned that, for example, the instructions in Figure A–FBEAA of Airbus Mandatory Service Bulletin A320–27A1186, Revision 05, dated March 10, 2010, for re-installing the crack-free rod-end using the same number of turns previously recorded when the rod-end was removed is meaningless as the rod-end will be installed on a different aircraft, and the number of turns most likely will be different in order to maintain aircraft rig on the new airplane. Delta wanted us to provide clearer language within the service information or allow operators to deviate from Airbus Mandatory Service Bulletin A320–27A1186, Revision 05, dated March 10, 2010, as written such that the operator can perform the required work without requesting an AMOC.

We disagree with the request. The example given in Figure A–FBEAA of Airbus Mandatory Service Bulletin A320–27A1186, Revision 05, dated March 10, 2010, for re-installing the crack-free rod-end specifies installation of a spare rod eye-end using the same number of turns previously recorded when the rod eye-end was removed. Therefore recording and re-installing using the same number of turns is necessary. We conclude that the service information is adequate and we have not changed this AD in this regard. However, under the provisions of paragraph (l) of this AD, we will consider requests for approval of an AMOC if sufficient data are submitted to substantiate that a deviation from the service information would provide an acceptable level of safety.

Requests To Remove Reporting Requirements

Delta, US Airways, and Airbus request the removal of the reporting requirement of paragraph (g)(3) of the NPRM (75 FR 68548, November 8, 2010) because Airbus has announced that it is no longer using the reported data to form a technical solution.

Because Airbus no longer needs the reported data to form a technical solution, we agree it is not necessary for operators to submit a report of inspection findings. We have removed paragraphs (g)(3) and (l)(3) of this AD.

Request To Change Servo Repetitive Inspection Initial Compliance Time

Delta requested we add a statement regarding the servos (and the associated rod-end) that are replaced for failure prior to the 10,000 flight-cycle threshold be placed on the repetitive 5,000 flight-cycle period rather than the "first" inspection period after the aircraft reached the 10,000 flight-cycle initial level. Delta stated that the NPRM (75 FR 68548, November 8, 2010) would require the inspection be delayed for aircraft under/less than the 10,000 flight-cycle threshold. Delta stated as the servo "mean time between removals" is currently about 11,000 flight hours, it makes little sense to inspect a replacement rod-end only a few hundred or 1,000 flight cycles after installation. Delta stated it makes sense to apply the 5,000 flight-cycle limit to the rod-end on the replaced servo.

We disagree. If the servos are replaced before accumulating 10,000 total airplane flight cycles as of September 22, 2009 (the effective date of AD 2009–17–04, Amendment 39–15995 (74 FR 41611, August 18, 2009)), then the first inspection in accordance with paragraph (g)(2) of this AD is required at the later of the times specified in paragraphs (g)(2)(ii)(A) and (g)(2)(ii)(B), *i.e.,* before the airplane accumulates 7,500 total flight cycles, or within 40 months after the effective date of this AD, whichever occurs later, but no later than 13,000 total flight cycles on the airplane, followed by repeat inspection in accordance with paragraph (h) of this AD. Therefore, no foreseeable scenario can necessitate an inspection after a few hundred or 1,000 airplane flight cycles. We have not changed this AD in this regard.

Conclusion

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

Differences Between This 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 our FAA policies. Any such differences are highlighted in a Note within the AD.

Costs of Compliance

We estimate that this AD will affect about 770 products of U.S. registry.

The actions that are required by AD 2009–17–04, Amendment 39–15995 (74 FR 41611, August 18, 2009), and retained in this AD, take about 13 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the currently required actions is $1,105 per product.

We estimate that it will take about 12 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of these AD requirements to the U.S. operators to be $785,400, or $1,020 per product.

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 have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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 the NPRM (75 FR 68548, November 8, 2010), 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.

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 39–15995 (74 FR 41611, August 18, 2009) and adding the following new AD:

2011–19–04 Airbus: Amendment 39–16809. Docket No. FAA–2010–1045; Directorate Identifier 2010–NM–101–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 21, 2011.

Affected ADs

(b) This AD supersedes AD 2009–17–04, Amendment 39–15995 (74 FR 41611, August 18, 2009).

Applicability

(c) This AD applies to Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all manufacturer serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

Reason

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

One case of elevator servo-control disconnection has been experienced on an aeroplane of the A320 family. Investigation has revealed that the failure occurred at the servo-control rod eye-end.

Further to this finding, additional inspections have revealed cracking at the same location on a number of other servo-control rod eye-ends. In several cases, both actuators of the same elevator surface were affected. The root cause of the cracking has not yet been determined and tests are ongoing.

A dual servo-control disconnection on the same elevator could result in an uncontrolled surface, the elevator surface being neither actuated nor damped, which could lead to reduced control of the aeroplane.

* * * * *

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 2009–17–04, Amendment 39–15995 (74 FR 41611, August 18, 2009), With Reduced and Revised Compliance Times and Revised Service Information:

(g) Unless already done, do the following actions.

(1) At the applicable times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD: Inspect both the left-hand and right-hand inboard elevator servo-control rod eye-ends for cracking, in accordance with the instructions of Airbus All Operators Telex (AOT) A320–27A1186, Revision 04, dated April 3, 2009; or the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–27A1186, Revision 07, dated March 2, 2011. As of the effective date of this AD, use Airbus Mandatory Service Bulletin A320–27A1186, Revision 07, dated March 2, 2011.

(i) For airplanes that have accumulated 10,000 total flight cycles or more as of September 22, 2009 (the effective date of AD 2009–17–04, Amendment 39–15995 (74 FR 41611, August 18, 2009)): At the later of the times specified in paragraphs (g)(1)(i)(A) and (g)(1)(i)(B) of this AD.

(A) Within 1,500 flight cycles after September 22, 2009.

(B) Within 1,500 flight cycles after accumulating 10,000 total flight cycles since first flight of the airplane.

(ii) For airplanes that have accumulated less than 10,000 total flight cycles as of September 22, 2009: At the later of the times specified in paragraphs (g)(1)(ii)(A) and (g)(1)(ii)(B) of this AD.

(A) Before the accumulation of 5,000 total flight cycles.

(B) Within 20 months after the effective date of this AD but no later than before the accumulation of 11,500 total flight cycles.

(2) At the applicable time specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD: Inspect both the left-hand and right-hand outboard elevator servo-control rod eye-ends for cracking, in accordance with the instructions of Airbus AOT A320–27A1186, Revision 04, dated April 3, 2009; or the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–27A1186, Revision 07, dated March 2, 2011. As of the effective date of this AD, use Airbus Mandatory Service Bulletin A320–27A1186, Revision 07, dated March 2, 2011.

(i) For airplanes that have accumulated 10,000 total flight cycles or more as of September 22, 2009: At the later of the times specified in paragraphs (g)(2)(i)(A) and (g)(2)(i)(B) of this AD.

(A) Within 3,000 flight cycles after September 22, 2009.

(B) Within 3,000 flight cycles after accumulating 10,000 total flight cycles since first flight of the airplane.

(ii) For airplanes that have accumulated less than 10,000 total flight cycles as of September 22, 2009: At the later of the times specified in paragraphs (g)(2)(ii)(A) and (g)(2)(ii)(B) of this AD.

(A) Before the accumulation of 7,500 total flight cycles.

(B) Within 40 months after the effective date of this AD but no later than before the accumulation of 13,000 total flight cycles.

New Requirements of This AD:

Repetitive Inspections and Corrective Action

(h) Repeat the inspections of the left-hand and right-hand inboard and outboard elevator servo-control rod eye-ends for cracking as required by paragraphs (g)(1) and (g)(2) of this AD at the later of the times specified in paragraph (h)(1) or (h)(2) of this AD. Repeat the inspections thereafter at intervals not to exceed 5,000 flight cycles.

(1) Within 5,000 flight cycles after the last inspection required by paragraph (g)(1) or (g)(2) of this AD as applicable.

(2) Within 6 months after the effective date of this AD.

(i) If any cracking is found during any inspection required by this AD, before further flight, accomplish all applicable corrective actions, in accordance with the Accomplishment Instructions and figures of Airbus Mandatory Service Bulletin A320–27A1186, Revision 07, dated March 2, 2011.

Parts Installation

(j) As of the effective date of this AD, no person may install on any airplane an elevator servo-control rod eye-end unless it is new or has been inspected in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–27A1186, Revision 07, dated March 2, 2011, with no crack findings.

Credit for Actions Accomplished in Accordance With Previous Service Information

(k) Actions done before the effective date of this AD in accordance with the service information specified in table 1 of this AD are acceptable for compliance with the corresponding requirements of paragraphs (g)(1) and (g)(2) of this AD. Actions done before the effective date of this AD in accordance with the service information specified in table 2 of this AD are acceptable for compliance with the corresponding requirements of paragraph (h) of this AD.

TABLE 1—CREDIT SERVICE INFORMATION FOR PARAGRAPH (G) OF THIS AD

Airbus AOT—	Revision—	Dated—
A320-27A1186	Original	June 23, 2008.
A320-27A1186	01	August 11, 2008.
A320-27A1186	02	March 30, 2009.
A320-27A1186	03	April 1, 2009.
A320-27A1186	04	April 3, 2009.

TABLE 2—CREDIT SERVICE INFORMATION FOR PARAGRAPH (H) OF THIS AD

Airbus Service Bulletin—	Revision—	Dated—
A320-27A1186	05	March 10, 2010.
A320-27A1186	06	December 14, 2010.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, 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:* Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; 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. AMOCs approved previously in accordance with AD 2009–17–04, Amendment 39–15995 (74 FR 41611, August 18, 2009), are approved as AMOCs for the corresponding provisions of 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

(m) Refer to MCAI EASA Airworthiness Directive 2010–0046, dated March 19, 2010; and Airbus Mandatory Service Bulletin A320–27A1186, Revision 07, dated March 2, 2011; for related information.

Material Incorporated by Reference

(n) You must use Airbus Mandatory Service Bulletin A320–27A1186, Revision 07, including Appendices 1, 2, 3, 4, 5, and 6, dated March 2, 2011, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; *e-mail: account.airworth-eas@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 September 7, 2011.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–23468 Filed 9–15–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0515; Airspace Docket No. 11–ANM–11]

Amendment of Class E Airspace; Miles City, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Miles City, MT, to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Frank Wiley Field. Additionally, the geographic coordinates for Frank Wiley Field are being adjusted. This improves the safety

and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, December 15, 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: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On July 15, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify controlled airspace at Miles City, MT (76 FR 41725). 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 6002 and 6005, respectively, of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface, at Frank Wiley Field, Miles City, MT, to accommodate IFR aircraft executing new RNAV (GPS) standard instrument approach procedures at the airport. This action also adjusts the geographic coordinates for Frank Wiley Field to coincide with the FAA's aeronautical database. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified 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 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Frank Wiley Field, Miles City, MT.

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 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM MT E2 Miles City, MT [Modified]

Miles City, Frank Wiley Field, MT
(Lat. 46°25′41″ N., long. 105°53′11″ W.)

Within a 4.9-mile radius of Frank Wiley Field, and within 3 miles each side of the 226° bearing of Frank Wiley Field extending from the 4.9-mile radius to 10.8 miles southwest of the airport, and within 3 miles each side of the 253° bearing of Frank Wiley Field extending from the 4.9-mile radius to 9.4 miles west of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

ANM MT E5 Miles City, MT [Modified]

Miles City, Frank Wiley Field, MT
(Lat. 46°25′41″ N., long. 105°53′11″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Frank Wiley Field, and within 3.1 miles each side of the 047° bearing from Frank Wiley Field extending from the 7.4-mile radius to 15.5 miles northeast of the airport, and within 3.5 miles each side of the 226° bearing from Frank Wiley Field, extending from the 7.4-mile radius to 15 miles southwest of the airport, and within 4.5 miles each side of the 253° bearing from Frank Wiley Field, extending from the 7.4-mile radius to 12 miles west of the airport; that airspace extending upward from 1,200 feet above the surface within a 34.5-mile radius of Frank Wiley Field.

Issued in Seattle, Washington, on September 7, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–23693 Filed 9–15–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0517; Airspace Docket No. 11–AWP–7]

Establishment of Class E Airspace; Chinle, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Chinle Municipal Airport, Chinle, AZ, to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Chinle Municipal Airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, December 15, 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: Eldon Taylor, Federal Aviation

Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On July 13, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish controlled airspace at Chinle, AZ (76 FR 41147). 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 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface, at Chinle Municipal Airport, to accommodate IFR aircraft executing new RNAV (GPS) standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified 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 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Chinle Municipal Airport, Chinle, AZ.

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 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

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

* * * * *

AWP AZ E5 Chinle, AZ [New]

Chinle Municipal Airport, AZ

(Lat. 36°06′34″ N., long. 109°34′32″ W.)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of Chinle Municipal Airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 36°34′00″ N., long. 110°00′00″ W.; to lat. 36°38′00″ N., long. 109°35′00″ W.; to lat. 36°16′00″ N., long. 109°02′00″ W.; to lat. 36°04′00″ N., long. 109°25′00″ W.; to lat. 35°38′00″ N., long. 110°01′00″ W.; to lat. 36°19′00″ N., long. 110°21′00″ W., thence to the point of beginning.

Issued in Seattle, Washington, on September 7, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–23700 Filed 9–15–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 119, 125, 133, 137, 141, 142, 145, and 147

[Docket No. FAA–2008–1154; Amendment Nos. 91–325, 119–15, 125–61, 133–14, 137–16, 141–16, 142–8, 145–29, and 147–7]

RIN 2120–AJ36

Restrictions on Operators Employing Former Flight Standards Service Aviation Safety Inspectors; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a final rule published on August 22, 2011 (76 FR 52231). In that final rule the FAA prohibited any person holding a certificate from knowingly employing, or making a contractual arrangement with, certain individuals to act as an agent or a representative of the certificate holder in any matter before the FAA under certain conditions. This document corrects an amendment number.

DATES: Effective September 16, 2011.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule, contact Nancy Lauck Claussen, Federal Aviation Administration, Air Transportation Division, AFS–200, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8166.

Background

On August 22, 2011, the FAA published a final rule entitled ''Restrictions on Operators Employing Former Flight Standards Service Aviation Safety Inspectors'' (76 FR 52231).

In that final rule the FAA prohibited any person holding a certificate from knowingly employing, or making a contractual arrangement with, certain individuals to act as an agent or a representative of the certificate holder in any matter before the FAA under certain conditions. These restrictions apply if the individual, in the preceding 2 year period directly served as, or was directly responsible for the oversight of, a Flight Standards Service Aviation Safety Inspector, and had direct responsibility to inspect, or oversee the inspection of, the operations of the certificate holder. This rule also applies to persons who own or manage fractional ownership program aircraft that are used to conduct operations

under specific regulations described in this document. This rule establishes these restrictions to prevent potential organizational conflicts of interest which could adversely affect aviation safety.

Correction to Preamble

This technical amendment makes one revision to the preamble section of the final rule. The amendment number "119–5" should read "119–15".

Issued in Washington, DC, on September 8, 2011.

Dennis R. Pratte,

Acting Director, Office of Rulemaking.

[FR Doc. 2011–23805 Filed 9–15–11; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. PA–47 ; File No. S7–19–11]

Privacy Act of 1974: Implementation and Amendment of Exemptions

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("SEC" or "Commission") is adopting a rule to amend its Privacy Act regulations to exempt portions of three new systems of records and to make technical amendments to its current inventory of exempted systems of records. Specifically, application of the exemptions to the three new systems of records is necessary to protect information compiled for law enforcement purposes.

DATES: *Effective Date:* October 17, 2011.

FOR FURTHER INFORMATION CONTACT: Cristal Perpignan, Acting Chief Privacy Officer, Office of Information Technology, 202–551–7716.

SUPPLEMENTARY INFORMATION:

Background: On May 24, 2011, SEC published notice of three new Privacy Act systems of records entitled Tips, Complaints, and Referrals (TCR) Records (SEC–63)", "SEC Security in the Workplace Incident Records (SEC–64)", and "Investor Response Information System (IRIS) (SEC–65)"; and to revise two existing systems of records at Release No. PA–46, (May 18, 2011), 76 FR 30213 (May 24, 2011). In conjunction with publication of the systems of records notice, the SEC published, with invitation to comment, a proposed rule to exempt the new systems of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act and 17 CFR 200.303, 200.304, and 200.306; and to make technical amendments to its current inventory of exempted systems of records at Release No. PA–45 (May 18, 2011), 76 FR 30048 (May 24, 2011). The TCR Records (SEC–63) system of records contains records related to tips, complaints, referrals of misconduct, or related information about actual or potential violations of the federal securities laws; investor harm; conduct of public companies; securities professionals; regulated entities; and associated persons. This system of records may include investigatory materials that were compiled in connection with the Commission's enforcement responsibilities under the federal securities laws. Such material may consist of unsolicited and often unverified statements concerning individuals, information received from confidential sources, as well as reports from the Commission's investigators and other law enforcement personnel. The disclosure of the existence of investigatory materials could seriously undermine effective enforcement of the federal securities laws by prematurely alerting individuals to the fact that they are under investigation, by giving them access to the evidentiary bases for a Commission enforcement action or seriously hampering the Commission's case in court or before an administrative law judge.

The SEC Security in the Workplace Incident Records (SEC–64) system of records contains records related to reports involving incidents of assault, harassment, intimidation, bullying, weapons possession, or threats at the SEC. This system of records may include investigatory materials that were compiled in connection with inquiries or investigation of potential or actual incidents of violence by and against individuals at an SEC facility. The disclosure of information as it relates to investigatory materials or the identity of sources of information may seriously undermine the safety and security of employees in the workplace. Access to such information could allow the subject of an investigation or inquiry of an actual or potential criminal or civil violation to interfere with and impede the investigation, tamper with witnesses or evidence, and to avoid detection or apprehension.

The IRIS (SEC–65) system of records contains records related to complaints/inquiries/requests from members of the public and others. This system of records may include investigatory materials that were compiled in connection with the Commission's enforcement responsibilities under the federal securities laws. Such material may consist of unsolicited and often unverified statements concerning individuals, information received from confidential sources, as well as reports from the Commission's investigators and other law enforcement personnel. The disclosure of the existence of investigatory materials could seriously undermine effective enforcement of the federal securities laws by prematurely alerting individuals to the fact that they are under investigation, by giving them access to the evidentiary bases for a commission enforcement action or seriously hampering the Commission's case in court or before an administrative law judge.

The Commission is exempting SEC–63, SEC–64 and SEC–65 from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) and 17 CFR 200.303, 200.304, and 200.306, insofar as they contain investigatory materials compiled for law enforcement purposes; and amending its existing inventory of exemptions by modifying the name of SEC 38 from "Office of Personnel Code of Conduct and Employee Performance Files" to "Disciplinary and Adverse Actions, Employee Conduct, and Labor Relations Files" and by deleting reference to "Personnel Security Files", which was published for deletion at Release No. PA–29 (July 28, 2000), 65 FR 49037(August10, 2000).

Public Comments: The Commission received only one comment on the proposal, but it did not address the specific exemptions; instead, the commenter stated generally that he thought privacy should be preserved and not taken away. We continue to believe the exemptions are consistent with the Privacy Act because the exemptions protect information relating to enforcement investigations from disclosure.

Paperwork Reduction Act

This rule does not contain a "collection of information" requirement within the meaning of the Paperwork Reduction Act of 1995, so the Paperwork Reduction Act is not applicable.

Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The Privacy Act of 1974 directs each agency that proposes to establish or make a significant change in a system of records to publish in the **Federal Register** a notice of the existence and character of the system. Government agencies may exempt certain records from certain provisions of the Privacy Act, but to claim an exemption the

agency must issue a rule justifying the exemption.

The new systems of records may include investigatory materials compiled in connection with the Commission's enforcement of the federal securities laws, in connection with potential or actual incidents of workplace violence, or in connections with complaints, inquiries or requests from the public. The Commission and investors will benefit from the amendments, because in their absence the potential access to or disclosure of the investigatory materials in these systems of records could seriously undermine the effective enforcement of the Federal securities laws, and could jeopardize the safety and security of Commission employees in the workplace.

We recognize that the proposed amendments may impose costs on individuals who may wish to obtain access to records that contain investigatory materials in these systems of records. We have no way of estimating the potential number of individuals who might in the future desire such access. Nevertheless, the benefits of exempting those records from public access are compelling, and they clearly justify the costs of the exemption. In addition, Congress was aware of such potential costs when they promulgated the specific exemption in 5 U.S.C. 552a(k)(2). The Commission discussed these costs and benefits in the proposing release and received no comments on them.

Regulatory Flexibility Act Certification

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, SEC certified that these regulations would not significantly affect a substantial number of small entities. The rule imposes no duties or obligations on small entities. Further, in accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, SEC has determined that this rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements. The Commission provided this certification in the proposing release and received no comments.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure; Privacy.

Text of Amendments

For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

■ 1. The authority citation for Part 200 is amended by adding authority for § 200.312 in numerical order to read as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d–1, 78d–2, 78w, 78ll(d), 78mm, 80a–37, 80b–11, and 7202, unless otherwise noted.

* * * * *

Section 200.312 is also issued under 5 U.S.C. 552a(k).

* * * * *

Subpart H—Regulations Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Commission

■ 2. Amend § 200.312 by:
■ a. Removing "and" at the end of paragraph (a)(5);
■ b. Removing the period at the end of paragraph (a)(6) and adding a semicolon in its place;
■ c. Adding paragraphs (a)(7), (a)(8) and (a)(9);
■ d. Revising paragraph (b); and
■ e. Removing the authority citation at the end of the section.

The additions and revision read as follows.

§ 200.312 Specific exemptions.

* * * * *

(a) * * *

(7) Tips, Complaints, and Referrals (TCR) Records;

(8) SEC Security in the Workplace Incident Records; and

(9) Investor Response Information System (IRIS).

(b) Pursuant to 5 U.S.C. 552a(k)(5), the system of records containing the Commission's Disciplinary and Adverse Actions, Employee Conduct, and Labor Relations Files shall be exempt from sections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act, 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I), and (f), and 17 CFR 200.303, 200.304, and 200.306 insofar as they contain investigatory material compiled to determine an individual's suitability, eligibility, and qualifications for Federal civilian employment or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

By the Commission.

Dated: September 12, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23732 Filed 9–15–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD–2009–HA–0068]

RIN 0720–AB30

TRICARE; Continued Health Care Benefit Program Expansion

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule executes the expansion of section 1078a of title 10, United States Code (U.S.C). With the recent expansions of Military Health System (MHS) coverage, particularly with the Reserve Component (RC) members, some MHS beneficiaries would not be eligible to purchase Continued Health Care Benefit Program (CHCBP) coverage under certain circumstances that terminate their MHS coverage. This provision allows the Secretary to establish CHCBP eligibility for any category of MHS beneficiaries who otherwise would lose MHS coverage with no continued care eligibility. Although the proposed rule listed each authorized category of MHS beneficiary eligible to receive care, on further examination this format for the rule appeared cumbersome and perhaps confusing. Thus this final rule contains some organizational changes to simplify the rule to enhance understanding and make clear that any category including future categories of beneficiaries are entitled to purchase this CHCBP coverage. This final rule also includes administrative changes providing clarification on eligibility notifications and the CHCBP premium rate publication process. It updates the previous final rule published in the **Federal Register** on September 30, 1994.

DATES: *Effective Date:* October 17, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Ellis, TRICARE Policy and Operations, TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041, telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

CHCBP is the program that provides continued health care coverage for eligible beneficiaries who lose their MHS eligibility. It was initially established by Congress in section 4408 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1993, Public Law 102–484, which amended title 10 U.S.C., by adding section 1078a. The Department of Defense (DoD) published the initial final rule regarding CHCBP in the **Federal Register** on September 30, 1994, (59 FR 49817). It is modeled after private sector insurance programs giving some employees the ability to continue health insurance coverage after leaving employment as authorized by the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985. "COBRA Coverage" requires the individual to pay up to 100 percent of the program cost plus an amount to cover administrative expenses.

Section 713 of the NDAA for FY 2004 expanded the category of persons authorized coverage to include the uniformed services that are not armed forces. A final rule implementing this change was published in the **Federal Register** on September 30, 1994. The statute was again amended by Section 705 of the NDAA for FY 2008 which authorized the expansion of persons eligible for the CHCBP under 10 U.S.C. 1078a to include any person specified by regulation prescribed by the Secretary who was authorized coverage under 10 U.S.C. chapter 55 and who loses that eligibility. The proposed rule to implement this change was published in the **Federal Register** on November 27, 2009. The intent of the proposed rule and this final rule is to specify that any person who is currently authorized coverage under 10 U.S.C. chapter 55 or 10 U.S.C. 1145(a) and any person who may in the future be authorized coverage under chapter 55 of 10 U.S.C. or 10 U.S.C. 1145(a) and who loses that eligibility shall be authorized coverage under the CHCBP.

Currently, CHCBP provides coverage for certain active duty (AD) service members and their family members as well as RC members and their families. The coverage period is up to 36 months after the date on which the person first ceases to be covered under his or her respective program eligibility. However, for RC members the coverage is for 18 months from either separation from AD or when coverage under the Transitional Assistance Management Program (TAMP) (10 U.S.C. 1145(a)) ends.

The 2008 change to 10 U.S.C. 1078a expands CHCBP to all who the Secretary specifies in regulation who lose entitlement or eligibility to health care services under 10 U.S.C. chapter 55 Therefore, members or former members of the RC, such as TRICARE Reserve Select under 10 U.S.C. 1076d or TRICARE Retired Reserve under 10 U.S.C. Section 1076e coverage under CHCBP will now run for 18 months after the date the member ceases to be eligible for benefits under their respective Reserve program's eligibility. The rule also standardizes the number of days that a written election by an eligible beneficiary must be made to sixty (60) days after loss of entitlement or eligibility. Previously, those losing eligibility for TRICARE Reserve Select had only thirty (30) days to elect CHCBP coverage. The rule clarifies that individual locked out of other TRICARE plans per the other TRICARE program rules are not eligible to purchase CHCBP.

II. Public Comments

The proposed rule was published in the **Federal Register** on November 27, 2009 (74 FR 62271), for a 60-day comment period. We received comments from one individual. We thank the commenter for his comments. Specific matters raised are summarized below.

Comment: One commenter said the final changes to the CHCBP could be extremely beneficial to current and former service members, but that eligibility for health care for National Guard/RC members after the member ceases to be entitled to care under 10 U.S.C. 1074(a) (AD) or 10 U.S.C. 1145(a) (TAMP) should be extended to at least 24 months to maximize the opportunity for care. The commenter noted many health issues that service members are experiencing in theater need more time to be fully understood by the member and to be officially diagnosed. By extending an additional six months, service members who may be in denial about health issues or who may be having trouble transitioning to "civilian" life would have more time to obtain medical and dental care.

Response: The period of CHCBP eligibility after a period of AD or TAMP is limited by statute to 18 months. However, the 6 months of TAMP plus the 18 months of CHCBP allows the member the opportunity for 24 months of care.

Comment: One comment asked for clarity as to how long a "specific and limited period of time" CHCBP can continue.

Response: Eligibility timeframes for CHCBP vary by beneficiary category and are outlined in 32 CFR 199.20(d)(1).

Comment: One comment asked who would be considered a "certain former spouse" who is eligible for CHCBP.

Response: Eligibility for unremarried former spouses is outlined in 32 CFR 199.20(d)(1)(iii).

III. Provisions of Final Rule

This rule expands eligibility to purchase CHCBP coverage for any beneficiary that loses entitlement or eligibility for medical care under 10 U.S.C. chapter 55 or 10 U.S.C. 1145(a), subject to the coverage limits of 10 U.S.C. 1078a.

The final rule incorporates a number of revisions from the proposed rule to clarify the expanded coverage adopted by Congress in section 705 of the NDAA for FY 2008 to ensure that all future beneficiaries under 10 U.S.C. chapter 55 or 10 U.S.C. 1145 who lose eligibility for care under those parts will be eligible to purchase CHCBP. For example in relation to coverage of RC personnel and their family members, the children of RC personnel who are covered dependent children under TRS and who reach the coverage age limit will have the same CHCBP eligibility as their counterparts who are children of AD personnel. As another example, a surviving spouse and child of a RC member who dies and who were covered by TRR will have the opportunity to obtain CHCBP coverage for up to three years after TRR coverage ends.

Administrative Changes

This final rule provides for improved administration of CHCBP by: Allowing the Department of Defense and the other uniformed services the ability to delegate to a designee the responsibility for notifying persons eligible to receive health benefits under the CHCBP; requiring supporting documentation on any change in status that would make a child eligible for CHCBP; allowing notification of a former spouse's potential eligibility for CHCBP to be made to the CHCBP contractor by the member, former member, or former spouse; establishing a 14-day period within which the CHCBP contractor must advise former spouses of their potential eligibility for CHCBP; and discontinuing the requirement that CHCBP premium rates be published annually but, instead, requiring that the premium rates be published whenever a change in rate occurs. There have been no changes in this final rule from the proposed rule on these administrative matters.

This final rule also makes minor editorial changes in an attempt to improve understanding of CHCBP program requirements and processes, including making grammatical improvements in the text of § 199.20. There have been a few minor changes in this final rule from the proposed rule on these editorial matters. These include reference to the "TRICARE Standard program" vice the TRICARE basic program; reference to the "CHCBP contractor" vice the "Third Party Administrator;" and reference to members of the "uniformed services" where the term "armed forces" was inadvertently used. Finally, the final rule includes a conforming change to § 199.24, deleting the paragraph that addressed the relationship between TRS and the CHCBP. That relationship is not covered by the revised provisions in § 199.20, which governs the CHCBP.

This final rule also contains administrative changes to update information regarding the current CHCBP and TRICARE programs as follows: Updates the "CHAMPUS" (Civilian Health and Medical Program of the Uniformed Services) program name to "TRICARE" when appropriate; updates the Department of Defense agency name from "OCHAMPUS" (the Office of CHAMPUS) to "TRICARE Management Activity" (TMA); replaces the reference "Third Party Administrator" with "CHCBP contractor" to make it consistent with the "contractor" term used for TMA programs; updates "military health services system" with "Military Health System;" and updates information regarding the enrollment process both to require the use of the enrollment applications or DD Form as designated by the Director, TRICARE as well as the documentation required to verify an applicant's eligibility for enrollment.

This final rule contains administrative changes to other paragraphs of Title 32 Code of Federal Regulations, specifically in § 199.20, by: Changing the title of paragraph (n) of this section "Peer Review Organization Program" to "Quality and Utilization Review Peer Review Organization Program;" changing the title of the program in paragraph (p)(2)(ii) from "Active Duty Dependents Dental Plan" to "TRICARE Dental Program;" and by adding to that same paragraph the "TRICARE Retiree Dental Program" under § 199.22 as a special program that is not available to participants in the CHCBP. In addition, this final rule deletes paragraph (p)(3) in its entirety, as that subpart referenced two demonstration projects that are no longer in existence and therefore no longer available to CHCBP participants: The "Home Health Care Demonstration" and the "Home Health Care—Case Management Demonstration." There have been no changes in this final rule from the proposed rule on these references.

IV. Regulatory Procedures

Executive Order 12866, "*Regulatory Planning and Review*" *and Public Law 96–354,* "*Regulatory Flexibility Act*" *(5 U.S.C. 601)*

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule is not an economically significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA, thus this final rule is not subject to any of these requirements.

Sec. 202, Public Law 104–4, "*Unfunded Mandates Reform Act*"

This rule does not contain unfunded mandates. It does not contain a Federal mandate that may result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511)

This rule will not impose additional information collection requirements on the public. OMB previously cleared the collection requirements under OMB Control Number 0704–0364.

Executive Order 13132, "*Federalism*"

We have examined the impact(s) of the rule under Executive Order 13132, and it does not have policies that have federalism implications that would 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, therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.20 is revised to read as follows:

§ 199.20 Continued Health Care Benefit Program (CHCBP).

(a) *Purpose.* The CHCBP is a premium-based temporary health care coverage program that will be available to beneficiaries who meet the eligibility and enrollment criteria as set forth in paragraph (d)(1) of this section. The CHCBP is not part of the TRICARE program. However, as set forth in this section, it functions under similar rules and procedures of the TRICARE Standard program. Because the purpose of the CHCBP is to provide a continuation health care benefit for the Department of Defense and the other uniformed services (National Oceanic and Atmospheric Administration (NOAA), Public Health Service (PHS), and Coast Guard) beneficiaries losing eligibility, it will be administered so that it appears, to the maximum extent possible, to be part of the TRICARE Standard program. Medical coverage under this program will be the same as the benefits payable under the TRICARE Standard program. However, unlike the Standard program there is a cost for enrollment to the CHCBP and these premium costs are payable by enrollees before any care may be provided.

(b) *General provisions.* Except for any provisions the Director of the TRICARE Management Activity may exclude, the general provisions of § 199.1 shall apply to the CHCBP as they do to TRICARE.

(c) *Definitions.* Except as may be specifically provided in this section, to the extent terms defined in § 199.2 are relevant to the administration of the CHCBP, the definitions contained in that section shall apply to the CHCBP as they do to the TRICARE Standard program.

(d) *Eligibility and enrollment.* (1) *Eligibility,* Enrollment in the CHCBP is open to any individual, except as noted in this section, who:

(i) Ceases to meet the requirements for eligibility under 10 U.S.C. chapter 55 or 10 U.S.C. 1145, and

(ii) Who on the day before they cease to meet the eligibility requirements for

such care they were covered under a health benefit plan under 10 U.S.C. chapter 55 or transitional healthcare under 10 U.S.C. 1145, and

(iii) Who would otherwise not be eligible for any benefits under 10 U.S.C. chapter 55 or 10 U.S.C. 1145 except for CHCBP.

(2) *Exceptions.* The following individuals are not eligible to enroll in CHCBP:

(i) Members of uniformed services, who are discharged or released from active duty either voluntarily or involuntarily under conditions that are adverse.

(ii) Individuals who lost their eligibility or entitlement to care under 10 U.S.C. chapter 55 or 10 U.S.C. 1145 before October 1, 1994.

(iii) Individuals who are locked out of other TRICARE programs per that program's requirements.

(3) *Effective date.* Eligibility in the CHCBP is limited to individuals who lost their entitlement to benefits under the MHS on or after October 1, 1994. The effective date of their coverage under CHCBP shall begin on the day after they cease to be eligible for care under 10 U.S.C. chapter 55 or 10 U.S.C. 1145.

(4) *Notification of eligibility.*

(i) The Department of Defense and the other uniformed services (National Oceanic and Atmospheric Administration (NOAA), Public Health Service (PHS), and Coast Guard) will notify persons in the uniformed services eligible to receive health benefits under the CHCBP. In the case of a member who becomes (or will become) eligible for continued coverage, the Department of Defense shall notify the member of their rights for coverage as part of pre-separation counseling conducted under 10 U.S.C. 1142.

(ii) In the case of a dependent of a member or former member who become eligible for continued coverage under paragraph (d)(1)(ii) of this section:

(A) The member or former member may submit to the CHCBP contractor a notice with supporting documentation of the dependent's change in status (including the dependent's name, address, and such other information needed); and

(B) The CHCBP contractor, within fourteen (14) days after receiving such information, will inform the dependent of the dependent's rights under 10 U.S.C. 1142.

(iii) In the case of a former spouse of a member or former member who becomes eligible for continued coverage, the member, former member or former spouse may submit to the CHCBP contractor a notice of the former spouse's change in status. The CHCBP contractor within fourteen (14) days after receiving such information will notify the individual of their potential eligibility for CHCBP.

(5) *Election of coverage.* In order to obtain coverage under the CHCBP, a written election by the eligible beneficiary must be made within a prescribed time period.

(i) In the case of a member discharged or released from active duty or full-time National Guard duty (whether voluntarily or involuntarily), or a RC member formerly eligible for care under 10 U.S.C. chapter 55, the written election shall be submitted to the CHCBP contractor before the end of the 60-day period beginning on the later of:

(A) The date of the discharge or release of the member; or

(B) The date that the period of transitional health care applicable to the member under 10 U.S.C. 1145(a) ends; or

(C) The date the member receives the notification required in paragraph (d)(3) of this section.

(ii) In the case of a child who ceases to meet the requirements for being an unremarried dependent child of a member or former member under 10 U.S.C. 1072(2)(D) or an unmarried dependent of a member or former member of the uniformed services under 10 U.S.C. 1072(2)(I), the written election shall be submitted to the CHCBP contractor before the end of the 60-day period beginning on the later of:

(A) The date that the dependent ceases to meet the definition of a dependent under 10 U.S.C. 1072(2)(D) or 10 U.S.C. 1072(2)(I); or

(B) The date that the dependent receives the notification required in paragraph (d)(3) of this section,

(iii) In the case of former spouse of a member or former member, the written election shall be submitted to the CHCBP contractor before the end of the 60-day period beginning on the date as of which the former spouse first ceases to meet the requirements for being considered a dependent under 10 U.S.C. 1072(2).

(iv) In the case of an unmarried surviving spouse of a member or former member of the uniformed services who on the day before the death of the member or former member was covered under 10 U.S.C. chapter 55 or 10 U.S.C. 1145(a), the written election shall be submitted to the CHCBP contractor within 60 days of the date of the member or former member's death.

(v) A member of the uniformed services who is eligible for enrollment under paragraph (d)(1) of this section may elect self-only or family coverage. Family members who may be included in such family coverage are the spouse and children of the member.

(vi) All other categories eligible for enrollment under paragraph (d)(1) of this section must elect self-only coverage.

(6) *Enrollment.* To enroll in the CHCBP, an eligible individual must submit the completed enrollment form designated by the Director, TRICARE as well as any documentation as requested on the enrollment form to verify the applicant's eligibility for enrolling in CHCBP, and payment to cover the quarter's premium. The CHCBP contractor may request additional information and documentation to confirm the applicant's eligibility for CHCBP.

(7) *Period of coverage.* Except as noted below CHCBP coverage may not extend beyond 18 months from the date the individual becomes eligible for CHCBP. Although beneficiaries have sixty (60) days to elect coverage under the CHCBP, upon enrolling, the period of coverage must begin the day after entitlement or eligibility to a military health care plan ends as though no break in coverage had occurred notwithstanding the date the enrollment form with any applicable premium is submitted.

(i) Exceptions:

(A) In the case of a child of a member or former member, the date which is 36 months after the date on which the person first ceases to meet the requirements for being considered an unmarried dependent child under 10 U.S.C. 1072(2)(D) or 10 U.S.C. 1072(2)(I).

(B) In the case of an unremarried former spouse (as this term is defined in 10 U.S.C. 1072(2)(G) or (H)) of a member or former member, the date which is 36 months after the later of:

(*1*) The date on which the final decree of divorce, dissolution, or annulment occurs; or

(*2*) If applicable, the date the one-year extension of dependency under 10 U.S.C. 1072(2)(H) expires.

(C) In the case of an unremarried surviving spouse (widow or widower) (under 10 U.S.C. 1072(2)(B) or (C)) of a member or former member of the uniformed services who is not otherwise eligible for care under 10 U.S.C. chapter 55, the date which is 36 months after the date the surviving spouse becomes ineligible under 10 U.S.C chapter 55 or 10 U.S.C. 1145(a).

(D) In the case of a former spouse of a retiree whose marriage was dissolved after the member retired from the service, the period of coverage under the

CHCBP is unlimited, if the former spouse:

(*1*) Has not remarried before the age of 55 after the marriage to the former member was dissolved; and

(*2*) Was enrolled in the CHCBP or TRICARE as the dependent of a retiree during the 18-month period before the date of the divorce, dissolution, or annulment; and

(*3*) Is receiving a portion of the retired or retainer pay of a member or former member or an annuity based on the retainer pay of the member; or

(*4*) Has a court order for payment of any portion of the retired or retainer pay or has a written agreement (whether voluntary or pursuant to a court order) which provides for an election by the member or former member to provide an annuity to the former spouse.

(E) For the beneficiary who becomes eligible for the CHCBP by ceasing to meet the requirements for being considered an unmarried dependent child of a member or former member, health care coverage may not extend beyond the date which is 36 months after the date the member becomes ineligible for medical and dental care under 10 U.S.C. 1074(a) and any transitional health care under 10 U.S.C. 1145(a).

(e) *CHCBP benefits.*

(1) *In general.* Except as provided in paragraph (e)(2) of this section, the provisions of § 199.4 shall apply to the CHCBP as they do to TRICARE.

(2) *Exceptions.* The following provisions of § 199.4 are not applicable to the CHCBP:

(i) Section 199.4(a)(2) concerning eligibility.

(ii) All provisions regarding requirements to use facilities of the uniformed services because CHCBP enrollees are not eligible to use those facilities.

(3) *Beneficiary liability.* For purposes of TRICARE deductible and cost-sharing requirements and catastrophic cap limits, amounts applicable to the category of beneficiaries to which the CHCBP enrollee last belonged shall continue to apply, except that for separating active duty members, amounts applicable to dependents of active duty members shall apply.

(f) *Authorized providers.* The provisions of § 199.6 shall apply to the CHCBP as they do to TRICARE Standard.

(g) *Claims submission, review, and payment.* The provisions of § 199.7 shall apply to the CHCBP as they do to TRICARE Standard except no provisions regarding nonavailability statements shall apply.

(h) *Double coverage.* The provisions of § 199.8 shall apply to the CHCBP as they do to TRICARE Standard.

(i) *Administrative remedies for fraud, abuse, and conflict of interest.* The provisions of § 199.9 shall apply to the CHCBP as they do to TRICARE Standard.

(j) *Appeal and hearing procedures.* The provisions of § 199.10 shall apply to the CHCBP as they do to TRICARE Standard.

(k) *Overpayments recovery.* The provisions of § 199.11 shall apply to the CHCBP as they do to TRICARE Standard.

(l) *Third party recoveries.* The provisions of § 199.12 shall apply to the CHCBP as they do to TRICARE Standard.

(m) *Provider reimbursement methods.* The provisions of § 199.14 shall apply to the CHCBP as they do to TRICARE Standard.

(n) *Quality and Utilization Review Peer Review Organization Program.* The provisions of § 199.15 shall apply to the CHCBP as they do to TRICARE Standard.

(o) *Preferred provider organization programs available.* Any preferred provider organization program under this part that provides for reduced cost sharing for using designated providers, such as the "TRICARE Extra" option under § 199.17, shall be available to participants in the CHCBP as it is to TRICARE Standard beneficiaries.

(p) *Special programs not applicable.*

(1) *In general.* Special programs established under this Part that are not part of the TRICARE Standard program established pursuant to 10 U.S.C. 1079 and 1086 are not, unless specifically provided in this section, available to participants in the CHCBP.

(2) *Examples.* The special programs referred to in paragraph (p)(1) of this section include but are not limited to:

(i) The Extended Care Health Option under § 199.5;

(ii) The TRICARE Dental Program or Retiree Dental Program under § 199.13 and 199.22 respectively;

(iii) The Supplemental Health Care Program under § 199.16;

(iv) The TRICARE Program under § 199.17, except for TRICARE Standard and Extra programs under that section; and

(v) The Uniform HMO benefit under § 199.18.

(q) *Premiums.*

(1) *Rates.* Premium rates will be established by the Assistant Secretary of Defense (Health Affairs) for two rate groups—individual and family. Eligible beneficiaries will select the level of coverage they require at the time of initial enrollment (either individual or family) and pay the appropriate premium payment. The rates are based on Federal Employees Health Benefits Program employee and agency contributions required for a comparable health benefits plan, plus an administrative fee. The administrative fee, not to exceed ten percent of the basic premium amount, shall be determined based on actual expected administrative costs for administration of the program. Premiums may be revised annually and shall be published when the premium amount is changed. Premiums will be paid by enrollees quarterly.

(2) *Effects of failure to make premium payments.* Failure by enrollees to submit timely and proper premium payments will result in denial of continued enrollment and denial of payment of medical claims. Premium payments that are late thirty (30) days or more past the start of the quarter for which payment is due will result in the termination of beneficiary enrollment. Beneficiaries denied continued enrollment due to lack of premium payments will not be allowed to reenroll. In such a case, benefit coverage will cease at the end of the ninety (90) day period for which a premium payment was received. Enrollees will be held liable for medical costs incurred after losing eligibility.

(r) *Procedures.* The Director, TRICARE Management Activity, may establish other rules and procedures for the administration of the CHCBP.

■ 3. Section 199.24 is amended by removing and reserving paragraph (e) to read as follows:

§ 199.24 TRICARE Reserve Select.

* * * * *

(e) [Reserved]

* * * * *

Dated: August 24, 2011.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–23760 Filed 9–15–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD–2010–HA–0033]

RIN 0720–AB44

TRICARE: Unfortunate Sequelae From Noncovered Services in a Military Treatment Facility

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense is publishing this final rule to allow coverage for otherwise covered services and supplies required in the treatment of complications (unfortunate sequelae) resulting from a noncovered incident of treatment provided in a Military Treatment Facility (MTF), when the initial noncovered service has been authorized by the MTF Commander and the MTF is unable to provide the necessary treatment of the complications. This final rule is necessary to protect TRICARE beneficiaries from incurring financial hardships due to the current regulatory restrictions that prohibit TRICARE coverage of treatment of the complications resulting from noncovered procedures, even when those procedures were conducted in a Department of Defense facility.

DATES: *Effective Date:* This rule is effective October 17, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. René Morrell, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676–3618.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 6, 2010, (75 FR 47519–47520), the Office of the Secretary of Defense published for public comment a proposed rule to allow coverage for otherwise covered services and supplies required in the treatment of complications (unfortunate sequelae) resulting from a noncovered incident of treatment provided in a Military Treatment Facility (MTF), when the initial noncovered service has been authorized by the MTF Commander and the MTF is unable to provide the necessary treatment of the complications.

In order to support Graduate Medical Education and maintain provider skill levels, MTF providers are frequently required to perform medical procedures that may be excluded from coverage under TRICARE. Unexpected complications (unfortunate sequelae) from these procedures may result and, in those instances where the MTFs are unable to provide the appropriate level of care necessary for the proper treatment of these complications, the MTF Commander must refer beneficiaries for treatment outside the MTF. Under current regulatory provisions, TRICARE is unable to cover treatment of the complications resulting from noncovered procedures. When beneficiaries require treatment outside the MTF for these complications, arising from noncovered procedures, they are responsible for payment for this necessary treatment resulting in significant financial hardship. This final rule will address that unfortunate situation by allowing coverage of treatment for the complications resulting from noncovered treatment provided in an MTF when the original procedure was authorized by the MTF Commander. The specific procedures for approval of this treatment will be addressed in the TRICARE Policy Manual rather than in the regulation to ensure that this information is current and easily accessible. TRICARE manuals may be accessed at *http://www.tricare.mil*.

II. Public Comments

We provided a 60-day public comment period following publication of the Proposed Rule in the **Federal Register** (75 FR 47519–47520) on August 6, 2010. One comment was received in full support of the rule.

III. Regulatory Procedures

Executive Order 12866, "*Regulatory Planning and Review*" *and Executive Order 13563,* "*Improving Regulation and Regulatory Review*"

Section 801 of title 5, United States Code, and Executive Order 12866 require certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. It has been certified that this rule is not an economically significant rule, however, it is a regulatory action which has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866.

Section 202, Public Law 104–4, "*Unfunded Mandates Reform Act*"

Section 202 of Public Law 104–4, "Unfunded Mandates Reform Act," requires that an analysis be performed to determine whether any Federal mandate may result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector of $100 million in any one year. It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and Tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, "*Regulatory Flexibility Act*" *(5 U.S.C. 601)*

The "Regulatory Flexibility Act" (RFA) requires each Federal agency to prepare and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule will not significantly impact a substantial number of small entities for purposes of the RFA.

Public Law 96–511, "*Paperwork Reduction Act*" *(44 U.S.C. Chapter 35)*

This rule will not impose significant additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

Executive Order 13132, "*Federalism*"

This rule has been examined for its impact under E.O. 13132 and does not contain policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among the various levels of government; therefore, consultation with the State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

■ 2. Section 199.4 is amended by:
■ a. Redesignating paragraph (e)(9) as paragraph (e)(9)(i)
■ b. Adding new paragraph (e)(9)(ii)

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(9) * * *

(ii) Benefits are available for otherwise covered services and supplies required in the treatment of complications (unfortunate sequelae) resulting from a noncovered incident of treatment provided in an MTF, when the initial noncovered service has been authorized by the MTF Commander and the MTF is unable to provide the necessary treatment of the complications, according to the guidelines adopted by the Director, TMA, or a designee.

* * * * *

Dated: August 24, 2011.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–23762 Filed 9–15–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DOD–2010–HA–0071; RIN 0720–AB40]

TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2010; Expansion of Survivor Eligibility Under the TRICARE Dental Program

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Department is publishing this final rule to implement the National Defense Authorization Act for Fiscal Year 2010 (NDAA for FY10), as amended by the National Defense Authorization Act for Fiscal Year 2011 (NDAA for FY11). Specifically, that legislation expands the survivor eligibility under the TRICARE Dental Program (TDP). The 2011 amendment to the legislation entitles the surviving spouse and child(ren) continuation of eligibility for the TDP regardless of whether they were previously enrolled in the TDP. Prior enrollment in the TDP had been a requirement of the 2010 legislation for both the spouse and children. The period of continued eligibility for a spouse will be 3 years beginning on the date of the member's death. The legislation entitles a child to continuation of eligibility for the TDP for the longer of three years or until age 21 (or 23 for most full-time students). Survivors, who meet the new eligibility requirements, will obtain TDP eligibility as of the publishing of the final rule in the **Federal Register**. Retroactive payment of premiums or claims paid for dental treatment during the time of loss of TDP eligibility will not be reimbursed to surviving dependents.

DATES: *Effective Date:* This rule is effective October 17, 2011.

FOR FURTHER INFORMATION CONTACT: Col. Jeffrey Chaffin, TRICARE Management Activity, telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION: This final rule implements section 704 of the National Defense Authorization Act for Fiscal Year 2010 (NDAA for FY10), Public Law 111–84, as amended by Section 703 of the National Defense Authorization Act for Fiscal Year 2011 (NDAA for FY11), Public Law 111–83.

I. Background

This final rule expands the survivor eligibility under the TRICARE Dental Program (TDP). The legislation entitles the surviving spouse and child(ren) continuation of eligibility for the TDP regardless of whether they were previously enrolled in the TDP. Prior enrollment in the TDP had been a requirement of the 2010 legislation for both the spouse and children. The period of continued eligibility for spouse will be 3 years beginning on the date of the member's death. The period of continued eligibility for children will be 3 years beginning on the date of the member's death or until age 21 (or age 23 for most full-time students).

The final rule will maintain the government's payment of both the government and dependent's portion of the premium share during the period of continuous enrollment.

II. Public Comments

The proposed rule was published in the **Federal Register** on August 18, 2010, for a 60-day comment period. We received one comment expressing support of the extended eligibilities.

III. Regulatory Procedures

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

Executive Orders 12866 and 13563 require that a comprehensive regulatory impact analysis be performed on any significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule is not a significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA, thus this final rule is not subject to any of these requirements.

Paperwork Reduction Act

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

EO 13132, "*Federalism*"

We have examined the impact(s) of the final rule under Executive Order 13132 and it does not have policies that have federalism implications that would 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, therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199:

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.13 is amended by revising paragraph (c)(3)(ii)(E)(*2*) to read as follows:

§ 199.13 TRICARE Dental Program.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(E) * * *

(*2*) *Continuation of eligibility.* Eligible dependents of active duty members who die while on active duty for a period of more than 30 days and eligible dependents of members of the Ready Reserve (*i.e.,* Selected Reserve or Individual Ready Reserve, as specified in 10 U.S.C. 10143 and 10144(b) respectively) who die, shall be eligible for continued enrollment in the TDP. This continued enrollment shall be up to (3) three years from the date of the member's death, except that, in the case of a dependent of the deceased who is described in 10 U.S.C. section 1072(2) by subparagraph (D) or (I), the period of continued enrollment shall be the longer of the following periods

beginning on the date of the member's death:

(*i*) Three years.

(*ii*) The period ending on the date on which such dependent attains 21 years of age.

(*iii*) In the case of such dependent who, at 21 years of age, is enrolled in a full-time course of study in a secondary school or in a full-time course of study in an institution of higher education approved by the administering Secretary and was, at the time of the member's death, in fact dependent on the member for over one-half of such dependent's support, the period ending on the earlier of the following dates: The date on which such dependent ceases to pursue such a course of study, as determined by the administering Secretary; or the date on which such dependent attains 23 years of age.

* * * * *

Dated: August 24, 2011.

Patricia Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–23761 Filed 9–15–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 256

[DoD Instruction 4165.57]

Air Installations Compatible Use Zones

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule removes the DoD's rule concerning air installations compatible use zones. The underlying DoD Instruction has been revised and it has been determined that there is no need to publish the revised DoD Instruction as a rule in the Code of Federal Regulations since the Instruction is for the internal management of the DoD.

DATES: *Effective Date:* September 16, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia L. Toppings at 703–696–5284.

SUPPLEMENTARY INFORMATION: A copy of the current DoD Instruction may be obtained from *http://www.dtic.mil/whs/directives/corres/pdf/416557p.pdf*.

List of Subjects in 32 CFR Part 256

Armed forces; airports; environmental protection; Federal buildings and facilities; navigation (air); noise control.

PART 256—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 256 is removed.

Dated: August 24, 2011.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–23759 Filed 9–15–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

[Docket ID: DoD–2011–OS–0004]

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary, DoD.

ACTION: Direct final rule with request for comments.

SUMMARY: The Office of the Secretary of Defense is exempting those records contained in DMDC 13, entitled "Investigative Records Repository", when investigatory material is compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that such material would reveal the identity of a confidential source.

This direct final rule makes nonsubstantive changes to the Office of the Secretary Privacy Program rules. These changes will allow the Department to add an exemption rule to the Office of the Secretary of Defense Privacy Program rules that will exempt applicable Department records and/or material from certain portions of the Privacy Act. This change will allow the Department to move part of the Department's personnel security program records from the Defense Security Service Privacy Program to the Office of the Secretary of Defense Privacy Program. This will improve the efficiency and effectiveness of DoD's program by preserving the exempt status of the applicable records and/or material when the purposes underlying the exemption(s) are valid and necessary. This rule is being published as a direct final rule as the Department of Defense does not expect to receive any adverse comments, and so a proposed rule is unnecessary.

DATES: The rule will be effective on November 25, 2011 unless comments are received that would result in a contrary determination. Comments will be accepted on or before November 15, 2011.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION:

Direct Final Rule and Significant Adverse Comments

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes dealing with DoD's management of its Privacy Progams. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will withdraw this direct final rule by publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or

communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive orders.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 95–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no additional information collection requirements on the public under the Paperwork Reduction Act of 1995.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that this Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 311.

Privacy.

Accordingly, 32 CFR part 311 is amended as follows:

PART 311—OFFICE OF THE SECRETARY OF DEFENSE AND JOINT STAFF PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1986 (5 U.S.C. 522a).

■ 2. Section 311.8 is amended by adding paragraph (c)(17) to read as follows:

§ 311.8 Procedures for exemptions.

* * * * *

(c) * * *

(17) System identifier and name: DMDC 13, Investigative Records Repository.

(i) *Exemptions:* (A) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(C) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(D) Any portion of this system that falls under the provisions of 5 U.S.C. 552a(k)(2), (k)(3), or (k)(5) may be exempt from the following subsections of 5 U.S.C. 552(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority:* 5 U.S.C. 552a(k)(2), (k)(3), or (k)(5).

(iii) *Reasons:* (A) From subsection (c)(3) because it will enable the Department to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(B) From subsections (e)(1), (e)(4(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the source's identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(C) From subsections (d) and (f) because requiring OSD to grant access to records and agency rules for access and amendment of records would unfairly impede the agency's investigation of allegations of unlawful activities. To require OSD to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

* * * * *

Dated: August 24, 2011.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–23756 Filed 9–15–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0629]

RIN 1625–AA08

Special Local Regulations for Marine Events; Temporary Change of Dates for Recurring Marine Events in the Fifth Coast Guard District, Wrightsville Channel; Wrightsville Beach, NC; Correction

ACTION: Correcting amendment.

SUMMARY: In the **Federal Register** published on September 8, 2011, the Coast Guard published a Temporary Final Rule changing the date of the special local regulation for this year's Wilmington YMCA Triathlon. In that Temporary Final Rule, the line number for the temporary line in the Table to § 100.501 was wrong. This Correction fixes that error. The date and all other details in the Final Rule were correct.

DATES: This correction is effective September 16, 2011.

FOR FURTHER INFORMATION CONTACT: For information about this correction, contact Kevin d'Eustachio, Office of Regulations and Administrative Law, telephone (202) 372–3854, e-mail *kevin.m.deustachio@uscg.mil*. For information about the original regulation, contact BOSN3 Joseph M. Edge, Coast Guard Sector North Carolina, telephone (252) 247–4525 *Joseph.M.Edge@uscg.mil*.

SUPPLEMENTARY INFORMATION: In FR Doc. 2011–22919 appearing on page 55561 in the **Federal Register** of Thursday, September 8, 2011, the following correction is made:

§ 100.501 Special Local Regulations; Marine Events in the Fifth Coast Guard District.

■ 1. On page 55563, in the third column, in the third amendatory instruction, remove the words "line No. 63" and replace with "line No. 59".

Dated: September 12, 2011.

Erin Ledford,

Acting Chief, Office of Regulations and Administrative Law (CG–0943), U.S. Coast Guard.

[FR Doc. 2011–23743 Filed 9–15–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 132

[EPA–HQ–OW–2010–0492; FRL–9466–3]

RIN 2040–AF23

Final Withdrawal of Certain Federal Aquatic Life Water Quality Criteria Applicable to Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is withdrawing the federal aquatic life water quality criteria for chronic and acute copper and nickel, and chronic endrin and selenium applicable to certain waters of the Great Lakes System in Wisconsin. Wisconsin's revised and EPA-approved criteria adequately protect all waters of the State designated for aquatic life use at a level consistent with the federal requirements. As a result of this withdrawal, Wisconsin will continue to implement its EPA-approved aquatic life criteria.

DATES: This final rule is effective on October 17, 2011.

ADDRESSES: The EPA established a docket for this action under Docket ID No. EPA–HQ–OW–2010–0492. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publically 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 publically 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 Office of Water (OW) Docket Center. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–2426, and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Francine Norling, U.S. EPA, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604 (telephone: (312) 886–0271 or e-mail: *norling.francine@epa.gov*) or Sara Hilbrich, U.S. EPA Headquarters, Office of Science and Technology, 1200 Pennsylvania Avenue, NW., Mail Code 4305T, Washington, DC 20460 (telephone: (202) 564–0441 or e-mail: *hilbrich.sara@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Potentially Affected Entities
II. Background
  A. Applicable Federal Statutory and Regulatory Requirements
  B. Why is the EPA withdrawing certain federal aquatic life water quality criteria applicable to Wisconsin?
  C. Why is the EPA not withdrawing Wisconsin's chronic endrin aquatic life use criterion for waters designated as Warm Water Sportfish and Warm Water Forage Fish use, and chronic selenium aquatic life use criterion for waters designated as limited Forage Fish use?
  D. What are the applicable federal aquatic life water quality criteria that the EPA is withdrawing?
III. Statutory and Executive Order Reviews
  A. Executive Order 12866 (Regulatory Planning and Review)
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132 (Federalism)
  F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)
  G. Executive Order 13045 (Protection of Children From Environmental Health 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. Congressional Review Act

I. Potentially Affected Entities

This rule withdraws federal water quality standards, specifically aquatic life criteria for chronic and acute copper and nickel and chronic endrin and selenium for Wisconsin surface waters designated for certain aquatic life uses in the Great Lakes System (described in 40 CFR part 132). As a result of this rule, Wisconsin will implement the following State-revised and EPA-approved aquatic life criteria: chronic and acute copper and nickel for all Wisconsin surface waters designated for aquatic life use; chronic endrin for Wisconsin surface waters designated for aquatic life use except waters designated as Warm Water Forage Fish and Warm Water Sportfish use; chronic selenium for Wisconsin surface waters designated for aquatic life use except waters designated as Limited Forage Fish use. Entities discharging copper, nickel, endrin or selenium to surface waters of Wisconsin could be affected by this rulemaking given that water quality standards are used to determine water quality based effluent limits in National Pollutant Discharge Elimination System (NPDES) permits, and may affect Clean Water Act (CWA) Section 404 dredge and fill permits, and other federal licenses and permits requiring CWA 401 certification. Table 1, below, provides examples of the types of NPDES-regulated entities that may ultimately be affected by the federal rule withdrawal.

TABLE 1—EXAMPLES OF ENTITIES POTENTIALLY AFFECTED BY THE FEDERAL RULE WITHDRAWAL

Category	Examples of potentially affected entities
Industry	Industries discharging to surface waters in Wisconsin designated by the State for aquatic life use.

TABLE 1—EXAMPLES OF ENTITIES POTENTIALLY AFFECTED BY THE FEDERAL RULE WITHDRAWAL—Continued

Category	Examples of potentially affected entities
Municipalities	Publicly-owned treatment works discharging to surface waters in Wisconsin designated by the State for aquatic life use.

If you have any questions regarding the applicability of this action to a particular entity, consult the person identified in the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. Applicable Federal Statutory and Regulatory Requirements

In 1995, the EPA published the final *Water Quality Guidance for the Great Lakes System* (Guidance), required by CWA Section 118(c)(2) (33 U.S.C. 1268). Among other provisions, the Guidance identified minimum water quality standards to protect aquatic life as part of a comprehensive plan to restore the health of the Great Lakes System (40 CFR 132.3). Under CWA Section 118(c)(2), within two years of publishing the Guidance, Great Lakes States, including Wisconsin, were required to adopt provisions consistent with the Guidance into their water quality standards and NPDES permit programs. The regulation at 40 CFR 132.5(f) provides that, after review of a State's water quality standards submission, the EPA must either publish a notice of approval of the State's submission in the **Federal Register** or notify the State that the EPA has determined that all or part of its submission is inconsistent with the CWA and/or the Guidance, and identify any changes needed to obtain EPA approval. If the EPA notified the State of inconsistencies, then the State had 90 days to make the necessary changes. If the State failed to make the necessary changes, the EPA was required to publish a document in the **Federal Register** identifying the approved and disapproved elements of the submission and a final rule identifying the provisions of the Guidance that apply to the State.

B. Why is the EPA withdrawing certain federal aquatic life water quality criteria applicable to Wisconsin?

In 1997, Wisconsin adopted revised water quality standards to comply with the Guidance requirements at 40 CFR part 132. In October 2000, the EPA disapproved six of Wisconsin's revised aquatic life criteria including chronic and acute copper and nickel, and chronic endrin and selenium. Subsequently the EPA published a final rule effective February 5, 2001, making the following aquatic life criteria, published at 40 CFR 132.6, effective for waters of the Great Lakes System in the State of Wisconsin: (1) Chronic and acute copper and nickel in Tables 1 and 2 of 40 CFR 132.6(f); (2) chronic endrin in Table 2 of 40 CFR 132.6(f); and (3) chronic selenium in Table 2 of 40 CFR 132.6(g).

In January 2008, Wisconsin began rulemaking to revise its water quality standards to address the EPA's disapproval of these aquatic life criteria. The Wisconsin Natural Resources Board adopted the State's revised criteria on June 24, 2008 and the Wisconsin Attorney General certified these rules on December 22, 2008. On May 4, 2009, EPA Region 5 received a letter from the Wisconsin Department of Natural Resources requesting approval of final revisions to Chapter NR 105 (Surface Water Quality Criteria and Secondary Values for Toxic Substances) of the Wisconsin Administrative Code (WAC).

Pursuant to CWA section 303(c)(3), the EPA is required to review and approve new and revised State water quality standards before such standards become effective for CWA purposes. The EPA found that Wisconsin's revised criteria, with the exception of chronic selenium for waters designated by Wisconsin as Limited Forage Fish use, satisfy the federal requirements for submittal of new or revised water quality standards to the EPA and are consistent with the CWA and the Guidance requirements. Therefore, the EPA approved Wisconsin's revised aquatic life criteria on July 1, 2009, with the exception of the chronic aquatic life criterion for selenium in waters designated by Wisconsin as Limited Forage Fish use.

The EPA's approval of Wisconsin's aquatic life criteria makes the federal criteria no longer necessary for compliance with the CWA and the Guidance. Therefore, the EPA determined that the following federal aquatic life criteria for waters of the Great Lakes System in Wisconsin may be withdrawn: chronic and acute copper and nickel for all aquatic life uses; chronic endrin for all aquatic life uses with the exception of waters designated by Wisconsin as Warm Water Forage Fish and Warm Water Sportfish use; and chronic selenium for all aquatic life uses with the exception of waters designated by Wisconsin as Limited Forage Fish use.

C. Why is the EPA not withdrawing Wisconsin's chronic endrin aquatic life use criterion for waters designated as Warm Water Sportfish and Warm Water Forage Fish use, and chronic selenium aquatic life use criterion for waters designated as limited Forage Fish use?

The EPA is not withdrawing the federal chronic endrin aquatic life use criterion for waters of the Great Lakes System in Wisconsin designated as Warm Water Sportfish and Warm Water Forage Fish use, due to a State transcription error. While the EPA approved Wisconsin's revised chronic endrin aquatic life use criteria for all waters in the State of Wisconsin on July 1, 2009, the chronic aquatic life use criterion for endrin for waters designated as Warm Water Forage Fish and Warm Water Sportfish use published in Wisconsin's regulations at NR 105.06 (0.05 µg/L) is not identical to the criterion that Wisconsin submitted and that the EPA had approved (0.036 µg/L). The EPA is not withdrawing the federal chronic endrin criterion for these aquatic life uses until after Wisconsin concludes rulemaking to correct the criterion in the State's regulations.

The EPA is not withdrawing the federal chronic selenium aquatic life use criterion for waters of the Great Lakes System in Wisconsin designated for Limited Forage Fish use because the EPA took no action on Wisconsin's revised chronic selenium criterion for this aquatic life use in its July 1, 2009 action approving the other aquatic life criteria. Therefore, the federal aquatic life use criterion for chronic selenium will continue to apply to waters within the Great Lakes System of Wisconsin, designated as Limited Forage Fish use. Wisconsin calculated the chronic selenium criterion based on water column toxicity studies, rather than through dietary exposure, which currently available data indicates is the appropriate methodology to use. Because Wisconsin does not have an EPA-approved chronic aquatic life selenium criterion for Limited Forage Fish Waters, the EPA is not withdrawing the federal chronic aquatic

life selenium criterion for Wisconsin's Limited Forage Fish waters in this rule. Wisconsin may revise their chronic selenium criterion and submit it to the EPA for review and approval at a future date.

D. What are the applicable federal aquatic life water quality criteria that the EPA is withdrawing?

The EPA is withdrawing certain federal aquatic life criteria for Wisconsin included in the Guidance at 40 CFR 132.6. Specifically, the EPA is withdrawing the federal aquatic life use criteria for chronic and acute copper and nickel (40 CFR 132.6(f)) applicable to all waters of the Great Lakes System in Wisconsin designated for aquatic life uses. The EPA is also amending the federal chronic aquatic life criterion for endrin (40 CFR 132.6(f)) to apply exclusively to waters designated by Wisconsin as Warm Water Sportfish and Warm Water Forage Fish use, and amending the federal chronic aquatic life criterion for selenium (40 CFR 132.6(g)) to apply exclusively to waters designated by Wisconsin as Limited Forage Fish use. As a result of this final rule withdrawal, Wisconsin will implement the EPA-approved aquatic life criteria under State law.

Wisconsin has tiered aquatic life uses and the State's EPA-approved aquatic life criteria revisions do not affect Wisconsin's designated uses included in Chapter NR 105 of the WAC. Based on the designated uses defined in NR 102.04(3) of the WAC, Wisconsin's aquatic life designated uses of Cold Water, Warm Water Sportfish, and Warm Water Forage Fish are consistent with the requirements of CWA Section 101(a)(2) for the protection and propagation of fish, shellfish, and wildlife. The Limited Forage Fish aquatic life use does not meet this requirement because these surface waters are capable of supporting only a "limited community of forage fish and other aquatic life," based on "limited capacity and naturally poor water quality or habitat" (WAC, Chapter 102.04(3)(d)). The following section discusses and compares the calculations and criteria included in the EPA's federal regulations and those included in Wisconsin's revised criteria.

1. Acute Copper Aquatic Life Criteria Applicable to Cold Water, Warm Water Sportfish, Warm Water Forage Fish, Limited Forage Fish, and Limited Aquatic Life Designated Uses

Wisconsin adopted and the EPA reviewed and approved an acute copper aquatic life criteria equation applicable to all surface waters in Wisconsin designated for aquatic life use. The equation used by Wisconsin to calculate the acute copper aquatic life criteria results in a slightly higher value than the EPA equation at a given hardness (see Table 2).

TABLE 2—ACUTE COPPER CRITERIA EQUATION

[All aquatic life designated uses]

EPA criteria maximum concentration (μg/L)	Wisconsin acute toxicity criteria (μg/L)
CMC = exp(0.9422*ln(hardness)) − 1.700	ATC = exp(0.9436*ln(hardness)) − 1.6036

The difference between the EPA's and Wisconsin's intercept in the acute copper equation is due to the elimination of one of the most sensitive species from the criteria calculation (northern pikeminnow, genus *Ptychocheilus)* and inclusion of additional data for three species. Eliminating the *Ptychocheilus* data from the equation is scientifically defensible because *Ptychocheilus* is not native to Wisconsin and is not a surrogate for other Wisconsin taxa unrepresented in the data set. The northern pikeminnow is a type of minnow, and other minnows (fathead and bluntnose) found in Wisconsin are well-represented in the copper data set. Wisconsin's slope of 0.9436 is slightly different from the EPA's 0.9422 slope due to Wisconsin's inclusion of additional data on three species (*Daphnia magna,* rainbow trout, and bluegill) that were not included in the EPA's 1985 slope calculation used in the Guidance. The EPA included these data in the 1995 criteria update, but did not recalculate the slope used in the 1985 EPA copper criteria document.

Wisconsin's method for deriving the acute copper criteria equation is an acceptable State-specific modification of the EPA's criteria, consistent with Wisconsin's methods for deriving criteria (WAC Chapter NR 105). The equation is scientifically sound and results in criteria that are protective of the use; therefore this equation is consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR Parts 131 and 132.

2. Chronic Copper Aquatic Life Criteria Applicable to Cold Water, Warm Water Sportfish, Warm Water Forage Fish, Limited Forage Fish, and Limited Aquatic Life Designated Uses

Wisconsin adopted and the EPA reviewed and approved a chronic copper aquatic life criteria equation applicable to all surface waters in Wisconsin designated for aquatic life use. The equation used by Wisconsin for calculating chronic aquatic life criteria for copper produces a slightly higher value than the EPA equation at a given hardness (see Table 3).

TABLE 3—CHRONIC COPPER CRITERIA EQUATION

[All aquatic life designated uses]

EPA criterion continuous concentration (μg/L)	Wisconsin chronic toxicity criteria (μg/L)
CCC = exp(0.8545*ln(hardness)) − 1.702	CTC = exp(0.8557*ln(hardness)) − 1.6036

The difference between the EPA's and Wisconsin's chronic copper equation intercept is primarily due to the elimination of one of the most sensitive species from the federal criteria calculation (northern pikeminnow, genus *Ptychocheilus*), which is not native to Wisconsin. Wisconsin's elimination of data for a non-native species that is not a surrogate for taxa that are unrepresented in the data set, is scientifically defensible. The northern

pikeminnow is a type of minnow, and other minnows (fathead and bluntnose) found in Wisconsin, are well-represented in the copper data set. Wisconsin's slope of 0.8557 is slightly different from the EPA's 0.8545 slope due to Wisconsin's inclusion of additional data on three species (*Daphnia magna,* rainbow trout, and bluegill) that were not included in the EPA's 1985 slope calculation used in the Guidance. The EPA included these data in the 1995 criteria update, but did not recalculate the slope used in the 1985 copper criteria document.

Wisconsin's method for deriving the chronic copper criteria equation is an acceptable State-specific modification of the EPA's criteria, consistent with Wisconsin's methods for deriving criteria (WAC Chapter NR 105). The equation is scientifically sound and results in criteria that are protective of the use, therefore this equation is consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132.

3. Acute Nickel Aquatic Life Criteria Applicable to Cold Water, Warm Water Sportfish, Warm Water Forage Fish, Limited Forage Fish, and Limited Aquatic Life Designated Uses

Wisconsin adopted and the EPA reviewed and approved an acute nickel aquatic life criteria equation applicable to all surface waters in Wisconsin designated for aquatic life use. The equation used by Wisconsin to calculate acute aquatic life criteria for nickel is identical to the equation contained in the Great Lakes Water Quality Guidance, 40 CFR part 132 as well as the EPA's CWA Section 304(a) criteria (see Table 4). The equation is scientifically sound and results in criteria that are protective of the use, therefore this equation is consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132.

TABLE 4—ACUTE NICKEL CRITERIA EQUATION

[All aquatic life designated uses]

EPA criteria maximum concentration (μg/L)	Wisconsin acute toxicity criteria (μg/L)
CMC = exp(0.846*ln(hardness)) + 2.255	ATC = exp(0.846*ln(hardness)) + 2.255

4. Chronic Nickel Aquatic Life Criteria Applicable to Cold Water, Warm Water Sportfish, Warm Water Forage Fish, Limited Forage Fish, and Limited Aquatic Life Designated Uses

Wisconsin adopted and the EPA reviewed and approved, two criteria equations for chronic nickel for differing aquatic life uses (see Table 5).

TABLE 5—CHRONIC NICKEL CRITERIA EQUATIONS

EPA criterion continuous concentration (μg/L)	Wisconsin chronic toxicity criteria (μg/L): Cold water, warm water sportfish, warm water forage fish, and limited forage fish	Wisconsin chronic toxicity criteria (μg/L): Limited aquatic life
CCC = exp(0.846*ln(hardness)) + 0.0584	CTC = exp(0.846*ln(hardness)) + .0591	CTC = exp(0.846*ln(hardness)) + .4004

The equation used by Wisconsin for calculating the chronic nickel criteria for Cold Water, Warm Water Sportfish, Warm Water Forage Fish, and Limited Forage Fish designated uses results in a value that is slightly higher than the resulting criterion from the EPA's equation at a given hardness. This difference is due to Wisconsin's use of a slightly different intercept and acute-chronic ratio for the *Cladoceran* test data. The equation for the Limited Aquatic Life classification has a different value for the intercept because data for the fathead minnow, which are not expected to have a fish community in Limited Aquatic Life use waters, were not included in the calculation.

For the Cold Water, Warm Water Sportfish, Warm Water Forage Fish, and Limited Forage Fish water classifications, Wisconsin's chronic nickel criteria equation is scientifically defensible and results in criteria protective of the use and therefore is consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132. For Wisconsin's equation for Limited Aquatic Life water classification, the elimination of data for a non-resident species is an appropriate State-specific modification of the EPA's equation. Wisconsin's equation is scientifically sound and results in criteria that are protective of the use, and is therefore consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132.

5. Chronic Endrin Aquatic Life Criteria Applicable to Cold Water, Warm Water Sportfish, Warm Water Forage Fish, Limited Forage Fish, and Limited Aquatic Life Designated Uses

Wisconsin adopted and the EPA reviewed and approved a chronic endrin criterion for Cold Water, Warm Water Forage Fish, and Warm Water Sportfish classifications that is identical to the EPA's criterion in the Guidance (40 CFR part 132). The criterion is scientifically sound and protective of the use, therefore this criterion is consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132 (see Table 6). However, due to a transcription error, the chronic endrin aquatic life use criterion for waters designated as Warm Water Forage Fish and Warm Water Sportfish use published in Wisconsin's regulations NR 105.06 (0.05 μg/L) is not identical to the criterion that Wisconsin submitted to the EPA and which the EPA approved (0.036 μg/L). Therefore, the EPA is not withdrawing the federal chronic endrin criterion for these uses until after Wisconsin concludes rulemaking to correct the criterion in the State's regulations.

TABLE 6—CHRONIC ENDRIN AQUATIC LIFE CRITERIA

EPA criterion continuous concentration (µg/L)	Wisconsin chronic toxicity criteria (µg/L): Cold water, warm water forage fish, and warm water sportfish	Wisconsin chronic toxicity criteria (µg/L): Limited forage fish and limited aquatic life
0.036	0.036	0.050

Wisconsin's criterion for Limited Forage Fish and Limited Aquatic Life waters is higher than the EPA's criterion because three of the four most sensitive genera used to calculate the EPA's criterion do not exist in these waters in Wisconsin, and were therefore excluded from the State's calculation. These species are *Perca* (yellow perch), *Lepomis* (bluegill), and *micropterus* (largemouth bass). Instead, Wisconsin used data for the following genera for the endrin criterion calculation for Limited Forage Fish Waters: *Pteronarcys* (stonefly), which was also used by the EPA; *Cyprinus* (carp); *Piemphales* (fathead minnow); and *Pteronarcella* (stonefly). When the fathead minnow data set was removed from the Limited Aquatic Life calculation, the calculated criterion was lower than the calculated criterion for Limited Forage Fish waters. Under Wisconsin's rules NR 105.05(1)(a)(9), when this occurs, the Limited Aquatic Life criterion can be set equal to the Limited Forage Fish criterion if the species used to calculate the Limited Aquatic Life criterion are already included in the database used to calculate the Limited Forage Fish criterion. Therefore, Wisconsin established the Limited Aquatic Life criterion for endrin at a level that provides protection equal to the level for the Limited Forage Fish criterion.

Wisconsin's method for deriving the chronic endrin criterion for Limited Aquatic Life and Limited Forage Fish waters is an acceptable State-specific modification of the EPA's criterion, consistent with Wisconsin's methods for deriving criteria (Chapter NR 105 of the WAC). The criterion is scientifically sound and protective of the use, therefore this criterion is consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132.

6. Chronic Selenium Aquatic Life Criteria Applicable to Cold Water, Warm Water Sportfish, Warm Water Forage Fish, Limited Forage Fish, and Limited Aquatic Life Designated Uses

The EPA reviewed and approved Wisconsin's revised chronic selenium criterion for Cold Water, Warm Water Sportfish, and Warm Water Forage Fish classifications, which are identical to the EPA's chronic selenium criterion in 40 CFR part 132 (see Table 7). The criterion is scientifically sound and protective of the uses, and is therefore consistent with CWA Section 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132.

TABLE 7—CHRONIC SELENIUM AQUATIC LIFE CRITERIA

EPA Criterion continuous concentration (µg/L)	Wisconsin chronic toxicity criteria (µg/L): Cold water, warm water sportfish, warm water forage fish	Wisconsin chronic toxicity criteria (µg/L): Limited forage fish, limited aquatic life
5.0	5.0	46.5

Wisconsin did not adopt the EPA's chronic aquatic life criterion for selenium, found in 40 CFR Part 132, for Limited Aquatic Life waters. Wisconsin's basis for this decision is that Limited Aquatic Life waters only support an invertebrate community, and the EPA's criterion was based on observed effects of selenium on sportfish (bluegills) in field studies (Belews Lake, North Carolina, and others). Instead, Wisconsin calculated a criterion for Limited Aquatic Life waters based on toxicity studies listed in the EPA's 1987 selenium aquatic life criteria document (selenite, +4). Wisconsin's value of 46.5 µg/L is slightly different than the EPA's calculated criterion of 44.72 µg/L, because Wisconsin removed the data for two saltwater species used in the EPA's calculation.

Wisconsin's chronic aquatic life selenium criterion of 46.5 µg/L for Limited Aquatic Life waters is consistent with the protection provided for aquatic life in Limited Aquatic Life waters, for several reasons. First, two of the three freshwater studies used to calculate the criterion, in accord with the 1985 Guidelines, were conducted on invertebrates (*Daphnia magna* and *Daphnia pulex*). Wisconsin followed their State procedures for deriving aquatic life criteria, using these toxicity studies (Chapter NR 105 of the WAC). Second, current literature on selenium states: "The most important aspect of selenium residues in aquatic food chains is not direct toxicity to the organisms themselves, but rather the dietary source of selenium they provide to fish and wildlife species that feed on them".[1] In the case of Limited Aquatic Life waters, there are no fish that feed on the invertebrates, and there is currently no information available to determine effects on wildlife from eating these organisms. No new studies have been conducted with invertebrates that would provide a scientific basis to refute the 1987 invertebrate toxicity studies reported in the EPA's 1987 selenium criteria document.

For the above reasons, the EPA approved Wisconsin's chronic selenium criterion for Limited Aquatic Life waters as an acceptable State-specific modification of the EPA's criterion, consistent with Wisconsin's methods for deriving criteria. The criterion is scientifically sound and protective of the use, therefore this criterion is consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR Parts 131 and 132.

Wisconsin did not adopt the EPA's chronic aquatic life selenium criterion of 5 µg/L, found in 40 CFR Part 132, for Limited Forage Fish waters. Wisconsin's basis for not adopting the EPA's criterion is that Limited Forage Fish waters only support forage fish and invertebrates, and the EPA's criterion was based on observed effects of selenium on sportfish (bluegill) in field studies. Instead, Wisconsin calculated a chronic selenium criterion for Limited Forage Fish waters based on toxicity studies listed in the EPA's 1987

[1] Lemly, A Dennis. 2002. Selenium Assessment in Aquatic Ecosystems: A Guide for Hazard Evaluation. Springer Series on Environmental Management. Page 23.

selenium aquatic life criteria document (selenite, +4). The EPA did not use these laboratory toxicity studies as the final basis for the recommended national selenium criterion of 5 µg/L because these studies were based on water column-only exposure to selenium. Given the available data showing the importance of dietary exposure, the EPA's criteria recommendations are based on field studies that account for bioaccumulation through the food chain as the main route of the exposure. The available data indicate that the primary route of exposure to all fish species is dietary. Consequently, a water column exposure-based criterion, such as the criterion adopted by Wisconsin for Limited Forage Fish waters, may not protect aquatic life in these waters. Therefore, the EPA did not act on Wisconsin's revised chronic selenium criterion for Limited Forage Fish waters in its July 1, 2009 action approving the other aquatic life criteria. Because Wisconsin does not have an EPA-approved chronic aquatic life selenium criterion for Limited Forage Fish Waters, the EPA is not withdrawing the federal chronic aquatic life selenium criterion for these waters. Therefore, the federal criteria for chronic selenium will continue to apply to Wisconsin's Limited Forage Fish waters.

III. Statutory and Executive Order Reviews

A. Executive Order 12866 (Regulatory Planning and Review)

This action withdraws federal requirements applicable to Wisconsin and imposes no regulatory requirements or costs on any person or entity, does not interfere with the action or planned action of another agency, and does not have any budgetary impacts or raise novel legal or policy issues. Thus, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to Office of Management and Budget (OMB) review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden because it is administratively withdrawing Federal requirements that are no longer needed in Wisconsin. It does not include any information collection, reporting or recordkeeping requirements. However, the OMB has previously approved the information collection requirements contained in the existing regulations 40 CFR Part 131 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0049. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This rule imposes no regulatory requirements or costs on any small entity. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under UMRA Section 202, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, UMRA Section 205 generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of UMRA Section 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA Section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under UMRA Section 203 a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Tribal, or local governments or the private sector because it imposes no enforceable duty on any of these entities. Thus, this rule is not subject to the requirements of UMRA Sections 202 and 205 for a written statement and small government agency plan. Similarly, the EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA Section 203.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires the 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."

This rule imposes no regulatory requirements or costs on any State or local governments; therefore, it does not have federalism implications under Executive Order 13132.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) the EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless

the Federal Government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or the EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

The EPA has concluded that this action may have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. Wisconsin's revised and EPA-approved aquatic life criteria are identical to, or only slightly less stringent than, the federal criteria being withdrawn in this rule. In 2009 the EPA determined that Wisconsin's revised criteria, with the exception of the chronic aquatic life criterion for selenium in waters designated as Limited Forage Fish use, adequately protect all waters of the State designated for aquatic life use at a level consistent with the Guidance and CWA requirements. Therefore, tribal consultation on this rule is unnecessary.

G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not economically significant and the EPA has no reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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 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 the 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. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

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

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

The EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations for several reasons. First, this rule pertains to aquatic life use criteria only which, based on current science and the EPA's CWA Section 304(a) recommended criteria, the EPA has previously determined are protective of the applicable aquatic life designated uses. Second, Wisconsin's revised and EPA-approved aquatic life criteria apply to all waters in the State designated for certain aquatic life uses. For these reasons, the EPA believes that this action will not disproportionately affect any one group over another in the State of Wisconsin.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The 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**, however this action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will become effective 30 days after publication in the **Federal Register** as provided under the Administrative Procedure Act.

List of Subjects in 40 CFR Part 132

Environmental protection, Administrative practice and procedure, Great Lakes, Indian lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: September 8, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, 40 CFR part 132 is amended as follows:

PART 132—WATER QUALITY GUIDANCE FOR THE GREAT LAKES SYSTEM

■ 1. The authority citation for 40 CFR part 132 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 2. In § 132.6 paragraphs (f) and (g) are revised to read as follows:

§ 132.6 Application of part 132 requirements in Great Lakes States and Tribes.

* * * * *

(f) Effective December 6, 2000, the chronic aquatic life criterion for endrin in Table 2 of this part shall apply to the waters of the Great Lakes System in the State of Wisconsin designated by Wisconsin as Warm Water Sportfish and Warm Water Forage Fish aquatic life use.

(g) Effective February 5, 2001, the chronic aquatic life criterion for selenium in Table 2 of this part shall apply to the waters of the Great Lakes System in the State of Wisconsin

designated by Wisconsin as Limited Forage Fish aquatic life use.

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[FR Doc. 2011–23817 Filed 9–15–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[EPA–HQ–OPP–2009–0609; FRL–8889–2]

Bacillus thuringiensis eCry3.1Ab Protein in Corn; Temporary Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends the effective date for a temporary exemption from the requirement of a tolerance for residues of *Bacillus thuringiensis* eCry3.1Ab protein in corn, in or on the food or feed commodities of corn; corn, field; corn, sweet; and corn, pop, when used as a plant-incorporated protectant in accordance with the terms of Experimental Use Permit (EUP) No. 67979–EUP–8. Syngenta Seeds, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting to extend the existing temporary tolerance exemption for *Bacillus thuringiensis* eCry3.1Ab protein in corn that was set to expire on March 1, 2013. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus thuringiensis* eCry3.1Ab protein in corn under the FFDCA. The temporary tolerance exemption now expires on December 31, 2013.

DATES: This regulation is effective September 16, 2011. Objections and requests for hearings must be received on or before November 15, 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–2009–0609. 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 Office of Pesticide Programs (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: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@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:

- 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 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 40 CFR part 174 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), 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–2009–0609 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 November 15, 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–2009–0609, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* 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. Background and Statutory Findings

In the **Federal Register** of June 8, 2011 (76 FR 33183) (FRL–8874–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 1G7868) by Syngenta Seeds, Inc., P.O. Box 12257, Research Triangle Park, NC 27709. The petition requested that 40 CFR part 174 be amended by extending the effective date of an existing temporary exemption from the requirement of a tolerance for residues of *Bacillus thuringiensis* eCry3.1Ab protein in corn. This notice referenced a summary of the petition prepared by the petitioner, Syngenta Seeds, Inc., which is available in the docket via

http://www.regulations.gov. One comment was received on the notice of filing. EPA's response to this comment is discussed in Unit VII.C.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(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. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance exemption 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 * * *." Additionally, section 408(b)(2)(D) of FFDCA requires that EPA consider "available information concerning the cumulative effects of [a particular pesticide's] * * * residues and other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information 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.

A. Product Characterization Overview

Based on amino acid sequence homology and crystal structures, known Cry proteins have a similar three-dimensional structure comprised of three domains, Domain I, II, and III (Refs. 1, 2, 3, and 4). The toxin portions of Cry proteins are characterized by having five conserved blocks (CB) across their amino acid sequence. These are numbered CB1 to CB5 from the N-terminus to the C-terminus (Ref. 5). The sequences preceding and following these conserved blocks are highly variable and are designated as variable regions V1 to V6.

Syngenta Seeds, Inc. developed Event 5307 maize (*Zea mays*) through *Agrobacterium*-mediated transformation (via plasmid vector PV–ZMIR245) to express eCry3.1Ab protein for use as a plant-incorporated protectant (PIP). This proposed PIP is a chimeric *Bacillus thuringiensis* protein, composed of portions of Cry1Ab and modified Cry3A proteins. The eCry3.1Ab protein was genetically engineered via exchanging the variable regions (V1 to V6) between the mCry3A and the Cry1Ab proteins for enhanced toxicity against western corn rootworm (WCR, *Diabrotica virgifera*). The eCry3.1Ab protein consists of a fusion between the N-terminus (Domain I, Domain II, and a portion of Domain III) of mCry3A and the C-terminus (a portion of Domain III and variable region 6) of Cry1Ab. The eCry3.1Ab protein is 654 amino acid residues in size and is approximately 73.7 kilodaltons.

B. Mammalian Toxicity and Allergenicity Assessment

Syngenta Seeds, Inc. has submitted acute oral toxicity data demonstrating the lack of mammalian toxicity at high levels of exposure to the pure eCry3.1Ab protein. These data demonstrate the safety of the product at a level well above maximum possible exposure levels that are reasonably anticipated in the crop. Basing this conclusion on acute oral toxicity data without requiring further toxicity testing and residue data is similar to EPA's position regarding toxicity testing and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this PIP was derived (see 40 CFR 158.2130(d)(1)(i) and 158.2140(d)(7)). For microbial products, further toxicity testing and residue data are triggered by significant adverse acute effects in studies, such as the mouse oral toxicity study, to verify and quantify the observed adverse effects and clarify the source of these effects (Tiers II & III).

An acute oral toxicity study in mice (Master Record Identification Number (MRID No.) 477539–01) indicated that eCry3.1Ab is nontoxic. Two groups of 10 male and 10 female mice were orally dosed (via gavage) with 2,000 milligrams/kilograms bodyweight (mg/kg bwt) (eCry3.1Ab protein mg/kg bwt) of the eCry3.1Ab–0208 test substance, the microbial-produced eCry3.1Ab protein. All treated animals gained weight and had no test material-related clinical signs and no test material-related findings at necropsy. Since there were no significant differences between the test and control groups related to the oral administration of eCry3.1Ab–0208 test material, the eCry3.1Ab protein does not appear to cause any significant adverse effects at an exposure level of up to 2,000 mg/kg bwt and supports the finding that the eCry3.1Ab protein would be nontoxic to mammals.

When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Ref. 6). Therefore, since no acute effects were shown to be caused by eCry3.1Ab, even at relatively high dose levels, the eCry3.1Ab protein is not considered toxic. Further, amino acid sequence comparisons showed no similarities between the eCry3.1Ab protein and known toxic proteins in protein databases that would raise a safety concern.

Since eCry3.1Ab is a protein, allergenic sensitivities were considered. Currently, no definitive tests exist for determining the allergenic potential of novel proteins. Therefore, EPA uses a "weight-of-the-evidence" approach where the following factors are considered: Source of the trait; amino acid sequence similarity with known allergens; prevalence in food; and biochemical properties of the protein, including *in vitro* digestibility in simulated gastric fluid (SGF) and glycosylation (as recommended by CAC 2003, see Ref. 7). Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by acid and proteases; may be glycosylated; and present at high concentrations in the food.

1. *Source of the trait. Bacillus thuringiensis* is not considered to be a source of allergenic proteins.

2. *Amino acid sequence.* A comparison of the amino acid sequence of eCry3.1Ab with known allergens showed no significant overall sequence similarity or identity at the level of eight contiguous amino acid residues. This is the appropriate level of sensitivity to detect possible IgE epitopes without high false positive rates.

3. *Prevalence in food.* Preliminary expression level analysis shows that the eCry.1Ab protein is present at relatively low levels. Dietary exposure is expected to be correspondingly low. Expression

in Event 5307 leaf is 35 parts per million (ppm); root is 6 ppm; and pollen is 0.15 ppm. Thus, the expression has been shown to be in the parts per million range.

4. *Digestibility.* The eCry3.1Ab protein was rapidly digested in simulated mammalian gastric fluid containing pepsin at a pH of 1.2 at 37 °C. The estimated degradation rate (DT_{50}) is less than 1 minute for eCry3.1Ab protein.

5. *Glycosylation.* The eCry3.1Ab protein expressed in corn was shown not to be glycosylated.

6. *Conclusion.* Considering all of the available information, EPA has concluded that the potential for eCry3.1Ab to be a food allergen is minimal.

IV. Aggregate Exposure

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

EPA has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. First, with respect to other related substances, the eCry3.1Ab protein is a chimeric *Bacillus thuringiensis* protein, composed of portions of Cry1Ab and mCry3A proteins, both of which are registered PIPs that were previously assessed as having a lack of mammalian toxicity at high levels of exposure. Exemptions from the requirement of a tolerance have been established for Cry1Ab in food and mCry3A in maize (see 40 CFR 174.511 and 40 CFR 174.505, respectively). Second, and specific to the eCry3.1Ab protein, these considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the PIP chemical residue and exposure from non-occupational sources. Exposure via the skin or inhalation is not likely since the PIP is contained within plant cells, which essentially eliminates these exposure routes or reduces these exposure routes to negligible. The amino acid homology assessment included similarity to known aeroallergens. It has been demonstrated that there is no evidence of occupationally related respiratory symptoms, based on a health survey on migrant workers after exposure to *Bacillus thuringiensis* pesticides (Ref. 8). Exposure via residential or lawn use to infants and children is also not expected because the use sites for the eCry3.1Ab protein are all agricultural for control of insects. Oral exposure, at very low levels, may occur from ingestion of processed corn products and, potentially, drinking water.

However, oral toxicity testing done at a dose of 2 gm/kg showed no adverse effects. Furthermore, the expected dietary exposure from corn is several orders of magnitude lower than the amounts of eCry3.1Ab protein shown to have no toxicity. Therefore, even if negligible aggregate exposure should occur, EPA concludes that such exposure would present no harm due to the lack of mammalian toxicity and the rapid digestibility demonstrated for the eCry3.1Ab protein.

V. 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 exemption, EPA consider "available information concerning the cumulative effects of [a particular pesticide's] * * * residues and other substances that have a common mechanism of toxicity."

Since eCry3.1Ab is not considered toxic, EPA has not found *Bacillus thuringiensis* eCry3.1Ab protein in corn to share a common mechanism of toxicity with any other substances, and *Bacillus thuringiensis* eCry3.1Ab protein in corn does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that *Bacillus thuringiensis* eCry3.1Ab protein in corn does not have a common mechanism of toxicity with other substances. Following from this, EPA concludes that there are no cumulative effects associated with eCry3.1Ab that need to be considered. 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*.

VI. Determination of Safety for United States (U.S.) Population, Infants and Children

The data submitted and cited regarding potential health effects for the eCry3.1Ab protein include the characterization of the expressed eCry3.1Ab protein in corn, as well as the acute oral toxicity, heat stability, and *in vitro* digestibility of the protein. The results of these studies were used to evaluate human risk, and the validity, completeness, and reliability of the available data from the studies were also considered.

As discussed more fully in Unit III., the acute oral toxicity data submitted supports the prediction that the eCry3.1Ab protein would be nontoxic to humans. Moreover, eCry3.1Ab showed no sequence similarity to any known toxin. Because of this lack of demonstrated mammalian toxicity, no protein residue chemistry data for eCry3.1Ab were required for a human health effects assessment. Even so, preliminary expression level analysis showed eCry3.1Ab protein is present at relatively low levels. Dietary exposure is expected to be correspondingly low.

In addition, since eCry3.1Ab is a protein, its potential allergenicity was also considered as part of the toxicity assessment. Data considered as part of the allergenicity assessment include that the eCry3.1Ab protein came from *Bacillus thuringiensis,* which is not a known allergenic source, showed no sequence similarity to known allergens, was readily degraded by pepsin, and was not glycosylated when expressed in the plant. Therefore, there is a reasonable certainty that eCry3.1Ab protein will not be an allergen.

Considered together, the lack of mammalian toxicity at high levels of exposure to the eCry3.1Ab protein and the minimal potential for that protein to be a food allergen demonstrate the safety of the product at levels well above possible maximum exposure levels anticipated in the crop.

Finally, and specifically in regards to infants and children, FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold 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 unless EPA determines that a different margin of safety will be safe for infants and children.

Based on its review and consideration of all the available information, as discussed in more detail in this unit, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and

children, from aggregate exposure to residues of the Cry3.1Ab protein and the genetic material necessary for its production in corn. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. EPA has also concluded, again for the reasons discussed in more detail in this unit, that there are no threshold effects of concern and, as a result, that an additional margin of safety for infants and children is unnecessary in this instance.

VII. Other Considerations

A. Analytical Enforcement Methodology

EPA has determined that an analytical method is not required for enforcement purposes since it is establishing an exemption from the requirement of a tolerance without any numerical limitation. Nonetheless, a method for extraction and two test strip commercial kits to detect eCry3.1Ab protein via enzyme-linked immunosorbent assay analysis in corn have been submitted.

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. In this context, 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.

The Codex has not established a MRL for *Bacillus thuringiensis* eCry3.1Ab protein in corn.

C. Response to Comments

One comment was received from an anonymous individual who objected to the use or approval of *Bacillus thuringiensis*-based corn. The individual further stated that the subject Bt corn was toxic and harmful and that animals eating it would be poisoned. No basis was given for these comments. While EPA understands that some individuals are opposed to all pesticide use and/or biotechnology based products, relevant data discussed in this unit did serve as the basis for EPA's conclusion in this instance that there is a reasonable certainty of no harm from residues of *Bacillus thuringiensis* eCry3.1Ab protein in corn.

VIII. Conclusion

EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Bacillus thuringiensis* eCry3.1Ab protein in corn and the genetic material necessary for its production. Therefore, the temporary exemption for residues of *Bacillus thuringiensis* eCry3.1Ab protein in corn, in or on the food or feed commodities of corn; corn, field; corn, sweet; and corn, pop, when used as a plant-incorporated protectant in accordance with the terms of Experimental Use Permit (EUP) No. 67979–EUP–8 is modified by extending the expiration date to December 31, 2013.

IX. References

1. Ge A, Rivers D, Milne R, Dean DH. 1991. Functional Domains of *Bacillus thuringiensis* Insecticidal Crystal Proteins. Refinement of *Heliothis virescens* and *Trichoplusiani* Specificity Domains on Cry1A(c). *Journal of Biological Chemistry.* 266: 17954–17958.
2. Honee G, Convents D, Van Rie J, Jansens S, Peferoen M, Visser B. 1991. The C–Terminal Domain of the Toxic Fragment of a *Bacillus thuringiensis* Crystal Protein Determines Receptor Binding. *Molecular Microbiology.* 5: 2799–2806.
3. Li J, Carroll J, Ellar DJ. 1991. Crystal Structure of Insecticidal delta-Endotoxin from *Bacillus thuringiensis* at 2.5 A resolution. *Nature.* 353: 815–821.
4. Nakamura K, Oshie K, Shimizu M, Takada Y, Oeda K, Ohkawa H. 1990. Construction of Chimeric Insecticidal Proteins Between the 130-kDa and 135-kDa Proteins of *Bacillus thuringiensis* subsp. *aizawai* for Analysis of Structure-Function Relationship. *Agricultural Biological Chemistry.* 54: 715–724.
5. Hofte H, Whitley HR. 1989. Insecticidal Crystal Proteins of *Bacillus thuringiensis. Microbiology Review.* 53: 242–255.
6. Sjoblad RD, McClintock JT, Engler R. 1992. Toxicological Considerations for Protein Components of Biological Pesticide Products. *Regulatory Toxicology and Pharmacology.* 15(1): 3–9.
7. CAC. 2003. Alinorm 03/34: Joint FAO/WHO Food Standard Programme. Codex Alimentarius Commission, Twenty-Fifth Session, 30 July 2003. Rome, Italy. Appendix III: Guideline for Conduct of Food Safety Assessments of Foods Derived from Recombinant-DNA Plants; Appendix IV: Annex on Assessment of Possible Allergenicity. Codex Alimentarius Commission, 47–60.
8. Bernstein IL, Bernstein JA, Miller M, Tierzieva S, Bernstein DI., Lummus Z, Selgrade MK, Doerfler DL, Seligy VL. 1999. Immune responses in farm workers after exposure to *Bacillus thuringiensis* pesticides. *Environmental Health Perspectives.* 107(7):575–82.

X. Statutory and Executive Order Reviews

This final rule modifies a tolerance exemption under section 408(d) of FFDCA in response to a petition submitted to EPA. 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 modified on the basis of a petition under section 408(d) of FFDCA, such as the tolerance exemption 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. As a result, this action does not 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, EPA 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, EPA 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 EPA 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).

XI. 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 174

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

Dated: September 8, 2011.

Keith Matthews,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 174—[AMENDED]

■ 1. The authority citation for part 174 continues to read as follows:

Authority: 7 U.S.C. 136–136y; 21 U.S.C. 346a and 371.

■ 2. Section 174.532 is revised to read as follows:

§ 174.532 Bacillus thuringiensis eCry3.1Ab protein in corn; temporary exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* eCry3.1Ab protein in corn, in or on the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop are exempt temporarily from the requirement of a tolerance when *Bacillus thuringiensis* eCry3.1Ab protein in corn is used as a plant-incorporated protectant in accordance with the terms of Experimental Use Permit 67979–EUP–8. This temporary exemption from the requirement of a tolerance expires on December 31, 2013.

[FR Doc. 2011–23813 Filed 9–15–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0360; FRL–8887–5]

Tetrachlorvinphos; Extension of Time-Limited Interim Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an extension of time-limited interim tolerances for the combined residues of the insecticide tetrachlorvinphos [(Z)-2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate], including its metabolites, 1-(2,4,5-trichlorophenyl)-ethanol (free and conjugated forms), 2,4,5-trichloroacetophenone, and 1-(2,4,5-trichlorophenyl)-ethanediol, in or on multiple commodities which will be identified later in this document, under the Federal Food, Drug, and Cosmetic Act (FFDCA). The time-limited tolerances expire on March 18, 2013.

DATES: This regulation is effective September 16, 2011. Objections and requests for hearings must be received on or before November 15, 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–2011–0360. 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: Carmen Rodia, Registration Division (7504P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; *telephone number:* (703) 306–0327; *fax number:* (703) 308–0029; *e-mail address: rodia.carmen@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:

- 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 under **FOR FURTHER INFORMATION CONTACT**.

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

In addition to accessing electronically available documents at *http://www.regulations.gov,* you may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr.* You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr.*

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

Under section 408(g) of FFDCA, 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. The EPA procedural

regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. 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–2011–0360 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 15, 2011.

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 that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2011–0360, 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. Background

A detailed summary of the background related to EPA's proposal to extend the time-limited interim tolerances for the combined residues of the insecticide tetrachlorvinphos, including its metabolites, in or on multiple commodities can be found in the **Federal Register** of June 8, 2011 (76 FR 33184) (FRL–8874–7), by going to *http://www.regulations.gov,* and is hereby incorporated by reference. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**. Locate and click on the hyperlink for docket ID number EPA–HQ–OPP–2011–0360. Double-click on the document to view the referenced background summary information on pages 33186–33187.

Two anonymous comments were received in response to the referenced proposal. These comments were non-substantive in nature and totally unrelated to EPA's proposal.

III. Conclusion

Therefore, an extension of the time-limited interim tolerances is established for the combined residues of the insecticide tetrachlorvinphos [(Z)-2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate], including its metabolites, 1-(2,4,5-trichlorophenyl)-ethanol (free and conjugated forms), 2,4,5-trichloroacetophenone, and 1-(2,4,5-trichlorophenyl)-ethanediol, in or on cattle, fat (of which no more than 0.1 ppm is tetrachlorvinphos *per se*) at 0.2 parts per million (ppm); cattle, kidney (of which no more than 0.05 ppm is tetrachlorvinphos *per se*) at 1.0 ppm; cattle, liver (of which no more than 0.05 ppm is tetrachlorvinphos *per se*) at 0.5 ppm; cattle, meat (of which no more than 2.0 ppm is tetrachlorvinphos *per se*) at 2.0 ppm; cattle, meat byproducts, except kidney and liver at 1.0 ppm; egg (of which no more than 0.05 ppm is tetrachlorvinphos *per se*) at 0.2 ppm; hog, fat (of which no more than 0.1 ppm is tetrachlorvinphos *per se*) at 0.2 ppm; hog, kidney (of which no more than 0.05 ppm is tetrachlorvinphos *per se*) at 1.0 ppm; hog, liver (of which no more than 0.05 ppm is tetrachlorvinphos *per se*) at 0.5 ppm; hog, meat (of which no more than 2.0 ppm is tetrachlorvinphos *per se*) at 2.0 ppm; hog, meat byproducts, except kidney and liver at 1.0 ppm; milk, fat (reflecting negligible residues in whole milk and of which no more than 0.05 ppm is tetrachlorvinphos *per se)* at 0.05 ppm; poultry, fat (of which no more than 7.0 ppm is tetrachlorvinphos *per se*) at 7.0 ppm; poultry, liver (of which no more than 0.05 ppm is tetrachlorvinphos *per se*) at 2.0 ppm; poultry, meat (of which no more than 3.0 ppm is tetrachlorvinphos *per se*) at 3.0 ppm; and poultry, meat byproducts, except liver at 2.0 ppm, for a period of 18 months following the date of publication of this final rule in the **Federal Register.** A time-limitation has been imposed in order to provide the Agency with additional time to complete the reviews of the submitted livestock Magnitude of Residue (MOR) data, storage stability data, and the waiver request for the swine MOR data. As a result, these time-limited interim tolerances will expire on March 18, 2013.

IV. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(e) of FFDCA. 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).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels, or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions was published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

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).

V. 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: September 8, 2011.

Lois Rossi,

Director, Registration Division, 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 180.252 is revised to read as follows:

§ 180.252 Tetrachlorvinphos; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the insecticide tetrachlorvinphos [(Z)-2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate], including its metabolites, 1-(2,4,5-trichlorophenyl)-ethanol (free and conjugated forms), 2,4,5-trichloroacetophenone, and 1-(2,4,5-trichlorophenyl)-ethanediol, in or on the following commodities:

Commodity	Parts per million	Expiration/revocation date
Cattle, fat (of which no more than 0.1 ppm is tetrachlorvinphos *per se*)	0.2	March 18, 2013.
Cattle, kidney (of which no more than 0.05 ppm is tetrachlorvinphos *per se*)	1.0	March 18, 2013.
Cattle, liver (of which no more than 0.05 ppm is tetrachlorvinphos *per se*)	0.5	March 18, 2013.
Cattle, meat (of which no more than 2.0 ppm is tetrachlorvinphos *per se*)	2.0	March 18, 2013.
Cattle, meat byproducts, except kidney and liver	1.0	March 18, 2013.
Egg (of which no more than 0.05 ppm is tetrachlorvinphos *per se*)	0.2	March 18, 2013.
Hog, fat (of which no more than 0.1 ppm is tetrachlorvinphos *per se*)	0.2	March 18, 2013.
Hog, kidney (of which no more than 0.05 ppm is tetrachlorvinphos *per se*)	1.0	March 18, 2013.
Hog, liver (of which no more than 0.05 ppm is tetrachlorvinphos *per se*)	0.5	March 18, 2013.
Hog, meat (of which no more than 2.0 ppm is tetrachlorvinphos *per se*)	2.0	March 18, 2013.
Hog, meat byproducts, except kidney and liver	1.0	March 18, 2013.
Milk, fat (reflecting negligible residues in whole milk and of which no more than 0.05 ppm is tetrachlorvinphos *per se*).	0.05	March 18, 2013.
Poultry, fat (of which no more than 7.0 ppm is tetrachlorvinphos *per se*)	7.0	March 18, 2013.
Poultry, liver (of which no more than 0.05 ppm is tetrachlorvinphos *per se*)	2.0	March 18, 2013.
Poultry, meat (of which no more than 3.0 ppm is tetrachlorvinphos *per se*)	3.0	March 18, 2013.
Poultry, meat byproducts, except liver	2.0	March 18, 2013.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2011–23815 Filed 9–15–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[EPA–R10–UST–2011–0097; FRL–9465–3]

Oregon: Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final determination.

SUMMARY: The State of Oregon has applied for final approval of its underground storage tank program for petroleum and hazardous substances under subtitle I of the Resource Conservation and Recovery Act (RCRA). The United States Environmental Protection Agency (EPA) has reviewed the State of Oregon's application and has made a final determination that the State of Oregon's underground storage tank program for petroleum and hazardous substances satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to the State of Oregon to operate its underground storage tank program for petroleum and hazardous substances.

DATES: *Effective Date:* Final approval for the State of Oregon shall be effective on September 16, 2011.

FOR FURTHER INFORMATION CONTACT: Katherine Griffith, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop: OCE–082, Seattle, WA 98101, phone number: (206) 553–2901, e-mail: *griffith.katherine@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6991c, authorizes EPA to approve underground storage tank programs to operate in the State in lieu of the federal underground storage tank (UST) program. To qualify for final approval, a state's program must be "no less stringent" than the federal program in all eight elements set forth at section 9004(a)(1) through (7) and (9) of RCRA, 42 U.S.C. 6991c(a)(1) through (7) and (9); include the notification requirements of RCRA section 9004(a)(8) and provide for adequate enforcement of compliance with UST standards (section 9004(a) of RCRA, 42 U.S.C. 6991c(a)). Note that the Energy Policy Act of 2005 added state-specific operator training requirements as a state

program approval element in section 9004(a)(9). Although, EPA has not yet established performance criteria in 40 CFR Part 281 for making a no-less-stringent determination for the operator training element, EPA finds Oregon's operator training requirements to be consistent with Operator Training Grant Guidelines issued by EPA in 2007 and approves Oregon's operator training requirements in today's approval. Also, note that RCRA sections 9005 (on information-gathering) and 9006 (on Federal enforcement) by their terms apply even in states with programs approved by EPA under RCRA section 9004. Thus, the Agency retains its authority under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State authorized analogues to these provisions.

On July 19, 2010, the State of Oregon submitted an official application to obtain final program approval to administer the underground storage tank program for petroleum and hazardous substances. On March 2, 2011, EPA published a tentative determination announcing its intent to approve the State of Oregon's program. Further background on the tentative decision to grant approval appears in the **Federal Register** at 76 FR 11404 (March 2, 2011).

Along with the tentative determination, EPA announced the availability of the application for public review and comment and the date of a public hearing on the application. EPA requested advance notice for testimony and reserved the right to cancel the public hearing in the event of insufficient public interest. Since there was no public request for a hearing, the public hearing was cancelled. No public comments were received regarding EPA's tentative approval of Oregon's underground storage tank program.

II. Final Decision

I conclude that the State of Oregon's application for program approval meets all of the statutory and regulatory requirements established by subtitle I of RCRA and 40 CFR part 281. Accordingly, Oregon is granted final approval to operate its underground storage tank program for petroleum and hazardous substances in lieu of the federal underground storage tank program. Oregon has primary enforcement responsibility for petroleum and hazardous underground storage tanks, although EPA retains the right to conduct enforcement actions for all regulated underground storage tanks under section 9006 of RCRA. This approval is subject to the terms and conditions set forth in the State's application for approval (including, but not limited to, the Memorandum of Agreement) and in the March 2, 2011 Federal Register Oregon: Tentative Approval of State Underground Storage Tank Program. This final determination to approve the Oregon program applies to all areas within the State except for land in Indian Country. This includes all lands within the exterior boundaries of the Grande Ronde, Klamath, Siletz, Umatilla and Warm Springs Reservations; any land held in trust by the United States for an Indian tribe, and any other lands that are Indian Country within the meaning of 18 U.S.C. 1151.

III. Statutory and Executive Order (EO) Review

This rule only applies to Oregon's UST Program requirements pursuant to RCRA Section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable EOs and statutory provisions as follows:

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this rule from its review under Executive Order 12866.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* because this rule does not establish or modify any information or recordkeeping requirements for the regulated community and only seeks to authorize the pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing, and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's size regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. I certify that this rule will not have a significant economic impact on a substantial number of small entities because the rule will only have the effect of authorizing pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law.

D. Unfunded Mandates Reform Act

This rule does not have any impacts as described in the Unfunded Mandates Reform Act because this rule codifies 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 mandates or significantly or uniquely affects small governments.

E. Executive Order 13132: Federalism

This 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 various levels of government, as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999). This rule authorizes pre-existing State rules. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (59 FR 22951, 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 rule does not have tribal implications, as specified in Executive Order 13175 because EPA retains its authority over Indian Country. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health 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 action is not subject to Executive Order 13045 because it approves a state program.

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" as defined under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272), 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 bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This rule does not affect the level of protection provided to human health or the environment because this rule authorizes pre-existing State rules which are no less stringent than existing Federal requirements.

K. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This document is issued under the authority of Section 9004 of the Resource Conservation and Recovery Act, 42 U.S.C. 6991c.

Dated: August 31, 2011.

Michelle L. Pirzadeh,

Acting Regional Administator, Region 10.

[FR Doc. 2011–23816 Filed 9–15–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1998–0007; FRL–9465–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of direct final rule.

SUMMARY: On July 29, 2011, the Environmental Protection Agency (EPA) published a Notice of Intent to Delete and a Direct Notice of Deletion for the State Marine of Port Arthur (SMPA) Superfund Site from the National Priorities List. The EPA is withdrawing the Final Direct Notice of Deletion because the deletion notices were published in the **Federal Register** without Headquarter's concurrence as required under the Comprehensive Environmental Response, Compensation, and Liability Act Delegation of Authority.

DATES: *Effective Date:* This withdrawal of the direct final action (76 FR 45428) is effective as of September 16, 2011.

ADDRESSES:

Information Repositories: Comprehensive information on the SMPA Superfund Site, as well as the comments that we received during the comment period, are available in Docket EPA–HQ–SFUND–1998–0007, accessed through the *http://www.regulations.gov* Web site. Although listed in the docket 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:

1. U.S. Environmental Protection Agency, Region 6; 1445 Ross Avenue, Suite 700; Dallas, Texas 75202–2733; Hours of operation: Monday thru Friday, 9 a.m. to 12 p.m. and 1 to 4 p.m. Contact: Rafael A. Casanova (214) 665–7437.

2. Port Arthur Public Library; 4615 9th Avenue; Port Arthur, Texas 77642–5799; Hours of operation: Monday thru Thursday, 9 a.m. to 9 p.m.; Friday, 9 a.m. to 6 p.m.; Saturday, 9 a.m. to 5 p.m.; and Sunday, 2 to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Rafael A. Casanova, Remedial Project Manager; U.S. Environmental Protection Agency, Region 6; Superfund Division (6SF–RA); 1445 Ross Avenue, Suite

1200; Dallas, Texas 75202–2733; telephone number: (214) 665–7437; e-mail: *casanova.rafael@epa.gov.*

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 300

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

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

Dated: September 6, 2011.

Al Armendariz,

Regional Administrator, Region 6.

Accordingly, the amendment to Table 1 of Appendix B to CFR part 300 to remove the entry "State Marine of Port Arthur Superfund Site," "Port Arthur, Texas," is withdrawn as of September 16, 2011.

[FR Doc. 2011–23823 Filed 9–15–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2000–0003; FRL–9465–5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of direct final rule.

SUMMARY: On July 29, 2011, the Environmental Protection Agency (EPA) published a Notice of Intent to Delete and a Direct Notice of Deletion for the Palmer Barge Line (PBL) Superfund Site from the National Priorities List. The EPA is withdrawing the Final Direct Notice of Deletion because the deletion notices were published in the **Federal Register** without Headquarter's concurrence as required under the Comprehensive Environmental Response, Compensation, and Liability Act Delegation of Authority.

DATES: *Effective Date:* This withdrawal of the direct final action (76 FR 45432) is effective as of September 16, 2011.

ADDRESSES:

Information Repositories: Comprehensive information on the PBL Superfund Site, as well as the comments that we received during the comment period, are available in Docket EPA–HQ–SFUND–2000–0003, accessed through the *http://www.regulations.gov* Web site. Although listed in the docket 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:

1. U.S. Environmental Protection Agency, Region 6; 1445 Ross Avenue, Suite 700; Dallas, Texas 75202–2733; Hours of operation: Monday thru Friday, 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m.. Contact: Rafael A. Casanova (214) 665–7437.

2. Port Arthur Public Library; 4615 9th Avenue; Port Arthur, Texas 77642–5799; Hours of operation: Monday thru Thursday, 9 a.m. to 9 p.m.; Friday, 9 a.m. to 6 p.m.; Saturday, 9 a.m. to 5 p.m.; and Sunday, 2 p.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Rafael A. Casanova, Remedial Project Manager; U.S. Environmental Protection Agency, Region 6; Superfund Division (6SF–RA); 1445 Ross Avenue, Suite 1200; Dallas, Texas 75202–2733; telephone number: (214) 665–7437; e-mail: *casanova.rafael@epa.gov*.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 300

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

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

Dated: September 6, 2011.

Al Armendariz,

Regional Administrator, Region 6.

Accordingly, the amendment to Table 1 of Appendix B to CFR part 300 to remove the entry "Palmer Barge Line Superfund Site," "Port Arthur, Texas," is withdrawn as of September 16, 2011.

[FR Doc. 2011–23870 Filed 9–15–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2002–0001; EPA–HQ–SFUND–2010–0640 and 0641, EPA–HQ–SFUND–2011–0057, 0058, 0061, 0062, 0065, 0066, 0070, 0072, 0074, 0076, 0077, and 0078, FRL–9464–6]

RIN 2050–AD75

National Priorities List, Final Rule No. 52

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds 15 sites to the NPL, all to the General Superfund Section.

DATES: *Effective Date:* The effective date for this amendment to the NCP is October 17, 2011.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see section II, "Availability of Information to the Public" in the "Supplementary Information" portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone: (703) 603–8852, email: *jeng.terry@epa.gov*, Site Assessment and Remedy Decisions Branch; Assessment and Remediation Division; Office of Superfund Remediation and Technology Innovation (Mailcode 5204P); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, NW; Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (“CERCLA” or “the Act”), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (“SARA”), Public Law 99–499, 100 Stat. 1613 et seq.

B. What is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes “criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action.” “Removal” actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of “releases” and the highest priority “facilities” and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the “General Superfund Section”), and one of sites that are owned or operated by other Federal agencies (the “Federal Facilities Section”). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (“HRS”) score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of

uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions. ***" 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the "Jones Co. plant site") in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the Remedial Investigation ("RI") "is a process undertaken * * * to determine the nature and extent of the problem presented by the release" as more information is developed on site contamination, and which is generally performed in an interactive fashion with the Feasibility Study ("FS") (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the Agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

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

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

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

H. May EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the construction completion list (CCL)?

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund/cleanup/ccl.htm.*

J. What is the sitewide ready for anticipated use measure?

The Sitewide Ready for Anticipated Use measure represents important Superfund accomplishments and the measure reflects the high priority EPA places on considering anticipated future land use as part of our remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to *http://www.epa.gov/superfund/programs/recycle/tools/index.html.*

II. Availability of Information to the Public

A. May I review the documents relevant to this final rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

An electronic version of the public docket is available through *http://www.regulations.gov* (see table below for Docket Identification numbers). Although not all Docket materials may be available electronically, you may still access any of the publicly available Docket materials through the Docket facilities identified below in section II D.

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/county, state	Docket ID No.
Blue Ledge Mine	Rogue River—Siskiyou National Forest, CA	EPA–HQ–SFUND–2011–0057
New Idria Mercury Mine	Idria, CA	EPA–HQ–SFUND–2011–0058
Armstrong World Industries	Macon, GA	EPA–HQ–SFUND–2010–0640
Sandoval Zinc Company	Sandoval, IL	EPA–HQ–SFUND–2011–0061
Gary Development Landfill	Gary, IN	EPA–HQ–SFUND–2011–0062
Kerr-McGee Chemical Corp—Columbus	Columbus, MS	EPA–HQ–SFUND–2011–0065
Red Panther Chemical Company	Clarksdale, MS	EPA–HQ–SFUND–2011–0066
Horton Iron and Metal	Wilmington, NC	EPA–HQ–SFUND–2010–0641
Garfield Ground Water Contamination	Garfield, NJ	EPA–HQ–SFUND–2011–0070
Chevron Questa Mine	Questa, NM	EPA–HQ–SFUND–2011–0072
New Cassel/Hicksville Ground Water Contamination	New Cassel/Hicksville, NY	EPA–HQ–SFUND–2011–0074
North Ridge Estates	Klamath Falls, OR	EPA–HQ–SFUND–2011–0076
US Finishing/Cone Mills	Greenville, SC	EPA–HQ–SFUND–2011–0077
Alamo Contaminated Ground Water	Alamo, TN	EPA–HQ–SFUND–2011–0078
Falcon Refinery	Ingleside, TX	EPA–HQ–SFUND–2002–0001

B. What documents are available for review at the headquarters docket?

The Headquarters Docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. For sites that received comments during the comment period, the Headquarters Docket also contains a Support Document that includes EPA's responses to comments.

C. What documents are available for review at the regional dockets?

The Regional Dockets contain all the information in the Headquarters Docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional Dockets. For sites that received comments during the comment period, the Regional Docket also contains a Support Document that includes EPA's responses to comments.

D. How do I access the documents?

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional Dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue, NW.; EPA West, Room 3334, Washington, DC 20004, 202/566–0276.

The contact information for the Regional Dockets is as follows:

Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109–3912 ; 617/918–1417.

Ildefonso Acosta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4344.
Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.
Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., Mailcode 9T25, Atlanta, GA 30303; 404/562–8862.
Evette Jones, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7572.
Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Suite 1200, Mailcode 6SF, Dallas, TX 75202–2733; 214/665–7436.
Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Mailcode SUPRERNB, Kansas City, KS 66101; 913/551–7335.
Sabrina Forrest, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR–B, Denver, CO 80202–1129; 303/312–6484.
Karen Jurist, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD–6–1, San Francisco, CA 94105; 415/972–3219.
Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mailcode ECL–112, Seattle, WA 98101; 206/463–1349.

E. How may I obtain a current list of NPL sites?

You may obtain a current list of NPL sites via the Internet at *http://www.epa.gov/superfund/sites/npl/status.htm* or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds the following 15 sites to the NPL, all to the General Superfund Section. All of the sites included in this final rulemaking are being added to the NPL based on HRS scores of 28.50 or above with the exceptions of North Ridge Estates (Klamath Falls, OR), which is being added based on its designation as the state's top priority, and Garfield Ground Water Contamination (Garfield, NJ), which is being added based on ATSDR health advisory criteria (see further discussion in Section C below). The sites are presented in the table below:

State	Site name	City/county
CA	Blue Ledge Mine	Rogue River—Siskiyou National Forest.
CA	New Idria Mercury Mine	Idria.
GA	Armstrong World Industries	Macon.
IL	Sandoval Zinc Company	Sandoval.
IN	Gary Development Company	Gary.
MS	Kerr-McGee Chemical Corp—Columbus	Columbus.
MS	Red Panther Chemical Company	Clarksdale.
NC	Horton Iron and Metal	Wilmington.
NJ	Garfield Ground Water Contamination	Garfield.
NM	Chevron Questa Mine	Questa.
NY	New Cassel/Hicksville Ground Water Contamination	New Cassel/Hicksville.
OR	North Ridge Estates	Klamath Falls.
SC	US Finishing/Cone Mills	Greenville.
TN	Alamo Contaminated Ground Water	Alamo.
TX	Falcon Refinery	Ingleside.

B. Site Name Change

The Chevron Questa Mine site in Questa, New Mexico, was proposed to the NPL under a different name. The former name was MolyCorp Inc. (see Proposed Rule at 76 FR 13113, March 10, 2011). EPA believes the new name, Chevron Questa Mine, more accurately identifies the site (see further discussion in Section C below).

C. What did EPA do with the public comments it received?

EPA reviewed all comments received on the sites in this rule and responded to all relevant comments. This rule adds 15 sites to the NPL.

Six sites received no comments: Gary Development Landfill (IN) (three comments were received which were unrelated to Gary Development Landfill but erroneously were addressed to the Gary Development Landfill docket number); Kerr-McGee Chemical Corp-Columbus (MS); Red Panther Chemical Company (MS); US Finishing/Cone Mills (SC); Alamo Contaminated Ground Water (TN); and North Ridge Estates (OR).

Four sites being placed on the NPL received comments specifically related to the HRS score and these are being addressed in response to comment support documents available concurrent with this rule: Sandoval Zinc Company (IL); Armstrong World Industries (GA); Horton Iron and Metal (NC); and New Cassel/Hicksville Ground Water Contamination (NY).

The North Ridge Estates site was added to the NPL as a one-time state designation of highest priority pursuant to 40 CFR 300.425(c)(2). In accordance with the Oregon Governor's designation letter dated August 31, 2010, the site consists of areas affected by releases or threatened releases of asbestos or other materials within the approximately 422 acres of the North Ridge Estates site. These areas include the former Marine Recuperation Barracks location and the Kingsley Firing Range, identified respectively as Operable Units 1 and 2 (OU1 and OU2) in the Record of Decision (ROD) and other ongoing investigations between EPA and the Oregon Department of Environmental Quality (DEQ), as referenced in the Governor's designation letter. As discussed in Section I.F. of this Final Rule, however, the North Ridge Estates site may not be limited to these areas or releases. As stated by the D.C. Circuit Court of Appeals, "EPA may alter or expand the boundaries of a NPL site if subsequent study reveals a wider-than-expected scope of contamination." *Washington State DOT* v. *EPA,* 917 F.2d 1309, 1310 (D.C. Cir. 1990) (citing *Eagle-Picher Indus.* v. *EPA,* 822 F.2d 132, 144 (D.C. Cir. 1987)).

Five sites received minimal comments: Falcon Refinery (TX); Blue Ledge Mine (CA); New Idria Mercury Mine (CA); Garfield Ground Water Contamination (NJ); and Chevron Questa Mine (NM). These sites are being added to the NPL in this rule and

comments are addressed below. Falcon Refinery was proposed September 5, 2002 and the other sites were proposed March 10, 2011.

EPA received no comments on the HRS score for the Falcon Refinery site but did receive one comment requesting that EPA suspend the final listing and allow the owner to perform the cleanup in accordance with EPA guidance for Superfund Alternative Sites. EPA agreed to this and entered into an agreement, leaving the site in proposed status since 2002. The owner has been approved by EPA to complete the RI/FS, but may not have the funds to carry out further cleanup work, should that be necessary (see information in docket for further information). Therefore, EPA is adding the site to the NPL in order for any potential cleanup activity to proceed in an expeditious manner. The work performed to this point has not resulted in any change to the HRS score at proposal.

The Blue Ledge Mine site received one potential comment (which may actually have been for the New Cassel/Hicksville site) supporting the listing. If the comment was regarding the Blue Ledge site proposal, EPA agrees the site should be listed so that it can be further investigated and the EPA can determine what, if any, response actions are necessary.

The Chevron Questa Mine site received 16 supporting comments and no comments opposing listing. An additional comment was received from an unrelated corporation named Molycorp, Inc., which was formed as a new Delaware corporation in 2010 and has no connection to the previous corporation named MolyCorp, Inc., or to the site being added to the NPL today. The commenter requested that the site name be changed to a name which does not include "Molycorp" to avoid confusion to the public and prevent harm to the recently formed corporation due to a false impression that it may have caused contamination of the site or be responsible for the cleanup and remediation of the site. EPA agrees with the commenter's concern, and has changed the name to Chevron Questa Mine to clarify and more accurately identify the site for the public.

The Garfield Ground Water Contamination site received one comment. The comment was related to another EPA **Federal Register** notice seeking public input regarding whether the HRS should be amended to add a vapor intrusion component. The comment said that EPA's ability to list the Garfield site showed that addition of a vapor intrusion component to the HRS was unnecessary. Since the comment was supportive of listing the site, EPA is proceeding with adding the site to the NPL.

The New Idria Mercury Mine site received five comments. Four supported listing, including one comment that said mercury at the site was bioavailable and a serious health concern, and cited several studies to support these assertions. One commenter opposed listing, claiming mercury at the site would not pose a problem and was not bioavailable, and that cleanup was a waste of money. The comment did not mention the HRS scoring. In response, the toxicity and bioaccumulation values assigned to mercury in the documentation record at proposal are consistent with the application of the HRS and no commenter suggested any other values. The site score based on these values makes the site eligible for listing. The HRS does not specifically consider bioavailability. Cost is not a factor considered when making a listing decision. Remedial costs, if any, will be determined once the risk decision is made. Placing the site on the NPL will enable EPA to evaluate whether the site poses a health risk, whether the mercury is bioavailable, and what cleanup, if any, is needed.

IV. Statutory and Executive Order Reviews

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

1. What are Executive Order 12866 and Executive Order 13563?

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Executive Order 13563, entitled "Improving Regulation and Regulatory Review," was issued on January 18, 2011, and supplements Executive Order 12866 by outlining the President's regulatory strategy to support continued economic growth and job creation, while protecting the safety, health and rights of all Americans. The Executive Order requires considering costs, reducing burdens on businesses and consumers, expanding opportunities for public involvement, designing flexible approaches, ensuring sound science forms the basis of decisions, and retrospectively reviewing existing regulations.

2. Is this rule subject to Executive Order 12866 and Executive Order 13563 review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

1. What is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act apply to this final rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a

Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

1. What is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How has EPA complied with the Regulatory Flexibility Act?

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

2. Does UMRA apply to this final rule?

This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As is mentioned above, site listing does not impose any costs and would not require any action of a small government.

E. Executive Order 13132: Federalism

1. What is Executive Order 13132?

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are 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."

2. Does Executive Order 13132 apply to this final rule?

This final 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, because it does not contain any requirements applicable to States or other levels of government. Thus, the requirements of the Executive Order do not apply to this final rule.

EPA believes, however, that this final rule may be of significant interest to State governments. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA therefore consulted with State officials and/or representatives of State governments early in the process of developing the rule to permit them to have meaningful and timely input into its development. All sites included in this final rule were referred to EPA by States for listing. For all sites in this rule, EPA received letters

of support either from the Governor or a State official who was delegated the authority by the Governor to speak on their behalf regarding NPL listing decisions.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

1. What is Executive Order 13175?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 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." "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

2. Does Executive Order 13175 apply to this final rule?

This final rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this final rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

1. What is Executive Order 13045?

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

2. Does Executive Order 13045 apply to this final rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this rule present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage

1. What Is Executive Order 13211?

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)), requires federal agencies to prepare a "Statement of Energy Effects" when undertaking certain regulatory actions. A Statement of Energy Effects describes the adverse effects of a "significant energy action" on energy supply, distribution and use, reasonable alternatives to the action, and the expected effects of the alternatives on energy supply, distribution and use.

2. Does Executive Order 13211 apply to this final rule?

This action is not a "significant energy action" as defined in Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this final rule is not likely to have any adverse energy impacts because adding a site to the NPL does not require an entity to conduct any action that would require energy use, let alone that which would significantly affect energy supply, distribution, or usage. Thus, Executive Order 13175 does not apply to this action.

I. National Technology Transfer and Advancement Act

1. What is the National Technology Transfer and Advancement Act?

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), 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act apply to this final rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

1. What is Executive Order 12898?

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.

2. Does Executive Order 12898 apply to this rule?

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As this rule does not impose any enforceable duty upon State, tribal, or local governments, this rule will neither increase nor decrease environmental protection.

K. Congressional Review Act

1. Has EPA submitted this rule to Congress and the Government Accountability Office?

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, that includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted 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 rule is not a "major rule" as defined by 5 U.S.C. 804(2).

2. Could the effective date of this final rule change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: An annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

3. What could cause a change in the effective date of this rule?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983), and *Bd. of Regents of the University of Washington* v. *EPA,* 86 F.3d 1214,1222 (D.C. Cir. 1996), cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register.**

List of Subjects in 40 CFR Part 300

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

Dated: September 8, 2011.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

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

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

■ 2. Table 1 of Appendix B to part 300 is amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
*	*	*	*
CA	Blue Ledge Mine	Rogue River—Siskiyou National Forest	
*	*	*	*
CA	New Idria Mercury Mine	Idria	
*	*	*	*
GA	Armstrong World Industries	Macon	
*	*	*	*
IL	Sandoval Zinc Company	Sandoval	
*	*	*	*
IN	Gary Development Company	Gary	
*	*	*	*
MS	Kerr-McGee Chemical Corp—Columbus	Columbus	
*	*	*	*
MS	Red Panther Chemical Company	Clarksdale	
*	*	*	*
NC	Horton Iron and Metal	Wilmington	

TABLE 1—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes [a]
*	* * * * * * *		
NJ	Garfield Ground Water Contamination	Garfield	
*	* * * * * * *		
NM	Chevron Questa Mine	Questa	
*	* * * * * * *		
NY	New Cassel/Hicksville Ground Water Contamination	New Cassel/Hicksville	
*	* * * * * * *		
OR	North Ridge Estates	Klamath Falls	
*	* * * * * * *		
SC	US Finishing/Cone Mills	Greenville	
*	* * * * * * *		
TN	Alamo Contaminated Ground Water	Alamo	
*	* * * * * * *		
TX	Falcon Refinery	Ingleside	
*	* * * * * * *		

[a] A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (HRS score need not be greater than or equal to 28.50).
C = Sites on Construction Completion list.
S = State top priority (HRS score need not be greater than or equal to 28.50).
P = Sites with partial deletion(s).

* * * * *

[FR Doc. 2011–23652 Filed 9–15–11; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 203 and 252

[DFARS Case 2010–D026]

RIN 0750–AG98

Defense Federal Acquisition Regulation Supplement; Display of DoD Inspector General Fraud Hotline Posters

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to require contractors to display the DoD fraud hotline poster in common work areas.

DATES: *Effective Date:* September 16, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, 703–602–1302.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule implements the recommendations of the DoD Inspector General (IG) by providing a DFARS clause to use in lieu of the FAR clause at 52.203–14, Display of Hotline Poster(s).

Government Accountability Office (GAO) Report GAO–09–591, entitled "Defense Contracting Integrity: Opportunities Exist to Improve DoD's Oversight of Contractor Ethics Programs," recommended that the DoD IG determine the need for defense contractors to display the DoD IG's fraud hotline poster.

The DoD IG determined that DoD contractors, including contractors that have an ethics and compliance program that includes a reporting mechanism such as a hotline poster, need to display DoD fraud hotline posters in a common work area within business segments performing work under the contract and at contract work sites.

FAR 52.203–14(c) states that "(i)f the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters, other than any required DHS posters." The DoD IG determined that this exemption has the potential to make the DoD hotline program less effective by ultimately reducing contractor exposure to DoD IG fraud hotline posters and diminishing the means by which fraud, waste, and abuse can be reported under the protection of Federal whistleblower protection laws. According to the DoD IG, some contractors' posters may not be as effective as the DoD poster in advertising the hotline number, which is integral to the fraud program. The DoD IG is also revising the DoD IG fraud hotline poster to inform contractor employees of their Federal whistleblower protections.

Therefore, the prescription for use of the new DFARS clause provides no exception to the use of the DoD hotline poster for contractors that have implemented a business ethics and conduct awareness program, even those that include a reporting mechanism such as a hotline poster.

II. Discussion and Analysis

DoD published a proposed rule at 76 FR 13327 on March 11, 2011, to implement the DoD IG's policy. Nine respondents submitted 25 public comments on the proposed rule. The comments are summarized and discussed in the following paragraphs.

A. Supportive Comments

Comments: Four respondents supported the DFARS rule, stating that it would assist employees in reporting fraud, waste, and abuse and might promote *qui tam* suits. Two respondents recommended expanding the rule's applicability by (1) Lowering the

threshold or (2) making it applicable to U.S.-owned and -operated firms that perform overseas.

Response: DoD acknowledges the respondents' support. DoD declines to expand the rule's applicability because the prescription and conditions for the use of the hotline poster in DoD contracts are exactly those prescribed at FAR 3.1004(b) for the inclusion of the FAR clause at 52.203–14, Display of Hotline Poster(s). The respondents did not provide rationale supporting the proposed further expansion of requirements to use the DoD IG hotline poster clause.

B. Requirement To Post the DHS Hotline Poster

Comments: One respondent asked that the DFARS Procedures, Guidance and Information (PGI), include guidance on obtaining relevant information to be inserted in the clause regarding the title of the applicable Department of Homeland Security (DHS) fraud hotline poster and Web site(s) or other contact information. Another respondent, however, stated that the requirement, at 252.203–700X(b)(ii) of the proposed rule, to display the DHS fraud hotline posters, is unnecessary for several reasons. It is unlikely, according to the respondent, that DoD would be awarding DHS contracts for disaster recovery, and the coverage at FAR 52.203–14 relating to the display of DHS fraud hotline posters does not need to be duplicated in the DFARS.

Response: There is a reason to include in the DFARS clause a requirement to use the DHS fraud hotline poster when DHS disaster relief funding is added to a DoD contract. The DoD clause prescription has been expanded (at 203.1004(b)(2)(ii)) to explain that information regarding the DHS hotline poster is needed only when DHS disaster relief funding is added to the DoD contract. In most cases, there is no need to display the DHS hotline poster and, therefore, no need to include in the clause information about where to obtain the DHS poster. Adding this clarification to the DFARS clause prescription removes any need to add PGI guidance on relevant information regarding the applicable DHS fraud hotline poster and Web sites or other contact information.

C. Rule Does Not Pass a Cost/Benefit Analysis

Comments: Five comments were received on this issue. One respondent remarked that the new requirement will be unnecessarily burdensome with little, if any, commensurate benefit. The respondent called the rule "an example of the stacking of regulations within and across agencies that increases the burden without any apparent benefit to achieving the mission." Three other respondents made essentially the same point, one suggesting that the rule could be viewed as an unintentional but unfortunate effort by DoD to discourage contractors from implementing rigorous internal mechanisms for dealing with compliance concerns. A respondent suggested that the proposed rule ignored the significant change already made to the FAR that requires mandatory reporting to the agency IG if the contractor has credible evidence of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity, or a violation of the civil False Claims Act in connection with Government contracts (see FAR 3.1003(b)).

According to one respondent, many company employee hotline reports simply disclose a concern about an activity or behavior without the employee knowing whether it violates only company policy or some Government contract provision or law. Posting the DoD IG hotline poster will confuse employees, asserted the respondent, and will result in company employees not reporting potentially valuable information to anyone.

Response: A requirement to hang a free poster in work areas does not appear to be measurably burdensome. Further, the DoD poster contains a prominent location for inclusion of the contractor's own fraud hotline number and does not preclude or preempt posting of a contractor's separate fraud hotline poster. As to any additional burden on the DoD IG, that office has weighed the potential cost and elected this approach.

D. Replaces the Contractor as the First Line of Defense Against Waste and Fraud

Comments: One respondent stated that this change would seriously undermine the role company hotline posters have in internal contractor compliance and ethics programs. The respondent noted that these company programs have a proven track record of inhibiting improper and/or illegal behavior. This respondent and one other respondent expressed concern that, from a purely practical perspective, removing the exemption and requiring the use of the DoD hotline posters will usurp the company's position as the first line of defense against waste and fraud and, instead, place the DoD/IG in that role.

Response: There is no intent to replace the company hotline poster. This rule supplements the Government defense against fraud, waste, and abuse.

E. Will Result in Inefficiencies for Both Contractors and the DoD IG

Comments: Five comments were received from two respondents. A respondent concluded that posting the DoD IG fraud hotline poster will result in the DoD IG becoming involved in matters of an urgent nature, as well as a significant number of day-to-day issues. Both respondents pointed out that the majority of the matters reported to company hotlines are human resource-related issues that have little or nothing to do with the direct performance and final deliverables under DoD-funded contracts and subcontracts. The respondents were concerned that, if such matters are reported through the DoD IG fraud hotline rather than directly to the contractor, the latter will be left to learn about them from the DoD IG and will be unable to respond quickly, which ultimately will have a negative impact on employee morale. Further, display of the DoD IG fraud hotline posters, according to a respondent, will assuredly result in the DoD IG being quickly drawn into a myriad of personnel and related issues, thus bogging down the system. The respondents considered that result to be against the best interests of both DoD and its contractors.

The respondents also noted that, if employees choose to contact the DoD IG hotline regarding more serious potential workplace-safety or product-quality matters, the contractor may not learn about these matters in a timely manner, thereby increasing the possibility of injury or deficient product quality. The respondents suggested that directly inserting the DoD IG into these matters could potentially result in DoD "taking on some measure of responsibility for failing to respond in a timely manner." One of the respondents quoted the GAO report as recognizing these potential issues:

> "* * * there might be practical reasons for continuing to exempt some defense contractors with their own hotlines from displaying DOD's hotline poster, such as avoiding the confusion or duplication that could occur with too many hotline posters on display in one place * * *"

Response: This rule provides contractor employees with more than one option for reporting matters of concern. Further, the Office of the DoD IG advises that its fraud hotline is adequately staffed with personnel trained to recognize and react appropriately to reports with the potential to affect safety or quality. They

further advise that the staff is trained to distinguish between routine personnel issues and those that impact Government contracts.

F. Unnecessary Because of Contractors' Existing Duty

Comments: Four respondents raised issues on this subject. One respondent pointed out that contractors already have existing contractual and regulatory duties to notify the Government of certain significant events that occur in connection with contract performance. Another respondent stated that the requirement is likely to lead to confusion as to appropriate reporting channels and mechanisms. The respondents asserted that defense industry and research institutions, as well as other segments of DoD's contracting community, take most seriously the responsibility to self-report or voluntarily disclose violations to the Government. Contractors also take very seriously the need to have open and accessible reporting mechanisms and respond expeditiously and thoroughly to matters raised through those reporting mechanisms. Creating an alternate reporting mechanism without the same level of accountability as the contractor's in-house or external reporting mechanism, according to respondents, adds no value to the process and undermines existing systems, processes, and programs already in place. A respondent took issue with the DoD IG implication, made in the background section of the proposed rule (76 FR 13328, March 11, 2011), that reports made to a contractor hotline diminished the protections available under Federal whistleblower-protection laws. This respondent expressed the strong belief that adequate provisions ensure that employees who in good faith report information to a company hotline, but who are not themselves culpable, have full whistleblower protection for their disclosures.

Response: For those contractors that have existing internal compliance programs with a fraud hotline number, the posting of the DoD IG fraud hotline poster supplements the existing reporting mechanisms. A contractor's existing duty to self-report or voluntarily disclose violations to the Government is not preempted by posting the DoD IG fraud hotline poster.

G. Exclusions and Flowdown Requirement

Comments: One respondent expressed strong support for the $5 million threshold and the exclusions provided for prime contracts that are for commercial items or that will be performed entirely outside the U.S. This respondent also strongly supported the $5 million threshold for flowdown of the requirement to subcontracts, as well as the exclusion from the flowdown requirement for subcontracts that are for commercial items or that will be performed entirely outside the U.S. However, the respondent recommended that the flowdown requirement be further limited to first-tier subcontracts.

Response: DoD has adopted the same criteria for flowdown of the new clause at DFARS 252.203–7004, Display of Fraud Hotline Posters, as is used for the comparable clause at FAR 52.203–14, Display of Hotline Posters. Because DoD is using DFARS 252.203–7004 in lieu of the clause at FAR 52.203–14, DoD has retained the same criteria for flowdown to subcontractors.

H. Allow Electronic, as an Alternate to Physical, Display of Poster

Comment: A respondent noted that the nature of the workplace has changed significantly, making the requirement to display the DoD IG hotline poster in traditional office locations less effective than it might have been in the past. The respondent, noting that the clause at FAR 52.203–14 already requires each company to display the hotline poster on the company's Web site, if a Web site is maintained, recommended that the DFARS final rule allow electronic posting to satisfy the regulatory requirement to "display the hotline poster in common work areas."

Response: The DFARS coverage specifically requires electronic display, if the contractor maintains a Web site, in addition to physical display. These are the same posting rules as are used in the comparable FAR clause, 52.203–14, Display of Fraud Hotline Posters.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the requirement to display posters has minimal economic impact and the rule only applies to contracts and subcontracts that exceed $5 million in value, so few small business concerns are impacted. However, a final regulatory flexibility analysis has been performed and is summarized as follows:

This rule was initiated in response to a Government Accountability Office (GAO–09–591) recommendation that the DoD IG should determine the need for defense contractors to display the DoD IG's fraud hotline poster. The DoD IG subsequently determined that DoD contractors, including contractors with an ethics and compliance program that includes a reporting mechanism such as a hotline poster (currently exempt), need to display DoD fraud hotline posters in a common work area within business segments performing work under the contract and at contract work sites.

The final rule does not include an exemption for DoD contractors to post their own company posters instead of the DoD IG hotline poster and requires all DoD contractors with contracts that exceed $5 million to post the DoD IG fraud hotline poster. The DoD IG determined that this FAR exemption to the posting of an agency's fraud hotline poster had the potential to make the DoD IG hotline program less effective by ultimately reducing contractor exposure to DoD IG fraud hotline posters and diminishing the means by which fraud, waste, and abuse can be reported under the protection of Federal whistleblower protection laws. The DOD IG further determined that some contractors' posters may not be as effective as the DoD poster in advertising the hotline number, which is integral to the DoD fraud program. The legal basis for the rule is 41 U.S.C. 1303 and 48 CFR chapter 1.

The rule applies to all contractors with DoD contracts with a value that exceeds $5 million. Many small businesses, therefore, are not impacted.

Paragraph (c) of the clause at FAR 52.203–14 provides that a contractor need not display any agency fraud hotline posters (other than required DHS posters) if the contractor has implemented a business ethics and conduct awareness program that includes a reporting mechanism such as a hotline poster. The DFARS rule differs

only in that it removes this FAR exemption.

There is no reporting or recordkeeping requirement established by this rule. The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no alternatives that would achieve the objectives of the final rule. No comments were received on the small business impact in response to the initial regulatory flexibility analysis.

Interested parties may obtain a copy of the final regulatory flexibility analysis (FRFA) from the point of contact named herein. A copy of the FRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 203 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 203 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 203 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 2. Amend section 203.1004 by revising paragraph (b)(2)(ii) to read as follows:

203.1004 Contract clauses.

(a) * * *

(b)(2)(ii) Unless the contract is for the acquisition of a commercial item or will be performed entirely outside the United States, if the contract exceeds $5 million, use the clause at 252.203–7004, Display of Fraud Hotline Poster(s), in lieu of the clause at FAR 52.203–14, Display of Hotline Poster(s). If the Department of Homeland Security (DHS) provides disaster relief funds for the contract, DHS will provide information on how to obtain and display the DHS fraud hotline poster.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Add section 252.203–7004 to read as follows:

252.203–7004 Display of fraud hotline poster(s).

As prescribed in 203.1004(b)(2)(ii), use the following clause:

Display of Fraud Hotline Poster(s) (Sep 2011)

(a) *Definition. United States,* as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Display of fraud hotline poster(s).*

(1) The Contractor shall display prominently in common work areas within business segments performing work in the United States under Department of Defense (DoD) contracts DoD fraud hotline posters prepared by the DoD Office of the Inspector General. DoD fraud hotline posters may be obtained from the DoD Inspector General, Attn: Defense Hotline, 400 Army Navy Drive, Washington, DC 22202–2884.

(2) If the contract is funded, in whole or in part, by Department of Homeland Security (DHS) disaster relief funds, the DHS fraud hotline poster shall be displayed in addition to the DoD fraud hotline poster. If a display of a DHS fraud hotline poster is required, the Contractor may obtain such poster from:

_____

[Contracting Officer shall insert the appropriate DHS contact information or website.]

(3) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that exceed $5 million except when the subcontract—

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

(End of clause)

[FR Doc. 2011–23782 Filed 9–15–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 209, 216, and 252

[DFARS Case 2011–D033]

RIN–0750–AH37

Defense Federal Acquisition Regulation Supplement; Award Fee Reduction or Denial for Health or Safety Issues

AGENCY: Defense Acquisition Regulations System, Department of Defense (DOD).

ACTION: Interim rule.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement those sections of the National Defense Authorization Acts (NDAA) for Fiscal Years (FY) 2011 and 2010 providing increased statutory authorities to reduce or deny award fees to companies found to jeopardize the health or safety of Government personnel and adding a mechanism to decrease or eliminate a contractor's award fee for a specific performance period. In addition, this rule modifies the section of the NDAA for FY 2009 that requires that information on the final determination of award fee be entered into the Federal Awardee Performance and Integrity Information System (FAPIIS).

DATES: *Effective Date:* September 16, 2011.

Applicability Date: This interim rule is applicable to any contract entered into on or after the effective date. This interim rule is applicable to any task order or delivery order issued on or after the effective date of this interim rule, under a contract entered into before, on, or after the effective date.

Comments Date: Comments on the interim rule should be submitted in writing to the address shown below on or before November 15, 2011 to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by DFARS Case 2011–D033, using any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2011–D033" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2011–D033." Follow the instructions provided at the "Submit a Comment" screen.

Please include your name, company name (if any), and "DFARS Case 2011–D033" on your attached document. Follow the instructions for submitting comments.

- *E-mail: dfars@osd.mil.* Include DFARS Case 2011–D033 in the subject line of the message.
- *Fax:* 703–602–0350.
- *Mail:* Defense Acquisition Regulations System, ATTN: Meredith Murphy, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Meredith Murphy, telephone 703–602–1302.

SUPPLEMENTARY INFORMATION:

I. Background

An interim rule was published in the **Federal Register** under DFARS Case 2009–D039, Award-Fee Reductions for Health and Safety Issues, on November 12, 2010, at 75 FR 69360 to implement section 823 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84). This interim rule includes the review of public comments received in response to the **Federal Register** notice for DFARS Case 2009–D039. DFARS Case 2009–D039 was merged into this case, DFARS Case 2011–D033, after the NDAA for FY 2011 (Pub. L. 111–383) was enacted on January 7, 2011, in order to combine related sections of the NDAAs for FY 2010 and FY 2011 affecting identical sections of the DFARS.

A. Section 834 Interim Rule

- The NDAA for FY 2011 was enacted on January 7, 2011. Section 834 of the statute added to existing statutory authorities to decrease or eliminate a contractor's award fee for a performance period based on a final determination resulting from a DoD investigation of a serious bodily injury or death of any civilian or military personnel alleged to have been caused by a contractor or subcontractor.
- Section 834 applies only to contractors and subcontractors at any tier that are not subject to the jurisdiction of U.S. courts.

A contractor's award fee is affected if, after the investigation, a determination is made that the serious bodily injury or death was caused by the contractor's or subcontractor's gross negligence or with reckless disregard for the safety of civilian or military personnel of the Government.

Senate Report 111–201, "to accompany S. 3454, the National Defense Authorization Act for Fiscal Year 2011," associated with section 834, stated that investigations under the provision would be conducted pursuant to existing DoD procedures for administrative fact-finding investigations, such as those provided by Army Regulation 15–6 and the Manual of the Judge Advocate General of the Navy. Defense Criminal Investigative Organizations (DCIOs) have procedures in place currently for conducting criminal investigations of contractor misconduct. In addition, the Military Services have procedures for conducting administrative investigations involving actions related to civilian and military personnel. Findings of criminal misconduct are made at the conclusion of the DCIO investigations.

- The statute also modifies section 872 of the NDAA for FY 2009 (Pub. L. 110–417), and requires that information on the final determination be entered into the Federal Awardee Performance and Integrity Information System (FAPIIS) (see DFARS 209.105–2–70) and will be available to the public.

DoD has added a provision at DFARS 209.105–2–70 to provide for the inclusion of a final determination of contractor fault in the FAPIIS (see FAR 9.104–6 and *http://www.ppirs.gov*). In addition, the requirements of section 834 have been included at DFARS 216.405–2–70, Award fee reduction or denial for jeopardizing the health or safety of Government personnel, and added as a fifth cause for reducing or denying a contractor's award fee in the clause at DFARS 252.216–7004.

B. Section 823 Interim Rule

The related statutory provision, section 823 of the NDAA for FY 2010, currently is addressed at DFARS 216.405–2–70, Award fee reduction for jeopardizing the health or safety of Government personnel, and the clause at DFARS 252.216–7004 (similarly titled), which require the contracting officer to include in the evaluation criteria of any award-fee plan a review of contractor actions that jeopardized the health and safety of Government personnel. As previously discussed, the section 823 requirement was implemented in the DFARS by DFARS Case 2009–D039, published in the **Federal Register** as an interim rule on November 12, 2010, at 75 FR 69360, prior to its being merged into this case, 2011–D033, Award Fee Reduction or Denial for Health or Safety Issues.

II. Discussion and Analysis

The public comment period for the interim rule issued under DFARS Case 2009–D039 closed January 24, 2011. Two respondents submitted comments on the interim rule. The individual comments are discussed below.

A. Applicability

Comment: A respondent recommended that the rule be applied to harm caused to any person (not just Government employees).

Response: Section 823 addresses "serious bodily injury or death to any civilian or military personnel of the Government." Extension of the application of this rule to any person is outside the scope of the statute.

Comment: The respondent commented that the definition of "covered incident" should be broadened, such that contractors are not encouraged to settle out of court and thus deny any liability or wrong-doing and protect their award fees.

Response: The rule implements the statutory definition of a "covered incident" in section 823 of the NDAA for FY 2010, which provides instructions to the contracting officer to reduce the award fee if the contractor is found at fault for a covered incident. It does not instruct the Government on how to proceed with any investigation or resolve covered incidents. No changes to the statutory definition are determined necessary in response to this comment.

Comment: A respondent called for the contracting officer to be allowed to consider any incident that calls into question a contractor's integrity or responsibility when deciding whether to reduce or deny award fees.

Response: Extension of the application of this rule to any incident that calls into question a contractor's integrity or responsibility is outside the scope of the statute; however, other parts of the FAR, such as FAR parts 3, Improper Business Practices and Personal Conflicts of Interest, and 9, Contractor Qualifications, and the related DFARS parts, provide information on dealing with contractor responsibility and improper business practices.

B. Documentation

Comment: A respondent stated that contracting officers should be required to make a written determination regarding decisions to reduce or deny

the award fee or decline to do so. The statements should also be made available to the public, according to this respondent.

Response: FAR 16.401(e)(2) states that "(t)he basis for all award-fee determinations shall be documented in the contract file, to include, at a minimum, a determination that overall cost, schedule, and technical performance in the aggregate is or is not at a satisfactory level." The award-fee determination does not go into FAPIIS. It is the "final determination of contractor fault by the Secretary of Defense" (section 834(d)) that is required to be submitted into FAPIIS. While the latter determination impacts the former determination, they are not the same thing. A requirement for public posting of award-fee determinations is outside the scope of the statute.

C. Contractor Liability

Comment: The respondent noted that contractors performing on contracts within Government facilities have little control over the conditions of the facilities, the funding to provide for repairs to facilities, or the priorities of the repairs.

Response: The DFARS clause at 252.216–7004, Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel, applies only when a direct, causal connection is found between a contractor's actions and a serious bodily injury to a Government employee.

Comment: The respondent expressed concern that, if a contractor is found partially liable under the Occupational Safety and Health Administration multi-employer worksite policy for a hazardous worksite condition that caused serious injury, then the contractor's future/past award fee could be reduced or denied.

Response: The statute as implemented in DFARS clause 252.216–7004, requires that if a contractor is found liable in a covered incident for causing serious bodily injury to a Government employee, the contracting officer must consider reducing or denying the relevant award fee.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and therefore was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

On November 12, 2010, DoD published an interim rule at 75 FR 69360 implementing section 823 of the NDAA for FY 2010. The interim rule was immediately effective upon publication. Section 823 required contracting officers to consider reduction or denial of award fee if the actions of the contractor or a subcontractor at any tier jeopardize the health or safety of Government personnel. DoD did not prepare an initial regulatory flexibility analysis at that time because generally, contracts awarded to small business are not likely to utilize incentive- and award-fee contract structures. No comments were received on the regulatory flexibility section of the notice for the interim rule implementing section 823.

DoD does not expect this interim rule implementing section 834 of the NDAA for FY 2011 to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This rule does not apply to firms that are subject to the jurisdiction of U.S. courts. By definition, small businesses are U.S. businesses and, therefore, are subject to the jurisdiction of the U.S. courts. Accordingly, this rule will not affect small businesses. An initial regulatory flexibility analysis has not been performed because this rule will apply only to primes and subcontractors at any tier that are not subject to the jurisdiction of the U.S. courts. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011–D033) in correspondence.

V. Paperwork Reduction Act

The interim rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

VI. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. Pursuant to section 823 of the NDAA for FY 2010, contracting officers shall include in the evaluation criteria of any award-fee plan, a review of contractor and subcontractor actions that jeopardize the health and safety of Government personnel, through gross negligence or reckless disregard for the safety of such personnel, as determined through conviction in a criminal proceeding or finding of fault and liability in a civil or administrative proceeding. Additionally, pursuant to section 834 of the NDAA for FY 2011, which became effective on enactment, January 7, 2011, contracting officers are authorized to make a determination of contractor or subcontractor fault where DoD has reason to believe that a contractor or subcontractor may have caused the serious bodily injury or death of civilian or military personnel and the contractor or any subcontractor is not subject to the jurisdiction of the U.S. courts. If DoD finds that a contractor or subcontractor caused the death or serious injury through gross negligence or with reckless disregard for the safety of such personnel, this final determination shall be included in award-fee determinations, thereby providing an important remedy for those situations where a DoD contractor or subcontractor is not otherwise subject to U.S. court jurisdiction. Issuing an interim rule will provide contracting officers with this important remedy immediately upon publication of the rule. However, pursuant to 41 U.S.C. 1707 (formerly 41 U.S.C. 418b) and FAR 1.501–3(b), DoD will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 209, 216, and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 209, 216, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 209, 216, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 209—CONTRACTOR QUALIFICATIONS

■ 2. Add section 209.105 to subpart 209.1 to read as follows:

209.105 Procedures

■ 3. Add section 209.105–2–70 to read as follows:

209.105–2–70 Inclusion of determination of contractor fault in Federal Awardee Performance and Integrity Information System (FAPIIS).

If the contractor or a subcontractor at any tier is not subject to the jurisdiction of the U.S. courts and the DoD appointing official that requested a DoD investigation makes a final determination that a contractor's or subcontractor's gross negligence or reckless disregard for the safety of civilian or military personnel of the Government caused serious bodily injury or death of such personnel, the contracting officer shall enter in FAPIIS the appropriate information regarding such determination within three days of receiving notice of the determination, pursuant to section 834 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383). Information posted in FAPIIS regarding such determinations will be publicly available.

PART 216—TYPES OF CONTRACTS

■ 4. Amend section 216.405–2–70 by revising paragraphs (b) and (c) to read as follows:

216.405–2–70 Award fee reduction or denial for jeopardizing the health or safety of Government personnel.

* * * * *

(b) The contracting officer shall include in the evaluation criteria of any award-fee plan, a review of contractor and subcontractor actions that jeopardized the health or safety of Government personnel, through gross negligence or reckless disregard for the safety of such personnel, as determined through—

(1) Conviction in a criminal proceeding, or finding of fault and liability in a civil or administrative proceeding (in accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84)); or

(2) If a contractor or a subcontractor at any tier is not subject to the jurisdiction of the U.S. courts, a final determination of contractor or subcontractor fault resulting from a DoD investigation (in accordance with section 834 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383)).

(c) In evaluating the contractor's performance under a contract that includes the clause at 252.216–7004, Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel, the contracting officer shall consider reducing or denying award fees for a period if contractor or subcontractor actions cause serious bodily injury or death of civilian or military Government personnel during such period. The contracting officer's evaluation also shall consider recovering all or part of award fees previously paid for such period.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Revise section 252.216–7004 to read as follows:

252.216–7004 Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel.

As prescribed in 216.406 use the following clause:

Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel (SEP 2011)

(a) *Definitions.* As used in this clause—

Covered incident—

(i) Means any incident in which the Contractor, through a criminal, civil, or administrative proceeding that results in a disposition listed in paragraph (a)(ii) of this definition—

(A) Has been determined in the performance of this contract to have caused serious bodily injury or death of any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel; or

(B) Has been determined to be liable for actions of a subcontractor of the Contractor that caused serious bodily injury or death of any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel.

(ii) Includes those incidents that have resulted in any of the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil proceeding, a finding of fault or liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damage of $5,000 or more.

(C) In an administrative proceeding, a finding of fault and liability that results in—

(*1*) The payment of a monetary fine or penalty of $5,000 or more; or

(*2*) The payment of a reimbursement, restitution, or damages in excess of $100,000.

(D) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in subparagraphs (a)(ii)(A), (a)(ii)

(B), or (a)(ii)(C).

(E) In a DoD investigation of the Contractor or its subcontractors at any tier not subject to the jurisdiction of the U.S. courts, a final determination by the Secretary of Defense of Contractor or subcontractor fault (see DFARS 216.405–2–70.

Serious bodily injury means a grievous physical harm that results in a permanent disability.

(b) If, in the performance of this contract, the Contractor's or its subcontractor's actions cause serious bodily injury or death of civilian or military Government personnel, the Government may reduce or deny the award fee for the period in which the covered incident occurred, including the recovery of all or part of any award fees paid for any previous period during which the covered incident occurred.

(End of clause)

[FR Doc. 2011–23630 Filed 9–15–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 216

[DFARS Case 2011–D010]

RIN 0750–AH15

Defense Federal Acquisition Regulation Supplement; Increase the Use of Fixed-Price Incentive (Firm Target) Contracts

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the DFARS to increase the use of fixed-price incentive (firm target) contracts, with particular attention to share lines and ceiling prices.

DATES: *Effective date:* September 16, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, telephone 703–602–0328.

SUPPLEMENTARY INFORMATION:

I. Background

This DFARS case was initiated to implement an initiative to incentivize productivity and innovation in industry, as set forth in a memorandum from the Under Secretary of Defense for Acquisition, Technology, & Logistics (USD(AT&L)), dated November 3, 2010. The memorandum provided guidance to the secretaries of the military departments and directors of defense

agencies on obtaining greater efficiency and productivity in defense spending. In support of this initiative, DoD published a proposed rule in the **Federal Register** on March 2, 2011 (76 FR 11410). The proposed rule required that contracting officers must—

(1) Give particular consideration to the use of fixed-price incentive (firm target) contracts, especially for acquisitions moving from development to production; and

(2) Pay particular attention to share line and ceiling prices for fixed-price incentive (firm target) contracts, with 120 percent ceiling and a 50/50 share ratio as the default arrangement.

The comment period closed on May 2, 2011. DoD received comments from one respondent.

II. Discussion/Analysis

The respondent considered that the incorporation of a broad preference to use a 50/50 share line with a ceiling of 120 percent is a mistake for Government acquisitions for the reasons discussed in the following comments.

Comment: The respondent provided anecdotal evidence that currently acquisition leadership translates this preference as a mandatory requirement.

Response: All of the documentation for this case, and all of the presentations by senior acquisition leaders within DoD, have emphasized that this initiative is to be implemented in a way that makes sense for each individual acquisition. The guidance in the DFARS companion Procedures, Guidance, and Information (PGI) reiterates that each situation must be evaluated in terms of the degree and nature of the risk presented in order to select the proper contract type. The PGI also provides additional guidance on establishing the target cost, share lines, and ceiling price. This regulation is not a "one-size-fits-all" mandate.

However, to make the final rule more consistent with the terminology of the USD(AT&L) memo of November 3, 2010, and to clarify that each contract must be considered on a case-by-case basis, DoD has revised the description of the use of a fixed-price incentive (firm target) contract with a 50/50 share ratio and a 120 percent ceiling from "the default arrangement" to "the point of departure for establishing the incentive arrangement."

Comment: According to the respondent, the Institute for Defense Analyses (IDA) study, Can Profit Policy and Contract Incentives Improve Defense Contract Outcomes?, makes a strong case for the ineffectiveness of incentive contracts.

Response: The majority of incentive contracts covered by the IDA study were award-fee contracts, not fixed-price incentive (firm target) contracts. Furthermore, DoD is actively taking steps to ensure that incentives are linked to acquisition outcomes and the profits are tied to performance in achieving those outcomes.

Comment: The respondent stated that in order to correct the use of incentives, DoD should mandate that contracting officers use a true pessimistic/optimistic weighted average and ensure that their cost curves do not mirror cost-plus-fixed-fee cost curves.

Response: DoD endorses the respondent's concept that contracting officers should carefully develop a realistic target cost and that an incentive contract should provide adequate incentives. The reason for specifying the 120 percent ceiling and the 50/50 cost sharing arrangement as the point of departure for establishing the incentive arrangement is to promote cost realism and discourage an incentive arrangement that does not provide adequate incentive to the contractor to control costs. An excessively flat share line approaches a cost-plus-fixed-fee arrangement (100/0), thereby providing almost no incentive to the contractor to control costs. A 50/50 share line suggests that the Government and the contractor have a common view of the likely contract execution cost. A 50/50 share line should represent a point where the estimate is deemed equally likely to be too high or too low. However, as already stated, rather than issuing mandates, DoD encourages the evaluation of each situation in terms of the degree and nature of the risk presented in order to select the proper contract type and, if an incentive contract type is selected, the appropriate incentive arrangement.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq*. The FRFA is summarized as follows:

This rule amends the Defense Federal Acquisition Regulation Supplement to implement the initiative on incentivizing productivity and innovation in industry, as presented by the Under Secretary of Defense for Acquisition, Technology, & Logistics in a memorandum dated November 3, 2010. The objective of the rule is to incentivize contractors to control costs. The legal basis is 41 U.S.C. 1303 and 48 CFR chapter 1.

There were no public comments in response to the initial regulatory flexibility analysis.

The final rule will not have much impact on small entities, because the focus of the rule is on development efforts that are moving into early production. Small entities are more likely to receive awards for commercial products, including commercially available off-the-shelf products, for which firm-fixed-price contracts are appropriate. In Fiscal Year 2010, 93 percent of awards to small businesses were firm-fixed-price contracts, and 99.99 percent of awards to small businesses were other than fixed-price incentive contracts.

The final rule imposes no reporting, recordkeeping, or other information collection requirements.

There are no known alternatives to the rule that would adequately implement the DoD policy. There is no significant economic impact on small entities.

There are no other alternatives that will accomplish the objectives of the rule.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 216

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 216 is amended as follows:

PART 216—TYPES OF CONTRACTS

■ 1. The authority citation for 48 CFR part 216 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Add section 216.403–1 to read as follows:

216.403–1 Fixed-price incentive (firm target) contracts.

(b) *Application.*

(1) The contracting officer shall give particular consideration to the use of fixed-price incentive (firm target) contracts, especially for acquisitions moving from development to production.

(2) The contracting officer shall pay particular attention to share lines and ceiling prices for fixed-price incentive (firm target) contracts, with a 120 percent ceiling and a 50/50 share ratio as the point of departure for establishing the incentive arrangement.

(3) See PGI 216.403–1 for guidance on the use of fixed-price incentive (firm target) contracts.

[FR Doc. 2011–23779 Filed 9–15–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–02]

RIN 0648–XA704

Fisheries of the Exclusive Economic Zone Off Alaska; Shallow-Water Species by Vessels Using Trawl Gear in the Gulf of Alaska

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 shallow-water species by vessels using trawl gear in the Gulf of Alaska (GOA) for 48 hours. This action is necessary to fully use the fourth seasonal apportionment of the 2011 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 14, 2011, through 1200 hrs, A.l.t., September 16, 2011. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 28, 2011.

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2011–0224, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter NOAA–NMFS–2011–0224 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, NMFS, P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557; Attn: Glenn Merrill.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 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 shallow-water species by vessels using trawl gear in the GOA under § 679.21(d)(7)(i) on September 3, 2011 (76 FR 55726, September 7, 2011).

As of September 12, 2011, NMFS has determined that approximately 149 metric tons remain in the fourth seasonal apportionment of the 2011 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the fourth seasonal apportionment of the 2011 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA, NMFS is terminating the previous closure and is opening directed fishing for trawl shallow-water species by vessels using trawl gear in the GOA. This will enhance the socioeconomic well-being of harvesters dependent upon shallow-water species in this area. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of halibut by trawl vessels participating in the shallow-water species fisheries and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels participating in this fishery.

In accordance with § 679.21(d)(7)(i), the Regional Administrator has determined that the fourth seasonal apportionment of the Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA will be reached after 48 hours. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates, and "other species." This prohibition does not apply to fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This inseason action does not apply to vessels fishing under a cooperative quota permit in the cooperative fishery in the Rockfish Program for the Central GOA.

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 shallow-water species by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent and relevant data only became available as of September 12, 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 fishery for shallow-water species by vessels using trawl gear in the GOA 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 September 28, 2011.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: September 13, 2011.

Steven Thur,

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

[FR Doc. 2011–23827 Filed 9–13–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 180
Friday, September 16, 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

Agricultural Research Service

7 CFR Part 505

RIN 0518–8AA04

Modification of Interlibrary Loan Fee Schedule

AGENCY: Agricultural Research Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Research Service proposes to amend its regulations on the fee schedule for interlibrary loan from the collections of the National Agricultural Library.

The revised fee schedule is based on the method of payment used (traditional invoicing through the National Technical Information Service (NTIS) or payment through the Online Computer Library Center (OCLC) network's Interlibrary Fee Management program, a debit/credit program for interlibrary loan) rather than type of material requested (loan, photocopy, microform) and eliminates the current billing surcharge which is instead incorporated into the revised flat fee. The revision brings these fees up to date in order to support the current cost of providing the service and will enable customers to estimate charges more easily and distribute them more effectively within their own institutions.

DATES: Submit comments on or before November 15, 2011.

ADDRESSES: Send comments to Kay Derr, Document Delivery Services Branch, National Agricultural Library, 10301 Baltimore Avenue, Beltsville, MD 20705–2351. Telephone (301) 504–5879 or fax (301) 504–6503.

FOR FURTHER INFORMATION CONTACT: *kay.derr@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: The proposed revised fee schedule for interlibrary loan from the collections of the National Agricultural Library is shown below.

Format	Fee
Loan Requests, Copy Requests (paper or microfilm up to 50 pages), Microfiche Duplication Requests (up to 5 fiche).	$25.00 per request if invoiced through NTIS. $18.00 per request if paid through OCLC's Interlibrary Fee Management (IFM) service.

This fee schedule applies to interlibrary loan requests only. All of the current services will continue to be offered under the revised fee schedule. The lower fee for payment through the IFM program reflects the lower administrative cost of these transactions due to the fact that IFM payment is wholly electronic and no invoices have to be produced or mailed. The National Agricultural Library will continue to invoice and collect fees through the National Technical Information Service (NTIS) for libraries which do not pay through IFM. The fee for invoiced requests is higher in order to cover the fee charged by NTIS for producing and processing invoices. This change has been reviewed by the Office of Management and Budget and deemed ''not significant.''

This action is not a ''rule'' as defined under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and thus is exempt from provisions of that Act.

This action is not likely to have an impact of $100 million or more on the U.S. economy and thus is not a ''significant regulatory action'' under Executive Order (''E.O.'') 12866. Therefore, this notice is not subject to formal Office of Management and Budget review.

List of Subjects in 7 CFR Part 505:

Agricultural research, Agriculture, Libraries, Research, User fees.

For reasons set forth in the preamble, the Agricultural Research Service proposes to revise 7 CFR part 505 as set forth below:

PART 505—NATIONAL AGRICULTURAL LIBRARY FEES FOR LOANS AND COPYING

Sec.
505.1 Scope and purpose.
505.2 Fees for loans, copying, duplicating and reproduction of materials in library collections.
505.3 [Reserved]
505.4 [Reserved]
505.5 [Reserved]
505.6 Payment of fees.

Authority: 5 U.S.C. 301; 7 U.S.C. 3125a.

§ 505.1 Scope and purpose.

These regulations establish fees for loans, copying, duplication, or reproduction of materials in the collections of the National Agricultural Library (NAL) within the United States Department of Agriculture (USDA).

§ 505.2 Fees for loans, copying, duplicating and reproduction of materials in library collections.

(a) NAL will provide interlibrary loan service (including loans of original materials from its collections and copies of portions of documents with copyright compliance) and charge fees for such service to other non-Federal and non-USDA libraries and institutions. Loans will be provided within the United States and Canada only. Copies will be provided within the United States and internationally.

(b) Interlibrary loan service will be provided at a flat fee of $18 per request for libraries paying electronically through OCLC's Interlibrary Loan Fee Management (IFM) program and at a flat rate of $25 per request for libraries paying by other methods.

(c) Cost for replacement of lost or damaged items will be the actual cost to purchase a replacement plus a $50.00 processing fee; or if replacement cost cannot be determined, a flat rate of $75.00 for monographs or $150.00 for audiovisuals per item plus a $50.00 processing fee.

(d) Photographic services from NAL Special Collections will be charged at cost for reproduction of the photo product (slides, transparencies, etc.)

plus a preparation fee of $25.00 per half hour or fraction thereof.

§ 505.3 [Reserved]

§ 505.4 [Reserved]

§ 505.5 [Reserved]

§ 505.6 Payment of Fees.

NAL charges for interlibrary loans through OCLC's Interlibrary Loan Fee Management Program (an electronic debit/credit payment program for libraries using OCLC's resource sharing service) or by invoice through the National Technical Information Service (NTIS) of the United States Department of Commerce. Payment for invoiced services will be made by check, money order or credit card in U.S. funds directly to NTIS upon receipt of invoice from NTIS. NAL encourages users to establish deposit accounts with NTIS for payment of interlibrary loan fees. Subject to a reduction for the actual costs of performing the invoicing service by NTIS, all funds will be returned to NAL for credit to the appropriations account charged with the cost of processing the interlibrary loan request.

Dated: September 6, 2011.

Edward B. Knipling,

Administrator, Agricultural Research Service.

[FR Doc. 2011–23723 Filed 9–15–11; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71, 77, 78, and 90

[Docket No. APHIS–2010–0125]

Secretary's Advisory Committee on Animal Health; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This is a notice to inform the public of an upcoming meeting of the Secretary's Advisory Committee on Animal Health. The meeting is organized by the Animal and Plant Health Inspection Service to discuss matters of animal health.

DATES: The meeting will be held September 23, 2011, from noon to 5 p.m. (eastern daylight time).

ADDRESSES: The meeting will be conducted as a multisite teleconference. Opportunities for public attendance are described in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Michael R. Doerrer, Chief Operating Officer, Veterinary Services, APHIS, USDA, 4700 River Road Unit 37, Riverdale, MD 20737; (301) 734–5665; e-mail: *SACAH.Management@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Animal Health (the Committee) advises the Secretary of Agriculture on matters of animal health, including means to prevent, conduct surveillance on, monitor, control, or eradicate animal diseases of national importance. In doing so, the Committee will consider public health, conservation of natural resources, and the stability of livestock economies.

During the September 23, 2011, meeting, which will be conducted as a multisite teleconference, the Committee will consider and discuss various aspects of the recently published proposed rule on traceability for livestock moving interstate. The Committee will also consider and discuss the bovine tuberculosis program, including possible wildlife surveillance requirements, test and remove management plans, and the issue of indemnity within the context of the new bovine tuberculosis/brucellosis framework that is being developed. Additional information, including the final agenda for the meeting, will be posted on the Committee's Web site at *http://www.aphis.usda.gov/animal_health/acah/*.

Public Participation

This meeting will be a multisite teleconference. Public attendees may join the call in ''listen-only'' mode. Members of the public who wish to listen in on the teleconference may do so by dialing 1–888–790–3291, followed by a public passcode, 1411045.

APHIS also plans to allow public access through Twitter during this teleconference. Questions and comments may be submitted for the Committee's consideration before the teleconference once the SACAH Twitter account has been established. The account name and instructions for participation via Twitter will be published on the SACAH Web site.

Questions and written comments may also be submitted up to 5 working days in advance of the teleconference. They can be sent via e-mail to *SACAH.Management@aphis.usda.gov* or mailed to the person listed under **FOR FURTHER INFORMATION CONTACT** at the beginning of this notice.

This notice of the meeting agenda is given pursuant to section 10 of the Federal Advisory Committee Act (5 U.S.C. App. 2).

Done in Washington, DC, this 8th day of September 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–23727 Filed 9–15–11; 8:45 am]

BILLING CODE 3410–34–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

[Docket No. CPSC–2010–0087]

Petition Requesting Regulations Restricting Cadmium in Children's Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (''Commission'' or ''CPSC'' or ''we'') has received a petition requesting standards restricting cadmium in children's products, especially toy metal jewelry. On September 6, 2011, the Commission granted the petition and directed CPSC staff to begin drafting a proposed rule unless a voluntary standard for cadmium in children's jewelry is published by ASTM International, Inc. (''ASTM'') within three months after September 16, 2011. If a voluntary standard for cadmium in children's jewelry is published by ASTM within this timeframe, then CPSC staff is directed to assess the adequacy of the voluntary standard and whether there is substantial compliance with the voluntary standard and based on these assessments make a recommendation on the disposition of this petition within nine months after September 16, 2011.

In addition, the Commission granted the petition and directed CPSC staff to begin drafting a proposed rule unless a voluntary standard for cadmium in children's toy jewelry is published by ASTM within three months after September 16, 2011. If a voluntary standard for cadmium in children's toy jewelry is published by ASTM within this timeframe, then CPSC staff is directed to assess the adequacy of the voluntary standard and whether there is substantial compliance with the voluntary standard and based on these assessments make a recommendation on the disposition of this petition within nine months after September 16, 2011.

FOR FURTHER INFORMATION CONTACT: Rocky Hammond, Office of the

Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD, 20814; telephone (301) 504–6833, *e-mail: rhammond@cpsc.gov.*

SUPPLEMENTARY INFORMATION: On May 28, 2010, the Empire State Consumer Project, Sierra Club, Center for Environmental Health, and the Rochesterians Against the Misuse of Pesticides (''petitioners'') submitted a petition stating that the Commission should issue regulations to ban cadmium in all toy jewelry under the Federal Hazardous Substances Act (''FHSA''), 15 U.S.C. 1261 *et seq.* The request was docketed under the FHSA as Petition No. HP 10–2.

Petitioners requested that the Commission adopt regulations declaring that any toy metal jewelry containing more than trace amounts of cadmium by weight, which could be ingested by children, be declared a banned hazardous substance. If the Commission finds that it lacks sufficient information to determine the appropriate level of cadmium in products, petitioners requested that the Commission, as an interim measure, adopt the maximum levels established for lead. In addition, petitioners requested a test method based on total cadmium, which simulates a child chewing the jewelry before swallowing, by cutting the metal jewelry in half, and evaluating the extractability of cadmium from children's metal jewelry based on a 24-hour acid extraction period. Petitioners also asserted that if the CPSC has insufficient information regarding cadmium, it should obtain additional information under the Interagency Testing Commission (''ITC'') through the Toxic Substances Control Act (''TSCA'') administered by the Environmental Protection Agency (''EPA'') to include metal jewelry in the scope of reporting under section 8(d) of the TSCA and require importers and processers to test toy metal jewelry for cadmium.

On February 16, 2011, the Commission voted unanimously to defer its decision on the petition for six months and directed CPSC staff to participate in the ASTM subcommittees. Specifically, the Commission directed staff to participate in the ASTM F15.24 subcommittee to develop a voluntary standard addressing accessible cadmium from children's metal jewelry and to work with the ASTM F15.22 subcommittee on the ASTM F963 standard with respect to toy jewelry.

On August 30, 2011, CPSC staff provided the Commission with an update regarding the voluntary standards activities under the ASTM subcommittees that would address cadmium in children's jewelry and toy jewelry. The update is available on the CPSC Web site at: *http://www.cpsc.gov/LIBRARY/FOIA/FOIA11/brief/cadmiumpetupd.pdf*. CPSC staff indicated that the work on those standards was expected to be completed in 2011.

On September 6, 2011, by a 3–2 vote,[1] the Commission granted the petition and directed CPSC staff to begin drafting a proposed rule unless a voluntary standard for cadmium in children's jewelry is published by ASTM within three months after September 16, 2011. If a voluntary standard for cadmium in children's jewelry is published by ASTM within this timeframe, then CPSC staff is directed to assess the adequacy of the voluntary standard and whether there is substantial compliance with the voluntary standard and based on these assessments make a recommendation on the disposition of this petition within nine months after September 16, 2011.

In addition, the Commission granted the petition and directed CPSC staff to begin drafting a proposed rule unless a voluntary standard for cadmium in children's toy jewelry is published by ASTM within three months after September 16, 2011. If a voluntary standard for cadmium in children's toy jewelry is published by ASTM within this timeframe, then CPSC staff is directed to assess the adequacy of the voluntary standard and whether there is substantial compliance with the voluntary standard and based on these assessments make a recommendation on the disposition of this petition within nine months after September 16, 2011.

The Commission further directed CPSC staff to issue a notice in the **Federal Register** announcing the outcome of the vote and status of the petition. Thus, this notice announces the vote that occurred on September 6, 2011, the actions that the Commission directed CPSC staff to take, and the status of the petition.

[1] Chairman Inez M. Tenenbaum and Commissioners Thomas H. Moore and Robert S. Adler voted to take this action. Commissioners Nancy A. Nord, and Anne M. Northup voted to defer the petition (HP10–2) for an additional six months and direct staff to continue its participation in the ASTM F15.24 subcommittee to develop a voluntary standard addressing accessible cadmium from children's metal jewelry, as well as continue its participation in the ASTM F15.22 subcommittee to amend the ASTM F963 toy safety standard. Chairman Tenenbaum and Commissioner Nord issued statements which are available at *http://www.cpsc.gov/PR/statements.html.*

Dated: September 13, 2011.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2011–23810 Filed 9–15–11; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Chapter III

Regulatory Review Schedule

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Notice of date and location change for Tribal consultation meeting.

SUMMARY: The purpose of this document is to change the date and location for the Tribal consultation scheduled for November 14–15, 2011 at the Spa Resort Casino, Palms Springs, California to November 14, 2011 in Rapid City, South Dakota.

DATES: See **SUPPLEMENTARY INFORMATION** below for dates and locations of cancelled consultations.

FOR FURTHER INFORMATION CONTACT: Lael Echo-Hawk, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005. Telephone: 202–632–7003; e-mail: *reg.review@nigc.gov*.

SUPPLEMENTARY INFORMATION: On November 18, 2010, the National Indian Gaming Commission (NIGC) issued a Notice of Inquiry and Notice of Consultation advising the public that it was conducting a review of its regulations promulgated to implement 25 U.S.C. 2701–2721 of the Indian Gaming Regulatory Act (IGRA) and requesting public comment on the process for conducting the regulatory review. On April 4, 2011, after holding eight consultations and reviewing all comments, NIGC published a Notice of Regulatory Review Schedule in the **Federal Register** setting out consultation schedules and review processes. (76 FR 18457, April 4, 2011).

The Commission's regulatory review process established a Tribal consultation schedule with a description of the regulation groups to be covered during consultation.

Group 1 included a review of:

(a) A Buy Indian Act regulation;
(b) Part 523—Review and Approval of Existing Ordinances or Resolutions;
(c) Part 514—Fees;
(d) Part 559—Facility License Notifications, Renewals, and Submissions; and

(e) Part 542—Minimum Internal Control Standards.

Group 2 included a review of:

(a) Part 573—Enforcement; and

(b) Regulations concerning proceedings before the Commission, including: Parts 519—Service, Part 524—Appeals, Part 539—Appeals, and Part 577—Appeals Before the Commission.

Group 3 included a review of:

(a) Part 543—Minimum Internal Control Standards for Class II Gaming; and

(b) Part 547—Minimum Technical Standards for Gaming Equipment Used With the Play of Class II Games.

Group 4 included a review of:

(a) Part 556—Background Investigations for Primary Management Officials and Key Employees;
(b) Part 558—Gaming Licenses for Key Employees and Primary Management Officials;
(c) Part 571—Monitoring and Investigations;
(d) Part 531—Collateral Agreements;
(e) Part 537—Background Investigations for Persons or Entities With a Financial Interest in, or Having Management Responsibility for, a Management Contract; and
(f) Part 502—Definitions.

Group 5 included a review of:

(a) Part 518—Self Regulation of Class II Gaming;
(b) A Sole Proprietary Interest regulation; and
(c) Class III MICS.

The Commission has conducted 12 consultations since April 2011 and will continue consultations on the regulations, however, the Commission has removed Group 3 regulations (Class II MICS and Technical Standards) and Class III MICS from the current consultation schedule. A Tribal Advisory Committee will review those regulations during a separate meeting schedule. The Commission intends to consult with Tribes on Group 3 regulations and Class III MICS after completion of the Tribal Advisory Committee process.

This document advises the public that the following Tribal consultation has been changed to a one day consultation in Rapid City, South Dakota.

Consultation date	Event	Location	Regulation group(s)
November 14–15, 2011	NIGC Consultation—California	Spa Resort Casino, Palm Springs, CA	5

New date and location:

Consultation date	Event	Location	Regulation group(s)
November 14, 2011	NIGC Consultation—Great Plains	Hilton Garden Inn, Rapid City, SD	1, 2, 4, 5

For additional information on consultation locations and times, please refer to the Web site of the National Indian Gaming Commission, *http://www.nigc.gov*.

Dated: September 12, 2011 in Washington, DC.

Tracie L. Stevens,

Chairwoman.

Steffani A. Cochran,

Vice-Chairwoman.

Daniel J. Little,

Associate Commissioner.

[FR Doc. 2011–23729 Filed 9–15–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–111283–11]

RIN 1545–BK22

Swap Exclusion for Section 1256 Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that describe swaps and similar agreements that fall within the meaning of section 1256(b)(2)(B) of the Internal Revenue Code (Code). This document also contains proposed regulations that revise the definition of a notional principal contract under § 1.446–3 of the Income Tax Regulations. This document provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by December 15, 2011. Outlines of topics to be discussed at the public hearing scheduled for January 19, 2012, must be received by December 14, 2011.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–111283–11), Room 5203, Internal Revenue Service, POB 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–111283–11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov/* (IRS–REG–111283–11). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, K. Scott Brown (202) 622–7454; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard Hurst, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 1256 and 446 of the Code. Section 1256(b)(2)(B) was added to the Code by section 1601 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 1601, 124 Stat. 1376, 2223 (2010)) (the Dodd-Frank Act). Section 1256(b)(2)(B) provides that certain swaps and similar agreements are not subject to section 1256 of the Code. These proposed regulations provide guidance on the category of swaps and similar agreements that are within the scope of section 1256(b)(2)(B). These proposed regulations also revise the definition

and scope of a notional principal contract under § 1.446–3 of the Income Tax Regulations.

Explanation of Provisions

A. Section 1256(b)(2)(B) Language and Legislative History

Section 1256 provides that contracts classified as section 1256 contracts are marked to market and any gain or loss is generally treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. Section 1256(b)(1) defines the term ''section 1256 contract'' as a regulated futures contract, foreign currency contract, nonequity option, dealer equity option, and dealer securities futures contract. With the exception of a foreign currency contract, a section 1256 contract must be traded on or subject to the rules of a ''qualified board or exchange'' as defined in section 1256(g)(7).

Section 1601 of the Dodd-Frank Act added section 1256(b)(2)(B), which excludes swaps and similar agreements from the definition of a section 1256 contract. Section 1256(b)(2)(B) provides that the term ''section 1256 contract'' shall not include—

> any interest rate swap, currency swap, basis swap, interest rate cap, interest rate floor, commodity swap, equity swap, equity index swap, credit default swap, or similar agreement.

Congress enacted section 1256(b)(2)(B) to resolve uncertainty under section 1256 for swap contracts that are traded on regulated exchanges. The specific uncertainty addressed by the enactment of section 1256(b)(2)(B) was described in the Conference Report:

> The title contains a provision to address the recharacterization of income as a result of increased exchange-trading of derivatives contracts by clarifying that section 1256 of the Internal Revenue Code does not apply to certain derivatives contracts transacted on exchanges.

H.R. Conf. Rep. No. 111–517, at 879 (2010).

Section 1256(b)(2)(B) contemplates that a swap contract, even if traded on or subject to the rules of a qualified board or exchange, will not be a section 1256 contract.

B. Scope of Swaps Excluded by Section 1256(b)(2)(B)

1. Notional Principal Contracts and Credit Default Swaps

Congress incorporated into section 1256(b)(2)(B) a list of swaps that parallels the list of swaps included under the definition of a notional principal contract in § 1.446–3(c) with the addition of credit default swaps. The parallel language suggests that Congress was attempting to harmonize the category of swaps excluded under section 1256(b)(2)(B) with swaps that qualify as notional principal contracts under § 1.446–3(c), rather than with the contracts defined as ''swaps'' under section 721 of the Dodd-Frank Act. Accordingly, § 1.1256(b)–1(a) of the proposed regulations provides that a section 1256 contract does not include a contract that qualifies as a notional principal contract as defined in proposed § 1.446–3(c). As discussed herein, the proposed regulations under § 1.446–3 also expressly provide that a credit default swap is a notional principal contract.

2. Option on a Notional Principal Contract

Section 1256(b)(2)(B) raises questions as to whether an option on a notional principal contract that is traded on a qualified board or exchange would constitute a ''similar agreement'' or would instead be treated as a nonequity option under section 1256(g)(3). Since an option on a notional principal contract is closely connected with the underlying contract, the Treasury Department and the IRS believe that such an option should be treated as a similar agreement within the meaning of section 1256(b)(2)(B). Accordingly, § 1.1256(b)–1(a) of the proposed regulations also provides that a section 1256 contract does not include an option on any contract that is a notional principal contract defined in § 1.446–3(c) of the proposed regulations.

3. Ordering Rule

The proposed regulations provide an ordering rule for a contract that trades as a futures contract regulated by the Commodity Futures Trading Commission (CFTC), but that also meets the definition of a notional principal contract. The Treasury Department and the IRS believe that such a contract is not a commodity futures contract of the kind envisioned by Congress when it enacted section 1256. Accordingly, § 1.1256(b)–1(a) of the proposed regulations provides that section 1256 does not include any contract, or option on such contract, that is both a section 1256 contract and a notional principal contract as defined in § 1.446–3(c) of the proposed regulations.

C. Definition of Regulated Futures Contract

Section 1256(g)(1) defines a regulated futures contract as ''a contract (A) with respect to which the amount required to be deposited and the amount which may be withdrawn depends on a system of marking to market, and (B) which is traded on or subject to the rules of a qualified board or exchange.'' The apparent breadth of section 1256(g)(1) has raised questions in the past as to whether a contract other than a futures contract can be a regulated futures contract. The Treasury Department and the IRS have historically limited the scope of a regulated futures contract to those futures contracts that have the characteristics of traditional futures contracts. Under the Dodd-Frank Act, a ''designated contract market'' may trade both futures contracts and swap contracts, although there will be specific reporting rules for swap contracts. In order to properly limit section 1256 to futures contracts that trade on designated contract markets, § 1.1256(b)–1(b) of the proposed regulations provides that a regulated futures contract is a section 1256 contract only if the contract is a futures contract that is not required to be reported as a swap under the Commodity Exchange Act (7 U.S.C. 1) (the CEA). The reporting provisions for swaps under the CEA will not be effective until the CFTC has published final rules implementing such provisions. It is anticipated that swap reporting rules will be in effect before these regulations are finalized. If, however, these proposed income tax regulations are finalized before the swap reporting provisions become effective, the Treasury Department and the IRS will evaluate whether the provisions of § 1.1256(b)–1(b) need to be adjusted.

Questions have also been raised as to whether the requirement that a regulated futures contract be ''traded on or subject to the rules of'' a qualified board or exchange includes off-exchange transactions such as an exchange of a futures contract for a cash commodity, or an exchange of a futures contract for a swap, that are carried out subject to the rules of a CFTC designated contract market. The phrase ''traded on or subject to the rules of'' appears to have originated under the CEA. Section 4(a) of the CEA provides, in part, that it is unlawful to engage in any transaction in, or in connection with, a commodity futures contract unless such transaction is conducted on or subject to the rules of a board of trade which has been designated as a contract market and such contract is executed or consummated by or through a contract market. Section 5(d) of the CEA, as amended by section 735 of the Dodd-Frank Act, provides that the rules of a designated contract market may authorize, for bona fide business purposes, transfer trades or office trades,

or an exchange of (i) Futures in connection with a cash commodity transaction, (ii) futures for cash commodities, or (iii) futures for swaps. As such, the Treasury Department and the IRS believe that a futures contract that results from one of these transactions is a regulated futures contract under section 1256(g)(1) because the contract is traded subject to the rules of a designated contract market.

D. Qualified Board or Exchange

Section 1256(g)(7)(C) provides that a qualified board or exchange includes any other exchange, board of trade, or other market which the Secretary determines has rules adequate to carry out the purposes of section 1256. Section 1.1256(g)–1(a) of the proposed regulations specifies that such determinations are only made through published guidance in the **Federal Register** or in the Internal Revenue Bulletin.

Since section 1256(g)(7) was adopted, the Treasury Department and the IRS have issued determinations for six entities, all of them foreign futures exchanges. See Rev. Rul. 2010–3 (2010–1 CB 272 (London International Financial Futures and Options Exchange)), Rev. Rul. 2009–24 (2009–2 CB 306 (ICE Futures Canada)), Rev. Rul. 2009–4 (2009–1 CB 408 (Dubai Mercantile Exchange)), Rev. Rul. 2007–26 (2007–1 CB 970 (ICE Futures)), Rev. Rul. 86–7 (1986–1 CB 295 (The Mercantile Division of the Montreal Exchange)), and Rev. Rul. 85–72 (1985–1 CB 286 (International Futures Exchange (Bermuda))). The IRS has followed a two step process for making each of the six qualified board or exchange determinations under section 1256(g)(7). See § 601.601(d)(2)(ii)(b).

In the first step, the exchange submitted a private letter ruling to the IRS requesting a determination that the exchange is a qualified board or exchange within the meaning of section 1256(g)(7)(C). Once the IRS determined that the exchange had rules sufficient to carry out the purposes of section 1256, the Treasury Department and the IRS published a revenue ruling announcing that the named exchange was a qualified board or exchange. The revenue rulings apply to commodity futures contracts and futures contract options of the type described under the CEA that are entered into on the named exchange. The revenue ruling does not apply to contracts that are entered into on another exchange that is affiliated with the named exchange.

In determining whether a foreign exchange is a qualified board or exchange under section 1256(g)(7)(C), the Treasury Department and the IRS have looked to whether the exchange received a CFTC ''direct access'' no-action relief letter permitting the exchange to make its electronic trading and matching system available in the United States, notwithstanding that the exchange was not designated as a contract market pursuant to section 5 of the CEA. Section 738 of the Dodd-Frank Act, however, provides the CFTC with authority to adopt rules and regulations that require registration of a foreign board of trade that provides United States participants direct access to the foreign board of trade's electronic trading system. In formulating these rules and regulations, the CFTC is directed to consider whether comparable supervision and regulation exists in the foreign board of trade's home country. Pursuant to section 738, the CFTC has proposed a registration system to replace the direct access no-action letter process. Under the proposed registration system, a foreign board of trade operating pursuant to an existing direct access no-action relief letter must apply through a limited application process for an ''Order of Registration'' which will replace the foreign board of trade's existing direct access no-action letter. Many of the proposed requirements for and conditions applied to a foreign board of trade's registration will be based upon those applicable to the foreign board of trade's currently granted direct access no-action relief letter.

The IRS has conditioned a foreign exchange's qualified board or exchange status under section 1256(g)(7)(C) on the exchange continuing to satisfy all CFTC conditions necessary to retain its direct access no-action relief letter. Consequently, if the CFTC adopts the proposed registration system, an exchange that has previously received a qualified board or exchange determination under section 1256(g)(7)(C) must obtain a CFTC Order of Registration in order to maintain its qualified board or exchange status. The IRS will continue to evaluate the CFTC's rules in this regard to determine if any changes to the IRS's section 1256(g)(7)(C) guidance process are warranted.

E. Definition and Scope of a Notional Principal Contract

1. Payments Under a Notional Principal Contract

In 1993, the IRS promulgated § 1.446–3(c) which defines a notional principal contract as a financial instrument that provides for the payment of amounts by one party to another at specified intervals calculated by reference to a specified index upon a notional principal amount in exchange for specified consideration or a promise to pay similar amounts. Questions have arisen as to the proper interpretation of this requirement. Sections 1.446–3(c)(1)(i) and (ii) of the proposed regulations expressly provide that a notional principal contract requires one party to make two or more payments to a counterparty. For this purpose, the fixing of an amount is treated as a payment, even if the actual payment reflecting that amount is to be made at a later date. Thus, for example, a contract that provides for a settlement payment referenced to the appreciation or depreciation on a specified number of shares of common stock, adjusted for actual dividends paid during the term of the contract, is treated as a contract with more than one payment with respect to that leg of the contract.

2. Credit Default Swaps

In Notice 2004–52 (2004–2 CB 168), the Treasury Department and the IRS described four possible characterizations of a credit default swap. See § 601.601(d)(2)(ii)(b). These proposed regulations resolve this uncertainty by adding credit default swaps to the list of swaps categorized as notional principal contracts governed by the rules of § 1.446–3.

3. Weather-Related and Other Non-Financial Index Based Swaps

Since the time that the § 1.446–3 regulations were promulgated, markets have developed for contracts based on non-financial indices. Many of these contracts are structured as swaps, and payments are calculated based on indices such as temperature, precipitation, snowfall, or frost. For example, payments made under a weather derivative may be based on heating degree days and cooling degree days. As a technical matter, a weather-related swap currently is not a notional principal contract because a weather index does not qualify as a ''specified index'' under § 1.446–3(c)(2) of the current regulations, which generally require that such index be a financial index.

The Treasury Department and the IRS believe that swaps on non-financial indices should be treated as notional principal contracts. Accordingly, § 1.446–3(c)(2)(ii) of the proposed regulations expands a specified index to include non-financial indices that are comprised of any objectively determinable information that is not within the control of any of the parties

to the contract and is not unique to one of the parties' circumstances, and that cannot be reasonably expected to front-load or back-load payments accruing under the contract.

4. Excluded Contracts

Section 1.446–3(c)(1)(ii) currently provides that a contract described in section 1256(b) and a futures contract are not notional principal contracts. In order to remove the circularity that would otherwise exist between excluded contracts under § 1.446–3(c)(1)(ii) and proposed § 1.1256(b)–1, a contract described in section 1256(b) and a futures contract have been deleted from excluded contracts under proposed § 1.446–3(c)(1)(iv).

5. Conforming Amendments

The definition of a notional principal contract in § 1.446–3(c) of the proposed regulations is intended to be the operative definition for all Federal income tax purposes, except where a different or more limited definition is specifically prescribed. Thus, the regulations under sections 512, 863, 954, and 988 have been amended to reference the definition of a notional principal contract in § 1.446–3(c).

Proposed Effective/Applicability Date

These regulations are proposed to apply to contracts entered into on or after the date the final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entitles, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and IRS invite comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available at *http://www.regulations.gov* or upon request.

A public hearing has been scheduled for January 19, 2012, beginning at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by December 15, 2011 and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by December 14, 2011. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is K. Scott Brown, Office of the Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.446–3 is amended by:

1. Revising the entries for the table of contents in § 1.446–3(a) for paragraphs (c) and (j).

2. Revising paragraphs (c)(1), (c)(2), and (c)(3).

3. Adding and reserving paragraph (c)(5).

4. Adding paragraph (c)(6).

5. Adding two sentences to the end of paragraph (j).

The revisions and additions read as follows:

§ 1.446–3 Notional principal contracts.

* * * * *

(c) Definitions and scope.
(1) Notional principal contract.
(i) In general.
(ii) Payment defined.
(iii) Included contracts.
(A) Special rule for credit default swaps.
(B) Special rule for nonfunctional currency notional principal contracts.
(iv) Excluded contracts.
(v) Transactions within section 475.
(vi) Transactions within section 988.
(2) Specified index.
(i) Specified financial index.
(ii) Specified non-financial index.
(3) Notional principal amount.
(4) Special definitions.
(i) Related person and party to the contract.
(ii) Objective financial information.
(iii) Dealer in notional principal contracts.
(5) [Reserved]
(6) Examples.

* * * * *

(j) Effective/applicability date.

* * * * *

(c) *Definitions and scope*—(1) *Notional principal contract*—(i) *In general.* A notional principal contract is a financial instrument that requires one party to make two or more payments to the counterparty at specified intervals calculated by reference to a specified index upon a notional principal amount in exchange for specified consideration or a promise to pay similar amounts. An agreement between a taxpayer and a qualified business unit (as defined in section 989(a)) of the taxpayer, or among qualified business units of the same taxpayer, is not a notional principal contract because a taxpayer cannot enter into a contract with itself.

(ii) *Payment defined.* For purposes of paragraph (c)(1)(i) of this section, a payment includes an amount that is fixed on one date and paid or otherwise taken into account on a later date. Thus, for example, a contract that provides for a settlement payment referenced to the appreciation or depreciation on a specified number of shares of common stock, adjusted for actual dividends paid during the term of the contract, is treated as a contract with more than one payment with respect to that leg of the contract. See *Example 2* of this paragraph (c).

(iii) *Included contracts.* Notional principal contracts governed by this section include contracts commonly

referred to as interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, credit default swaps, weather-related swaps, and similar agreements that satisfy the requirements of paragraph (c)(1)(i). A collar is not itself a notional principal contract, but a cap and a floor that comprise a collar may be treated as a single notional principal contract under paragraph (f)(2)(v)(C) of this section. A contract may be a notional principal contract governed by this section even though the term of the contract is subject to termination or extension. Each confirmation under a master agreement to enter into an agreement covered by this section is treated as a separate notional principal contract (or as more than one notional principal contract if the confirmation creates more than one notional principal contract). Notwithstanding the rule under paragraph (c)(3) of this section—

(A) *Special rule for credit default swaps.* A credit default swap contract that permits or requires the delivery of specified debt instruments in satisfaction of one leg of the contract is a notional principal contract if it otherwise satisfies the requirements of paragraph (c)(1)(i) of this section.

(B) *Special rule for nonfunctional currency notional principal contracts.* A notional principal contract that permits or requires the delivery of specified currency in satisfaction of one or both legs of the contract but that otherwise qualifies as a nonfunctional currency notional principal contract under § 1.988–1(a)(2)(iii)(B) is a notional principal contract.

(iv) *Excluded contracts.* A forward contract, an option, and a guarantee are not notional principal contracts. An instrument or contract that constitutes indebtedness under general Federal income tax law is not a notional principal contract. An option or forward contract that entitles or obligates a person to enter into a notional principal contract is not a notional principal contract, but payments made under such an option or forward contract may be governed by paragraph (g)(3) of this section.

(v) *Transactions within section 475.* To the extent that the rules provided in paragraphs (e) and (f) of this section are inconsistent with the rules that apply to any notional principal contract that is governed by section 475 and the regulations thereunder, the rules of section 475 and the regulations thereunder govern.

(vi) *Transactions within section 988.* To the extent that the rules provided in this section are inconsistent with the rules that apply to any notional principal contract that is also a section 988 transaction or that is integrated with other property or debt pursuant to section 988(d), the rules of section 988 and the regulations thereunder govern. The rules of § 1.446–3(g)(4) are not considered to be inconsistent with the rules of section 988. See § 1.988–2(e)(3)(iv).

(2) *Specified index.* A specified index may be either a specified financial index or a specified non-financial index.

(i) *Specified financial index.* A specified financial index is—

(A) A fixed rate, price, or amount;

(B) A fixed rate, price, or amount applicable in one or more specified periods followed by one or more different fixed rates, prices, or amounts applicable in other periods;

(C) An index that is based on objective financial information (as defined in paragraph (c)(4)(ii) of this section); and

(D) An interest rate index that is regularly used in normal lending transactions between a party to the contract and unrelated persons.

(ii) *Specified non-financial index.* A specified non-financial index is any objectively determinable information that—

(A) Is not within the control of any of the parties to the contract and is not unique to one of the parties' circumstances;

(B) Is not financial information; and

(C) Cannot be reasonably expected to front-load or back-load payments accruing under the contract.

(3) *Notional principal amount.* For purposes of this section, a notional principal amount is any specified amount of money or property that, when multiplied by either a specified financial index or a specified non-financial index, measures a party's rights and obligations under the contract, but is not borrowed, loaned, or sold between the parties as part of the contract. The notional principal amount may vary over the term of the contract, provided that it is set in advance or varies based on objective financial information (as defined in paragraph (c)(4)(ii) of this section). If a notional principal contract references a notional principal amount that varies, or that references a different notional principal amount for each party, and a principal purpose for entering into the contract is to avoid the application of the rules in this section, the Commissioner may recharacterize the contract according to its substance, including by separating the contract into a series of notional principal contracts for purposes of applying the rules of this section or by treating the contract, in whole or in part, as a loan.

* * * * *

(5) [Reserved]

(6) *Examples.* The following examples illustrate the application of paragraph (c) of this section.

Example 1. Forward rate agreement. (i) On January 1, 2012, A enters into a contract with unrelated counterparty B under which on December 31, 2013, A will pay or receive from B, as the case may be, an amount determined by subtracting 6% multiplied by a notional amount of $10 million from 3 month LIBOR on December 31, 2013 multiplied by the same notional amount ((3 month LIBOR × $10,000,000) − (6% × $10,000,000)). The contract provides for no other payments.

(ii) Because this contract provides for a single net payment between A and B determined by interest rates in effect on the settlement date of the contract, the contract is not a notional principal contract defined in § 1.446–3(c)(1)(i).

Example 2. Equity total return contract with dividend adjustments. (i) On January 1, 2012, A enters into a contract with unrelated counterparty B under which on December 31, 2013, A will receive from B an amount equal to the appreciation (if any) on a notional amount of 1 million shares of XYZ common stock, plus any dividends or other distributions that are paid on 1 million shares of XYZ common stock during the term of the contract. In return, on December 31, 2013 A will pay B an amount equal to any depreciation on 1 million shares of XYZ common stock, and an amount equal to 3 month LIBOR multiplied by the notional value of 1 million shares of XYZ stock on January 1, 2012 compounded over the term of the contract. All payments are netted such that A and B are only liable for the net payment due under the contract on December 31, 2013.

(ii) Because both legs of this contract provide for payments that become fixed during the term of the contract (the dividend payments and the LIBOR-based payments), each leg of the contract is treated as providing for more than one payment. In addition, since the indices referenced in the contract are specified indices described in paragraph (c)(2)(i) of this section, and the 1 million shares of XYZ common stock are a notional principal amount described in paragraph (c)(3) of this section, the contract is a notional principal contract defined in § 1.446–3(c)(1)(i).

* * * * *

(j) *Effective/applicability date.* * * * The rules of paragraph (c) of this section apply to notional principal contracts entered into on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Section 1.446–3(c) as contained in 26 CFR part 1 revised April 1, 2011, continues to apply to notional principal contracts entered into before the date of

publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 3. Section 1.512(b)–(1) is amended by:

1. Revising paragraph (a)(1).

2. Adding two sentences to the end of paragraph (a)(3).

The revision and addition read as follows:

§ 1.512(b)–1 Modifications.

* * * * *

(a) *Certain Investment Income*—(1) *In general.* Dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), annuities, income from notional principal contracts (as defined in § 1.446–3(c)), other substantially similar income from ordinary and routine investments to the extent determined by the Commissioner, and all deductions directly connected with any of the foregoing items of income shall be excluded in computing unrelated business taxable income.

* * * * *

(3) * * * The rules of paragraph (a)(1) of this section apply to notional principal contracts as defined in § 1.446–3(c) that are entered into on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Section 1.512(b)–1(a)(1) as contained in 26 CFR part 1 revised April 1, 2011, continues to apply to notional principal contracts entered into before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

Par. 4. Section 1.863–7 is amended by:

1. Revising the third sentence and removing the fourth sentence of paragraph (a)(1).

2. Adding two sentences to the end of paragraph (a)(2).

The revision and addition read as follows:

§ 1.863–7 Allocation of income attributable to certain notional principal contracts under section 863(a).

(a) *Scope*—(1) *Introduction.* * * * Notional principal contract income is income attributable to a notional principal contract as defined in § 1.446–3(c). * * *

(2) * * * The rules of this section apply to notional principal contracts as defined in § 1.446–3(c) that are entered into on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Section 1.863–7 as contained in 26 CFR part 1 revised April 1, 2011, continues to apply to notional principal contracts entered into before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

Par. 5. Section 1.954–2 is amended by:

1. Revising paragraph (h)(3)(i).

2. Adding paragraph (h)(3)(iii).

The revision and addition read as follows:

§ 1.954–2 Foreign personal holding company income.

* * * * *

(3) *Notional principal contracts*—(i) In general. Income equivalent to interest includes income from notional principal contracts (as defined in § 1.446–3(c)) denominated in the functional currency of the taxpayer (or a qualified business unit of the taxpayer, as defined in section 989(a)), the value of which is determined solely by reference to interest rates or interest rate indices, to the extent that the income from such transactions accrues on or after August 14, 1989.

* * * * *

(iii) *Effective/applicability date.* The rules of paragraph (h)(3) of this section apply to notional principal contracts as defined in § 1.446–3(c) that are entered into on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Section 1.954–2(h)(3) as contained in 26 CFR part 1 revised April 1, 2011, continues to apply to notional principal contracts entered into before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

Par. 6. Section 1.988–1 is amended by:

1. Revising paragraph (a)(2)(iii)(B)(*2*).

2. Adding two sentences to the end of paragraph (a)(2)(iii)(C).

The revision and addition read as follows:

§ 1.988–1 Certain definitions and special rules.

(a) * * *

(2) * * *

(iii) * * *

(B) * * *

(*2*) Definition of notional principal contract. Generally, the term ''notional principal contract'' means a contract defined in § 1.446–3(c). However, a ''notional principal contract'' shall only be considered as described in paragraph (a)(2)(iii)(B)(*1*) of this section if the underlying property to which the instrument ultimately relates is money (for example, functional currency), nonfunctional currency, or property the value of which is determined by reference to an interest rate. Thus, the term ''notional principal contract'' includes a currency swap as defined in § 1.988–2(e)(2)(ii), but does not include a swap referenced to a commodity or equity index.

(C) * * * The rules of this paragraph (a)(2)(iii) apply to notional principal contracts as defined in § 1.446–3(c) that are entered into on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Section 1.988–1(a)(2)(iii) as contained in 26 CFR part 1 revised April 1, 2011, continues to apply to notional principal contracts entered into before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

Par. 7. Section 1.1256(b)–1 is added to read as follows:

§ 1.1256(b)–1 Section 1256 contract defined.

(a) *General rule.* A section 1256 contract does not include any contract, or option on such contract, that is a notional principal contract as defined in § 1.446–3(c). A contract that is defined as both a notional principal contract in § 1.446–3(c) and as a section 1256 contract in section 1256(b)(1) is treated as a notional principal contract and not as a section 1256 contract.

(b) *Regulated futures contract.* A regulated futures contract is a section 1256 contract only if the contract is a futures contract—

(1) With respect to which the amount required to be deposited and the amount which may be withdrawn depends on a system of marking to market;

(2) That is traded on or subject to the rules of a qualified board or exchange; and

(3) That is not required to be reported as a swap under the Commodity Exchange Act.

(c) *Effective/applicability date.* The rules of this section apply to contracts entered into on or after the date the final regulations are published in the **Federal Register**.

Par. 8. Section 1.1256(g)–1 is added to read as follows:

§ 1.1256(g)–1 Qualified board or exchange defined.

(a) *General rule.* A qualified board or exchange means a national securities exchange registered with the Securities Exchange Commission, a domestic board of trade designated as a contract market by the Commodity Futures Trading Commission, or any other exchange, board of trade, or other

market for which the Secretary determines in published guidance in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter) that such market has rules adequate to carry out the purposes of section 1256.

(b) *Effective/applicability date.* The rule of this section applies to taxable years ending on or after the date the final regulations are published in the **Federal Register**.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2011–23665 Filed 9–15–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID DOD–2011–HA–0059]

RIN 0720–AB52

TRICARE; Elimination of the Non-Availability Statement (NAS) Requirement for Non-Emergency Inpatient Mental Health Care

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule eliminates the requirement that states a NAS is needed for non-emergency inpatient mental health care in order for a TRICARE Standard beneficiary's claim to be paid.

DATES: Comments must be received on or before November 15, 2011.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov* . Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Hart, TRICARE Policy and Operations, TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Under TRICARE Prime (as provided in 32 CFR, section 199.17), the military medical treatment facility (MTF) has the right of first refusal for specialty services requested by a civilian provider, if the services are available at the MTF. If a TRICARE Prime beneficiary living near a MTF is referred for specialty care by a civilian provider and the service is available at the MTF, the MTF may decide to provide the care. If services are refused by the MTF, the referral will be allowed with a network provider. As a result, the issuance of NAS(s) has been eliminated and are only required for non-enrolled beneficiaries who live within the MTF catchment area for non-emergency inpatient mental health care. Currently, the number of NASs issued is negligible as most mental health admissions are emergency admissions. Requiring a NAS for a relative few non-emergency inpatient mental health admissions is disproportionate to the cost of maintaining the systems necessary to process and coordinate the NAS. This proposed rule eliminates the requirement for a NAS for non-emergency inpatient mental health care in order for the TRICARE Standard beneficiary's claim to be paid.

II. Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review''; Executive Order 13563, ''Improving Regulation and Regulatory Review''; and Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

Executive Orders 12866 and 13563 require that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal Agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This proposed rule is not a significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA. Thus this proposed rule is not subject to any of these requirements.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511)

This rule will not impose additional information collection requirements on the public.

Executive Order 13132, ''Federalism''

We have examined the impacts of the rule under Executive Order 13132 and it does not have policies that have federalism implications that would 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, therefore, consultation with State and local officials is not required.

Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

This rule does not contain unfunded mandates. It does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR 199.4 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.4 is amended by removing and reserving paragraph (a)(9) as follows:

§ 199.4 Basic program benefits.

* * * * *

(a) * * *

(9) *[RESERVED]*

* * * * *

Dated: August 24, 2011.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–23766 Filed 9–15–11; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2011–0686, FRL–9465–8]

Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on a proposed revision to the State Implementation Plan (SIP) submitted by the New Jersey Department of Environmental Protection for New Jersey's enhanced inspection and maintenance (I/M) program. New Jersey has made several amendments to its I/M program to improve performance of the program and has requested that the SIP be revised to include these changes. Chief among the amendments EPA is proposing to approve is New Jersey's amendment to its I/M program to establish a new exhaust emission test for gasoline fueled vehicles and the extension of the new vehicle inspection exemption from 4 years to 5 years. EPA is proposing approval of this SIP revision because it meets all applicable requirements of the Clean Air Act and EPA's regulations and because the revision will not interfere with attainment or maintenance of the national ambient air quality standards in the affected area. The intended effect of this action is to maintain consistency between the State-adopted rules and the Federally approved SIP.

DATES: Comments must be received on or before October 17, 2011.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–R02–OAR–2011–0686, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Werner.Raymond@epa.gov.*
- *Fax:* 212–637–3901 .
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2011–0686. 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. 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 Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jenna Salomone, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3741, *salomone.jenna@epa.gov.*

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VI. What are EPA's conclusions?
VII. Statutory and Executive Order Reviews

I. What action is EPA proposing?

EPA is proposing to approve a revision, submitted by New Jersey on December 15, 2009, and a supplemental revision, submitted by New Jersey on October 12, 2010, to the New Jersey State Implementation Plan (SIP) pertaining to New Jersey's motor vehicle enhanced inspection and maintenance (I/M) program. New Jersey provided EPA with documentation on the emission impacts that will result from proposed changes to New Jersey's enhanced I/M program including a comparison to the EPA I/M performance standard. The revisions submitted by New Jersey include a new exhaust emission test for gasoline fueled vehicles; the extension of the new vehicle inspection exemption from 4 years to 5 years; the elimination of repair cost waivers; the increase in the inspection frequency (to annual) for certain classes of commercial vehicles such as limousines, taxis and jitneys; and the subjecting of light duty diesel vehicles to emissions testing.

II. Background Information

What are the Clean Air Act requirements for a moderate 8-hr ozone nonattainment area?

History of the Ozone Standard and Area Designations

In 1997, EPA revised the health-based National Ambient Air Quality Standards (NAAQS) for ozone, setting it at 0.08 parts per million (ppm) averaged over

an 8-hour period. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. The New Jersey portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT nonattainment area is composed of the following counties: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, and Warren. In addition, the New Jersey portion of the Philadelphia-Wilmington, Atlantic City, PA–DE–MD–NJ nonattainment area is composed of the following counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean and Salem. These counties were classified as moderate or above ozone nonattainment areas under the pre-existing 1-hour ozone standard. These designations triggered the requirements under section 182(b) of the Clean Air Act (CAA) for moderate and above nonattainment areas, including a requirement to submit an enhanced motor vehicle I/M program.

Clean Air Act Requirements for I/M Programs

The CAA requires certain states to implement an enhanced I/M program to detect gasoline-fueled motor vehicles that exhibit excessive emissions of certain air pollutants. The enhanced I/M program is intended to help states meet Federal health-based NAAQS for ozone and carbon monoxide by requiring vehicles with excess emissions to have their emissions control systems repaired. Section 182 of the CAA requires I/M programs in those areas of the nation that are most impacted by carbon monoxide and ozone pollution.

On April 5, 2001, EPA published in the **Federal Register** ''Amendments to Vehicle Inspection and Maintenance Program Requirements Incorporating the On-Board Diagnostics Check'' (66 FR 18156). The revised I/M rule requires that electronic checks of the On-Board Diagnostics (OBD) system on model year 1996 and newer OBD-equipped motor vehicles be conducted as part of states' motor vehicle I/M programs. OBD is part of the sophisticated vehicle powertrain management system and is designed to detect engine and transmission problems that might cause vehicle emissions to exceed allowable limits. OBD is the subject of this proposed rulemaking action.

The OBD system monitors the status of up to 11 emission control related subsystems by performing either continuous or periodic functional tests of specific components and vehicle conditions. The first three testing categories—misfire, fuel trim, and comprehensive components—are continuous, while the remaining eight only run after a certain set of conditions has been met. The algorithms for running these eight periodic monitors are unique to each manufacturer and involve such things as ambient temperature as well as driving conditions. Most vehicles will have at least five of the eight remaining monitors (catalyst, evaporative system, oxygen sensor, heated oxygen sensor, and exhaust gas recirculation or EGR system) while the remaining three (air conditioning, secondary air, and heated catalyst) are not necessarily applicable to all vehicles. When a vehicle is scanned at an OBD–I/M test site, these monitors can appear as either ''ready'' (meaning the monitor in question has been evaluated), ''not ready'' (meaning the monitor has not yet been evaluated), or ''not applicable'' (meaning the vehicle is not equipped with the component monitor in question).

The OBD system is also designed to fully evaluate the vehicle emissions control system. If the OBD system detects a problem that may cause vehicle emissions to exceed 1.5 times the Federal Test Procedure standards, then the Malfunction Indicator Light (MIL) is illuminated. By turning on the MIL, the OBD system notifies the vehicle operator that an emission-related fault has been detected, and the vehicle should be repaired as soon as possible thus reducing the harmful emissions contributed by that vehicle.

EPA's revised OBD I/M rule applies to only those areas that are required to implement I/M programs under the CAA, which includes the aforementioned counties in New Jersey. This rule established a deadline of January 1, 2002 for states to begin performing OBD checks on 1996 and newer model OBD-equipped vehicles and to require repairs to be performed on those vehicles with malfunctions identified by the OBD check.

EPA's revised I/M rule also permitted, under certain circumstances, for states to delay implementation of OBD testing. If the state makes a request to show cause to EPA for a delay, an extension of the deadline for states to begin conducting mandatory OBD is permissible. The revised implementation date represents ''the best the state can reasonably do'' (66 FR 18159). EPA's final rule identifies factors that may serve as a possible justification for states considering making a request to the EPA to delay implementation of OBD I/M program checks beyond the January 2002 deadline. Potential factors justifying such a delay include contractual impediments, hardware or software deficiencies, data management software deficiencies, the need for additional training for the testing and repair industries, and the need for public education or outreach.

New Jersey is required to have an enhanced I/M program pursuant to the CAA, and consequently has adopted, and has been implementing an enhanced I/M program statewide since December 13, 1999. In the January 22, 2002 **Federal Register**, (67 FR 2811), EPA fully approved New Jersey's enhanced I/M program and the State's performance standard modeling as meeting the applicable requirements of the CAA. Additional information on EPA's final approval of New Jersey's enhanced I/M program can be found in EPA's January 22, 2002 final approval notice.

III. What was included in New Jersey's proposed SIP submittal?

On December 15, 2009, New Jersey submitted a revision to the State of New Jersey's I/M program SIP. The submittal consists of new rules and rule amendments to the New Jersey Department of Environmental Protection's rules at N.J.A.C. 7:27–15, 7:27B–5 and the Motor Vehicle Commission rules at N.J.A.C. 13:20–7, 13:20–24, 13:20–26, 13:20–28, 13:20–29, 13:20–32, 13:20–33, 13:20–43, 13:20–44, 13:20–45, and N.J.A.C. 13:21–15.8 and 13:21–15.12.

The proposed changes to New Jersey's I/M program include the establishment of a new exhaust emission test for gasoline fueled vehicles. The Two Speed Idle (TSI) test will replace both the Acceleration Simulation Mode (ASM5015) and 2500 Revolutions per Minute (RPM) tests. The TSI test is a tailpipe test which checks the vehicle's HC, CO, O_2 and CO_2 exhaust emissions concentration levels at two different engine speeds, the regular idle and a fast idle around 2500 RPM. The ASM5015

test measures the concentrations of HC, CO and NO_X, in a vehicle's tailpipe emissions when a vehicle is running under marginal load and at a steady rate or RPM. The 2500 RPM test is a tailpipe test that checks the vehicle's HC, CO, O_2 and CO_2 exhaust emissions concentration levels at 2500 RPM.

The proposed changes to New Jersey's I/M program also include: the elimination of repair cost waivers, the increase in the inspection frequency (to annual) for certain classes of commercial vehicles such as limousines, taxis and jitneys, and the subjecting of light duty diesel vehicles to emissions testing. New Jersey provided documentation on the emission impacts that will result from proposed changes to New Jersey's I/M program including a comparison to the EPA I/M performance standard.

On October 12, 2010, New Jersey submitted a supplemental I/M program SIP revision which consisted of amendments to chapter 8 of Title 39 of the Revised Statutes of the state of New Jersey at R.S. 39:8–1, 39:8–2, and 39:8–3. The submittal includes an extension of the new vehicle inspection exemption from 4 years to 5 years and an acknowledgement with supporting justification that New Jersey's decentralized I/M network (the private inspection facilities, or PIFs) is currently 96 percent as effective as New Jersey's centralized I/M network (the centralized inspection facilities, or CIFs). PIFs were previously assumed to be 80 percent as effective as CIFs, which New Jersey considered to likely be very conservative in light of the program and technology changes that were implemented in the years following the 80 percent effectiveness assumption. In May 2010, New Jersey authorized MACTEC Engineering and Consulting, Inc. to assess improvements in effectiveness of the decentralized program and to determine a reasonable effectiveness fraction that may be supported by data and technical reasoning. MACTEC analyzed the effectiveness of the decentralized PIF network relative to the CIF (centralized) network. The relative effectiveness of PIFs was based on data collected from PIFs and CIFs in 2009. As a result of the analysis, MACTEC determined that New Jersey should increase the effectiveness factor for PIFs and provided the following justifications:

- Fail rates for OBD inspections in PIFs were found to be nearly identical to those in CIFs;
- An analysis of triggers for OBD tests performed in 2009 showed that over 99% of inspections in PIFs have no indications of fraud;
- New Jersey has implemented several additional OBD triggers in the new program, which will further reduce the incidence of fraud.

New Jersey submitted to EPA the final report prepared by MACTEC dated June 23, 2010 entitled ''New Jersey Motor Vehicle Inspection Program PIF Effectiveness Study.''

IV. What are the performance standard requirements and does New Jersey's I/M program satisfy them?

As part of its final rule for I/M requirements, EPA established a ''model'' program for areas that were required to implement enhanced I/M programs. This model program is termed by EPA as the ''I/M performance standard'' and is defined by a specific set of program elements. The purpose of the performance standard is to provide a gauge by which EPA can evaluate the adequacy and effectiveness of each state's enhanced I/M program. As such, states are required to demonstrate that their enhanced I/M programs achieve applicable area-wide emission levels for the pollutants of interest that are equal to, or lower than, those which would be realized by the implementation of the model program. EPA allows for a margin of error of +/− 0.02 grams per mile (gpm) in determining compliance with the performance standard.

Originally, EPA only designed one enhanced performance standard, as specified at 40 CFR 51.351, and required all enhanced I/M program areas to meet or exceed that standard. However, on September 18, 1995, EPA promulgated the ''low'' enhanced performance standard. The low enhanced performance standard is a less stringent enhanced I/M performance standard established for those areas that have an approved SIP for Rate of Progress (ROP) for 1996, and do not have a disapproved plan for ROP for the period after 1996 or a disapproved plan for attainment of the air quality standards for ozone or carbon monoxide.

New Jersey is currently demonstrating compliance with the CAA requirements for ROP and attainment and is therefore now only required to meet the ''low'' enhanced performance standard. The revised performance standard modeling included as part of this submittal is designed to show attainment of the low enhanced performance standard.

In accordance with the EPA's final rule for I/M requirements, a state must design and implement its enhanced I/M program such that it meets or exceeds, within +/− 0.02 gpm, a minimum performance standard. The performance standard is expressed as average gpm emission levels from area-wide highway mobile sources as a result of the enhanced I/M program. Areas must meet the performance standard for the pollutants that cause them to be subject to the enhanced I/M requirements. New Jersey was required to implement its enhanced I/M program because of its non-attainment status for two criteria air pollutants, ozone (of which volatile organic compounds (VOCs) and oxides of nitrogen (NOx) are precursors) and carbon monoxide.

EPA's final rule on I/M requirements also requires that the equivalency of the emission levels achieved by the state's enhanced I/M program design compared to those of the performance standard must be demonstrated using the most current version of EPA's mobile source emission model. New Jersey utilized MOBILE 6.2.03 (dated September 24, 2003) in its analysis, which was the most current version at the time the SIP revisions were submitted.

Table 1 below compares the Low Enhanced I/M Performance Standards with both New Jersey's existing and proposed enhanced I/M programs.

TABLE 1—PERFORMANCE STANDARD AND NEW JERSEY'S ENHANCED PROGRAM DESIGNS

Program element	Low enhanced performance standard	New Jersey's existing enhanced I/M program	New Jersey's proposed enhanced I/M program
Network Type	100% centralized	hybrid—70% centralized/30% decentralized.	hybrid—70% centralized/30% decentralized.
Credit Assumed for Decentralized Program.	NA	80%	96%.[1]
Program Start Date	1983[2]	1974	1974.
Test Frequency	Annual	Biennial	Biennial.
New Vehicle Exemption	None	4 Years	5 Years.

TABLE 1—PERFORMANCE STANDARD AND NEW JERSEY'S ENHANCED PROGRAM DESIGNS—Continued

Program element	Low enhanced performance standard	New Jersey's existing enhanced I/M program	New Jersey's proposed enhanced I/M program
Emission Standards	Those specified at 40 CFR Part 85, Subpart W.	Initial ASM5015 exhaust emission standards.	Two-Speed Idle Standards of 1.2% for carbon monoxide and 220ppm for HC.
Model Year (MY) Coverage	1968 and later MY	All vehicles not specifically exempt.	All vehicles not specifically exempt.
Vehicle Type Coverage	All light-duty gasoline-fueled vehicles and trucks (up to 8,500 lbs. GVWR).	All gasoline-fueled vehicles and trucks (both light and heavy duty vehicles).	All gasoline-fueled vehicles and trucks (both light and heavy duty vehicles).
Exhaust Emission Test	*Idle*—1968–2050 MY	*OBD*—1996 and later MY beginning 6/1/03. *ASM5015*—1981–1995 MY amenable to dyno. testing. *2500 RPM test*—certain exempt vehicles and those 1981 and newer MY not amenable to dyno. testing. *Idle*—pre-1981 and HDGVs	*OBD*—1996 and later MY beginning 6/1/03. *Two-Speed Idle*—1981–1995 MY. *Idle*—pre-1981 and HDGVs.
Visual Inspections	*Positive Crankcase Ventilation (PCV) valve*—1968–1971 MY inclusive *Exhaust Gas Recirculation (EGR) valve*—1972 and newer	Visual inspection of the catalytic converter, presence of a gas cap, and fuel inlet restrictor—1975 and newer (beginning calendar 1985).	Visual inspection of the catalytic converter, presence of a gas cap, and fuel inlet restrictor—1975 and newer (beginning calendar 1985).
Evaporative System Function Checks.	N/A	*Gas Cap Testing*—1971 and later vehicles[3] (beginning calendar year 1998).	*Gas Cap Testing*—1971–2000 MY inclusive[3] (beginning calendar year 1998).
Pre- 1981 MY Stringency	20%	30%	30%.
Waiver Rate	3%	3%[4]	0%.
Compliance Rate	96%	98%	98%.
Evaluation Date[5]	January 1, 2002	January 1, 2012	January 1, 2012.
On-Road Testing	0.5% of the subject vehicle population or 20,000 vehicles (whichever is less).	0.5% of the subject vehicle population or 20,000 vehicles (whichever is less).	0.5% of the subject vehicle population or 20,000 vehicles (whichever is less).

[1] New Jersey conducted a study to assess the current effectiveness of its PIF network. The study concluded that the PIF network is currently 96 percent as effective as the CIF network.

[2] For programs with existing I/M programs, like New Jersey's basic I/M program.

[3] Only those pre-1981 vehicles that were equipped with sealed gas caps will be subject to the gas cap check. The State presumes that model year vehicles prior to 1970 were not equipped with a sealed gas cap.

[4] The State assumed a zero percent waiver rate for pre-1981 vehicles as these vehicles are not eligible for a waiver based on the NJMVC inspection rules.

[5] For all scenarios, summer season and temperatures were used for VOC/NO_X evaluations, while winter season and temperatures were used for carbon monoxide evaluations.

I/M programs are designed and implemented to meet or exceed an applicable minimum Federal performance standard. EPA's performance standards are derived from MOBILE6 utilizing ''model'' inputs and local characteristics (*i.e.,* vehicle mix, fuel controls). Performance standards are expressed as emissions levels, in area-wide average gpm values, resulting from the I/M program. More conventionally, performance standards are expressed as emission reductions, as compared to a no I/M scenario. Although each enhanced I/M program must meet the enhanced performance standard as specified in 40 CFR 51.351, the performance standard emission factor results will vary for each state. This variation is the result of the use of state-specific inputs such as registration distribution and vehicle miles traveled (VMT) mix. Other local parameters, such as fuel type, add to state variations in determining the emission factors for EPA's performance standard program. While I/M jurisdictions are allowed to adopt alternate design features other than EPA's ''model'' inputs, compliance with the applicable performance standard must be demonstrated for the pollutant(s) that established I/M requirements.

In addition to the parameters and assumptions shown previously in Table 1, New Jersey made other assumptions in order to complete its performance standard and program evaluation modeling. Table 2 shows what those assumptions were and what values where used to complete the modeling:

TABLE 2—LOW ENHANCED PERFORMANCE STANDARD MODELING ASSUMPTIONS

Modeling parameters	Value used for average summer runs (VOC and NO_X)	Value used for average winter runs (carbon monoxide)
Maximum Temperature (F)	82.9	41.2.
Minimum Temperature (F)	66.3	26.7.
Absolute Humidity (grains/pound)	85.59	20.00.
Speed	MOBILE6 Defaults	MOBILE6 Defaults.
Mechanic Training and Certification	yes—100%	yes—100%.

TABLE 2—LOW ENHANCED PERFORMANCE STANDARD MODELING ASSUMPTIONS—Continued

Modeling parameters	Value used for average summer runs (VOC and NO_X)	Value used for average winter runs (carbon monoxide)
NJ Low Emission Vehicle Program w/o ZEV Mandate	Yes	Yes.
Gasoline RVP (psi)	6.8	15.
Oxygenated Reformulated Gasoline	10% Ethanol	10% Ethanol.

Modeling performed by New Jersey and verified by EPA indicates that there is no significant difference between emission factors for New Jersey's existing and proposed enhanced I/M programs for ozone precursors (VOCs and NO_X). The new enhanced I/M program results in a small decrease in the predicted carbon monoxide emission factor relative to the existing enhanced I/M program. This demonstrates that the proposed changes to the enhanced I/M program do not compromise New Jersey's efforts to meet and/or maintain NAAQS for ozone or carbon monoxide. The results of New Jersey's performance standard modeling show that the proposed enhanced I/M program meets the USEPA low enhanced performance standard. A summary of the modeling results is found in Table 3. The values seen in Table 3 are expressed as total mobile source emission factors.

TABLE 3—LOW ENHANCED PERFORMANCE STANDARD MODELING RESULTS

Program type	VOC (gpm)	NO_X (gpm)	Carbon monoxide (gpm)
USEPA Low Enhanced Performance Standard (2002)	*0.923	*2.396	*21.854
New Jersey Existing Enhanced I/M Program (2013)	0.349	0.687	10.045
New Jersey New Enhanced I/M Program (2013)	0.348	0.688	10.028

*EPA allows for a +/− 0.02 gpm margin of error in meeting the performance standard values.

EPA's Evaluation

EPA has reviewed New Jersey's proposed changes to its enhanced I/M program that differ from the previous Federally approved program and has determined that those changes satisfy the low enhanced performance standard and are therefore approvable into the SIP. EPA will continue to evaluate New Jersey's enhanced I/M program effectiveness through the annual and biennial reports submitted by New Jersey in accordance with 40 CFR 51.366, ''Data Analysis and Reporting.''

V. Does New Jersey demonstrate noninterference with attainment and maintenance under Section 110(l) of the Clean Air Act?

Revisions to SIP-approved control measures must meet the requirements of Clean Air Act section 110(l) to be approved by EPA. Section 110(l) states: ''* * * The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.''

EPA interprets section 110(l) to apply to all requirements of the CAA and to all areas of the country, whether attainment, nonattainment, unclassifiable, or maintenance for one or more of the six criteria pollutants. EPA also interprets section 110(l) to require a demonstration addressing all pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision. Thus, for example, modification of a SIP-approved measure may impact NO_X emissions, which may impact $PM_{2.5}$ emissions. The scope and rigor of an adequate section 110(l) demonstration of noninterference depends on the air quality status of the area, the potential impact of the revision on air quality, the pollutant(s) affected, and the nature of the applicable CAA requirements.

New Jersey's modeling results indicate that there is no significant difference between emission factors for New Jersey's existing and proposed enhanced I/M programs for ozone precursors (VOCs and NO_X). The new enhanced I/M program results in an insignificantly small increase in the predicted carbon monoxide emission factor relative to the existing enhanced I/M program.

The increase is well below the EPA margin of error of +/− 0.02 gpm. This demonstrates that the proposed changes to the enhanced I/M program do not compromise New Jersey's efforts to meet and/or maintain NAAQS for ozone or carbon monoxide.

New Jersey has demonstrated that the changes to their enhanced I/M program will meet the performance standard requirements and will therefore continue to achieve emission reductions necessary to attain and maintain the NAAQS for all criteria pollutants. EPA proposes to find that New Jersey has satisfied the section 110(l) of the CAA demonstration of noninterference.

VI. What are EPA's conclusions?

EPA's review of the materials submitted indicates that New Jersey has revised its I/M program in accordance with the requirements of the CAA, 40 CFR part 51 and all of EPA's technical requirements for an approvable Enhanced I/M program. EPA is proposing to approve the rules and rule amendments to the New Jersey Department of Environmental Protection's rules at N.J.A.C 7:27–15, 7:27B–5, the Motor Vehicle Commission rules at N.J.A.C. 13:20–7, 13:20–24, 13:20–26, 13:20–28, 13:20–29, 13:20–32, 13:20–33, 13:20–43, 13:20–44, 13:20–45, and N.J.A.C. 13:21–15.8, 13:21–15.12 and the amendments to chapter 8 of Title 39 of the Revised Statutes of the state of New Jersey at R.S. 39:8–1, 39:8–2, and 39:8–3 which incorporate New Jersey's motor vehicle inspection program requirements. The CAA gives states the discretion in program planning to implement programs of the state's choosing as long as necessary emission reductions are met.

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k);

40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 6, 2011.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2011–23862 Filed 9–15–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2011–0687, FRL–9465–9]

Approval and Promulgation of Implementation Plans; New York; Motor Vehicle Enhanced Inspection and Maintenance Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on a proposed State Implementation Plan revision submitted by the New York State Department of Environmental Conservation. This revision consists of changes to New York's motor vehicle enhanced inspection and maintenance program that would eliminate the transient emission short test program as it relates to the New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT 8-hour ozone moderate nonattainment area. EPA is proposing approval of this State Implementation Plan revision because it meets all applicable requirements of the Clean Air Act and EPA's regulations and because the revision will not interfere with attainment or maintenance of the national ambient air quality standards in the affected area. The intended effect of this action is to maintain consistency between the State-adopted rules and the Federally approved SIP.

DATES: Comments must be received on or before October 17, 2011.

ADDRESSES: Submit your comments, identified by Docket Number EPA–R02–OAR–2011–0687, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: Werner.Raymond@epa.gov.*
- *Fax:* 212–637–3901.
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket No. EPA–R02–OAR–2011–0687. 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 or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/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 Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York,

New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kirk Wieber (*wieber.kirk@epa.gov*), Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

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VI. What are EPA's conclusions?
VII. Statutory and Executive Order Reviews

I. What action is EPA proposing?

The EPA is proposing to approve a revision to the New York State Implementation Plan (SIP) pertaining to New York's motor vehicle enhanced inspection and maintenance (I/M) program that proposes to end tailpipe testing on December 31, 2010. This proposed SIP revision also outlines several changes to New York's enhanced I/M programs currently operating within the New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT nonattainment area. New York proposes to reduce the percentage of emissions waivers allowed within that area to 2% (from 3%). New York indicates that the decentralized program, which features on-board diagnostics inspections, is as effective as a centralized test-only program for modeling purposes.

II. Background Information

What are the Clean Air Act (CAA) requirements for a moderate 8-hour ozone nonattainment area?

History of the Ozone Standard and Area Designations

In 1997, EPA revised the health-based national ambient air quality standards (NAAQS) for ozone, setting it at 0.08 parts per million averaged over an 8-hour period. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. The New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT nonattainment area is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester and Rockland. This is collectively referred to as the New York City Metropolitan Area or NYMA. The NYMA was classified as a severe ozone nonattainment area under the pre-existing 1-hour ozone standard. These designations triggered the requirements under section 182(b) of the CAA for moderate and above nonattainment areas, including a requirement to submit an enhanced motor vehicle I/M program.

CAA Requirements for I/M Programs

The CAA requires certain states to implement an enhanced I/M program to detect gasoline-fueled motor vehicles that exhibit excessive emissions of certain air pollutants. The enhanced I/M program is intended to help states meet Federal health-based NAAQS for ozone and carbon monoxide by requiring vehicles with excess emissions to have their emissions control systems repaired. Section 182 of the CAA requires I/M programs in those areas of the nation that are most impacted by carbon monoxide and ozone pollution.

On April 5, 2001, EPA published in the **Federal Register** ''Amendments to Vehicle Inspection and Maintenance Program Requirements Incorporating the On-Board Diagnostics Check'' (66 FR 18156). The revised I/M rule requires that electronic checks of the On-Board Diagnostics (OBD) system on model year 1996 and newer OBD-equipped motor vehicles be conducted as part of states' motor vehicle I/M programs.

OBD is part of the sophisticated vehicle powertrain management system and is designed to detect engine and transmission problems that might cause vehicle emissions to exceed allowable limits.

The OBD system monitors the status of up to 11 emission control related subsystems by performing either continuous or periodic functional tests of specific components and vehicle conditions. The first three testing categories—misfire, fuel trim, and comprehensive components—are continuous, while the remaining eight only run after a certain set of conditions has been met. The algorithms for running these eight periodic monitors are unique to each manufacturer and involve such things as ambient temperature as well as driving conditions. Most vehicles will have at least five of the eight remaining monitors (catalyst, evaporative system, oxygen sensor, heated oxygen sensor, and exhaust gas recirculation or EGR system) while the remaining three (air conditioning, secondary air, and heated catalyst) are not necessarily applicable to all vehicles. When a vehicle is scanned at an OBD–I/M test site, these monitors can appear as either ''ready'' (meaning the monitor in question has been evaluated), ''not ready'' (meaning the monitor has not yet been evaluated), or ''not applicable'' (meaning the vehicle is not equipped with the component monitor in question).

The OBD system is also designed to fully evaluate the vehicle emissions control system. If the OBD system detects a problem that may cause vehicle emissions to exceed 1.5 times the Federal Test Procedure standards, then the Malfunction Indicator Light (MIL) is illuminated. By turning on the MIL, the OBD system notifies the vehicle operator that an emission-related fault has been detected, and the vehicle should be repaired as soon as possible thus reducing the harmful emissions contributed by that vehicle.

EPA's revised OBD I/M rule applies to only those areas that are required to implement I/M programs under the CAA, which include the NYMA and certain counties in Upstate New York. This rule established a deadline of January 1, 2002 for states to begin performing OBD checks on 1996 and newer model OBD-equipped vehicles and to require repairs to be performed on those vehicles with malfunctions identified by the OBD check.

On May 7, 2001 (66 FR 22922), EPA fully approved New York's enhanced I/M program as it applies to NYMA and included the State's performance standard modeling as meeting the applicable requirements of the CAA. The OBD component of that program was not being implemented at that time

and therefore was not approved by EPA as satisfying a fully operational OBD program.

However, on February 21, 2007 (72 FR 7826) EPA fully approved a revision to New York's SIP that incorporates OBD system requirements in the NYMA and the 53 counties located in upstate New York, therefore making OBD a statewide requirement. The reader is referred to that rulemaking action for a more detailed discussion on New York's OBD program.

III. What was included in New York's proposed SIP submittal?

After completing the appropriate public notice and comment procedures, on July 10, 2009, the New York State Department of Environmental Conservation (NYSDEC) submitted to EPA a proposed SIP revision that includes changes to the New York State enhanced I/M program. The changes include a proposal to end tailpipe testing through the New York Transient Emissions Short Test (NYTEST) I/M program on December 31, 2010. The proposed revision also includes a reduction in the percentage of emissions test waivers allowed within NYMA to 2% (from 3%) beginning in calendar year 2008. The SIP revision includes MOBILE6 vehicle emission modeling software (MOBILE6) demonstration for the high enhanced I/M performance standard.

On February 15, 2011, NYSDEC made a supplemental SIP submittal to EPA which included recent revisions to Title 6 of the New York Codes, Rules and Regulations (NYCRR), Part 217, ''Motor Vehicle Emissions,'' and the New York State Department of Motor Vehicles (NYSDMV) regulation found at Title 15 NYCRR Part 79, ''Motor Vehicle Inspection.'' New York adopted these rule revisions to end the NYTEST I/M program. This submittal was also subject to public notice and comment.

IV. What are the I/M performance standard requirements and does New York's I/M program satisfy them?

Table 1 below compares New York's existing NYMA I/M program requirements, which includes both the New York Vehicle Inspection Program (NYVIP) and NYTEST programs, to a future design after the NYTEST tailpipe testing program ends (''Post-NYTEST'').

TABLE 1

Vehicle type current NYMA I/M	(NYVIP and NYTEST Programs)	Post-NYTEST
Non-electric and non-diesel light-duty vehicles (<8,501 lbs. GVWR), MYs 1996 to 2 MYs old.	Emissions Test Type: NYVIP OBD II ECD Checks for Weight Code 1: air pump, fuel inlet restrictor, EGR, PCV, TAC, CAT, EVAP system disablement. Gas Cap: Cap Presence Only	Emissions Test Type: NYVIP OBD II ECD Checks for Weight Code 1: air pump, fuel inlet restrictor, EGR, PCV, TAC, CAT, EVAP system disablement. Gas Cap: Cap Presence Only.
Non-electric and non-diesel light-duty vehicles (<8,501 lbs. GVWR), 25 MYs old to MY 1995.	Emissions Test Type: NYTEST Transient ECD Checks for Weight Code 1: air pump, fuel inlet restrictor, EGR, PCV, TAC, CAT, EVAP system disablement. Gas Cap: NYTEST Pressure Test	Emissions Test Type: Low Enhanced: ECD Checks for Weight Code 1: air pump, fuel inlet restrictor, EGR, PCV, TAC, CAT, EVAP system disablement. Gas Cap: Cap Presence only.
Non-electric and non-diesel medium- and heavy-duty vehicles (8,501–<18,001 lbs. GVWR), 25 MYs old to older than 2MYs (DMV Weight Codes 2, 3).	Emissions Test Type: NYTEST Idle ECD Checks for Weight Codes 2 and 3: air pump, fuel inlet restrictor, EGR, PCV, TAC, CAT, EVAP system disablement.. Gas Cap: NYTEST Pressure Test	Emissions Test Type: Low Enhanced: ECD Checks for Weight Codes 2 and 3: air pump, fuel inlet restrictor, EGR, PCV, TAC, CAT, EVAP system disablement. Gas Cap: Cap Presence only.
Non-electric and non-diesel medium- and heavy-duty vehicles (>18,000 lbs. GVWR), 25 MYs old to older than 2MYs (DMV Weight Code 4).	Emissions Test Type: NYTEST Idle ECD Checks for Weight Code 4: air pump, fuel inlet restrictor, EGR, PCV, TAC, CAT, EVAP system disablement. Gas Cap: NYTEST Pressure Test	Safety only (NYVIP) (No emissions, ECD, or gas cap checks).

NOTE: The reader is referred to the following NYSDEC Web site for a list of Acronyms and Abbreviations: *http://www.dec.ny.gov/chemical/53288.html.*

I/M programs are designed and implemented to meet or exceed an applicable minimum Federal performance standard. EPA's performance standards were derived from MOBILE6 utilizing ''model'' inputs and local characteristics (*i.e.,* vehicle mix, fuel controls). Performance standards are expressed as emissions levels, in area-wide average grams per mile (gpm) values, resulting from the I/M program. More conventionally, performance standards are expressed as emission reductions, as compared to a no I/M scenario. The NYSDEC determined EPA's high enhanced performance standard (HEPS) by utilizing the ''model'' inputs contained under 40 CFR 51.351(f)(1) through (f)(13). While I/M jurisdictions are allowed to adopt alternate design features other than EPA's ''model'' inputs, compliance with the applicable performance standard must be demonstrated for the pollutant(s) that established I/M requirements.

NYSDEC proposed changes that differ from the initial 1996 NYMA demonstration. These modifications will affect a revised NYMA HEPS demonstration as follows:

— Emissions test type changes to reflect the end of NYTEST tailpipe testing (see Table above);
— New York estimated, and included a justification that the NYVIP OBD-based I/M program is as effective as a centralized test-only network.[1] The previously approved NYTEST network effectiveness of 88%, 84%, and 86% for hydrocarbons, carbon monoxide and oxides of nitrogen, respectively, are no longer applicable to the NYVIP program;
— New York evaluated, and included a justification for using MOBILE6 national default values for annual vehicle mileage accumulations rather than using local inputs derived from the outdated Nationwide Personal Transportation Survey (NPTS, 1995), as was previously used in the 1996 and 2006 I/M SIPs;
— A commitment to increase the stringency of the NYMA waiver rate to 2% beginning in 2008, as opposed

[1] New York identified four general program enhancements to serve as the basis for claiming 100% test-and-repair credit for NYVIP; Program Manager Network Design, System Integrity/Enhanced Enforcement, Training/Certification, and Inspector and Motorist Information.

to a 3% waiver rate claimed within the 1996 SIP.

— Of note, MOBILE5 previously allowed for partial repair technician training credit. New York previously claimed 50% repair technician credit within the 1996 SIP revision for the NYSDMV sponsored automotive technician training program. MOBILE6 does not allow for partial repair technician training, therefore no additional credit is assumed within this modeling effort.

With each new calendar year (beginning January 1), a greater percentage of NYMA vehicles will receive OBD II inspections through NYVIP I/M while the percentage of NYTEST inspections will decrease due to the 25 model year extension and escalated vehicle turnover (compared to newer NYVIP vehicles). To determine the date that a NYVIP only based I/M program complies with EPA's HEPS (*i.e.,* following the end of the NYTEST tailpipe emissions testing), NYSDEC completed a multi-year modeling analysis employing the following general inputs:

Network Type: decentralized test-and -repair.

NYVIP NYMA Start Date: 2006.

Test Frequency: annual.

Test-and-Repair Effectiveness: 100%.

Vehicle Types: LDV, LDT1, LDT2, LDT3, LDT4.

Visual Inspection Tests: air pump, catalyst, fuel inlet restrictor, EGR, evaporative disablement, PCV, and missing gas cap.

Applicable model years: model years 25 and newer.

Emissions Test Types: OBD: I/M & Evap.

Waiver Rate: 2% (beginning in CY 2008).

Compliance Rate: 98%.

OBD Exemption Ages: LDVs older than model year 1996, 2 newest model years.

Pre-81 Stringency: N/A.

Repair Technician Training: 0% credit.

NYMA I/M benefits were estimated using the MOBILE6 emission model and individual inputs for each county in the NYMA nonattainment area. Daily Vehicle Miles Traveled (DVMT) inventory was constructed by the New York State Department of Transportation (NYSDOT) to provide DVMT estimates by county, geographic component (urban, small urban, and rural) and functional class. This resulting vehicle miles traveled (VMT) by county and by functional class is then multiplied by a seasonal adjustment factor to account for seasonal differences. This seasonal adjustment factor, which appropriately takes into account hourly temperature, relative humidity data and other factors, is also supplied by the NYSDOT.

The vehicle mix for each of the 11 NYSDOT regions in New York State are used to produce VMT by vehicle type. There are 28 fuel and weight based categories employed by MOBILE6. The main objective was to create a separate, distinct (where justified) vehicle mix for each of the twelve roadway types in the Federal Highway Administration (FHWA) classification scheme. However, an hourly VMT was input to the model using the VMT BY HOUR command and was used in the computation of the composite daily emission factor. The local data were obtained through analyses conducted by NYSDOT.

The vehicle distributions used in MOBILE6 were obtained from the New York State Department of Motor Vehicles (NYSDMV) registration database for the current year at the beginning of July. Each record was sorted into the 28 vehicle types by county.

NYSDEC's MOBILE6 modeling demonstration estimated volatile organic compound (VOC) and oxides of nitrogen (NO_X) reductions for a NYVIP-only program in NYMA against EPA's HEPS. Modeling comparisons were completed for the 2009, 2010, and 2011 ozone seasons. The HEPS evaluation included the ±0.02 gpm emission level margin provided by 40 CFR 51.351(f)(13). While MOBILE6 reports gpm emission levels to the thousandths place, the calculated differences between the future NYVIP program and HEPS were rounded to the hundredths place to reflect the ±0.02 gpm margin. Carbon Monoxide (CO) reductions are included for demonstration purposes. The summary of New York's multi-year modeling evaluation is provided below in Table 2.

TABLE 2—NYVIP–ONLY HIGH ENHANCED I/M PERFORMANCE STANDARD COMPARISON FUTURE OZONE SEASONS

		VMT (1,000's)	VOC (gpm)	CO (gpm)	NO_X (gpm)
2009	EPA's HEPS	212,776.18	0.576	5.149	0.842
	Target NYVIP	"	0.606	5.446	0.857
	Difference		(0.03)	(0.30)	(0.02)
	Is it within the 0.02 gpm margin?		No	No	Yes.
2010	EPA's HEPS	216,180.83	0.520	4.807	0.750
	Target NYVIP	"	0.547	5.072	0.766
	Difference		(0.03)	(0.27)	(0.02)
	Is it within the 0.02 gpm margin?		No	No	Yes.
2011	EPA's HEPS	219,585.48	0.474	4.526	0.670
	Target NYVIP	"	0.495	4.739	0.684
	Difference		(0.02)	(0.21)	(0.01)
	Is it within the 0.02 gpm margin?		Yes	No	Yes.

As Table 2 indicates, the NYVIP I/M program alone cannot meet EPA's HEPS in either the 2009 or 2010 ozone seasons (June 1–September 30), but does meet EPA's HEPS for the 2011 ozone season (*i.e.,* prior to June 1). NYSDEC proposed that tailpipe testing be discontinued on December 31, 2010. NYSDEC believed this was the best date between the 2010 and 2011 ozone seasons to implement regulatory and inspection software based changes.

EPA's Evaluation

EPA has reviewed NYSDEC's proposed changes to its enhanced I/M program that differ from the previous Federally approved program and has determined that those changes satisfy the high enhanced performance standard, by utilizing the ''model'' inputs contained under 40 CFR 51.351(f)(1) through (f)(13), and are therefore approvable into the SIP. EPA will continue to evaluate the New York enhanced I/M program effectiveness through the annual and biennial reports submitted by the NYSDEC in accordance with 40 CFR 51.366, ''Data Analysis and Reporting.''

V. Does New York demonstrate noninterference with attainment and maintenance under Section 110(l) of the CAA?

Revisions to SIP-approved control measures must meet the requirements of CAA section 110(l) to be approved by EPA. Section 110(l) states: ''* * * The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.''

EPA interprets section 110(l) to apply to all requirements of the CAA and to all areas of the country, whether attainment, nonattainment, unclassifiable, or maintenance for one or more of the six criteria pollutants. EPA also interprets section 110(l) to require a demonstration addressing all pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision. Thus, for example, modification of a SIP-approved measure may impact NO_X emissions, may also impact $PM_{2.5}$ emissions, and this would have to be evaluated. The scope and rigor of an adequate section 110(l) demonstration of noninterference depends on the air quality status of the area, the potential impact of the revision on air quality, the pollutant(s) affected, and the nature of the applicable CAA requirements.

It is important to note, aside from ozone, the NYMA is attaining the NAAQS for all of the other criteria pollutants, including $PM_{2.5}$ and carbon monoxide. There are two SIPs where I/M has been included as an emission reduction control measure, the 1-hour and 8-hour ozone SIPs. For the 8-hour ozone SIP, New York included in the attainment demonstration the proposed I/M program as discussed in this action, so no further evaluation is needed.

For the 1-hour ozone SIP, NYSDEC discusses the ''anti-backsliding'' provisions within the Rate of Progress/Reasonable Further Progress Demonstration discussion of its I/M SIP submittal. Since the NYTEST program is part of the 1-hour ozone SIP for the NYMA, NYSDEC must, in accordance with CAA section 181(b)(4), continue to meet the reasonable further progress requirements of CAA section 182(b)(1). In other words, NYSDEC needs to ''make up'' for any decrease in projected emission reductions, as indicated in Table 3, that will occur as a result of the changes being made to the I/M program through the application of programs not already included in the 1-hour ozone SIP.

TABLE 3—NYVIP–ONLY HIGH ENHANCED I/M PERFORMANCE STANDARD COMPARISON 2011 OZONE SEASON

[In tons per day (tpd)]

		VMT (1,000's)	VOC (tpd)	NO_X (tpd)
2011	EPA HEPS	219,585.48	114.49	161.83
	Target NYVIP	"	119.56	165.22
	Difference/Shortfall	.....	(5.07)	(3.39)

In its submittal, NYSDEC noted it had or was planning to adopt revisions to its regulations (6 NYCRR Parts 228, 235, 241 and 243) that would more than make up this difference.

As part of the NYMA ozone attainment demonstration SIP, NYSDEC has estimated the emission reductions that will result from each of these control measures. The expected reductions in 2011 are identified below in Table 4.

TABLE 4

Regulation	Rule name	State effective date	Pollutant	Reduction in 2011 (tpd)
Part 228	Adhesives and Sealants	9/30/10	VOC	6.08
Part 235	Consumer Products	10/15/09	VOC	16.73
Part 241	Asphalt Paving	1/1/11	VOC	2.45
Part 243	Clean Air Intrastate Rule (CAIR)	5/6/10	NO_X	8.7

As a result of this analysis, it can be concluded that the adoption of either the Consumer Products or Adhesives and Sealants provisions (when compared to the Table 3 shortfall emission reductions) are all that is needed in VOC reductions to prevent ''backsliding'' under the 1-hour ozone SIP, and the adopted CAIR provisions alone make up the necessary NO_X reductions.[2] New York has adopted all of these rules with the respective State effective dates identified.

New York has demonstrated that the changes to its enhanced I/M program will meet the performance standard requirements and will therefore continue to achieve emission reductions necessary to attain and maintain the NAAQS for all criteria pollutants. EPA proposes to find that New York has satisfied the section 110(l) of the CAA demonstration of noninterference.

VI. What are EPA's conclusions?

EPA's review of the materials submitted indicates that New York has revised its I/M program in accordance with the requirements of the CAA, 40 CFR part 51 and all of EPA's technical requirements for an approvable enhanced I/M program. EPA is proposing to approve the revisions to the Title 6, New York Codes, Rules and Regulations (NYCRR), Part 217, ''Motor Vehicle Emissions,'' Subparts 217–1, 217–4 and the adoption of new Subpart 217–6, as effective on December 5, 2010,

[2] On July 6, 2011, EPA issued the Cross-State Air Pollution Rule (CSAPR) to replace the CAIR rule, which was vacated and then remanded to the EPA in 2008, see *http://www.epa.gov/airtransport/*. A December 2008 court decision kept the requirements of CAIR in place temporarily, but directed EPA to issue a new rule to implement the CAA requirements concerning the transport of air pollution across state boundaries. This CSAPR is designed to implement these CAA requirements and respond to the court's concerns. The CSAPR takes effect January 1, 2012; CAIR will be implemented through the 2011 compliance periods, and then replaced by the CSAPR.

and the New York State Department of Motor Vehicles (NYSDMV) regulation Title 15 NYCRR Part 79 ''Motor Vehicle Inspection,'' Sections 79.1–79.15, 79.17, 79.20, 79.21, 79.24, 79.25, as effective on December 29, 2010, which incorporate the State's motor vehicle I/M program requirements. The CAA gives states the discretion in program planning to implement programs of the state's choosing as long as necessary emission reductions are met. EPA is also proposing to approve New York's performance standard modeling demonstration, which reflects the State's I/M program as it is currently implemented in the NYMA as well as throughout New York State.

VII. Statutory and Executive Order Reviews

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

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

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: September 6, 2011.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2011–23855 Filed 9–15–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2000–0003; FRL–9465–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of proposed rule.

SUMMARY: On July 29, 2011, the Environmental Protection Agency (EPA) published a Notice of Intent to Delete and a Direct Notice of Deletion for the Palmer Barge Line (PBL) Superfund Site from the National Priorities List. The EPA is withdrawing the Notice of Intent to Delete because the deletion notices were published in the **Federal Register** without Headquarter's concurrence as required under the Comprehensive Environmental Response, Compensation, and Liability Act Delegation of Authority. After appropriate Headquarters concurrence is received on the Notice of Intent to Delete the PBL Superfund Site from the National Priorities List, the EPA will re-publish a Notice of Intent to Delete in the **Federal Register**.

DATES: The proposed rule published on July 29, 2011, (76 FR 45484) is withdrawn as of September 16, 2011.

ADDRESSES:

Information Repositories: Comprehensive information on the PBL Superfund Site, as well as the comments that we received during the comment period, are available in Docket EPA–HQ–SFUND–2000–0003, accessed through the *http://www.regulations.gov* Web site. Although listed in the docket 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:

1. U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733; Hours of operation: Monday thru Friday, 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m. Contact: Rafael A. Casanova (214) 665–7437.

2. Port Arthur Public Library, 4615 9th Avenue, Port Arthur, Texas 77642–5799; Hours of operation: Monday thru Thursday, 9 a.m. to 9 p.m.; Friday, 9 a.m. to 6 p.m.; Saturday, 9 a.m. to 5 p.m.; and Sunday, 2 p.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Rafael A. Casanova, Remedial Project Manager; U.S. Environmental Protection Agency, Region 6, Superfund Division (6SF–RA), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733; telephone number: (214) 665–7437; *e-mail: casanova.rafael@epa.gov*.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 300

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

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

Dated: September 6, 2011.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2011–23871 Filed 9–15–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1998–0007; FRL–9465–6]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of proposed rule.

SUMMARY: On July 29, 2011, the Environmental Protection Agency (EPA) published a Notice of Intent to Delete and a Direct Notice of Deletion for the State Marine of Port Arthur (SMPA) Superfund Site from the National Priorities List. The EPA is withdrawing the Notice of Intent to Delete because the deletion notices were published in the **Federal Register** without Headquarter's concurrence as required under the Comprehensive Environmental Response, Compensation, and Liability Act Delegation of Authority. After appropriate Headquarters concurrence is received on the Notice of Intent to Delete the SMPA Superfund Site from the National Priorities List, the EPA will re-publish a Notice of Intent to Delete in the **Federal Register**.

DATES: The proposed rule published on July 29, 2011, (76 FR 45483) is withdrawn as of September 16, 2011.

ADDRESSES:

Information Repositories: Comprehensive information on the SMPA Superfund Site, as well as the comments that we received during the comment period, are available in Docket EPA–HQ–SFUND–1998–0007, accessed through the *http://www.regulations.gov* Web site. Although listed in the docket 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:

1. U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733; Hours of operation: Monday thru Friday, 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m. Contact: Rafael A. Casanova (214) 665–7437.

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FOR FURTHER INFORMATION CONTACT: Rafael A. Casanova, Remedial Project Manager, U.S. Environmental Protection Agency, Region 6, Superfund Division (6SF–RA), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733; *telephone number:* (214) 665–7437; *e-mail: casanova.rafael@epa.gov.*

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 300

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

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

Dated: September 6, 2011.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2011–23822 Filed 9–15–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2011–0644, 0645, 0646, 0647, 0648, 0649, 0650, 0651, 0652, 0653, and 0654; FRL–9464–5]

RIN 2050–AD75

National Priorities List, Proposed Rule No. 55

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add 11 sites to the General Superfund section of the NPL.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before November 15, 2011.

ADDRESSES: Identify the appropriate Docket Number from the table below.

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/County, State	Docket ID No.
Jervis B. Webb Co.	South Gate, CA	EPA–HQ–SFUND–2011–0644
Seam Master Industries	South Gate, CA	EPA–HQ–SFUND–2011–0645
Continental Cleaners	Miami, FL	EPA–HQ–SFUND–2011–0646
Leeds Metal	Leeds, ME	EPA–HQ–SFUND–2011–0647
Compass Plaza Well TCE	Rogersville, MO	EPA–HQ–SFUND–2011–0648
Southeastern Wood Preserving	Canton, MS	EPA–HQ–SFUND–2011–0649
Eighteenmile Creek	Niagara County, NY	EPA–HQ–SFUND–2011–0650
Metro Container Corporation	Trainer, PA	EPA–HQ–SFUND–2011–0651
Corozal Well	Corozal, PR	EPA–HQ–SFUND–2011–0652
US Oil Recovery	Pasadena, TX	EPA–HQ–SFUND–2011–0653
Bremerton Gasworks	Bremerton, WA	EPA–HQ–SFUND–2011–0654

Submit your comments, identified by the appropriate Docket number, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: superfund.docket@epa.gov.*
- *Mail:* Mail comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mailcode 5305T); 1200 Pennsylvania Avenue, NW.; Washington, DC 20460.
- *Hand Delivery or Express Mail:* Send comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue, NW.; EPA West, Room 3334, Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays).

Instructions: Direct your comments to the appropriate Docket number (see table above). 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; that 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 Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the Supplementary Information portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone: (703) 603–8852, e-mail: *jeng.terry@epa.gov,* Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mailcode 5204P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases

into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.,* the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.,* where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply

that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the Remedial Investigation (''RI'') ''is a process undertaken * * * to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally performed in an interactive fashion with the Feasibility Study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the Agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

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

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

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

H. May EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.,* institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund/cleanup/ccl.htm.*

J. What is the Sitewide Ready for Anticipated Use measure?

The Sitewide Ready for Anticipated Use measure (formerly called Sitewide Ready-for-Reuse) represents important Superfund accomplishments and the measure reflects the high priority EPA places on considering anticipated future land use as part of our remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to *http://www.epa.gov/superfund/programs/recycle/tools/index.html.*

II. Public Review/Public Comment

A. May I review the documents relevant to this proposed rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this proposed rule are contained in public Dockets located both at EPA Headquarters in Washington, DC, and in the Regional offices. These documents are also available by electronic access at *http://www.regulations.gov* (see instructions in the **ADDRESSES** section above).

B. How do I access the documents?

You may view the documents, by appointment only, in the Headquarters or the Regional Dockets after the publication of this proposed rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional Dockets for hours.

The following is the contact information for the EPA Headquarters Docket: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue, NW.; EPA West, Room 3334, Washington, DC 20004; 202/566–0276. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional Dockets is as follows:

Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109–3912 ; 617/918–1417.

Ildefonso Acosta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4344.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., Mailcode 9T25, Atlanta, GA 30303; 404/562–8862.

Evette Jones, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7572.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Suite 1200, Mailcode 6SF, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Mailcode SUPRERNB, Kansas City, KS 66101; 913/551–7335.

Sabrina Forrest, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR–B, Denver, CO 80202–1129; 303/312–6484.

Karen Jurist, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD–6–1, San Francisco, CA 94105; 415/972–3219.

Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mailcode ECL–112, Seattle, WA 98101; 206/463–1349.

You may also request copies from EPA Headquarters or the Regional Dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents. Please note that due to the difficulty of reproducing oversized maps, oversized maps may be viewed only in-person, since EPA dockets are not equipped to either copy and mail out such maps or scan them and send them out electronically.

You may use the Docket at *http://www.regulations.gov* to access documents in the Headquarters Docket (see instructions included in the **ADDRESSES** section above). Please note that there are differences between the Headquarters Docket and the Regional Dockets and those differences are outlined below.

C. What documents are available for public review at the Headquarters Docket?

The Headquarters Docket for this proposed rule contains the following for the sites proposed in this rule: HRS score sheets; Documentation Records describing the information used to compute the score; information for any sites affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What documents are available for public review at the Regional Dockets?

The Regional Dockets for this proposed rule contain all of the information in the Headquarters Docket plus the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional Dockets.

E. How do I submit my comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the mailing addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What happens to my comments?

EPA considers all comments received during the comment period. Significant comments are typically addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What should I consider when preparing my comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas,* 849 F.2d 1516 (DC Cir. 1988)). EPA will not address voluminous comments that are not referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. May I submit comments after the public comment period is over?

Generally, EPA will not respond to late comments. EPA can guarantee only that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of generally not delaying a final listing decision solely to accommodate consideration of late comments.

I. May I view public comments submitted by others?

During the comment period, comments are placed in the Headquarters Docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional Dockets approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper, will be made available for public viewing in the electronic public Docket at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Once in the public Dockets system, select ''search,'' then key in the appropriate Docket ID number.

J. May I submit comments regarding sites not currently proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites that were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the Docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

In today's proposed rule, EPA is proposing to add 11 sites to the General Superfund section of the NPL. All of the sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above.

The sites are presented in the table below.

State	Site name	City/County
CA	Jervis B. Webb Co.	South Gate.
CA	Seam Master Industries	South Gate.
FL	Continental Cleaners	Miami.
ME	Leeds Metal	Leeds.
MO	Compass Plaza Well TCE	Rogersville.
MS	Southeastern Wood Preserving	Canton.
NY	Eighteenmile Creek	Niagara County.
PA	Metro Container Corporation	Trainer.
PR	Corozal Well	Corozal.
TX	US Oil Recovery	Pasadena.
WA	Bremerton Gasworks	Bremerton.

IV. Statutory and Executive Order Reviews

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

1. What are Executive Order 12866 and Executive Order 13563?

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Executive Order 13563, entitled ''Improving Regulation and Regulatory Review,'' was issued on January 18, 2011, and supplements Executive Order 12866 by outlining the President's regulatory strategy to support continued economic growth and job creation, while protecting the safety, health and rights of all Americans. The Executive Order requires considering costs, reducing burdens on businesses and consumers, expanding opportunities for public involvement, designing flexible approaches, ensuring sound science forms the basis of decisions, and retrospectively reviewing existing regulations.

2. Is this proposed rule subject to Executive Order 12866 review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

1. What is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act apply to this proposed rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

1. What is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How has EPA complied with the Regulatory Flexibility Act?

This proposed rule listing sites on the NPL, if promulgated, would not impose any obligations on any group, including small entities. This proposed rule, if promulgated, also would establish no standards or requirements that any small entity must meet, and would impose no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this proposed rule, if promulgated, would not impose any requirements on any small entities. For the foregoing reasons, I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome

alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

2. Does UMRA apply to this proposed rule?

This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Proposing a site on the NPL does not itself impose any costs. Proposal does not mean that EPA necessarily will undertake remedial action. Nor does proposal require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of proposing a site to be placed on the NPL. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As is mentioned above, site proposal does not impose any costs and would not require any action of a small government.

E. Executive Order 13132: Federalism

1. What is Executive Order 13132?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are 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.''

2. Does Executive Order 13132 apply to this proposed rule?

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, because it does not contain any requirements applicable to States or other levels of government. Thus, the requirements of the Executive Order do not apply to this proposed rule.

EPA believes, however, that this proposed rule may be of significant interest to State governments. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA therefore consulted with State officials and/or representatives of State governments early in the process of developing the rule to permit them to have meaningful and timely input into its development. All sites included in this proposed rule were referred to EPA by States for listing. For all sites in this rule, EPA received letters of support either from the Governor or a State official who was delegated the authority by the Governor to speak on their behalf regarding NPL listing decisions.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

1. What Is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249, November 6, 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.'' ''Policies that have Tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.''

2. Does Executive Order 13175 apply to this proposed rule?

This action does not have Tribal implications, as specified in Executive Order 13175. Proposing a site to the NPL does not impose any costs on a Tribe or require a Tribe to take remedial action. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

1. What is Executive Order 13045?

Executive Order 13045: ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

2. Does Executive Order 13045 apply to this proposed rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage

1. What is Executive Order 13211?

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355 (May 22, 2001)) requires Federal agencies to prepare a ''Statement of Energy Effects'' when undertaking certain regulatory actions. A Statement of Energy Effects describes the adverse effects of a ''significant energy action'' on energy supply, distribution and use, reasonable alternatives to the action, and the expected effects of the alternatives on energy supply, distribution and use.

2. Does Executive Order 13211 apply to this proposed rule?

This action is not a ''significant energy action'' as defined in Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy impacts because proposing a site to the NPL does not require an entity to conduct any action that would require energy use, let alone that which would significantly affect energy supply, distribution, or usage. Thus, Executive Order 13175 does not apply to this action.

I. National Technology Transfer and Advancement Act

1. What is the National Technology Transfer and Advancement Act?

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), 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act apply to this proposed rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

1. What is Executive Order 12898?

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.

2. Does Executive Order 12898 apply to this rule?

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As this rule does not impose any enforceable duty upon State, Tribal or local governments, this rule will neither increase nor decrease environmental protection.

List of Subjects in 40 CFR Part 300

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

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

Dated: September 8, 2011.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 2011–23651 Filed 9–15–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–BA17.e

Atlantic Highly Migratory Species; Atlantic Shark Management Measures

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

ACTION: Notice of Intent; control date for Atlantic shark landings; request for comments.

SUMMARY: This notice announces the National Marine Fisheries Service's (NMFS) intent to prepare an EIS and FMP Amendment that would consider catch shares for the Atlantic shark fisheries. NMFS published an Advanced Notice of Proposed Rulemaking (ANPR) on September 20, 2010, that provided background information and requested public comment on potential adjustments to the regulations governing the U.S. Atlantic shark fisheries to address several specific issues currently affecting management of the shark fisheries and to identify specific goals for management of the fisheries in the future. NMFS received comments on a variety of modifications to the existing management structure for the Atlantic shark fisheries, including programs such as catch shares, limited access privilege programs (LAPPs), individual fishing quotas (IFQs), and/or sectors. The purpose of this Notice of Intent (NOI) is to establish a control date for eligibility to participate in an Atlantic shark catch share program, announce the availability of a white paper describing design elements of catch share programs in general and issues specific to the Atlantic shark fisheries, announce a catch share workshop at the upcoming HMS Advisory Panel meeting, and request public comment on the implementation of catch shares in the Atlantic shark fisheries.

DATES: Written comments regarding the issues in this NOI must be received no later than 5 p.m. on March 1, 2012.

Topics included in this NOI will be discussed on September 22, 2011, at the Highly Migratory Species (HMS) Advisory Panel (AP). Additional workshops will be announced in a subsequent notice in the **Federal Register**. Please see the **SUPPLEMENTARY INFORMATION** section of this NOI for more specifics regarding the HMS Advisory Panel meeting.

ADDRESSES: The workshop at the HMS Advisory Panel will be held at the Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910. You may submit comments, identified by ''0648–BA17'', by any one of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.*
- *Fax:* 301–713–1917, Attn: Margo Schulze-Haugen.
- *Mail:* NMFS SF1, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: All comments received are part of the public record and generally will be posted to portal *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft

Word, Excel, WordPerfect, or Adobe PDF file formats only.

Related documents, including the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments and the 2010 Stock Assessment and Fishery Evaluation (SAFE) Report are available upon request at the mailing address noted above or on the HMS Management Division's Web page at: *http://www.nmfs.noaa.gov/sfa/hms/.*

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz, LeAnn Southward Hogan, Guý DuBeck, or Michael Clark at 301–427–8503 or fax at 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). In 1999, NMFS revised the 1993 Shark FMP and included swordfish and tunas in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). The 1999 FMP was amended in 2003, and in 2006, NMFS consolidated the 1999 FMP and its amendments—and the Atlantic Billfish FMP and its amendments—into the 2006 Consolidated Atlantic HMS FMP. The 2006 Consolidated HMS FMP was amended in 2008 and 2010 to address management needs in the Atlantic shark fisheries.

As outlined in the September 20, 2010, ANPR (75 FR 57235), sharks have been federally managed since 1993. Since that time, there have been numerous changes to the regulations and major rules related to sharks, either through FMP amendments or regulatory amendments, in order to respond to results of stock assessments, changes in stock status, and other fishery fluctuations. Despite these modifications, the Atlantic shark fisheries, particularly the large coastal shark (LCS) portion, has experienced problems such as commercial landings that exceed the quotas, declining numbers of fishing permits since limited access was implemented, complex regulations, ''derby'' fishing conditions due to small quotas and short seasons, increasing numbers of regulatory discards, and declining market prices. The objective of the ANPR was to describe and seek public comment on alternative management strategies that might better address these issues in the Atlantic shark fisheries.

Comments were sought on several themes that would affect management of the shark fisheries and to identify goals for future actions. The themes presented in the ANPR included: quota structure, permit structure, and catch shares. Six public meetings were held which included one at the Atlantic HMS AP meeting in Silver Spring, MD on September 21–23, 2010. NMFS received comments on a variety of possible modifications to the existing management structure for Atlantic sharks. The public commented that changes in quota structure addressed issues associated with species complexes/quotas, regions, and retention limits, while comments on changes in the permit structure addressed issues associated with permit stacking and ''use it or lose it'' permits. NMFS received comments from environmental groups that supported our initiative to address a number of serious problems facing shark populations in the Atlantic Ocean and Gulf of Mexico. NMFS also received comments about concerns for better tracking of landings and mortality of sharks by recreational fishermen. Comments in support of and opposed to catch shares were received in addition to comments on methods for determining individuals' initial allocation if catch shares were implemented for the Atlantic shark fisheries. A summary of all the comments received can be obtained from HMS Management Division Web site (*http://www.nmfs.noaa.gov/sfa/hms/sharks/catchshares.htm*).

Furthermore, NMFS received a proposal from regional stakeholders to implement a catch share program for the Atlantic shark fisheries, particularly the LCS portion, in the Gulf of Mexico (GOM). These fishermen would prefer to replace the current management structure for LCS with an individual fishing quota (IFQ) program. The regional stakeholders continue to hold deliberations related to this IFQ proposal and some of the details have yet to be finalized. Regional stakeholders have expressed that they would like this IFQ program to be integrated into existing catch share programs in the GOM for reef fish (*i.e.,* red snapper, red grouper, and tilefish) and employ some of the same infrastructure for monitoring and reporting as well as some of the same design and management elements associated with these Council-designed catch share programs in the GOM. The proposal would include non-sandbar LCS, sandbar sharks, and small coastal sharks (SCS). Under the industry proposal, the eligible participants in the IFQ program would include all fishermen with a valid federal directed or incidental limited access shark permit and state-water fishermen, and the initial share of the IFQ program would be distributed to current Federal directed and incidental permit holders based on their catch history in logbooks from 2002–2009. The allocation for the state-water fishermen would be based on dealer landings from the same qualifying years as the Federal permit holders. In the industry-proposed IFQ program, state-water permit holders would fish under an established state quota and be managed under state-specific rules. The qualifying years for initial allocation for each species has multiple options in the proposal. The non-sandbar LCS allocation would be based on variety of number of years during a time period of 2002–2011. Participants would be able to select the best number of years out of the total number of qualifying years. For example, if the qualifying years were 2002–2009, then participants would be able to select the best 5 out of the 8 years for their allocation. The proposal would also establish an allocation for sandbar sharks in order to allow a sandbar shark allocation that can be easily and quickly incorporated into the IFQ program once the species is rebuilt. The stakeholders are considering that the qualifying years for this allocation would be 2002–2007 or 2005–2007. SCS were also included in the proposal, but the qualifying years for allocation have yet to be proposed. The other details of the IFQ proposal, including duration of the program, transferability, IFQ share caps, IFQ allocation caps, and cost recovery fees are consistent with the existing GOM IFQ programs (red snapper, grouper, and tilefish). Additional details on the proposal received from GOM participants for the Atlantic shark fisheries can be found on the HMS Management Division Web site (*http://www.nmfs.noaa.gov/sfa/hms/sharks/catchshares.htm*).

In light of the comments received on the ANPR concerning catch shares and the more specific interest in a catch share program for Atlantic Sharks in the GOM submitted by regional stakeholders, NMFS is considering implementation of catch shares for the Atlantic shark fisheries. Consistent with the objectives described in the ANPR on the Future of the Atlantic Shark Fishery, written comments, and comments at public hearings and Advisory Panel meetings, implementing a catch share program for the Atlantic shark fisheries may be an effective means of lengthening seasons and providing participants more autonomy concerning timing of fishing activities, reducing regulatory discards, improving economic performance by allowing fishermen the opportunity to harvest

sharks when conditions are most favorable, addressing intraregional differences in shark distribution that may lead to difficulty timing seasons when sharks are locally available, reducing latent effort in the fishery, reducing bycatch, simplifying regulations, and ensuring that overfishing does not occur to maintain target rebuilding timeframes for sharks.

NMFS has prepared a white paper that provides more detail concerning some of the potential design elements for catch share programs and provides the public with additional information regarding some of the issues in the Atlantic shark fisheries that NMFS is interested in obtaining feedback on, including, but not limited to: eligibility (directed and/or incidental permit holders), specification of the resource unit (species and regions to include), initial allocation (based on catch history and/or other means), and catch share management. The white paper is available on the HMS Management Division Web site (*http://www.nmfs.noaa.gov/sfa/hms/sharks/catchshares.htm*). Implementation of any program to restrict access in the Atlantic shark fisheries would also require preparation of an amendment to the 2006 Consolidated HMS FMP, which would include the NOI and white paper for public comment during the scoping period, a predraft of FMP amendment outlining options for consideration, a proposed rule and draft environmental impact statement that analyzes alternatives for design and management of a catch share program and identifies the Agency's preferred alternatives, and issuance of a final implementing rule.

Control Date

NMFS is establishing September 16, 2011, as a control date. If NMFS takes future action to implement catch shares in the Atlantic shark fisheries, the control date would affect eligibility to participate in and receive an initial allocation of quota in the Atlantic shark fisheries. Unless NMFS changes the control date in the future, to be eligible for the Atlantic shark fisheries catch share program, participants must be in possession of a valid federal directed or incidental limited access shark permit on September 16, 2011. The Agency may or may not make use of this control date as part of the qualifying criteria for participation in any future catch share or other management program. Fishermen are not guaranteed future participation in a fishery regardless of their entry date or intensity of participation in the fishery before or after the control date under consideration.

Requests for Landings History

Through the proposed rulemaking process, NMFS will consider, among other things, methods of determining initial allocations. At this time, to reduce duplicate work and minimize confusion, NMFS is requesting that permit holders not submit data requests for their logbook landings history. There will be ample opportunity for all permit holders to review the landings data that NMFS has on file, the Agency will provide detailed information on a process for petitioning any discrepancies at a future date.

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

Dated: September 13, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–23877 Filed 9–15–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 180
Friday, September 16, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0090]

Notice of Request for Extension of Approval of an Information Collection; Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of fruits and vegetables.

DATES: We will consider all comments that we receive on or before November 15, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0090-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0090, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0090* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the importation of fruits and vegetables, contact Mr. David Lamb, Import Specialist, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road, Unit 156, Riverdale, MD 20737; (301) 734–0627. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Fruits and Vegetables.

OMB Number: 0579–0264.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*) (PPA), the Secretary of Agriculture may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, means of conveyance, or other article to prevent a plant pest or noxious weed from being introduced into or disseminated within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS), which administers regulations to implement the PPA.

The regulations in Subpart—Fruits and Vegetables (7 CFR 319.56–1 through 319.56–51) allow a number of fruits and vegetables to be imported into the United States, under specified conditions, from certain parts of the world while continuing to protect against the introduction of pests into the United States. Importation of a variety of fruits and vegetables from Belgium, Central America, China, the Dominican Republic, Jamaica, Jerusalem, Mexico, the Netherlands, South America, Trinidad, and Tobago requires the use of certain information collection activities, including phytosanitary certificates, fruit fly monitoring records, and cooperative agreements.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.2557172 hours per response.

Respondents: Growers, shippers, and national plant protection organizations.

Estimated annual number of respondents: 15.

Estimated annual number of responses per respondent: 32.06666.

Estimated annual number of responses: 481.

Estimated total annual burden on respondents: 123 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 8th day of September, 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–23728 Filed 9–15–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Performance Review Board Membership

AGENCY: Economics and Statistics Administration, Commerce.

ACTION: Notice.

SUMMARY: Below is a listing of individuals who are eligible to serve on the Performance Review Board (PRB) in accordance with the Economics and Statistics Administration's Senior

Executive Service and Senior Professional Performance Management Systems:

William G. Bostic, Jr.,
Arnold A. Jackson,
Theodore A. Johnson,
Steven J. Jost,
J. Steven Landefeld,
Jennifer Madans,
Marilia A. Matos,
Brian E. McGrath,
Thomas L. Mesenbourg, Jr.,
Brian C. Moyer,
Nancy A. Potok,
Katherine K. Wallman.

The term of all new members of the PRB will expire on December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Latasha Ellis, 301–763–3727.

Dated: September 7, 2011.

Kenneth A. Arnold,

Associate Under Secretary for Management, Chair, Performance Review Board.

[FR Doc. 2011–23752 Filed 9–15–11; 8:45 am]

BILLING CODE 3510–BS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 11, 2011, the Department of Commerce (''Department'') published the final results of the antidumping duty administrative review of wooden bedroom furniture from the People's Republic of China (''PRC'').[1] The period of review (''POR'') is January 1, 2009, through December 31, 2009. We are amending our *Final Results* to correct certain ministerial errors.

DATES: *Effective Date:* September 16, 2011.

FOR FURTHER INFORMATION CONTACT: Jeffrey Pedersen or Rebecca Pandolph, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2769 or (202) 482–3627, respectively.

[1] *See Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part,* 76 FR 49729 (August 11, 2011) (''*Final Results*'').

Background

The Department's regulations at 19 CFR 351.224(c)(2) state that a party to an antidumping duty proceeding must file comments concerning ministerial errors within five days after the earlier of the date on which the Secretary released disclosure documents to that party or held a disclosure meeting with that party. On August 10, 2011, Zhangjiagang Zheng Yan Decoration Co., Ltd. (''ZYD'') submitted a ministerial error allegation. On August 17, 2011, the Department issued draft cash deposit and liquidation instructions to all interested parties and set August 19, 2011, as the deadline for submitting comments on these instructions. On August 17, 2011, American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. (collectively, ''Petitioners''); Home Meridian International, Inc. d/b/a/ Samuel Lawrence Furniture Co. and Pulaski Furniture Company and Import Services, Inc. (''Home Meridian'') and Great Rich (HK) Enterprises Co., Ltd. (''Great Rich'')[2] submitted timely ministerial error allegations regarding the *Final Results.* On August 19, 2011, both Petitioners and Dalian Huafeng Furniture Group Co., Ltd. (''Dalian Huafeng'') submitted comments regarding the liquidation instructions for Huafeng. On August 22, 2011, Petitioners and Dalian Huafeng replied to Home Meridian's August 17, 2011, submission. On August 31, 2011, the Department rejected Dalian Huafeng's August 22, 2011, reply to ministerial error comments because it contained a new allegation. On September 2, 2011, Dalian Huafeng refiled its reply comments after removing the new allegation in accordance with instructions from the Department.

Mowry and Grimson entered a notice of appearance on behalf of Liberty Furniture Industries Inc. (''Liberty'') on August 17, 2011. The law firm also submitted a ministerial error allegation on behalf of Liberty on that date. In its allegation, Liberty ''signed on to the ministerial error comments'' filed by Home Meridian. Because Liberty was not a party to the proceeding, the Department rejected its ministerial error allegation.[3]

[2] Great Rich refilled its allegation on August 22, 2011, because it incorrectly identified the POR on its August 17, 2011, submission as the POR for the subsequent administrative review covering January 1, 2010, through December 31, 2010.

[3] *See* Letter to Liberty Furniture Industries, Inc. from Abdelali Elouaradia, Office Director, AD/CVD Operations, Office 4 regarding, ''Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China: Ministerial Error Comments: Rejection of Submission,'' dated August 31, 2011.

Ministerial Errors

A ministerial error, as defined in section 751(h) of the Tariff Act of 1930, as amended (''the Act''), includes ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.''[4]

Petitioners allege that the Department: (1) Left out the word ''Dongguan'' when it listed the entity ''Dongguan Cambridge Furniture Co., Ltd., Glory Oceanic Co., Ltd.'' (''Cambridge'') in the rate table of the *Final Results;* (2) did not correctly account for Dalian Huafeng's name change in the cash deposit instructions and (3) should revise the liquidation instructions for Dalian Huafeng to include ''reseller'' language as is done in market economy cases. Great Rich alleges that the Department incorrectly spelled its name in the cash deposit instructions. Home Meridian alleges that the Department made an arithmetic error in determining the surrogate value for plywood. Dalian Huafeng agrees with Home Meridian's allegation and also alleges that the Department's liquidation instructions do not correctly account for its name change. Petitioners claim Home Meridian's and Dalian Huafeng's allegation regarding the surrogate value calculation for plywood does not constitute a ministerial error. ZYD alleges that the Department incorrectly listed its rate in the *Final Results* given that the Department had rescinded the review of ZYD.

After analyzing the interested parties' allegations and reply comments, we find, in accordance with section 751(h) of the Act and 19 CFR 351.225(e), that the Department: (1) Incorrectly listed Cambridge's name in *Final Results;* (2) misspelled Great Rich's name in the cash deposit instructions and the *Final Results;* and (3) incorrectly listed ZYD's rate as 41.75 percent in the *Final Results* when the company's rate should have remained unchanged. Therefore, in accordance with section 735(e) of the Act, we are amending the *Final Results.* Specifically, we are amending the entity name ''Cambridge Furniture Co., Ltd., Glory Oceanic Co., Ltd.'' that was listed in the *Final Results* to ''Dongguan Cambridge Furniture Co., Ltd., Glory Oceanic Co., Ltd.'' The antidumping duty percentage margin assigned to this entity has not changed. Also, we are amending the entity name ''Dongguan

[4] *See also* 19 CFR 351.224(f).

Liaobushangdun Huada Furniture Factory, Great Rich (HK) Enterprise Co., Ltd.'' that was listed in the *Final Results* to ''Dongguan Liaobushangdun Huada Furniture Factory, Great Rich (HK) Enterprises Co., Ltd.'' The antidumping duty percentage margin assigned to this entity has not changed. The above corrections are also reflected in the customs instructions. Lastly, we are amending the *Final Results* by removing Zhangjiagang Zheng Yan Decoration Co. Ltd. from the rate table and noting that this company should not have been listed as receiving an antidumping duty margin of 41.75 percent. The review of Zhangjiagang Zheng Yan Decoration Co. Ltd. was rescinded and thus this company's dumping margin remains unchanged. We will liquidate entries for ZYD during the instant POR at the cash deposit rate required at the time of entry. In addition, ZYD's cash deposit rate will not change as a result of this review but will remain the rate in effect at the time of entry. Correction of these ministerial errors does not affect the margin selected for the PRC-wide entity. However, we disagree that the Department made ministerial errors with respect to: (1) Accounting for Dalian Huafeng's name change in the customs instructions; and (2) calculating the surrogate value for plywood. Further, the Department does not consider Petitioners' comments regarding the omission of reseller language from the liquidation instructions for Dalian Huafeng to be a ministerial error allegation and is, therefore, not making any changes in response to Petitioners' comments. For a full explanation of each of these findings, *see* Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4 regarding, ''Ministerial Error Allegations in the Final Results of the 2009 Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China,'' dated concurrently with this notice.

Assessment

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department shall determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP that are related to the amended final results 15 days after the date of publication of the amended final results of review.

Cash Deposit Requirements

Cash deposit requirements related to the amended final results will be effective retroactively for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the *Final Results,* as provided for by section 751(a)(2)(C) of the Act. The cash deposit rate for companies whose rate was corrected by the amended final results (*i.e.,* ZYD) will be the corrected rate for that company noted above. As noted above, ZYD's cash deposit rate will not change as a result of this review but will remain the rate in effect at the time of entry. For previously investigated or reviewed PRC and non-PRC exporters that have separate rates whose rate has not changed as a result of the amended final results, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period. For all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 216.01 percent. For all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements shall remain in effect until further notice.

These amended final results are published in accordance with sections 751(h) and 777(i)(1) of the Act.

Dated: September 12, 2011.

Christian Marsh,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–23832 Filed 9–15–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

The Manufacturing Council: Meeting of the Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The Manufacturing Council will hold a meeting to hear updates from the Department of Commerce in addition to the Council's ex-officio agency members from, the Departments of the Treasury, Labor, and Energy on past Council recommendations regarding competitiveness, workforce development issues, energy policy, trade agreements and other issues affecting the U.S. manufacturing sector and to determine future areas of focus for Council work.

DATES: September 29, 2011.

Time: 9 a.m.–11 a.m. EDT.

ADDRESSES: The U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4830, Washington, DC 20230. All guests are requested to register in advance. This program will be physically accessible to people with disabilities. Seating is limited and will be on a first come, first served basis. Requests for sign language interpretation, other auxiliary aids, or pre-registration, should be submitted no later than September 22, 2011 to Jennifer Pilat, the Manufacturing Council, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–4501, *OACIE@trade.gov.* Last minute requests will be accepted, but may be impossible to fill.

FOR FURTHER INFORMATION CONTACT: Jennifer Pilat, the Manufacturing Council, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone: 202–482–4501, e-mail: *OACIE@trade.gov*.

SUPPLEMENTARY INFORMATION: The Council was re-chartered on April 8, 2010, to advise the Secretary of Commerce on matters relating to the U.S. manufacturing industry.

No time will be available for oral comments from members of the public attending the meeting. Any member of the public may submit pertinent written comments concerning the Council's affairs at any time before or after the meeting. Comments may be submitted to Jennifer Pilat at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5 p.m. Eastern Time on September 22, 2011, to ensure transmission to the Council prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of Council meeting minutes will be available within 90 days of the meeting.

Dated: September 12, 2011.

Jennifer Pilat,

Executive Secretary, The Manufacturing Council.

[FR Doc. 2011–23901 Filed 9–15–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea: Revocation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 1, 2010, the Department of Commerce (the Department) initiated its third sunset review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea. Pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), the U.S. International Trade Commission (ITC) determined that revocation of the existing antidumping duty order on polyethylene terephthalate film, sheet, and strip from the Republic of Korea would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Therefore, pursuant to section 751(d)(2) of the Act, and 19 CFR 351.222(i)(1)(iii), the Department is revoking the antidumping duty order on PET film from the Republic of Korea.

DATES: *Effective Date:* October 20, 2010.

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold or Robert James, AD/CVD Operations Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–1121 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 1991, the Department published the antidumping duty order on PET film from the Republic of Korea. *See Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea,* 56 FR 25669 (June 5, 1991). On September 1, 2010, the Department initiated its third five-year sunset review of the antidumping duty order on PET film from the Republic of Korea. *See Initiation of Five-Year (''Sunset'') Review,* 75 FR 53664 (September 1, 2010).

As a result of this sunset review, the Department determined that revocation of the antidumping duty order would be likely to lead to the continuation or recurrence of dumping. *See Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea: Final Results of the Expedited Third Five-Year (Sunset) Review of the Antidumping Duty Order,* 76 FR 1135 (January 7, 2011). The Department notified the ITC of the magnitude of the margins likely to prevail should the antidumping duty order be revoked.

On September 2, 2011, the ITC published its determination that, pursuant to section 751(c) of the Act, revocation of the antidumping duty order on PET film from the Republic of Korea would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Polyethylene Terephthalate (PET) Film From Korea,* 76 FR 54791 (September 2, 2011), and USITC Publication 4254 (August 2011), entitled *Polyethylene Terephthalate (PET) Film from Korea: Investigation No. 731–TA–459 (Third Review).*

Scope of the Order

Imports covered by this order are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches (0.254 micrometers) thick.

PET film is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 3920.62.00. The HTSUS subheading is provided for convenience and for customs purposes. The written description remains dispositive as to the scope of the product coverage.

Revocation

As a result of the determination by the ITC that revocation of the antidumping duty order is not likely to lead to the continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d) of the Act, is revoking the antidumping duty order on PET film from the Republic of Korea. Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is October 20, 2010 (*i.e.,* the fifth anniversary of the effective date of publication in the **Federal Register** of the previous continuation notice of this order).[1]

The Department will notify U.S. Customs and Border Protection, 15 days after publication of this notice, to terminate suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered, or withdrawn from warehouse, on or after October 20, 2010. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of this order.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

This five-year sunset review and notice are in accordance with section 751(d)(2) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: September 9, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–23825 Filed 9–15–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Fisheries in the Western Pacific; Proposed Information Collection; Seabird-Fisheries Interaction Recovery Reporting

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

[1] *See Polyethylene Terephthalate Film from Korea; Continuation of Antidumping Duty Order,* 70 FR 61118 (October 20, 2005).

DATES: Written comments must be submitted on or before November 15, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Walter Ikehara, (808) 944–2275 or *Walter.Ikehara@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

The National Marine Fisheries Service (NMFS) requires longline vessel operators to notify NMFS in the event an endangered short-tailed albatross is hooked or entangled during fishing operations. Following the retrieval of the seabird from the ocean, as required by Federal regulations, the vessel captain must record the condition of the injured short-tailed albatross on a recovery data form. The information will be used by a veterinarian in providing advice to the captain caring for the short-tailed albatross. If the albatross is dead, the captain must attach an identification tag to the carcass to assist the U.S. Fish and Wildlife Service (USFWS) biologists in follow-up studies on the specimen. This collection is one of the terms and conditions contained in the biological opinion issued by USFWS, and is intended to maximize the probability of the long-term survival of short-tailed albatross accidentally taken by longline gear.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include e-mail of electronic forms, and mail and facsimile transmission of paper forms within 72 hours of landing.

III. Data

OMB Control Number: 0648–0456.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Business or other for-profit organizations, individuals, or households.

Estimated Number of Respondents: 1.

Estimated Time per Response: Notification, reporting, and tagging and specimen handling, 1 hour each.

Estimated Total Annual Burden Hours: 3.

Estimated Total Annual Cost to Public: $80 in recordkeeping/reporting costs, mainly for at-sea communications costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 12, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–23742 Filed 9–15–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA707

Notice of Availability of a Draft Companion Manual for Executive Order 11988 Floodplain Management and Executive Order 11990 Protection of Wetlands

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NOAA announces the availability of a draft companion manual to provide agency-wide guidance for executing compliance with Executive Order 11988 *Floodplain Management* and Executive Order 11990 *Protection of Wetlands.* The companion manual provides procedures and guidance in accordance with specific sections of Executive Order 11988 and Executive Order 11990. The purpose of the companion manual is to promote quality and consistency in implementing floodplain management and protection of wetlands across the agency and to provide the necessary procedures to agency personnel.

DATES: Written comments and input will be accepted on or before September 30, 2011.

ADDRESSES: Written comments should be sent to Emily Johannes, Senior Environmental Technical Advisor, NOAA, Safety and Environmental Compliance Office, 1315 East-West Highway, Suite 11115, Silver Spring, MD 20910; e-mail *emily.johannes@noaa.gov.*

FOR FURTHER INFORMATION: Contact Emily Johannes, Senior Environmental Technical Advisor, NOAA, 301–713–2870 x132, *emily.johannes@noaa.gov.* A copy of the draft companion manual can be viewed or downloaded at *http://www.seco.noaa.gov.*

SUPPLEMENTARY INFORMATION: This notice announces the availability of a draft companion manual to provide agency-wide guidance for executing compliance with Executive Order 11988—*Floodplain Management* and Executive Order 11990—*Protection of Wetlands.* Executive Orders 11988 and 11990 require Federal agencies to avoid, mitigate, and minimize harm to floodplains and wetlands from land use and construction activities and to consider the public safety and conditions to property located in or adversely affecting floodplains. This companion manual provides procedures and guidance in accordance with section 4(d) of Executive Order 11988 and section 6 of Executive Order 11990. The purpose of the companion manual is to promote quality and consistency in implementing floodplain management and protection of wetlands across the agency. The companion manual provides agency-wide compliance processes and guidance for RPMs to use to efficiently and effectively comply with the Executive Orders when undertaking actions involving Federal lands, land use, or real property. NOAA is accepting comments on the draft companion manual for 15 calendar days, beginning on September 16, 2011, until September 30, 2011.

Written Comments

Today's publication is a notice of internal NOAA guidance and not a rulemaking. If you choose to submit comments, please limit such comments to issues pertinent to the companion manual itself and explain the reasons

for any recommended changes. Where possible, reference the specific section or paragraph of the companion manual which you are addressing.

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. If you wish us to withhold your name and/or address, phone number, e-mail address or other personal identifying information, you must state this prominently at the beginning of your comment.

Dated: September 9, 2011.

James Norris,

Director, Safety and Environmental Compliance Office, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–23864 Filed 9–15–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA697

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of issuance of permits.

SUMMARY: NMFS has issued permit 15926 to UC Davis Department of Animal Science Genomic Variation Laboratory [Responsible Party: Dr. Bernie P. May], Department of Animal Science, University of California, Davis, One Shields Avenue Davis, CA 95616; and permit 16083 to Natural Resource Scientists, Incorporated [Responsible Party: Dave A. Vogel], P.O. Box 1210, Red Bluff, CA 96080; for purposes of scientific research.

ADDRESSES: Permits and related documents are available for review upon written request or by appointment in the following office(s): Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 13415 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521; and NMFS, Protected Resources Division, 650 Capitol Mall, Suite 5–100, Sacramento, CA 958914–4706; phone (916) 930–3600; fax (916) 930–3629.

FOR FURTHER INFORMATION CONTACT: Shirley Witalis at phone number (916) 930–3606, or e-mail *shirley.witalis@noaa.gov*.

SUPPLEMENTARY INFORMATION: This notice is relevant to Federally endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), threatened California Central Valley steelhead (*O. mykiss*), and threatened Southern distinct population segment of North American green sturgeon (*Acipenser medirostris*). Permits 15926 and 16083 have been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permits

Permit 15926 was issued to UC Davis Department of Animal Science Genomic Variation Laboratory (UC Davis) on September 7, 2011, authorizing the transfer of ESA-listed tissue specimens from the California Department of Fish and Game Central Valley Salmonid Tissue Archive to UC Davis, for purposes of genetic investigation. The archived collection includes tissue specimens from endangered Sacramento River (SR) winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley (CV) spring-run Chinook salmon (*O. tshawytscha*), and threatened California Central Valley (CCV) steelhead (*O. mykiss*). UC Davis will genotype the tissues, utilizing microsatellite and single nucleotide polymorphism (SNPs) markers, to study genetic relationships associated with different geographic populations and identify potential salmonid sources for introduction into the San Joaquin River Restoration Program project area, below Friant Dam to the confluence of the Merced River, a tributary to the San Joaquin River, in the Central Valley, California. Permit 15926 will expire on October 31, 2016.

Permit 16083 was issued to Natural Resource Scientists, Incorporated (NRSI) on June 27, 2011, authorizing the take of ESA-listed SR winter-run Chinook salmon), CV spring-run Chinook salmon, CV steelhead and threatened Southern distinct population segment of North American (sDPS) green sturgeon (*Acipenser medirostris*) for scientific research purposes. NRSI will collect fish entrainment data at five unscreened irrigation water diversions located along the Sacramento River and Delta, in Sutter, Yolo and Sacramento counties, in the Central Valley, California. Juvenile fish will be captured by fyke net, identified to species, enumerated and measured. Dead or moribund fish fish will be returned to the irrigation canals and live fish will be released into the Sacramento River. The objectives of the study are: to determine correlation of fish entrainment with river diversion flows, to quantify benefits to fish populations from screening small-scale agricultural diversions, and to advance the development of criteria for prioritizing fish screening projects on the Sacramento River. Permit 16083 will expire on January 31, 2013.

Dated: September 12, 2011.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–23831 Filed 9–15–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA696

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Receipt of applications for scientific research permits; request for comments.

SUMMARY: Notice is hereby given that NMFS has received applications for section 10(a)(1)(A) of the Endangered Species Act (ESA) scientific research permits from FISHBIO Environmental, LLC (FISHBIO) in Oakdale, CA (16531), and California Department of Water Resources Environmental Services (DWR–ES), in West Sacramento, CA (16543). This document serves to notify the public of availability of the permit applications for review and comment.

DATES: Written comments on the permit applications must be received no later than 5 p.m. Pacific Standard Time on October 17, 2011.

ADDRESSES: Written comments on the permit applications should be sent to the appropriate office as indicated below. Comments may also be sent via e-mail to: *FRNpermitsSAC@noaa.gov* or fax to the number indicated for the request. The applications and related documents are available for review by appointment: Protected Resources Division, NMFS, 650 Capitol Mall, Suite

5–100, Sacramento, CA 95814 (ph: 916–930–3600, fax: 916–930–3629).

FOR FURTHER INFORMATION CONTACT: Shirley Witalis at phone number 916–930–3606, or e-mail: *FRNpermitsSAC@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the ESA of 1973 (16 U.S.C. 1531–1543), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to Federally endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), threatened California Central Valley steelhead (*O. mykiss*), and threatened Southern distinct population segment of North American green sturgeon *(Acipenser medirostris*).

Applications Received

FISHBIO requests a 5-year permit (16531) for an estimated annual take of adult and juvenile steelhead associated with research studies linking habitat and spatial variability in the Merced River, a tributary to the San Joaquin River, in the Central Valley, California. Activities proposed under Permit 16531 include evaluation of the effects of attraction flow augmentation on adult salmonid migration timing and salmonid spawning and rearing habitats; and data collection on fry and juvenile salmonid abundance, outmigration and survival in the lower Merced River. Indirect mortality of steelhead may occur during the implementation of research activities authorized under Permit 16531.

FISHBIO proposes to monitor a fish counting weir operating from October 1 through December 31, in the lower Merced River, for enumeration of upstream migrating salmonids in conjunction with flow augmentation of the Merced River. FISHBIO will use a Didson sonar camera to observe fish migration at the weir. No mortality is anticipated with monitoring at the weir.

FISHBIO proposes to monitor annual juvenile salmonid outmigration from January 1 through June 15, by rotary screw trapping in the upper and lower Merced River. Captured fish will be identified to species and enumerated. A subsample of 30 juvenile salmonids will be sedated with tricaine methanesulfonate (MS–222), measured for lengths and weights, allowed to recover and will be released downstream. FISHBIO does not propose lethal take of fish being captured but some fish may expire as an unintentional result of research activities.

FISHBIO requests authorization for an estimated annual take of 25 natural-origin adult California Central Valley steelhead associated with observation and harassment during monitoring at the Merced River weir. FISHBIO requests authorization for an estimated annual take of 10 (2 indirect mortality) natural-origin adult California Central Valley steelhead; and 50 (5 indirect mortality) natural-origin juvenile California Central Valley steelhead associated with capture by rotary screw trap, handling, anesthetization, and release downstream of the Merced River trapping sites.

DWR–ES requests a 3-year permit (16543) to investigate predation of migrating native fishes as part of an on-going investigation of predation dynamics in the Sacramento-San Joaquin River Delta (delta), in the Central Valley, California. DWR–ES proposes to research predation by introduced and native resident fishes at six specific sites across fish migration corridors in the delta. The study will be conducted from November 30, 2011, to August 1, 2013, and will involve fish capture by gillnet and genetic analysis of trapped fish gut contents of various prey items. ESA-listed adult salmonids and green sturgeon incidentally collected in the gill nets will be measured and released after sufficient recovery in an aerated holding tank. DWR–ES requests authorization for the annual take of 5 (1 indirect mortality) natural-origin and 10 (1 indirect mortality hatchery-origin Sacramento River winter-run Chinook salmon adults, 12 (1 indirect mortality) natural-origin and 8 (1 indirect morality) hatchery-origin Central Valley spring-run Chinook salmon adults, 5 (1 indirect mortality) natural-origin and 10 (1 indirect mortality) hatchery-origin California Central Valley steelhead, and 1 adult, 5 subadult, and 2 juvenile natural Southern distinct population segment of North American green sturgeon associated with capture by gill net, handling (removal from net, length measurement, tank recovery), and release back into the delta ecosystem. No indirect mortality is anticipated for green sturgeon during the implementation of research activities authorized under Permit 16543.

Dated: September 12, 2011.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–23842 Filed 9–15–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA706

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's (Council) Groundfish Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday, October 5, 2011 at 9 a.m.

ADDRESSES: The meeting will be held at the Spring Hill Suites, 43 Newbury Street, Peabody, MA 01960; *telephone:* (978) 535–5000; *fax:* (978) 535–9610.

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 items of discussion in the committee's agenda are as follows:

The Groundfish Oversight Committee will meet to continue development of Framework Adjustment 47 (FW 47) to

the Northeast Multispecies Fishery Management Plan (FMP). The Committee will discuss Acceptable Biological Catch (ABCs) and Annual Catch Limits (ACLs) for FY 2012–14. This may include consideration of a sub-ACL of Southern New England windowpane flounder for the scallop fishery as well as other changes to the ACLs. They will also continue development of accountability measures for ocean pout, Atlantic wolffish, Atlantic halibut, and both windowpane flounder stocks. Other measures in FW 47 may also be discussed, including the proposed elimination of the cap on yellowtail flounder that can be caught by the scallop fishery in access areas. The Committee may continue planning for a sector workshop to be held in October and scoping for an amendment on accumulation limits. The Committee may also develop recommendations for Council priorities for the next year. Other business may also be discussed.

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 identified 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 (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: September 13, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–23773 Filed 9–15–11; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 10/17/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 6/11/2010 (75 FR 33270–33271); 6/17/2011 (76 FR 35415–35417); and 7/15/2011 (76 FR 41767–41768), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN: 8140–00–NSH–0013—M183 Demolition Charge Box.

NPA: Northeastern Michigan Rehabilitation and Opportunity Center (NEMROC), Alpena, MI.

Contracting Activity: DEPARTMENT OF THE ARMY, U.S. ARMY MATERIEL COMMAND, CRANE ARMY AMMUNITIONS ACTIVITY, CRANE, IN.

Coverage: C-List for 100% of the requirement of the Crane Army Ammunition Activity as aggregated by the Department of the Army, U.S. Army Materiel Command, Crane Army Ammunitions Activity, Crane, IN.

NSN: 8465–01–580–1664—MOLLE Component, Shoulder Straps, Frame, Enhanced, OCP

NPAs: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC. Blind Industries & Services of Maryland, Baltimore, MD.

Contracting Activity: DEPARTMENT OF THE ARMY RESEARCH, DEVELOPMENT, & ENGINEERING COMMAND (RDECOM), NATICK, MA.

Coverage: C-List for 100% of the requirement the Department of the Army, as aggregated by the Department of the Army Research, Development, & Engineering Command, Natick, MA.

Services

Service Type/Location: Custodial and Grounds Maintenance Services, Mill Creek Recreation Area, 3211 Reservoir Road, Walla Walla, WA.

NPA: Lillie Rice Center, Walla Walla, WA.

Contracting Activity: DEPT OF THE ARMY, XU W071 ENDIST WALLA WALLA, WALLA WALLA, WA.

Service Type/Location: Warehouse Staffing Services, Warehouse Section—Building Branch—NOAA's Logistics Div., Building 22, 325 Broadway Street, Boulder, CO.

NPA: Bayaud Industries, Inc., Denver, CO.

Contracting Activity: DEPT OF COMMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, BOULDER, CO.

Service Type/Location: Tier 1 Help Desk (Call Center) Service, Defense Logistics Agency, Fort Belvoir, VA. (Offsite: 2511 Martin Luther King Blvd., Lansing, MI)

NPA: Peckham Vocational Industries, Inc., Lansing, MI.

Contracting Activity: Defense Logistics Agency, Contracting Services Office, Fort Belvoir, VA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2011–23803 Filed 9–15–11; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: 10/17/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the *Javits-Wagner-O'Day Act* (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSN: 7930–00–NIB–0583—Refills, Bathroom Cleaner and Deodorizer, Cartridge Concentrate.

NSN: 7930–00–NIB–0584—Starter Kit, Bathroom Cleaner and Deodorizer, Cartridge Concentrate.

NSN: 7930–00–NIB–0585—Refills, Glass and Hard Surface Cleaner, Cartridge Concentrate.

NSN: 7930–00–NIB–0586—Starter Kit, Glass and Hard Surface Cleaner, Cartridge Concentrate.

NSN: 7930–00–NIB–0591—Refills, Disinfectant Cleaner-Degreaser Cartridge Concentrate.

NSN: 7930–00–NIB–0592—Starter Kit, Disinfectant Cleaner-Degreaser Cartridge Concentrate.

NSN: 7930–00–NIB–0593—Refills, Multi-Purpose Cleaner, Cartridge Concentrate.

NSN: 7930–00–NIB–0594—Starter Kit, Multi-Purpose Cleaner, Cartridge Concentrate.

NPA: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY.

Contracting Activity: General Services Administration, Fort Worth, TX

Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration.

Services

Service Type/Location: Grounds & Cemetery Facilities Maintenance, Fort McClellan Veterans Cemetery and Prisoner of War Cemetery, Anniston, AL.

NPA: The Opportunity Center Easter Seal Facility—The Ala ES Soc, Inc., Anniston, AL,

Contracting Activity: DEPT OF THE ARMY, W0LX ANNISTON DEPOT PROP DIV, ANNISTON, AL.

Service Types/Location: Janitorial Service, Grounds Maintenance Service, William Jefferson Clinton Birthplace Home National Historic Site (NHS), 117 S. Hervey St., Hope, AR.

NPA: Rainbow of Challenges, Inc., Hope, AR.

Contracting Activity: DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, MIDWEST REGION, OMAHA, NE.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2011–23804 Filed 9–15–11; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant an Exclusive Patent License

SUMMARY: Pursuant to the provisions of part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, as amended, the Department of the Air Force announces its intention to grant Eclipse Composites Engineering, LLC, a corporation of Utah, having a place of business at 78 West 13775, South #1, Draper, UT, 84020, an exclusive license in any right, title and interest the United States Air Force has in: U.S. Patent Application No. 12/932,341, filed on February 23, 2011, entitled ''Resin-Based Molding of Electrically Conductive Structures'' by David J. Legare as sole inventor.

FOR FURTHER INFORMATION CONTACT: An exclusive license for the invention described in this patent application will be granted unless a written objection is received within fifteen (15) days from the date of publication of this Notice. Written objections should be sent to: Air Force Research Laboratory, Office of the Staff Judge Advocate, AFRL/RIJ, 26 Electronic Parkway, Rome, New York 13441–4514. Telephone: (315) 330–2087; Facsimile (315) 330–7583.

Bao-Anh Trinh,

DAF, Air Force Federal Register Liaison Officer.

[FR Doc. 2011–23750 Filed 9–15–11; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement/Overseas Environmental Impact Statement for Military Readiness Activities in the Mariana Islands Training and Testing Study Area and To Announce Public Scoping Meetings; Correction

AGENCY: Department of Navy, DoD.

ACTION: Notice; correction.

SUMMARY: The Department of the Navy published a document in the **Federal Register** (76 FR 174) on September 8, 2011, concerning public scoping meetings to support the development of an Environmental Impact Statement/Overseas Environmental Impact Statement for the Mariana Islands Training and Testing Study Area. The document contained an incorrect scoping date.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Macariola—See, Naval Facilities Engineering Command, Pacific. *Attention:* MITT EIS/OEIS, 258 Makalapa Drive, Suite 100, Building 258, Floor 3, Pearl Harbor, Hawaii 96860–3134.

Correction: In the **Federal Register** (76 FR 174) of September 8, 2011, on page

55654, in the first column, correct the last public scoping date to read:

5. Thursday, September 29, 2011, at the Sinapalo Elementary School Cafeteria, Sinapalo I, Songsong Village, Rota, MP 96951.

Dated: September 9, 2011.

L.M. Senay,

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

[FR Doc. 2011–23755 Filed 9–15–11; 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 October 17, 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: September 13, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title of Collection: Annual Report of Children in State Agency and Locally Operated Institutions for Neglected and Delinquent Children.

OMB Control Number: 1810–0060.

Agency Form Number(s): Department of Education (ED) Form 4376.

Frequency of Responses: Annually.

Affected Public: State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 3,552.

Total Estimated Annual Burden Hours: 4,564.

Abstract: An annual survey is conducted to collect data on (1) the number of children enrolled in educational programs of State-operated institutions for neglected or delinquent (N or D) children, community day programs for N or D children, and adult correctional institutions and (2) the October caseload of N or D children in local institutions.

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 4662. 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. 2011–23830 Filed 9–15–11; 8:45 am]

BILLING CODE 4000–01–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 October 17, 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: September 13, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

National Center for Education Statistics

Type of Review: Revision.

Title of Collection: High School Longitudinal Study of 2009 (HSLS:09)

First Follow-up Full-scale Data Collection.

OMB Control Number: 1850–0852.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 47,853.

Total Estimated Annual Burden Hours: 24,528.

Abstract: The High School Longitudinal Study of 2009 (HSLS:09) is a nationally representative, longitudinal study of more than 20,000 9th graders in 944 schools who will be followed through their secondary and postsecondary years. The main study students will be re-surveyed in 2012 when most are high school 11th graders. The study focuses on understanding students' trajectories from the beginning of high school into university or the workforce and beyond. What students decide to pursue when, why, and how are crucial questions for HSLS:09, especially, but not solely, in regards to science, technology, engineering, and math courses, majors, and careers. This study includes a new student assessment in algebraic skills, reasoning, and problem solving and, like past studies, will survey students, their parents, school administrators, and school counselors. Students will be administered a questionnaire and an assessment instrument. This submission asks for a full-scale collection clearance for the first follow-up of HSLS:2009/12.

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 4714. 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. 2011–23833 Filed 9–15–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 15, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 13, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Policy and Program Studies Service

Type of Review: NEW.

Title of Collection: Study of Emerging Teacher Evaluation Systems in the United States.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: Once.

Affected Public: Not-for-profit institutions; State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 461.

Total Estimated Annual Burden Hours: 467.

Abstract: The Study of Emerging Teacher Evaluation Systems in the United States will contribute to the Department's work by providing research-based information to aid state and local efforts to plan and implement comprehensive teacher evaluation systems. The study includes a review of the research on teacher evaluation practices, programs, and policies, and nine case studies. The study sample will include five fully operational teacher evaluation systems and four systems in the early implementation phase.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4717. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–23838 Filed 9–15–11; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request; Election Assistance Commission's Voting System Test Laboratory Program Manual, Version 1.0

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice; comment request.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995, the U.S. Election Assistance Commission (EAC) invites the general public and other Federal agencies to take this opportunity to comment on EAC's request to renew an existing information collection, EAC's Voting System Test Laboratory Program Manual, Version 1.0. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents. Comments submitted in response to this notice will be summarized and included in the request for approval of this information collection by the Office of Management and Budget; they also will become a matter of public record.

DATES: Written comments must be submitted on or before 11:59 p.m. E.D.T. on October 17, 2011.

ADDRESSES: Comments and recommendations on the proposed information collection must be submitted in writing through either: (1) Electronically to *votingsystemguidelines@eac.gov;* via mail to Mr. Brian Hancock, Director of Voting System Testing and Certification, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005; or via fax to (202) 566–1392. An electronic copy of the manual, version 1.0, may be found on EAC's Web site at *http://www.eac.gov/open/comment.aspx.*

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please contact Mr. Brian Hancock, Director, Voting System Testing and Certification, Washington, DC, (202) 566–3100, *Fax:* (202) 566–1392.

SUPPLEMENTARY INFORMATION:

Background

In this notice, EAC seeks comments on the paperwork burdens contained in the current version of the Voting System Test Laboratory Manual, Version 1.0 OMB Control Number 3265–0004 only. Version 1.0 is the original version of the Manual without changes or updates.

Current Information Collection Request, Version 1.0

Title: Voting System Test Laboratory Manual, Version 1.0.

OMB Number: 3265–0013.

Type of Review: Renewal.

Needs and Uses: Section 231(a) of the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15371(a), requires EAC to ''provide for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories.'' To fulfill this mandate, EAC has developed and implemented the Voting System Test Laboratory Program Manual, Version 1.0. This version is currently in use under OMB Control Number 3265–0013. Although participation in the program in voluntary, adherence to the program's procedural requirements is mandatory for participants.

Affected Public: Voting system manufacturers.

Estimated Number of Respondents: 8.

Total Annual Responses: 8.

Estimated Total Annual Burden Hours: 200 hours.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 2011–23710 Filed 9–15–11; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Electricity Sector Cybersecurity Risk Management Process Guideline

AGENCY: Department of Energy.

ACTION: Notice of public comment.

SUMMARY: The Department of Energy (DOE) invites public comment on DOE's intent to publish the Electricity Sector Cybersecurity Risk Management Process Guideline. The guideline describes a risk management process that is targeted to the specific needs of electricity sector organizations and adds to the body of resources that help refine the definition and application of effective cybersecurity for all organizations in the Electricity Sector.

DATES: Comments must be received on or before Friday, October 28, 2011.

ADDRESSES: Written comments may be submitted to Matthew Light, U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, 1000 Independence Ave., SW., Washington, DC 20585.; Fax 202–586–2623; E-mail: *matthew.light@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Request for additional information should be directed to Matthew Light at *matthew.light@hq.doe.gov,* phone 202–316–5115.

SUPPLEMENTARY INFORMATION: DOE invites public comment on DOE's intent to publish a guidance document entitled: Electricity Sector Cybersecurity Risk Management Process Guideline. The primary goal of this guideline is to describe a risk management process that is targeted to the specific needs of electricity sector organizations. This document is designed to add to the body of resources that help refine the definition and application of effective cybersecurity for all organizations in the Electricity Sector.

The Electricity Sector Cybersecurity Risk Management Process Guideline was developed by the DOE, in collaboration with the National Institute of Standards and Technology (NIST), the North American Electric Reliability Corporation (NERC), and representatives from both the public and private sector. The NIST Special Publication 800–39, Managing Information Security Risk provides the foundational methodology for this document.

The Electricity Sector Cybersecurity Risk Management Process Guideline is available for review at *https://public.commentworks.com/CW_DOE_AWF/.*

Authority: 6 U.S.C. 101 note.

Issued at Washington, DC, on September 8, 2011.

Patricia A. Hoffman,

Assistant Secretary, Electricity Delivery and Energy Reliability.

[FR Doc. 2011–23781 Filed 9–15–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13237–003]

Notice of Application Tendered for Filing With the Commission, Accepted for Filing With the Commission, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, Intent To Waive Solicitation of Additional Study Requests, Intent To Waive Scoping, Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions, and Establishing an Expedited Schedule for Processing; Whitman River Dam, Inc.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* 13237–003.

c. *Date Filed:* August 29, 2011.

d. *Applicant:* Whitman River Dam, Inc.

e. *Name of Project:* Crocker Dam Hydro Project.

f. *Location:* On the Whitman River, in the Town of Westminster, Worcester County, Massachusetts. The project would not occupy lands of the United States.

g. *Filed Pursuant to:* 18 CFR 4.61 of the Commission's regulations.

h. *Applicant Contact:* Robert T. Francis, P.O. Box 145, 10 Tommy Francis Road, Westminster, MA 01473, (978) 874–1010, bfrancis@*verizon.net*.

i. *FERC Contact:* Jeff Browning, (202) 502–8677, or e-mail at *Jeffrey.Browning@ferc.gov.*

j. *Deadline for Filing Motions to Intervene And Protests, Comments, Terms and Conditions, Recommendations, and Prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *Project Description:* The Crocker Dam Hydro Project would consist of: (1) The existing 520-foot-long, 38.5-foot-high earthen embankment and masonry Crocker Pond dam equipped with a 120-foot-long arched spillway section topped with 26-inch-high wooden flashboards; (2) an existing 110 acre impoundment with a normal water surface elevation of 752.66 feet above mean sea level; (3) an existing 8-foot-wide, 12-foot-high floodgate located between the spillway and gate house; (4) an existing 3-foot-wide, 3-foot-high mud gate located at the spillway toe adjacent to the flood gate; (5) an existing gate house equipped with an existing 42-inch-diameter penstock; (6) a new 23-foot-long, 42-inch-penstock extension; (7) a new powerhouse containing one 145-kilowatt turbine generating unit; and (8) a new 480-volt (V), 40-foot-long buried transmission line from the powerhouse to an existing power pole connected to a new 480–V, 200-foot-long above-ground transmission line to the regional grid interconnection. The proposed project is estimated to generate an average of 887,450 kilowatt-hours annually.

m. Due to the project works already existing and the limited scope of proposed rehabilitation of the project site described above, the applicant's close coordination with Federal and state agencies during the preparation of the application, and completed studies during pre-filing consultation, we intend to waive scoping, shorten the notice filing period, and expedite the review process. Based on a review of the application, resource agency consultation letters, and comments filed to date, Commission staff intends to prepare a single environmental assessment (EA). Commission staff determined that the issues that need to be addressed in its EA have been adequately identified during the pre-filing period, which included a public meeting and site visit, and no new issues are likely to be identified through additional scoping. The EA will consider assessing the potential effects of project construction and operation on geology and soils, aquatic, terrestrial, threatened and endangered species, recreation and land use, aesthetic, and cultural and historic resources.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov.*

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Cooperating Agencies:* We are asking Federal, state, and local agencies and Indian Tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item p below.

Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

p. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,''

''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

q. *Procedural Schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate (*e.g.,* if scoping is waived, the schedule would be shortened).

Milestone	Target date
Notice of the availability of the EA.	February 2012.

Dated: September 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23794 Filed 9–15–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–115–000.

Applicants: Black River Generation, LLC, ReEnergy Black River LLC.

Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedition and Certain Waivers of Black River Generation, LLC and ReEnergy Black River LLC.

Filed Date: 09/07/2011.

Accession Number: 20110907–5102.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 28, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3163–001.

Applicants: Kansas Energy LLC.

Description: Kansas Energy LLC submits tariff filing per 35: Notice of Non-Material Change in Status and Tariff Amendment to be effective 11/7/2011.

Filed Date: 09/07/2011.

Accession Number: 20110907–5036.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 28, 2011.

Docket Numbers: ER11–3880–001.

Applicants: Vermont Transco, LLC.

Description: Vermont Transco, LLC submits tariff filing per 35: Vermont Transco 1991 Transmission Agreement Compliance Filing to be effective 7/1/2011.

Filed Date: 09/08/2011.

Accession Number: 20110908–5044.

Comment Date: 5 p.m. Eastern Time on Thursday, September 29, 2011.

Docket Numbers: ER11–4200–001.

Applicants: New York Independent System Operator, Inc.

Description: Motion of New York Independent System Operator, Inc. in Opposition to Amendment and, in the Alternative, Answer; and Motion Seeking Waiver of Tariff Requirements Regarding Black Start Service.

Filed Date: 09/02/2011.

Accession Number: 20110902–5152.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 13, 2011.

Docket Numbers: ER11–4445–000.

Applicants: Black Hills Power, Inc.

Description: Black Hills Power, Inc. submits tariff filing per 35.15: Cancellation (Complete Tariff ID) to be effective 9/6/2011.

Filed Date: 09/06/2011.

Accession Number: 20110906–5136.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 27, 2011.

Docket Numbers: ER11–4446–000.

Applicants: Northern States Power Company, a Wisconsin.

Description: Northern States Power Company, a Wisconsin corporation submits tariff filing per 35: 20110906_Compliance Filing to be effective 8/11/2010.

Filed Date: 09/06/2011.

Accession Number: 20110906–5156.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 27, 2011.

Docket Numbers: ER11–4447–000.

Applicants: Mac Trading, Inc.

Description: Mac Trading, Inc. submits tariff filing per 35.1: Rate Schedule FERC No. 1 to be effective 9/7/2011.

Filed Date: 09/07/2011.

Accession Number: 20110907–5044.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 28, 2011.

Docket Numbers: ER11–4448–000.

Applicants: AEP Texas Central Company.

Description: AEP Texas Central Company submits tariff filing per 35.13(a)(2)(iii: 20110907 TCC–South Texas Electric Coop Amended & Restated IA to be effective 8/18/2011.

Filed Date: 09/07/2011.

Accession Number: 20110907–5049.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 28, 2011.

Docket Numbers: ER11–4449–000.

Applicants: Starion Energy Inc.

Description: Starion Energy Inc. submits tariff filing per 35.1: Market-Based Rate Tariff Baseline to be effective 9/7/2011.

Filed Date: 09/07/2011.

Accession Number: 20110907–5068.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 28, 2011.

Docket Numbers: ER11–4450–000.

Applicants: Starion Energy NY, Inc.

Description: Starion Energy NY, Inc. submits tariff filing per 35.1: Market-Based Rate Tariff Baseline to be effective 9/7/2011.

Filed Date: 09/07/2011.

Accession Number: 20110907–5073.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 28, 2011.

Docket Numbers: ER11–4451–000.

Applicants: Santanna Energy Services.

Description: Santanna Energy Services submits tariff filing per 35.12: Market Based Rates Tariff to be effective 9/30/2011.

Filed Date: 09/07/2011.

Accession Number: 20110907–5074.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 28, 2011.

Docket Numbers: ER11–4452–000.

Applicants: Buy Energy Direct LLC.

Description: Buy Energy Direct LLC submits tariff filing per 35.1: BASE LINE FILLING to be effective 9/7/2011.

Filed Date: 09/07/2011.

Accession Number: 20110907–5076.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 28, 2011.

Docket Numbers: ER11–4453–000.

Applicants: Santanna Energy Services.

Description: Santanna Energy Services submits tariff filing per 35.12: Market Based Rates Tariff to be effective 9/30/2011.

Filed Date: 09/07/2011.

Accession Number: 20110907–5081.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 28, 2011.

Docket Numbers: ER11–4454–000.

Applicants: Puget Sound Energy, Inc.

Description: Puget Sound Energy, Inc submits the Average System Cost Rate Filing for FY 2012–2013 under ER11–4454.

Filed Date: 09/07/2011.
Accession Number: 20110907–0203.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 28, 2011.

Docket Numbers: ER11–4455–000.
Applicants: Thornwood Management Company, LLC.
Description: Thornwood Management Company LLC submits a notice of cancellation under ER11–4455.
Filed Date: 09/07/2011.
Accession Number: 20110907–0202.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 28, 2011.

Docket Numbers: ER11–4456–000.
Applicants: PJM Interconnection, LLC, American Electric Power Service Corporation.
Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii: AEPSC submits SA No. 1336—28th Revised ILDSA among AEPSC & Buckeye to be effective 3/8/2011.
Filed Date: 09/07/2011.
Accession Number: 20110907–5112.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 28, 2011.

Docket Numbers: ER11–4457–000.
Applicants: PSEG Energy Resources & Trade LLC.
Description: PSEG Energy Resources & Trade LLC submits tariff filing per 35: Compliance Filing Pursuant to Section 205 of the Federal Power Act to be effective 9/7/2011.
Filed Date: 09/07/2011.
Accession Number: 20110907–5116.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 28, 2011.

Docket Numbers: ER11–4458–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: G645 Amended GIA to be effective 9/8/2011.
Filed Date: 09/07/2011.
Accession Number: 20110907–5133.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 28, 2011.

Docket Numbers: ER11–4459–000.
Applicants: El Paso Electric Company.
Description: El Paso Electric Company submits tariff filing per 35.13(a)(2)(iii: Revisions to OATT Attachment M to be effective 11/1/2011.
Filed Date: 09/07/2011.
Accession Number: 20110907–5142.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 28, 2011.

Docket Numbers: ER11–4460–000.
Applicants: Rocky Mountain Reserve Group.
Description: Rocky Mountain Reserve Group submits tariff filing per 35.1: 20110907_RMRG Bylaws to be effective 11/6/2011.
Filed Date: 09/07/2011.
Accession Number: 20110907–5147.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 28, 2011.

Docket Numbers: ER11–4461–000.
Applicants: Black Hills Power, Inc.
Description: Black Hills Power, Inc. submits tariff filing per 35.1: JOATT Baseline to be effective 9/30/2010.
Filed Date: 09/07/2011.
Accession Number: 20110907–5148.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 28, 2011.

Docket Numbers: ER11–4462–000.
Applicants: NEPM II, LLC.
Description: NEPM II, LLC submits tariff filing per 35.12: NEPM II, LLC MBR Tariff to be effective 11/1/2011.
Filed Date: 09/08/2011.
Accession Number: 20110908–5000.
Comment Date: 5 p.m. Eastern Time on Thursday, September 29, 2011.

Docket Numbers: ER11–4463–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: SGIA WDT SERV SCE–Photon Solar 9000–9001 9th St Rancho Roof Top Solar Project to be effective 9/9/2011.
Filed Date: 09/08/2011.
Accession Number: 20110908–5001.
Comment Date: 5 p.m. Eastern Time on Thursday, September 29, 2011.

Docket Numbers: ER11–4464–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: SGIA WDT SERV SCE–Photon Solar 8449 Miliken Rancho Roof Top Solar Project to be effective 9/9/2011.
Filed Date: 09/08/2011.
Accession Number: 20110908–5002.
Comment Date: 5 p.m. Eastern Time on Thursday, September 29, 2011.

Docket Numbers: ER11–4465–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: SGIA WDT SERV SCE–Photon Solar Ellipse Foothill Ranch Roof Top Solar Project to be effective 9/9/2011.
Filed Date: 09/08/2011.
Accession Number: 20110908–5003.
Comment Date: 5 p.m. Eastern Time on Thursday, September 29, 2011.

Docket Numbers: ER11–4466–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: SGIA WDT SERV SCE–Photon Solar 6201–6251 Knott Buena Park Roof Top Solar Project to be effective 9/9/2011.
Filed Date: 09/08/2011.
Accession Number: 20110908–5004.
Comment Date: 5 p.m. Eastern Time on Thursday, September 29, 2011.

Docket Numbers: ER11–4467–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Market Rule 1 Appendix A Clean-up Filing to be effective 9/8/2011.
Filed Date: 09/08/2011.
Accession Number: 20110908–5042.
Comment Date: 5 p.m. Eastern Time on Thursday, September 29, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 8, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–23748 Filed 9–15–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Take Notice That the Commission Has Received the Following Natural Gas Pipeline Rate and Refund Report Filings:

Filings Instituting Proceedings

Docket Numbers: RP11–2558–000.
Applicants: Big Sandy Pipeline, LLC.
Description: Big Sandy Pipeline, LLC submits tariff filing per 154.204: 2011–09–01 Negotiated Rate Agreements—EQT Energy to be effective 9/1/2011.
Filed Date: 09/08/2011.
Accession Number: 20110908–5021.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 20, 2011.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before *5 p.m.* Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP11–2442–001.
Applicants: Central Kentucky Transmission Company.
Description: Central Kentucky Transmission Company submits tariff filing per 154.205(b): ACA Errata 2011 to be effective 10/1/2011.
Filed Date: 09/01/2011.
Accession Number: 20110901–5201.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 13, 2011.

Docket Numbers: RP11–2469–001.
Applicants: Eastern Shore Natural Gas Company.
Description: Eastern Shore Natural Gas Company submits tariff filing per 154.205(b): 2011 ACA Revised to be effective 10/1/2011.
Filed Date: 09/07/2011.
Accession Number: 20110907–5146.
Comment Date: 5 p.m. Eastern Time on Monday, September 19, 2011.

Docket Numbers: RP11–2470–001.
Applicants: Transcontinental Gas Pipe Line Company, LLC
Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.205(b): Pascagoula Expansion Non-Conforming Superseding Service Agreement to be effective 9/30/2011.
Filed Date: 09/07/2011.
Accession Number: 20110907–5129.
Comment Date: 5 p.m. Eastern Time on Monday, September 19, 2011.

Docket Numbers: RP11–2308–002.
Applicants: Algonquin Gas Transmission, LLC.
Description: Algonquin Gas Transmission, LLC submits tariff filing per 154.203: Winter Operations Compliance Filing to be effective 9/1/2011.
Filed Date: 09/08/2011.
Accession Number: 20110908–5043.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 20, 2011.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before *5 p.m.* Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 8, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–23749 Filed 9–15–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos., 13010–002 Mississippi 8 Hydro, LLC and 14272–000 FFP Project 98, LLC]

Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 1, 2011, Mississippi 8 Hydro, LLC (Mississippi 8) and FFP Project 98, LLC (FFP) filed preliminary permit applications pursuant to section 4(f) of the Federal Power Act (FPA) proposing to study the feasibility of the Mississippi River Lock and Dam No. 8 Hydroelectric Project (Lock and Dam #8 Project or project), to be located on the Mississippi River, near the town of Vernon, in Houston County, Wisconsin, at the U.S. Army Corps of Engineers' (Corps) Mississippi River Lock and Dam No. 8. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Mississippi 8's proposed Lock and Dam #8 Project No. 13010 would consist of: (1) A new 30-foot-long by 40-foot-wide powerhouse; (2) 20 very low head (VLH) type hydraulic turbines rated for 500 kilowatts (kW) each to produce a combined total installed capacity of 5 megawatts (MW); (3) a design flow of 706 cubic feet per second (cfs) and an operating range from a minimum of 300 cfs up to a maximum of 725 cfs, at 4.6 feet of net head; (4) a tailrace, which would include a submerged dike to redirect flow as it exits the tailrace; (5) a project storage yard; (6) a concrete intake structure; (7) a substation containing step-up transformers, circuit breakers, and disconnect switches; (8) a new power pole to re-route an existing 69-kilovolt (kV) transmission line to the substation; and (9) a 500-volt (V) power line to conduct electricity from the turbines to the control house. The estimated annual generation of the project would be 35.6 gigawatt-hours (GWh). The project would utilize released flows from Lock and Dam #8 as directed by the Corps.

Applicant Contact: Mr. Brent L. Smith, COO, Symbiotics LLC, 371 Upper Terrace, Suite 2, Bend, OR 97702; phone: (541) 330–8779.

FFP is exploring two concepts for its proposed Lock and Dam #8 Project No. 14272. Concept A would consist of: (1) Four horizontal bulb turbine generators, with a combined generation capacity of 14.4 MW, placed in a newly proposed 240-foot by 275-foot powerhouse located on the west bank of the river; (2) a 40-foot by 55-foot control building located on the west end of the dam; (3) a 320-foot-long transmission line extending south from a newly proposed 60-foot by 50-foot substation located adjacent to the control building, to an existing transmission line located south of the project; (4) a new 370-foot by 880-foot tailrace channel connecting the powerhouse to the river downstream; (5) a new 350-foot by 950-foot approach channel located upstream of the powerhouse; and (6) use of an existing access road for access to the project.

Concept B would integrate 40 inclined access bulb turbine generators rated at 0.37 MW each into the gate bays of the existing moveable dam section to produce a combined total installed capacity of 14.8 MW. Concept B would involve construction of the control building, transmission line, and use of the existing access road, but would not include the construction of a new powerhouse, approach channel, or tailrace. The estimated average annual generation of concept A would be 85 GWh, and the estimated average annual generation of concept B would be 80 GWh.

Applicant Contact: Mr. Ramya Swaminathan, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114; (978) 283–2822.

FERC Contact: Lesley Kordella; phone: (202) 502–6406.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18

CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13010–002, or P–14272–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23799 Filed 9–15–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–56–000]

Texas Eastern Transmission, LP, Algonquin Gas Transmission, LLC; Notice of Availability of the Draft Environmental Impact Statement for the Proposed New Jersey—New York Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this draft environmental impact statement (EIS) for the New Jersey—New York Expansion Project (NJ–NY Project or Project) proposed by Texas Eastern Transmission, LP (Texas Eastern) and Algonquin Gas Transmission, LLC (Algonquin), both Spectra Energy Corporation natural gas pipeline companies, in the above-referenced docket. Texas Eastern and Algonquin request authorization to expand their natural gas pipeline systems in New Jersey, New York, and Connecticut, to deliver up to 800,000 dekatherms per day of natural gas from multiple receipt points on the Texas Eastern and Algonquin pipeline systems to new delivery points in New Jersey and New York.

The draft EIS assesses the potential environmental effects of the construction and operation of the NJ–NY Project in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA). The FERC staff concludes that approval of the proposed Project would have some adverse environmental impact; however, these impacts would be reduced to less-than-significant levels with the implementation of Texas Eastern's and Algonquin's proposed mitigation and the additional measures we recommend in the draft EIS.

The U.S. Environmental Protection Agency, U.S. Department of Transportation, U.S. Army Corps of Engineers, New York City Mayor's Office, and New York City Department of Environmental Protection participated as cooperating agencies in the preparation of the draft EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. While the conclusions and recommendations presented in the draft EIS were developed with input from the cooperating agencies, the agencies will present their own conclusions and recommendations in their respective Records of Decision for the Project.

The draft EIS addresses the potential environmental effects of the construction and operation of the facilities listed below:

Texas Eastern and Algonquin propose to construct and operate:

- Approximately 19.8 miles of new and replacement 42- and 30-inch-diameter pipeline;
- Six new metering and regulating (M&R) stations;
- Abandonment of 8.95 miles of existing pipelines;
- Modification of four existing compressor stations;
- Installation of aboveground over-pressure protection regulation at two existing M&R stations;
- Installation of three pig launchers and two pig receivers, relocation of four pig receivers, and removal of two pig launchers;
- Installation of four mainline and three tap valves along the proposed pipeline facilities; and
- Installation of a block valve and blind flange to accommodate a temporary pig receiver.

The draft EIS has been placed in the public files of the FERC and is available for public viewing on the FERC's Web site at *http://www.ferc.gov.* A limited number of copies are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the draft EIS have been mailed to Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; local newspapers and libraries in the Project area; intervenors to the FERC's proceeding; and potentially affected landowners and other interested individuals and groups. Paper copy versions of this EIS were mailed to those specifically requesting them; all others received a CD version.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS may do so. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments before October 31, 2011.

For your convenience, there are four methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number (CP11–56–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing''; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal

Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

(4) In addition to or in lieu of sending written or electronic comments, the Commission invites you to attend one of the public comment meetings the staff will conduct in the Project area to receive comments on the draft EIS. Date, time, and location of these meetings will be sent under a different cover. Interested groups and individuals are encouraged to attend and present oral comments on the draft EIS. Transcripts of the meetings will be prepared.

After the comments are reviewed, any significant new issues are investigated, and modifications are made to the draft EIS, a final EIS will be published and distributed. The final EIS will contain the staff's responses to timely comments received on the draft EIS.

Although your comments will be considered by the Commission, simply filing comments will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR part 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Questions

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP11–56). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnline *Support@ferc.gov* or toll free at (866) 208–3676; for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Dated: September 9, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23741 Filed 9–15–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2144–038; Project No. 2225–015]

Boundary Hydroelectric Project; Sullivan Creek Project; Notice of Availability of the Final Environmental Impact Statement for the Relicensing of the Boundary Hydroelectric Project and the Surrender of the Sullivan Creek Project

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects has reviewed the applications for license for the Boundary Hydroelectric Project (FERC No. 2144–38), and the surrender of the Sullivan Creek Project (FERC No. 2225–015). The Boundary Project is located on the Pend Oreille River in Pend Oreille County, Washington. The Sullivan Creek Project is located on Sullivan Lake, and Sullivan Creek and Outlet Creeks, tributaries to the Pend Oreille River that empty into the Boundary Project reservoir. Both projects occupy lands within the Colville National Forest.

This final EIS contains staff evaluations of the applicants' proposals and the alternatives for relicensing the Boundary Project and surrendering the Sullivan Creek Project. The final EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicants, and Commission staff.

A copy of the final EIS is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''e-Library'' link. Enter the docket number of either project, excluding the last three digits, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

For further information, please contact David Turner at (202) 502–6191 or at *david.turner@ferc.gov.*

Dated: September 9, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23737 Filed 9–15–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4482–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; Madstone Energy Corp.

This is a supplemental notice in the above-referenced proceeding of Madstone Energy Corp.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 3, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic

service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive 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.

Dated: September 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23796 Filed 9–15–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4501–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; Caney River Wind Project, LLC

This is a supplemental notice in the above-referenced proceeding of Caney River Wind Project, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 3, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23798 Filed 9–15–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4489–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; ICC Energy Corporation

This is a supplemental notice in the above-referenced proceeding of ICC Energy Corporation's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 3, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive 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.

Dated: September 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23797 Filed 9–15–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4475–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; Rockland Wind Farm, LLC

This is a supplemental notice in the above-referenced proceeding of Rockland Wind Farm, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 3, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov/*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23795 Filed 9–15–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No: 14206–000]

Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications; Kachess Dam Hydropower, LLC

On May 31, 2011, Kachess Dam Hydropower, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the *Federal Power Act* (FPA), proposing to study the feasibility of the Kachess Dam Hydroelectric Project (project) to be located at Kachess Reservoir dam, owned and operated by the U.S. Bureau of Reclamation near Cle Elum and Roslyn in Kittitas County, Washington. The proposed project would also occupy U.S. Forest Service lands within the Wenatchee National Forest.

The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would utilize flows at the existing Kachess reservoir and would consist of the following new features: (1) A 36-inch diameter, 200-foot-long steel-reinforced plastic pipe penstock; (2) a 40-foot by 30-foot concrete powerhouse containing a 1.5-megawatt Francis turbine/generator unit; (3) an approximately 600-foot-long, 13.8-kilovolt transmission line interconnecting with a local utility's line, and (4) appurtenant facilities. The estimated annual generation of the project would be 5.1 gigawatt-hours.

Applicant Contact: Carl Spetzler, Kachess Dam Hydropower, LLC, 745 Emerson Street, Palto Alto, CA 94301, phone (650) 475–4467.

FERC Contact: Patrick Murphy, phone: (202) 502–8755.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14206–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 9, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23740 Filed 9–15–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14205–000]

Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications; McKay Dam Hydropower, LLC

On May 31, 2011, McKay Dam Hydropower, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the *Federal Power Act* (FPA), proposing to study the feasibility of the McKay Dam Hydroelectric Project (project) to be located at the McKay dam near Pendleton in Umatilla County,

Oregon. The existing McKay dam was built and operated by the U.S. Bureau of Reclamation (Reclamation). The project would occupy land within the McKay Creek National Wildlife Refuge. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would utilize flows at the existing McKay reservoir, and would consist of the following new features: (1) A 48-inch diameter, 250-foot-long steel-reinforced plastic pipe penstock; (2) a 40-foot by 30-foot concrete powerhouse containing a 3-megawatt turbine/generator; (3) an approximately 2,000-foot-long, 12.5-kilovolt transmission line interconnecting to a local utility line; and (4) appurtenant facilities. The estimated annual generation of the project would be 7.4 gigawatt-hours.

Applicant Contact: Carl Spetzler, McKay Dam Hydropower, LLC, 745 Emerson Street, Palo Alto, CA 94301, phone (650) 475–4467.

FERC Contact: Patrick Murphy, phone: (202) 502–8755.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14205–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 9, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23739 Filed 9–15–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–13221–001]

Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications; Pacific Gas and Electric Company

On September 1, 2011, Pacific Gas and Electric Company filed an application for a successive preliminary permit, pursuant to section 4(f) of the *Federal Power Act* (FPA), proposing to study the feasibility of the Mokelumne Pumped Storage Project to be located on the North Fork Mokelumne River, Bear River, and Cole Creek, in Amador and Calaveras Counties, California. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) Using the existing Lower Bear River reservoir, with a surface area of 746 acres, storage capacity of 49,079 acre-feet, and normal water surface elevation of 5,822 feet mean sea level (msl), as the upper reservoir, with the possibility of a dam raise to increase capacity; (2) a 16,000-foot-long power tunnel including intake structure and penstock; (3) the existing Salt Springs reservoir, with a surface area of 960 acres, storage capacity of 141,817 acre-feet, and a normal water surface elevation of 3,959 feet msl, as the lower reservoir; (4) a powerhouse with a total installed capacity from 300 to 1,200 megawatts; and (5) a 230- or 500-kilovolt overhead transmission line. The annual electrical production would be between 396 and 1,584 gigawatt-hours.

Besides the proposed use of the existing Lower Bear River Reservoir as the upper reservoir, PG&E also plans to continue studying two alternatives: (1) The existing Upper Bear River reservoir; and (2) a new reservoir on Cole Creek.

Applicant Contact: Mr. Randy Livingstone, Pacific Gas and Electric Company, 245 Market Street, MC N11E–1137, San Francisco, CA 94105–1702, Phone (415) 973–6950, and Ms. Annette Faraglia, Pacific Gas and Electric Company, 77 Beale Street, MC B30A–2479, San Francisco, CA 94105–1814, phone (415) 973–7145.

FERC Contact: Jim Fargo; phone: (202) 502–6095.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13221–001) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 9, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23738 Filed 9–15–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications

Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e) (1) (v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket no.	File date	Presenter or requester
1. P–12715–003.	9–6–11	Brandi Sangunett [1]

[1] Summary of telephone conversation.

Dated: September 9, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23736 Filed 9–15–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Notice of Cancellation of Environmental Impact Statement for the Interconnection of the Hualapai Valley Solar Project, Mohave County, AZ (DOE/EIS–0434)

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Cancellation of Environmental Impact Statement.

SUMMARY: The U.S. Department of Energy (DOE), Western Area Power Administration (Western) is issuing this notice to advise the public that it is cancelling the preparation of an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA) on an interconnection request by the Hualapai Valley Solar, LLC (HVS).

DATES: This cancellation is effective on September 16, 2011.

FOR FURTHER INFORMATION CONTACT: For further information on the cancellation of this EIS process, contact Mr. Matt Blevins, NEPA Document Manager, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213, Fax: (720) 962–7263, phone: at (720) 962–7261 or (800) 336–7288, or e-mail: *Blevins@wapa.gov.* For general information on the DOE's NEPA review process, contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, GC–54, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, telephone (202) 586–4600 or (800) 472–2756, facsimile (202) 586–7031.

SUPPLEMENTARY INFORMATION: Western is cancelling the preparation of an EIS under the NEPA on an interconnection request by HVS for a proposed utility-scale solar generation facility. HVS proposed to design, construct, operate, and maintain a 340-megawatt solar generation facility, and ancillary facilities including transmission line, access roads, and temporary laydown areas, about 27 miles north of Kingman in Mohave County, Arizona. HVS applied to interconnect the solar generation facility to Western's regional electric transmission system at one of two alternative points, (1) the Mead-Phoenix Transmission Line; or (2) the Liberty-Mead Transmission Line, thus triggering a NEPA review of Western's action to approve or deny HVS's request to interconnect its proposed project with Western's transmission system. If either one of the interconnection requests were approved, Western would have needed to construct and operate an interconnection facility at one of the interconnection points. Portions of HVS's proposed transmission line, effluent pipeline, and access roads would cross land administered by the U.S. Department of Interior, Bureau of Land Management (BLM), and would require right-of-way (ROW) authorization from BLM. In addition, Western applied to the BLM for an amendment to the ROW for its Mead-Liberty transmission line to accommodate a proposed new switchyard, and issue ROW for the proposed switchyard access road. BLM was a cooperating agency for the preparation of the EIS.

A Notice of Intent to Prepare an Environmental Impact Statement was published in the **Federal Register** on September 15, 2009 (74 FR 47245). Public scoping meetings were held subsequent to the Notice of Intent, but a Draft EIS was not produced. The HVS interconnection requests are no longer active; accordingly, Western is terminating the NEPA review process on its interconnection decision.

The Assistant Secretary, Environment, Safety and Health granted approval authority to Western's Administrator for EISs related to integrating major new sources of generation in an October 4, 1999, memorandum. Under the authority granted by that memorandum, I have terminated the NEPA process for HVS's proposed project with the publication of this notice.

Dated: September 8, 2011.

Timothy J. Meeks,

Administrator.

[FR Doc. 2011–23783 Filed 9–15–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2011–0744; FRL–8888–6]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (*i.e.,* a chemical not on the TSCA Chemical Substances Inventory (TSCA Inventory)) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document, which covers the period from June 6, 2011 to July 1, 2011, and provides the required notice and status report, consists of the PMNs and TMEs, both pending or expired, and the NOC to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before October 17, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2011–0744, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

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

Instructions: EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or 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, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Bernice Mudd, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8951; fax number: (202) 564–8955; e-mail address: *mudd.bernice@epa.gov.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the PMNs addressed in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or 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.

II. Why is EPA taking this action?

EPA classifies a chemical substance as either an ''existing'' chemical or a ''new'' chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a ''new chemical,'' while those that are on the TSCA Inventory are classified as an ''existing chemical.'' For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.* Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for ''test marketing'' purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://ww.epa.gov/opt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals. This status report, which covers the period from June 6, 2011 to July 1, 2011, consists of the PMNs and TMEs, both pending or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Reports

In Table I. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA's review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—48 PMNS RECEIVED FROM JUNE 6, 2011 TO JULY 1, 2011

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–11–0424	6/6/2011	9/3/2011	CBI	(G) Monomer for polymer applications.	(G) Alkenoyloxy arylphenone.
P–11–0431	6/6/2011	9/3/2011	Cytec Industries Inc	(G) Coatings resin	(G) Poly[oxyalkylenediyl], .alpha.-hydro-.omega.-hydroxy-, polymer with disubstituted carbomonocycle, alkyl acrylate blocked.
P–11–0432	6/6/2011	9/3/2011	Hybrid Plastics, Inc	(G) 1. Themoplastics and coatings additive; 2. Elastomer additive.	(S) Tricyclo[7.3.3.15, 11] heptasiloxane-3,7,14-triol, 1,3,5,7,9,11,14-heptaisooctyl-stereoisomer.
P–11–0433	6/7/2011	9/4/2011	CBI	(G) For use in cleaning detergents	(G) Substituted amino polymer, with substituted amine salt and salted acrylate.
P–11–0434	6/8/2011	9/5/2011	CBI	(S) Curing agent for epoxy resin	(G) Cashew, nutshell liq., polymer with arylalkylamine, bisphenol a, epichlorohydrin and formaldehyde.
P–11–0435	6/9/2011	9/6/2011	CBI	(G) Chemical intermediate	(G) Alkoxylated amine derivative.
P–11–0436	6/9/2011	9/6/2011	CBI	(G) Chemical intermediate	(G) Polyether sulfate salt derivative.
P–11–0437	6/9/2011	9/6/2011	CBI	(G) Polymeric colorant	(G) Substituted anthraquinone colorant.
P–11–0438	6/9/2011	9/6/2011	CBI	(G) Colorant for polyurethane	(G) Polyester substituted antraquinone colorant.
P–11–0439	6/10/2011	9/7/2011	SCNTE LLC	(G) The material will be used as the sensor element in an electrochemical sensor. One carbon nanotube-sic device will be use per one sensor. The maximum estimated annual quantity of sensors will be 10,000. This completed sensor will be able to detect metals and nutrients in water.	(S) Carbide derived nancarbon.

TABLE I—48 PMNS RECEIVED FROM JUNE 6, 2011 TO JULY 1, 2011—Continued

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–11–0440	6/13/2011	9/10/2011	CBI	(G) Polymeric film former for coatings.	(G) Fatty acids, dimers, polymers with aliphatic acrylate, aliphatic methacrylate, dihydrocarboxylic acids, hydroxyl terminated polyalkene, cycloaliphatic diisocyanate, aromatic dicarboxylic acid, aliphatic polyether diol, and aliphatic diol.
P–11–0441	6/13/2011	9/10/2011	CBI	(G) Destructive use	(G) Magnesium supported titanium.
P–11–0442	6/14/2011	9/11/2011	CBI	(G) Chemical intermediate	(G) Polyether amine derivative.
P–11–0443	6/15/2011	9/12/2011	CBI	(G) Additive for manufacture of articles.	(G) Modified starch acrylate polymer.
P–11–0444	6/16/2011	9/13/2011	Evonik Goldschmidt Corp.	(S) Industrial adhesive	(S) Hexadecanoic acid, eicosyl ester.
P–11–0445	6/19/2011	9/16/2011	CBI	(G) Additive for textile finishing	(G) Polyalkyacrylate copolymer.
P–11–0446	6/20/2011	9/17/2011	DIC International (USA) LLC.	(G) Colorant for industrial coatings	(G) Carbopolycycle-bis(diazonium), dihalo, chloride (1:2), reaction products with metal sulfate, calcium carbonate, *N*-(2-alkylphenyl)-oxoalkanamide, potassium 4-[dioxoalkylamino]substituted benzene (1:1) and sodium hydroxide.
P–11–0447	6/21/2011	9/18/2011	Huntsman Corporation.	(S) Gas treatment product to remove hydrogen sulfide from natural gas.	(G) Polyetheramine.
P–11–0448	6/21/2011	9/18/2011	GE Water & Process technologies.	(S) Heavy metal precipitant for wastewater.	(G) Sodium polyethylenimine dithiocarbamate, polymeric dithiocarbamate.
P–11–0449	6/21/2011	9/18/2011	CBI	(S) Resin for wood coatings	(S) Glycerides, $C_{16–18}$ and C_{18} unsaturated mono-and di-, polymers with a-[[[5-[[bis(2-hydroxyethyl)amino]carbonyl]amino]-2 (or 4)-methylphenyl]amino]carbonyl]—*W*-methoxypoly(oxy-1,2-ethanediyl), bisphenol a-epichlorohydrin polymer linoleate, hydrazine, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and 1,1′-methylenebis [4-isocyantocyclohexane], compds, with trie thylamine*.
P–11–0450	6/21/2011	9/18/2011	CBI	(G) Additive for paper coatings	(G) Fatty acids of natural waxes.
P–11–0451	6/21/2011	9/18/2011	CBI	(G) Additive for paper coatings	(G) Fatty acids of natural waxes, 1,3 butylene glycol esters, part. saponified.
P–11–0452	6/21/2011	9/18/2011	CBI	(G) Additive for paper coatings	(G) Fatty acids of natural waxes, ethylene esters.
P–11–0453	6/22/2011	9/19/2011	3M Company	(S) Moisture curing hot melt adhesive.	(G) Polyurethane prepolymer.
P–11–0454	6/23/2011	9/20/2011	CBI	(G) Resin for automotive coatings	(G) Thermoset acrylic polymer.
P–11–0455	6/23/2011	9/20/2011	CBI	(G) Resin for automotive coatings	(G) Thermoset acrylic polymer.
P–11–0456	6/23/2011	9/20/2011	CBI	(G) Resin for automotive coatings	(G) Thermoset acrylic polymer.
P–11–0457	6/23/2011	9/20/2011	CBI	(G) Resin for automotive coatings	(G) Thermoset acrylic polymer.
P–11–0458	6/23/2011	9/20/2011	CBI	(G) Resin for automotive coatings	(G) Thermoset acrylic polymer.
P–11–0459	6/23/2011	9/20/2011	CBI	(G) Resin for automotive coatings	(G) Thermoset acrylic polymer.
P–11–0460	6/27/2011	9/24/2011	CBI	(G) Coatings additive, open-non dispersive use.	(G) Borate ester of hydroxyethylmethacrylate.
P–11–0461	6/27/2011	9/24/2011	CBI	(G) Coatings additive, open-non dispersive use.	(G) Borate ester of hydroxyethylmethacrylate.
P–11–0462	6/27/2011	9/24/2011	CBI	(G) Coatings additive, open-non dispersive use.	(G) Borate ester of hydroxyethylmethacrylate.
P–11–0463	6/27/2011	9/24/2011	Zeon Chemicals L.P	(S) Lithium ion battery manufacture	(G) Modified acrylate polymer.

TABLE I—48 PMNS RECEIVED FROM JUNE 6, 2011 TO JULY 1, 2011—Continued

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–11–0464	6/28/2011	9/25/2011	CBI	(G) Water soluble polyamine curing agent for epoxy coatings.	(S) Phenol, 4,4′-(1-methylethylidene)bis-, polymer with 5-amino-1,3,3-trimethylcyclohexanemethanamine, N1,N2-bis(2-aminoethyl)-1,2-ethanediamine, 2-(chloromethyl)oxirane, .alpha.-hydro-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 2,2′-[(1-methylethylidene)bis(4,1-phenyleneoxymethylen-e)]bis[oxirane] and .alpha.-(2-oxiranylmethyl)-.omega.-(2-oxiranylmethoxy)poly[oxy(methyl-1,2-ethanediyl)], reaction products with 2-[[4-(11-dimethylethy-l)phenoxy]methyl]oxirane*.
P–11–0465	6/28/2011	9/25/2011	Dow Chemical Company.	(S) Component rigid polyurethane foam for appliances.	(G) Benzene dicarboxylic acid, polyesters with glycols and polyether polyol.
P–11–0466	6/29/2011	9/26/2011	CBI	(G) Chemical intermediate	(G) Alkoxylated amine derivative.
P–11–0467	6/29/2011	9/26/2011	CBI	(G) Chemical intermediate	(G) Polyether sulfate salt derivative.
P–11–0468	6/29/2011	9/26/2011	CBI	(G) Chemical intermediate	(G) Polyether amine derivative.
P–11–0469	6/29/2011	9/26/2011	CBI	(G) Polymeric colorant	(G) Polycyclic aromatic colorant.
P–11–0470	6/29/2011	9/26/2011	CBI	(G) Colorant for polymer articles	(G) Polyester substituted polycyclic aromatic colorant.
P–11–0471	6/29/2011	9/26/2011	OM Group, Inc	(G) Production of energy storage devices.	(S) Manganese hydroxide oxide*.
P–11–0472	6/29/2011	9/26/2011	OM Group, Inc	(G) Production of energy storage devices.	(S) Manganese hydroxide*.
P–11–0473	6/30/2011	9/27/2011	Omnova Solutions Inc	(S) Surfactant for the flow, leveling and wetting of aqueous coating formulations; surfactant for use in ink formulaitons for high resolutions ink jet printers.	(S) Boron, trifluoro(tetrahydrofuran)-, (*T*-4)-, polymer with .alpha.-hydro-.omega.-hydroxypoly(oxy-1,2-ethanediyl) and 3-methyl-3-[(2,2,3,3,3-pentafluoropropox-y)methyl]oxetane*.
P–11–0474	6/30/2011	9/27/2011	Omnova Solutions Inc	(S) Surfactant for the flow, leveling and wetting of aqueous coating formulations; surfactant for use in ink formulaitons for high resolutions ink jet printers.	(S) Boron, trifluoro (tetrahydrofuran)-, (*T*-4)-, polymer with methyloxirane, 3-methyl-3-[(2,2,3,3,3-pentapropoxy)methyl]oxetane, oxirane and tetrahydrofuran*.
P–11–0475	6/30/2011	9/27/2011	CBI	(G) Agent used in motor coil	(G) Alkylidene bisphenol, polymer with 2-(chloromethyl)oxirane, alkyl-oxo-2-propen-1-yl)oxy]alkyl 4-cycloalkene-1,2-dicarboxylate.
P–11–0476	6/30/2011	9/27/2011	E.I. Dupont de Nemours and Company.	(G) Extrusion and molding resin	(G) Dicarboxylic acid, compound with 1,6-hexanediamine alkyldioate, homopolymer.
P–11–0477	6/30/2011	9/27/2011	E.I. Dupont de Nemours and Company.	(G) Extrusion and molding resin	(G) Dicarboxylic acid, compound with 1,6-hexanediamine alkyldioate, homopolymer.

In Table II. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received by EPA during this period: The EPA case number assigned to the TME, the date the TME was received by EPA, the projected end date for EPA's review of the TME, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the TME, and the chemical identity.

TABLE II—1 TME RECEIVED FROM JUNE 6, 2011 TO JULY 1, 2011

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
T–11–0010	6/6/2011	7/20/2011	Cytec industries inc.	(G) Coatings resin.	(G) Poly[oxyalkylenediyl], .alpha.-hydro-.omega.-hydroxy-, polymer with disubstituted carbomonocycle, alkyl acrylate blocked.

In Table III. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE III—26 NOCS RECEIVED FROM JUNE 6, 2011 TO JULY 1, 2011

Case No.	Received date	Commencement notice end date	Chemical
P–01–0491	6/17/2011	6/6/2011	(G) Hydroxy urethane.
P–04–0853	6/7/2011	11/22/2005	(G) Aluminum salt of a quinacridone derivative.
P–09–0336	6/22/2011	5/25/2011	(G) Alkyl dioic acid polymer with alkyl diol, .alpha.-hydro-.omega.-hydroxypoly(oxyalkyldiyl), aromatic isocyanate, alkyl diol.
P–10–0367	6/16/2011	5/18/2011	(G) Carbon black derived from the pyrolysis of rubber tire shreds.
P–10–0470	6/23/2011	6/20/2011	(G) Fluoro modified, polyether modified and alkyl modified polymethylsiloxane.
P–10–0508	6/23/2011	5/27/2011	(G) Mixed mono and di carboxylic acids.
P–10–0575	6/29/2011	6/10/2011	(G) Methacrylic acid polymer with isoalkylmethacrylamide, arylmethacrylate, and alkenylmethacrylate.
P–11–0021	6/29/2011	3/25/2011	(S) 2-propenoic acid, 2-methyl-, dodecyl ester, polymer with 2-hydroxyethyl 2-methyl-2-propenoate, rel-(1r,2r,4r)-1,7,7-trimethylbicyclo[2.2.1]hept-2-yl 2-methyl-2-propenoate and rel-(1r,2r,4r)1,7,7-trimethylbicyclo[2.2.1]hept-2-yl 2-propenoate, tert-bu peroxide-initiated*.
P–11–0022	6/29/2011	3/25/2011	(S) 2-propenoic acid, 2-methyl-, 2-hydroxyethyl ester, polymer with rel-(1r,2r,4r)-1,7,7-trimethylbicyclo[2.2.1]hept-2-yl 2-methyl-2-propenoate and rel-(1r,2r,4r)—1,7,7-trimethylbicyclo[2.2.1]hept-2-yl 2-propenoate.
P–11–0039	6/27/2011	6/24/2011	(G) Silsesquioxanes, polyacrylate.
P–11–0076	7/1/2011	6/28/2011	(G) Polyurethane derivative.
P–11–0077	6/21/2011	6/20/2011	(G) Benzenedicarboxylic acid, polymer with 1,4-butanediol, (2e)-2-butenedioic acid, decanedioic acid, ethenylbenzene, 2-ethylhexyl 2-propenoate, hexanedioic acid, 1,6-hexane derivatives and 2-propenoic acid, tert-bu peroxide-initiated.
P–11–0098	6/13/2011	6/9/2011	(S) Phenol, 2-[1-[[3-(1h-imidazol-1-yl)propyl]imino]ethyl]-*.
P–11–0118	6/6/2011	5/6/2011	(G) Methyl alkene ester of benzoic acid.
P–11–0147	6/6/2011	5/18/2011	(G) Ultraviolet-curablepolyester polyurethane acrylate.
P–11–0189	6/15/2011	5/24/2011	(S) Acetic acid, 2,2'-dithiobis-' diammonium salt.
P–11–0191	6/6/2011	5/18/2011	(G) Ultraviolet-curable polyester polyurethane acrylate.
P–11–0205	6/29/2011	6/10/2011	(G) Polyalkene, maleated potassium salts.
P–11–0206	6/29/2011	5/24/2011	(G) Bisaryl iodonium salt.
P–11–0207	6/29/2011	5/29/2011	(G) Substituted aromatic borate salt.
P–11–0225	6/6/2011	6/3/2011	(S) Amines, C_{36}-alkylenedi-, polymers with 6-aminohexanoic acid, 1,6-diisocyanato-2,2,4-trimethylhexane, 1,6-diisocyanato-2,4,4-trimethylhexane, 5,5'-[(1-methylethylidene)bis(4,1-phenyleneoxy)]bis[1,3-isobenzofurandione] and pyromellitic dianhydride, 2,5-dihydro-2,5-dioxo-1*H*-pyrrole-1-hexanoic acid-blocked.
P–11–0228	6/7/2011	6/6/2011	(G) Benzaldehyde, reaction products with polyalkylenepolyamines, hydrogenated.
P–11–0237	6/15/2011	6/14/2011	(S) D-glucopyranose, oligomeric, decyl octyl glycosides, polymer with 1,3-dichloro-2-propanol and sorbitan mono-(9*z*)-9-octadecenoate.
P–11–0248	6/21/2011	6/20/2011	(G) Roin, polymer with ethylene glycol, propanediol, alkanedicarboxylic acid, terephthalic acid and trimellitic anhydride.
P–11–0259	6/17/2011	6/5/2011	(G) Polyether polyester polyurethane adhesive.
P–11–0275	6/30/2011	6/24/2011	(G) Hydroxy alkyl alkyl acrylate, polymer with alkyl acrylate, aromatic vinyl monomer, dialkyl acrylate and alkyl alkyl acrylate.

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Imports, Notice of commencement, Premanufacturer, Reporting and recordkeeping requirements, Test marketing exemptions.

Dated: September 7, 2011.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2011–23814 Filed 9–15–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9466–4; Docket ID No. EPA–HQ–ORD–2011–0390]

Draft Toxicological Review of 1,4-Dioxane: In Support of Summary Information on the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Comment Period; extension.

SUMMARY: EPA announced a 60-day public comment period on August 31, 2011 (76 FR 54225) for the external review draft human health assessment titled, ''Toxicological Review of 1,4-Dioxane: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (EPA/635/R–11/003). New inhalation studies regarding the toxicity of 1,4-dioxane are now included in the 1,4-dioxane assessment. EPA is extending the public comment period because of a delay in the release of the Toxicological Review to the public. The draft assessment was prepared by the National Center for Environmental Assessment (NCEA) within the EPA Office of Research and Development (ORD). EPA is releasing this draft assessment solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This draft assessment has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. After public review and comment, an EPA contractor will convene an expert panel for independent external peer review of this draft assessment. The public comment period and external peer review meeting are separate processes that provide opportunities for all interested parties to comment on the assessment. The external peer review meeting will be scheduled at a later date and announced in the **Federal Register**. Public comments submitted during the public comment period will be provided to the external peer reviewers before the panel meeting and considered by EPA in the disposition of public comments. Public comments received after the public comment period closes will not be submitted to the external peer reviewers and will only be considered by EPA if time permits.

DATES: The public comment period will be extended to end November 15, 2011. Comments should be in writing and must be received by EPA by November 15, 2011.

ADDRESSES: The draft ''Toxicological Review of 1,4-Dioxane: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' is available primarily via the Internet on the NCEA home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team (Address: Information Management Team, National Center for Environmental Assessment, (Mail Code: 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8561; facsimile: 703–347–8691). If you request a paper copy, please provide your name, mailing address, and the draft assessment title.

Comments may be submitted electronically via *http://www.regulations.gov,* by e-mail, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of the previous notice (76 FR 54225).

Additional Information: For information on the docket, *http://www.regulations.gov,* or the public comment period, please contact the Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For information on the draft assessment, please contact Patricia Gillespie, National Center for Environmental Assessment [Mail Code: B–243–01], U.S. Environmental Protection Agency, National Center for Environmental Assessment, Office of Research and Development, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919–541–1964; facsimile: 919–541–2985; or e-mail: *FRN_Questions@epa.gov.*

Dated: September 9, 2011.

Darrell A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2011–23818 Filed 9–15–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8999–1]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements
Filed 09/05/2011 Through 09/09/2011
Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EIS are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20110306, Draft EIS, USFS, CA, Johnny O'Neil Late Successional Reserve Habitat Restoration and Fuel Reduction Project, Proposal to Retain and Promote the Development of Late Successional Habitat and Reduce the Risk of Large, High Severity Wildfire, Happy Camp and Oak Knoll Ranger District, Klamath National Forest, Siskiyou County, CA, Comment Period Ends: 10/31/2011, Contact: Timothy Burnett 530–493–1767.

EIS No. 20110307, Draft EIS, BLM, CO, Colorado River Valley (formerly known as Glenwood Springs) Resource Management Plan, Implementation, Colorado River Valley Field Office, Portions of Eagle, Garfield, Mesa, Ritkin, and Routt Counties, CO, Comment Period Ends: 12/14/2011, Contact: John Russell 970–876–9025.

EIS No. 20110308, Final EIS, USFS, WY, Livestock Grazing and Vegetation Management on Five Project Area, Proposes to Continue to Authorize Livestock Grazing, Tongue, Medicine Wheel/Paintrock, and Power River Districts of the Bighorn National Forest, Johnson, Sheridan, Big Horn and Washakie Counties, WY, Review Period Ends: 10/17/2011, Contact: Laurie Walters-Clark 307–674–2627.

EIS No. 20110309, Draft EIS, BLM, CO, Kremmling Resource Management Plan, To Provide a Framework of Multiple-Use and Sustained Yield Management, in North-Central, CO, Comment Period Ends: 12/14/2011, Contact: Angela Glenn 303–239–3936.

EIS No. 20110310, Final EIS, FERC, WA, Boundary Hydroelectric Project, Application for Hydroelectric License, FERC Project No. 2144–038 and

Sullivan Creek Project, Application for Surrender of Hydropower FERC Project No. 2225–015, Pend Oreille County, WA, Review Period Ends: 10/17/2011, Contact: Leonard Tao 1–866–208–3372.

EIS No. 20110311, Draft EIS, FERC, 00, New Jersey-New York Expansion Project, Propose to Modify and Expand their Existing Natural Gas Transmission Pipeline Systems in New Jersey, New York, and Connecticut, Comment Period Ends: 10/31/2011, Contact: Leonard Tao 1–866–208–3372.

EIS No. 20110312, Draft EIS, NOAA, IL, Illinois Coastal Management Program, To Preserve, Protect, Restore, and Where Possible, Enhance Coastal Resources in Illinois, Comment Period Ends: 10/31/2011, Contact: Diana K. Olinger 301–563–1149.

EIS No. 20110313, Draft EIS, BR, CA, Joint Operations Center (JOC) Relocation Project, Propose to Construct and Operate the Permanent JOC as a Replacement Facility for their Current Operations on EL Camino Avenue, Sacramento County, CA, Comment Period Ends: 11/07/2011, Contact: Doug Kleinsmith 916–978–5034.

EIS No. 20110314, Draft EIS, DHS, 00, PROGRAMMATIC—Northern Border Activities Program, Propose to Enhance its Program of Security along the United States' Northern Border with Canada, from Maine to Washington, Comment Period Ends: 10/31/2011, Contact: Jennifer Hass 202–344–1929,

Amended Notices

EIS No. 20110214, Draft Supplement, USFS, ND, North Billings County Allotment Management Plan Revisions, Updated Information, Proposes to Continue to Permit Livestock Grazing on 43 Allotments, Medora Ranger District, Dakota Prairie Grasslands, Billings County, ND, Comment Period Ends: 09/21/2011, Contact: Nickole Dahl 701–227–7800.

EIS No. 20110240, Draft EIS, NPS, AK, Denali Park Road and Preserve, Draft Vehicle Management Plan, Implementation, AK, Comment Period Ends: 10/31/2011, Contact: Miriam Valentine 907–733–9102. Revision to FR Notice Published 07/29/2011: Extending Comment Period from 09/30/2011 to 10/31/2011.

EIS No. 20110303, Final EIS, FTA, CA, Crenshaw Transit Corridor Project, Proposes to Improve Transit Services, Funding, Los Angeles County Metropolitan Transportation Authority (LACMTA), Los Angeles County, CA, Review Period Ends: 10/11/2011, Contact: Ray Tellis 213–202–3956. The above FTA EIS should have appeared in the 09/09/2011 **Federal Register**. The 30-Day Review Period is Calculated from 09/09/2011.

Dated: September 13, 2011.

Cliff Rader,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–23828 Filed 9–15–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9464–7]

Program Requirement Revisions Related to the Public Water System Supervision Programs for the State of Rhode Island and the State of Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Rhode Island and the State of Vermont are in the process of revising their respective approved Public Water System Supervision (PWSS) programs to meet the requirements of the Safe Drinking Water Act (SDWA).

The State of Rhode Island has adopted drinking water regulations for the Arsenic Rule (66 FR 6976) promulgated on January 22, 2001, and the revised Public Notice Rule (65 FR 26035) promulgated on May 4, 2000. After review of the submitted documentation, EPA has determined that the State of Rhode Island's Arsenic Rule and Public Notice Rule are no less stringent than the corresponding Federal regulations. Therefore, EPA intends to approve Rhode Island's PWSS program revision for these rules.

The State of Vermont has adopted drinking water regulations for the Interim Enhanced Surface Water Treatment Rule (63 FR 69477) promulgated on December 16, 1998, the Long Term I Enhanced Surface Water Treatment Rule (67 FR 1812) promulgated on January 14, 2002, the Filter Backwash Recycling Rule (66 FR 31085) promulgated on June 8, 2001, the Arsenic Rule (66 FR 6976) promulgated on January 22, 2001, the Stage 1 Disinfectant and Disinfection Byproduct Rule (63 FR 69389) promulgated on December 16, 1998, and the Radionuclides Rule (FR 65 76708–76753) promulgated on December 7, 2000. After review of the submitted documentation, EPA has determined that these rules are no less stringent than the corresponding Federal regulations. Therefore, EPA intends to approve Vermont's PWSS program revision for these rules.

DATES: All interested parties may request a public hearing for any of the above EPA determinations. A request for a public hearing must be submitted within thirty (30) days of this **Federal Register** publication date to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator.

However, if a substantial request for a public hearing is made by this date, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become final and effective 30 days after the publication of this **Federal Register** Notice.

Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination; (3) information that the requesting person intends to submit at such hearing; and (4) the signature of the individual making the request, or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, at the following office(s):

U.S. Environmental Protection Agency, Office of Ecosystem Protection, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.

For documents specific to that State:

Rhode Island Department of Public Health, Division of Drinking Water Quality, 3 Capitol Hill, Providence, RI 02908–5097.

Vermont Department of Environmental Conservation, Water Supply Division, Agency of Natural Resources, 103 South Main Street, Old Pantry Building, Waterbury, VT 05671–0403.

FOR FURTHER INFORMATION CONTACT: Stafford Madison, U.S. EPA–New England, Office of Ecosystem Protection (telephone 617–918–1622).

Authority: Section 1401 (42 U.S.C. 300f) and Section 1413 (42 U.S.C. 300g–2) of the Safe Drinking Water Act, as amended (1996), and (40 CFR 142.10) of the National Primary Drinking Water Regulations.

Dated: September 7, 2011.

H. Curtis Spalding,

Regional Administrator, EPA—New England.

[FR Doc. 2011–23858 Filed 9–15–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 4652–Oakwood Deposit Bank, Oakwood, Ohio

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Oakwood Deposit Bank, Oakwood, Ohio (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed Receiver of Oakwood Deposit Bank on February 1, 2002. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 8.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Federal Deposit Insurance Corporation.

Dated: September 12, 2011.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–23712 Filed 9–15–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: September 12, 2011.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10395	First National Bank of Florida	Milton	FL	9/9/2011

[FR Doc. 2011–23711 Filed 9–15–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS11–25]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in closed session:

Location: FDIC—1776 F Street, NW., Room 4085, Washington, DC 20429.

Date: September 21, 2011.

Time: Immediately following the ASC open session.

Status: Closed.

Matters To Be Considered

August 10, 2011 minutes—Closed Session.

Preliminary discussion of State Compliance Reviews.

Dated: September 12, 2011.

James R. Park,

Executive Director.

[FR Doc. 2011–23859 Filed 9–15–11; 8:45 am]

BILLING CODE P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS11–24]

Appraisal Subcommittee; Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: FDIC—1776 F Street, NW., Room 4085, Washington, DC 20429.

Date: September 21, 2011.

Time: 10:30 a.m.

Status: Open.

Matters To Be Considered

Summary Agenda

August 10, 2011 minutes—Open Session.

(No substantive discussion of the above items is anticipated. These matters will be resolved with a single vote unless a member of the ASC requests that an item be moved to the discussion agenda.)

Discussion Agenda

Appraisal Foundation May 2011 Grant Reimbursement Request.
Appraisal Subcommittee Fiscal Year 2012 Budget.

How to Attend and Observe an ASC Meeting

E-mail your name, organization and contact information to *meetings@asc.gov.*

You may also send a written request via U.S. Mail, fax or commercial carrier to the Executive Director of the ASC, 1401 H Street, NW., Ste. 760, Washington, DC 20005. The fax number is 202–289–4101. Your request must be received no later than 4:30 p.m., ET, on the Monday prior to the meeting. Attendees must have a valid government-issued photo ID and must agree to submit to reasonable security measures. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: September 12, 2011.

James R. Park,

Executive Director.

[FR Doc. 2011–23876 Filed 9–15–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Registry of Evidence-Based Programs and Practices

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice Regarding Substance Abuse and Mental Health Services Administration's National Registry of Evidence-based Programs and Practices (NREPP): Open Submission Period for Fiscal Year 2012.

SUMMARY: The mission of the Substance Abuse and Mental Health Services Administration (SAMHSA) is to reduce the impact of substance abuse and mental illness on America's communities. Established in 1992, the Agency was directed by Congress to target effective substance abuse and mental health services to the people most in need, and to translate research in these areas more effectively and more rapidly into the general health care system. The National Registry of Evidence-based Programs and Practices (NREPP) is a key public resource SAMHSA has developed to help meet this directive. This notice announces NREPP's open submission period for Fiscal Year 2012, during which developers of interventions may submit an application for a potential review. The notice explains how submissions will be screened and selected, and provides guidance on the submission process. Potential applicants should be aware that this notice includes updated information relating to the eligibility of interventions and the review process that supersedes guidance provided in earlier **Federal Register** notices.

FOR FURTHER INFORMATION CONTACT: Kevin D. Hennessy, Ph.D., Science to Service Coordinator, Center for Behavioral Health Statistics and Quality, SAMHSA, 1 Choke Cherry Road, Room 2–1017, Rockville, MD 20857, telephone 240–276–2234.

Rose Shannon,

Director, Division of Executive Correspondence.

Substance Abuse and Mental Health Services Administration's National Registry of Evidence-Based Programs and Practices (NREPP): Open Submission Period for Fiscal Year 2012

Background

The Substance Abuse and Mental Health Services Administration's (SAMHSA) National Registry of Evidence-based Programs and Practices (NREPP) is a voluntary rating system designed to provide the public with reliable information about interventions that promote mental health or prevent or treat mental disorders, substance abuse, substance use disorders, and/or co-occurring disorders. Programs and practices that are accepted for inclusion in the registry undergo two independent review processes in which their (1) Quality of research and (2) readiness for dissemination are evaluated and rated. The results of these reviews are published on the NREPP Web site (*http://nrepp.samhsa.gov*).

It should be noted that inclusion in NREPP does not constitute endorsement of an intervention by SAMHSA. Moreover, since NREPP has not reviewed all interventions, the use of NREPP as an exclusive or exhaustive list of interventions is not appropriate. Policymakers and funders in particular are discouraged from limiting contracted providers and/or potential grantees to selecting only among NREPP interventions.

This notice announces the next open submission period during which SAMHSA will consider and accept new applications for review, describes the minimum requirements and other considerations that will be used in screening and selecting interventions, and provides guidance on the submission process.

Dates of Open Submission Period

SAMHSA has established a 3-month period for receipt of NREPP submissions for Fiscal Year 2012 that will begin November 1, 2011, and end February 1, 2012. Interventions submitted after February 1, 2012, will not be considered during this submission cycle. Program developers, researchers, and others interested in submitting an intervention should read this notice for information about current minimum requirements, and examine the information provided on the NREPP Web site about the review process and criteria (*http://nrepp.samhsa.gov/Reviews.aspx*) and guidance for preparing an intervention for submission (*http://nrepp.samhsa.gov/SubmissionCourse.aspx*). The selection of interventions will take place after the closing of the open submission period, and applicants will be informed of their acceptance status at that time. The number of reviews conducted will depend on the availability of funds, with the final selection of interventions and the timing of reviews to be determined at the discretion of SAMHSA.

In submitting an intervention, applicants understand that the results of NREPP reviews are considered public information and will be posted on the NREPP Web site. Once a review is completed, the applicant will be provided with a summary document (''intervention summary'') that presents ratings and descriptive information about the intervention. Anyone that consents to a review is expected to authorize publication of the intervention summary on the NREPP Web site. If a summary is completed and consent is not given to publish the summary, a statement to that effect will be posted on the NREPP Web site.

Applicants are encouraged to view examples of NREPP intervention summaries on the NREPP Web site to become familiar with the end product of the review process.

Minimum Requirements

To be considered for review, interventions must meet four minimum requirements:

1. The intervention has produced one or more positive behavioral outcomes ($p \leq .05$) in mental health, mental disorders, substance abuse, or substance use disorders among individuals, communities, or populations.

2. Evidence of these outcomes has been demonstrated in at least one study using an experimental or quasi-experimental design. Experimental designs require random assignment, a control or comparison group, and pre- and postintervention assessments. Quasi-experimental designs do not require random assignment, but do require a comparison or control group and pre- and postintervention assessments; this category includes longitudinal/multiple time series designs with at least three preintervention or baseline measurements and at least three postintervention or follow-up measurements. Studies that are based on single group, pre-/posttest designs do not meet this requirement.

3. The results of these studies have been published in a peer-reviewed journal or other professional publication, or documented in a comprehensive evaluation report. Comprehensive evaluation reports must include a review of the literature, theoretical framework, purpose, methodology, findings/results with statistical analysis and p values for significant outcomes, discussion, and conclusions. Submissions must include information that can be rated according to the six Quality of Research criteria identified on the NREPP Web site.

4. Implementation materials, training and support resources, and quality assurance procedures have been developed and are ready for use by the public.

Applicants are required to provide documentation at the time of submission that demonstrates the intervention meets these minimum requirements. Table 1 lists examples of appropriate supporting documentation.

TABLE 1—DOCUMENTATION FOR DEMONSTRATING COMPLIANCE WITH MINIMUM REQUIREMENTS

	Minimum requirement	Documentation
Quality of Research	1. Intervention has produced one or more positive behavioral outcomes ($p \leq .05$) in mental health, mental disorders, substance abuse, or substance use disorders among individuals, communities, or populations.	A list of significant behavioral outcomes that includes supporting citations (document/page number) for each outcome; *and*
	2. Evidence of these outcomes has been demonstrated in at least one study using an experimental or quasi-experimental design.	A full-text copy of each article/report cited in the list of outcomes. Other research articles, published or unpublished evaluation reports, grant final reports, and replication studies may be submitted as additional supporting documentation.
	3. Results of these studies have been published in a peer-reviewed journal or other publication or documented in a comprehensive evaluation report.	**Note:** Abstracts or URLs to partial articles are regarded as incomplete and will not be considered.
Readiness for Dissemination	4. Implementation materials, training and support resources, and quality assurance procedures have been developed and are ready for use by the public.	A brief narrative description and list of available materials, resources, and systems to support implementation (*e.g.,* treatment manuals, information for administrators, tested training curricula, mechanisms for ongoing supervision and consultation, protocols for gathering process and outcome data, ongoing monitoring of intervention fidelity, processes for gathering feedback); *and* A brief description of the method through which new implementation sites acquire the above materials.

The following types of interventions are not eligible for review and should not be submitted to NREPP:

1. Stand-alone pharmacologic treatments—The evidence base for pharmacologic treatments is reviewed and approved through the U.S. Food and Drug Administration (FDA). FDA-approved pharmacotherapy interventions (on-label use) are considered for NREPP review only when combined with one or more behavioral or psychosocial treatments.

2. To remain consistent with SAMHSA's mission (''to reduce the impact of substance abuse and mental illness on American communities''), NREPP will not accept for review, or otherwise include on the NREPP Web site, any interventions that have been developed or evaluated with funds or other support—either partially or wholly—from organizations whose goals or activities are determined to be inconsistent with SAMHSA's mission.

Selection of Interventions for Review

All submissions meeting the minimum requirements will be considered eligible for review. In selecting interventions for review, SAMHSA may choose to give special consideration to interventions that meet one or more of the following conditions:

- The original investigator(s) or an independent party has used the same protocol with an identical or similar target population, and/or has used a slightly modified protocol based on a slightly modified population, where results are consistent with positive findings from the original evaluation.
- Implementation materials (*e.g.,* program manuals, training guides, measurement instruments, implementation fidelity guides) are available to the public at no cost.
- The intervention targets underserved populations (*e.g.,* minority populations, elderly, young adults, individuals who are incarcerated).
- The intervention contributes to a content area where there are currently limited evidence-based interventions.

Interventions that are not selected for review may be resubmitted by the applicant in a future open submission period.

Instructions for Submitting an Intervention

To submit an intervention, individuals should send a written statement to NREPP expressing their interest along with documentation that demonstrates the intervention meets the minimum requirements as described above. All submissions must be made either by a principal investigator (PI) who has conducted research on the intervention, a project director (PD) who has worked with an evaluator of the intervention, or a formally authorized delegate of the PI or PD. For information on where to submit materials, please call 1–866–436–7377. Electronic submissions are preferred, but materials may be sent to NREPP in hard copy via postal mail or fax. To be eligible for consideration, submissions must be received no later than 11:59 p.m. E.S.T. on February 1, 2012; those received before November 1, 2011, will be disregarded.

For each intervention that is accepted, the Principal (the individual, usually the PI, formally designated as the intervention's point of contact and decisionmaking authority during the review process) will be asked to submit additional documentation to be used in the review. This additional documentation includes full-text copies of all articles and reports that provide evidence of significant outcomes ($p \leq .05$) as well as copies of selected dissemination materials in the format they are provided to the public (*e.g.,* hard copies or electronic versions of manuals, training presentations, tools, quality assurance protocols; URLs for interactive Web-based resources).

The Principal continues to work with NREPP staff throughout the review and is responsible for approval of the final intervention summary that is developed by NREPP staff once the review has been completed.

Contact Information

Individuals who have questions about the information contained in this notice may write to NREPP staff at *nrepp@samhsa.hhs.gov* or call 1–866–436–7377.

[FR Doc. 2011–23757 Filed 9–15–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)—Ethics Subcommittee (ES)

Correction: This notice was published in the **Federal Register** on September 8, 2011, Volume 76, Number 174, Page 55678. The correct time should be 1 p.m.–3:30 p.m.

Contact Person for More Information: Drue Barrett, Ph.D., Designated Federal Officer, ACD, CDC—ES, CDC, 1600 Clifton Road, NE., M/S D–50, Atlanta, Georgia 30333. Telephone (404) 639–4690. E-mail: *dbarrett@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 12, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–23767 Filed 9–15–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10398]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Generic Clearance for Medicaid and CHIP State Plan, Waiver, and Program Submissions; *Use:* CMS is requesting a generic PRA clearance for a body of forms necessary to conduct ongoing business with State partners in the implementation of Medicaid and the Children's Health Insurance Program (CHIP). Examples of the types of forms to be produced in this collection include State plan amendment templates, waiver and demonstration templates, and reporting templates. The development of streamlined submission forms is critical for States to implement timely health reform initiatives in Medicaid and CHIP state plans, demonstrations, and waivers, including legislative requirements enacted by the Affordable Care Act. The development of streamlined submissions forms enhances the collaboration and partnership between States and CMS by documenting CMS policy for States to use as they are developing program changes. Streamlined forms improve efficiency of administration by creating a common and user-friendly understanding of the information needed by CMS to quickly process requests for State plan amendments, waivers, and demonstration, as well as ongoing reporting.; *Form Number:* CMS–10398 (OMB #0938–NEW); *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 1120; *Total Annual Hours:* 28,747. (For policy questions regarding this collection contact Candice Payne at 410–786–4453. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must

be received by the OMB desk officer at the address below, no later than 5 p.m. on October 17, 2011. OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, *E-mail: OIRA_submission@omb.eop.gov*.

Dated: September 13, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–23807 Filed 9–15–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–246 and CMS–10147]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Advantage, Medicare Part D and Medicare Fee For Service Consumer Assessment of Healthcare Providers and Systems Survey. *Use:* CMS has fielded the MA Consumer Assessment of Health Care Providers and Systems (CAHPS) Survey annually since 1998, the Medicare FFS CAHPS Survey annually since 2000, and the MA DP and Stand Alone PDP CAHPS survey annually since 2006. The Medicare CAHPS is a national survey of health and prescription drug plans conducted at the contract level for MA, MA PD and Stand Alone PDP plans and at the state level for Medicare fee-for-service. Medicare CAHPS provides data to permit preparation of plan performance measures to assist Medicare beneficiaries in their selection of a health plan, prescription drug plan or both, and help policymakers and others assist the Medicare program and Medicare plans design and monitor patient-centered quality improvement initiatives. The 2009 Call letter for MA and MA PD plans requires these plans to contract with private vendors from a list selected by CMS to conduct the 2011 Medicare CAHPS survey for their plan at the contract level and provide the collected data to CMS for analyses and preparation of CAHPS measures for use in consumer and plan reports and for quality improvement purposes for MA, MA PD, and Stand Alone PDP plans. CMS will continue to collect the Medicare FFS CAHPS data from surveys at the state and some sub-state levels. This revision to a currently approved collection is to add questions focusing on care coordination. *Form Number:* CMS–R–246 (OCN: 0938–0732) *Frequency:* Yearly; *Affected Public:* Private Sector—Business or other For-profits; *Number of Respondents:* 598,200; *Number of Responses:* 598,200; *Total Annual Hours:* 216,555. (For policy questions regarding this collection, contact Sarah Gaillot at 410–786–4637. For all other issues call (410) 786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Standardized Pharmacy Notice: Your Prescription Cannot be Filled (f/k/a Medicare Prescription Drug Coverage and Your Rights) *Use:* This is a request for approval of changes to a currently approved collection under 42 CFR 423.562(a)(3). This regulatory provision has recently been modified to eliminate the previously available option of posting the standardized notice at the pharmacy. Revised 423.562(a)(3) and an associated regulatory provision at § 423.128(b)(7)(iii) require the pharmacy to provide the Part D enrollee with a printed copy of this standardized notice if the prescription cannot be filled.

The purpose of this notice is to provide enrollees with information about how to contact their Part D plans to request a coverage determination, including a request for an exception to the Part D plan's formulary. The notice reminds enrollees about certain rights and protections related to their Medicare prescription drug benefits, including the right to receive a written explanation from the drug plan about why a prescription drug is not covered. A Part D plan sponsor's network pharmacies are in the best position to notify enrollees about how to contact their Part D plan if the prescription cannot be filled.

As noted in a final rule published April 15, 2011 (76 FR 21432), the option of posting this notice at the pharmacy has been eliminated. If a prescription cannot be filled, the pharmacy must provide the enrollee with a printed copy of this notice. *Form Number:* CMS–10147 (OCN: 0938–0975) *Frequency:* Yearly; *Affected Public:* Private Sector—Business or other For-profits; *Number of Respondents:* 42,000; *Number of Responses:* 37,087,402; *Total Annual Hours:* 617,876. (For policy questions regarding this collection, contact Kathryn McCann Smith at 410–786–7623. For all other issues call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on October 17, 2011: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer. *Fax Number:* (202) 395–6974. *E-mail: OIRA_submission@omb.eop.gov.*

Dated: September 13, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–23801 Filed 9–15–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10411]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* State Balancing Incentive Payments Program (BIPP); *Use:* The Balancing Incentive Program requires that States undertake three structural changes to their long-term services and supports (LTSS) systems to increase nursing home diversions and access to community-based care: implementation of a No Wrong Door/Single Entry Point System, conflict-free case management, and the use of a core standardized assessment for supporting eligibility determination and service planning. In addition, grantee States must increase their community-based LTSS expenditures relative to their overall expenditures on LTSS to a minimum of 25% or 50%. State Medicaid agencies are responsible for developing the submissions to CMS in order to participate in this opportunity. If the statutory requirements are met, CMS will approve the State's submission, giving the State the authority to implement the changes in the program and to draw down the increased FMAP funds. *Form Number:* CMS–10411 (OMB 0938–1145); *Frequency:* Once; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 2,240. (For policy questions regarding this collection contact Effie George at 410–786–8639. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by November 15, 2011:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 13, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–23800 Filed 9–15–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Conference on the International Conference on Harmonisation Q10 Pharmaceutical Quality System: A Practical Approach to Effective Life-Cycle Implementation of Systems and Processes for Pharmaceutical Manufacturing; Public Conference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public conference.

The Food and Drug Administration (FDA), in cosponsorship with the Parenteral Drug Association (PDA), is announcing a public conference dedicated to teaching the principles of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) entitled ''Pharmaceutical Quality System (ICH Q10) Conference: A Practical Approach to Effective Life-Cycle Implementation of Systems and Processes for Pharmaceutical Manufacturing.'' The conference will span 2-and-one-half days and will be a unique opportunity to learn the principles from companies that have implemented a Pharmaceutical Quality System across the product life cycle according to the ICH Q10 model. These companies are reaping the benefits that come from establishing and maintaining a state of control, continual improvement, enhancing regulatory compliance, and meeting quality objectives every day.

Date and Time: The public conference, which will include an exhibition, will be held on Tuesday, October 4, 2011, from 8:30 a.m. to 6:30 p.m.; Wednesday, October 5, 2011, from 8 a.m. to 5:30 p.m.; and Thursday, October 6, 2011, from 8 a.m. to 1 p.m.

Location: The event will be held at the Crystal Gateway Marriott, 1700 Jefferson Davis Hwy., Arlington, VA, 703–920–3230, *Fax:* 703–271–5212.

Contact Person: Wanda Neal, Parenteral Drug Association, PDA Global Headquarters, Bethesda Towers, 4350 East West Hwy., suite 200, Bethesda, MD 20814; 301–656–5900, ext. 111; *Fax:* 301–986–1093; e-mail: *neal@pda.org.*

Attendees are responsible for their own accommodations. To make reservations at the reduced conference rate, contact the Marriott Crystal Gateway Hotel (see *Location*) and cite meeting code ''PDA.'' Room rates are single/double: $229.00, plus 10.5 percent State and local taxes. Reservations can be made on a space and rate available basis.

Registration: You are encouraged to register at your earliest convenience. The PDA registration fees cover the cost of facilities, materials, and breaks. Seats are limited; please submit your registration as soon as possible. Conference space will be filled in order of receipt of registration. Those accepted into the conference will receive confirmation. Registration will close after the conference is filled. Onsite registration will be available on a space-available basis on the day of the public conference beginning at 7 a.m. on October 4, 2011.

The cost of registration is as follows:

PDA Members	$1,695.00
PDA Nonmembers	1,944.00
Government/Health Authority Member	700.00
Government/Health Authority Nonmember	700.00
PDA Member Academic	700.00
PDA Nonmember Academic/ Health Authority	780.00
PDA Member Students	280.00
PDA Nonmember Students	310.00

If you need special accommodations due to a disability, please contact Wanda Neal, PDA (see *Contact Person*) at least 7 days in advance of the conference.

Registration instructions: To register, please submit your name, affiliation, mailing address, telephone number, fax number, and e-mail address, along with a check or money order payable to ''PDA.'' Mail to: PDA Global Headquarters, Bethesda Towers, 4350 East West Hwy., suite 200, Bethesda, MD 20814. To register via the Internet, go to the PDA Web site, *http://www.pda.org/Q10.* The registrar will also accept payment by major credit cards (VISA/MasterCard only). For more information on the meeting, or for questions on registration, contact PDA, 301–656–5900, *Fax:* 301–986–1093, e-mail: *info@pda.org.*

SUPPLEMENTARY INFORMATION: While this conference is intended to explain the principles of ICH Q10, it is not a conference that only tells you what ICH Q10 says. It is an event where you can learn the practicalities of how to implement Q10 based on real-life case studies. The conference will draw on the best industry and regulator contributors on this topic from both the United States and Europe. It will show you how senior management commitment and involvement is vital.

Dated: September 12, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–23747 Filed 9–15–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: October 25–27, 2011.

Open: October 25, 2011, 4 p.m. to 4:30 p.m.

Agenda: To review procedures and discuss policy.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Closed: October 25, 2011, 4:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Closed: October 26, 2011, 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.

Closed: October 27, 2011, 8 a.m. to 12 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: Barbara A. Woynarowska, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 402–7172, *woynarowskab@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: October 26–28, 2011.

Open: October 26, 2011, 5 p.m. to 5:30 p.m.

Agenda: To review procedures and discuss policy.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Closed: October 26, 2011, 5:30 p.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Closed: October 27, 2011, 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Closed: October 28, 2011, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John F. Connaughton, PhD, Chief, Chartered Committees Section, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Digestive Diseases and Nutrition C Subcommittee.

Date: October 26–28, 2011.

Open: October 26, 2011, 5 p.m. to 5:30 p.m.

Agenda: To review procedures and discuss policy.

Place: Courtyard Gaithersburg Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD 20878.

Closed: October 26, 2011, 5:30 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Gaithersburg Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD 20878.

Closed: October 27, 2011, 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Gaithersburg Washingtonian Center, 204 Broadwalk Place, Gaithersburg, MD 20878.

Closed: October 28, 2011, 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Gaithersburg Washingtonian Center, 204 Broadwalk Place, Gaithersburg, MD 20878.

Contact Person: Robert Wellner, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 706, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, *rw175w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 12, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–23849 Filed 9–15–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed 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 Center for Research Resources Special Emphasis Panel.

Date: October 25, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Barbara J. Nelson, PhD, Scientific Review Officer, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1080, MSC 4874, Bethesda, MD 20892–4874, 301–435–0806.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards., National Institutes of Health, HHS)

Dated: September 12, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–23857 Filed 9–15–11; 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 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: NIDCR Special Grants Review Committee.

Date: October 20–21, 2011.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Rebecca Wagenaar Miller, PhD, Scientific Review Officer, 6701 Democracy Blvd, Room 666, Bethesda, MD 20892, 301–594–0652, *rwagenaa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: September 12, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–23856 Filed 9–15–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute 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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Core Infrastructure and Methodological Research for Cancer Epidemiology Cohorts (UM1).

Date: October 4, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lalita D. Palekar, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7141, Bethesda, MD 20892, 301–496–7575, *palekarl@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Disparities, Cancer Risk, Prevention and Prognostic Factors.

Date: October 5–6, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Wlodek Lopaczynski, MD, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd. Room 8131, Bethesda, MD 20892, 301–594–1402, *lopacw@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Review of K99 Applications.

Date: October 12, 2011.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Sergei Radaev, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8113, Bethesda, MD 20892, 301–435–5655, *sradaev@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Biopsy Instruments and Devices that Preserve Molecular Profiles in Tumors.

Date: October 27, 2011.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Officer, Special Review Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892–8329, 301496–7576, *bielatk@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Minority-Based Community Clinical Oncology Program Groups (U10).

Date: November 8, 2011.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ellen K Schwartz, EDD, MBA, Scientific Review Officer, Special

Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8055B, Bethesda, MD 20892–8329, 301–594–1215, *schwarel@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Community Clinical Oncology Program Research Bases (U10).

Date: November 9, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ellen K Schwartz, EDD, MBA, Scientific Review Officer, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8055B, Bethesda, MD 20892–8329, 301–594–1215, *schwarel@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Small Grants for Behavioral Research in Cancer Control (R03).

Date: November 15, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Zhiqiang Zou, MD, PhD, Scientific Review Officer, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8055A, Bethesda, MD 20852, *zouzhiq@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 12, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–23851 Filed 9–15–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0854]

Information Collection Request to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Requests (ICRs) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of revisions to the following collections of information: 1625–0045, Adequacy Certification for Reception Facilities and Advance Notice—33 CFR Part 158, 1625–0060, Vapor Control Systems for Facilities and Tank Vessels, 1625–0081, Alternate Compliance Program, 1625–0083, Operational Measures for Existing Tank Vessels Without Double Hulls and l625–0113, Crewmember Identification Documents.

Our ICRs describe the information we seek to collect from the public. Before submitting these ICRs to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before November 15, 2011.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2011–0854] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) Online: *http://www.regulations.gov.*

(2) Mail: DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) 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.

(4) Fax: 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), ATTN Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St., SW., Stop 7101, Washington DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments.

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise these ICRs or decide not to seek approval for the Collections. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2011–0854], and must be received by November 15, 2011. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2011–0854], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (*via http://www.regulations.gov*), 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 DMF. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov*, and type ''USCG–2011–0854'' in the ''Keyword'' box. 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 will address them accordingly.

Viewing comments and documents: To view comments, as well as documents mentioned in this Notice 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–2011–0854'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in 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 statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Requests

1. *Title:* Adequacy Certification for Reception Facilities and Advance Notice—33 CFR Part 158.

OMB Control Number: 1625–0045.

Summary: This information helps ensure that waterfront facilities are in compliance with reception facility standards. Advance notice information from vessels ensures effective management of reception facilities.

Need: Section 1905 of Title 33 U.S.C. gives the Coast Guard the authority to certify the adequacy of reception facilities in ports. Reception facilities are needed to receive waste from ships which may not discharge at sea. Under these regulations in 33 CFR part 158 there are discharge limitations for oil and oily waste, noxious liquid substances, plastics and other garbage.

Forms: CG–5401, CG–5401A, CG–5401B, CG–5401C.

Respondents: Owners and operators of reception facilities, and owners and operators of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 1,529 hours to 1,497 hours a year.

2. *Title:* Vapor Control Systems for Facilities and Tank Vessels.

OMB Control Number: 1625–0060.

Summary: The information is needed to ensure compliance with U.S. regulations for the design of facility and tank vessel vapor control systems (VCS). The information is also needed to determine the qualifications of a certifying entity.

Need: Section 1225 of 33 U.S.C. and 46 U.S.C. 3703 authorizes the Coast Guard to establish regulations to promote the safety of life and property onboard facilities and vessels. Title 33 CFR part 154 subpart E and 46 CFR part 39 contains the Coast Guard regulations for VCS and certifying entities.

Forms: None.

Respondents: Owners and operators of facilities and tank vessels, and certifying entities.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 2,724 hours to 2,789 hours a year.

3. *Title:* Alternate Compliance Program.

OMB Control Number: 1625–0081.

Summary: This information is used by the Coast Guard to assess vessels participating in the voluntary Alternate Compliance Program (ACP) before issuance of a Certificate of Inspection.

Need: Sections 3306 and 3316 of 46 U.S.C. authorize the Coast Guard to establish vessel inspection regulations and inspection alternatives. Part 8 of 46 CFR contains the Coast Guard regulations for recognizing classification societies and enrollment of U.S.-flag vessels in ACP.

Forms: CG–3752 & CG–3752A.

Respondents: Owners and operators of U.S.-flag inspected vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 212 hours to 176 hours a year.

4. *Title:* Operational Measures for Existing Tank Vessels Without Double Hulls.

OMB Control Number: 1625–0083.

Summary: The information is needed to ensure compliance with U.S. regulations regarding operational measures for certain tank vessels while operating in the U.S. waters.

Need: Sections 3703 and 3703a of 46 U.S.C. authorize the Coast Guard to establish regulations for tank vessels to promote the safety of life for increased protection against hazards to life and property, for navigation and vessel safety, and for enhanced protection of the marine environment. Subparts G, H and I of 33 CFR part 157 contain Coast Guard regulations regarding operational measures for certain tank vessels without double hulls.

Forms: None.

Respondents: Owners, operators and masters of certain tank vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 3,474 hours to 1,684 hours a year.

5. *Title:* Crewmember Identification Documents.

OMB Control Number: 1625–0113.

Summary: This information collection covers the requirement that crewmembers on vessels calling at U.S. ports must carry and present on demand an identification that allows the identity of crewmembers to be authoritatively validated.

Need: Title 46 U.S.C. 70111 mandated that the Coast Guard establish regulations about crewmember identification. The regulations are in 33 CFR part 160 subpart D.

Forms: None.

Respondents: Crewmembers, and operators of certain vessels. *Frequency:* On occasion.

Burden Estimate: The estimated burden has decreased from 34,553 hours to 30,275 hours a year.

Dated: September 9, 2011.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2011–23754 Filed 9–15–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Notice of Availability of a Draft Programmatic Environmental Impact Statement for Northern Border Activities

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Notice of availability; Request for comments; Notice of public meetings.

SUMMARY: U.S. Customs and Border Protection (CBP) announces that a Draft Programmatic Environmental Impact Statement (PEIS) is now available and open for public comment. The Draft PEIS analyzes the potential environmental and socioeconomic effects associated with its ongoing and potential future activities along the Northern Border between the United States and Canada. The overall area of study analyzed in the document extends approximately 4,000 miles from Maine to Washington and 100 miles south of the U.S.-Canada Border. CBP also announces that it will be holding a series of public meetings in October to obtain comments regarding the Draft PEIS.

DATES: CBP invites comments on the Draft PEIS during the 45 day comment period, which begins on September 16, 2011. To ensure consideration, comments must be received by October 31, 2011. Comments may be submitted as set forth in the **ADDRESSES** section of this document. CBP will hold public meetings on the Draft PEIS. The locations, dates, and times are listed in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: You may submit comments related to the Draft PEIS by any of the following methods. Please include your name and address and the state or region to which the comment applies, as appropriate. To avoid duplication, please use only *one* of the following methods for providing comments:

- *Project Web site*: *http://www.NorthernBorderPEIS.com/public-involvement/comments.html;*
- *E-mail*: *Comments@NorthernBorderPEIS.com;*
- *Mail:* CBP Northern Border PEIS, P.O. Box 3625, McLean, Virginia 22102; Phone voicemail box: (866) 760–1421 (comments recorded in the voicemail box will be transcribed).

You may download the Draft PEIS from the project Web site: *http://www.NorthernBorderPEIS.com.* It will also be made available on the Department of Homeland Security Web site (*http://www.dhs.gov*). Copies of the Draft PEIS may also be obtained by submitting a request through one of the methods listed below. Please include your name and mailing address in your request.

- *E-mail*: *Comments@NorthernBorderPEIS.com* and write ''Draft PEIS'' in the subject line;
- *Mail:* CBP Northern Border PEIS, (Draft PEIS Request), P.O. Box 3625, McLean, VA 22102;
- *Phone:* (866) 760–1421.

FOR FURTHER INFORMATION CONTACT: Jennifer Hass, CBP, Office of Administration, telephone (202) 344–1929. You may also visit the project's Web site at: *http://www.NorthernBorderPEIS.com.*

SUPPLEMENTARY INFORMATION:

Public Meetings and Invitation To Comment

CBP invites comments on all aspects of the Draft PEIS. Comments that will provide the most assistance to CBP will reference a specific section of the Draft PEIS, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. Substantive comments received during the comment period will be addressed in, and included as an appendix to, the Final PEIS. The Final PEIS will be made available to the public through a Notice of Availability in the **Federal Register**.

Comments may be submitted as described in the **ADDRESSES** section of this document. Respondents may request to withhold names or street addresses, except for city or town, from public view or from disclosure under the Freedom of Information Act. Such a request must be stated prominently at the beginning of the comment. Such requests will be honored to the extent allowed by law. This request to withhold personal information does not apply to submissions from organizations or businesses, or from individuals identifying themselves as representatives or officials of organizations or businesses.

CBP will hold public meetings to inform the public and solicit comments about the Draft PEIS. Meetings will be held from 7 p.m. to 9 p.m. at each of the locations and dates provided below. The meeting in the Washington, DC area is for interested parties located outside of the project's areas of interest. Meetings will include displays, handouts, and a presentation by CBP, and will provide an opportunity for the public to record their comments on the Draft PEIS. Changes in meeting plans, due to inclement weather or other causes, will be announced on the project's Web site at: *http://www.NorthernBorderPEIS.com,* and on a telephone message at: (866) 760–1421.

Date	City, state	Location
October 3	Duluth, MN	Holiday Inn, 200 West First Street, Duluth, MN 55802.
October 4	Massena, NY	VFW, 101 W Hatfield St., Massena, NY 13662.
October 4	Caribou, ME	Caribou Inn and Convention Center, 19 Main Street, Caribou, ME 04736.
October 5	Augusta, ME	The Senator Inn & Spa, 284 Western Ave., Augusta, ME 04330.
October 5	Bottineau, ND	Twin Oaks Resort & Convention Center, 10723 Lake Loop Road, Bottineau, ND 58318.
October 6	St. Albans, VT	The Senator Historical Museum, 9 Church Street, St. Albans, VT 05478.
October 6	Detroit, MI	Holiday Inn Express, 1020 Washington Boulevard, Detroit, MI 48226.
October 6	Havre, MT	The Town House Inn, 627 1st Street West, Havre, MT 59501.
October 11	Bellingham, WA	Hampton Inn, 3958 Bennett Drive, Bellingham, WA 98225.
October 11	Rochester, NY	Holiday Inn—Rochester Airport, 911 Brooks Avenue, Rochester, NY 14624.
October 12	Erie, PA	Ambassador Banquet Center, 7794 Peach Street, Erie, PA 16509.
October 13	Naples, ID	The Great Northwest Territories Event Center, 336 County Road 8, Naples, ID 83847.
October 17	Washington, DC	Crystal City Marriott at Regan National Airport, 1999 Jefferson Davis Highway, Arlington, VA 22201.

The public may obtain information concerning the status and progress of the PEIS, as well as view and download the document, via the project's Web site at: *http://www.NorthernBorderPEIS.com.*

Background

U.S. Customs and Border Protection (CBP) is charged with the mission of enforcing customs, immigration, agriculture, and numerous other laws and regulations at the Nation's borders and facilitating legitimate trade and travel through legal ports of entry. As the guardian of the United States' borders, CBP protects the roughly 4,000 miles of Northern Border between United States and Canada, from Maine to Washington. The terrain ranges from densely forested lands on the west and east coasts to open plains in the middle of the country.

CBP has completed a Draft Programmatic Environmental Impact Statement (PEIS) for its ongoing and potential future activities along the Northern Border. The Draft PEIS is now available for public review and comment. (For instructions on obtaining a copy of the PEIS or on submitting comments, please see the **ADDRESSES** section of this document.) An Environmental Impact Statement (EIS) is a study of the potential effects on the environment from a specific Federal action. A Programmatic EIS (PEIS) is an EIS that looks at the general types of effects of a whole broad program of actions. It often forms the foundation for a ''regular'' or site-specific EIS, which looks in general detail at the effects of a specific project slated for a particular place. Because this effort is programmatic in nature, the Draft PEIS does not define effects for a specific or planned action. Instead, it analyzes the overall environmental and socioeconomic effects of activities supporting the homeland security mission of CBP focused on applying alternative approaches to better secure the border.

On July 6, 2010, CBP published in the **Federal Register** (75 FR 38822) a notice announcing that CBP intended to prepare four PEISs to analyze the environmental effects of current and potential future CBP border security activities along the Northern Border. Each PEIS was to cover one region of the Northern Border: the New England region, the Great Lakes region, the region east of the Rocky Mountains, and the region west of the Rocky Mountains. The notice also announced and initiated the public scoping process to gather information from the public in preparation for drafting the PEISs. As indicated in the notice, the scoping period concluded on August 5, 2010. However, CBP continued to take comments past the initial scoping period. For more information on this process, please see the section of this document entitled Public Scoping Process.

Subsequently, and in part due to comments received during public scoping, CBP decided to refocus its approach and develop one PEIS covering the entire Northern Border, rather than four separate, regional PEISs. This new approach was designed to ensure that CBP could effectively analyze and convey impacts that occur across regions of the Northern Border. CBP published a notice in the **Federal Register** announcing this intention on November 9, 2010 (75 FR 68810). While this makes for a somewhat larger single document, it offers the advantage of less duplication and greater usefulness as a CBP planning tool.

Aided by the information gained during the public scoping process, CBP has prepared the Draft PEIS to analyze the environmental and socioeconomic effects of current and potential future CBP border security activities along the Northern Border between the United States and Canada, including an area extending approximately 100 miles south of the Northern Border. For the purposes of the PEIS, the Northern Border is defined as the area between the United States and Canada extending from the Atlantic Ocean to the Pacific Ocean encompassing all the States between Maine and Washington, inclusively. (The Alaska-Canada border is not included in this effort.) CBP is evaluating the environmental and socioeconomic impacts of routine aspects of its operations along the Northern Border and considering enhancements to its infrastructure, technologies, and application of manpower to continue to deter existing and evolving threats to the Nation's physical and economic security. Due to the diverse and natural environments along the Northern Border, the Draft PEIS analyzes four Northern Border regions, referred to above: the New England region, the Great Lakes region, the region east of the Rocky Mountains, and the region west of the Rocky Mountains. CBP plans to use the information derived from the analysis in the PEIS in management, planning, and decision-making for its mission and its environmental stewardship responsibilities. It will also be used to establish a foundation for future impact analyses.

More specifically, CBP plans to use the PEIS analysis over the next five to seven years as CBP works to improve security along the Northern Border. To protect the Northern Border against evolving terrorist and criminal threats, CBP plans to implement a diversified approach to border security over the next five to seven years that responds most effectively to those threats. This will involve some combination of facilities, security infrastructure, technologies, and operational activities, although the specific combination of elements that will be used over this period cannot be determined at this time. CBP will use this PEIS as a foundation for future environmental analyses of specific programs or locations as CBP's plans for particular Northern Border security activities develop.

Alternatives Considered

The Draft PEIS considers the environmental impacts of several alternative approaches CBP may use to protect the Northern Border against evolving threats. These alternatives would all support continued deployment of existing CBP personnel in the most effective manner while maintaining officer safety and continued use of partnerships with other Federal, state, and local law enforcement agencies in the United States and Canada. CBP needs to maintain effective control of the Northern Border via all air, land, and maritime pathways for cross-border movement.

The No Action Alternative (or ''status quo'') would be to continue with the same facilities, technology, infrastructure, and approximate level of personnel currently in use, deployed, or currently planned by CBP. Normal maintenance of existing facilities is included in this alternative. This alternative would not meet CBP's goals as it would not allow CBP to improve its capability to interdict cross-border violators or to identify and resolve threats at the ports of entry in a manner that avoids adverse effects on legal trade and travel. However, it is evaluated in this Draft PEIS because it provides a baseline against which the impacts of the other reasonable alternatives can be compared.

The Facilities Development and Improvement Alternative would focus on providing new permanent facilities or improvements to existing facilities such as Border Patrol stations, ports of entry, and other facilities to allow CBP agents to operate more efficiently and respond to situations more quickly. This alternative would help meet CBP's goals because the new and improved facilities would make it more difficult for cross-border violators to cross the border. It

would also divert traffic from or increase the capacity of the more heavily used ports of entry, decreasing waiting times. The applicability of this alternative would be limited, as most roads crossing the Northern Border already have a crossing facility.

The Detection, Inspection, Surveillance and Communications Technology Expansion Alternative would focus on deploying more effective detection, inspection surveillance and communication technologies in support of CBP activities. This alternative would involve utilizing upgraded systems that would enable CBP to focus efforts on identifying threat areas, improving agent and officer communication systems, and deploying personnel to resolve incidents with maximum efficiency. This alternative would help meet CBP's goals by improving CBP's situational awareness and allowing CBP to more efficiently and effectively direct its resources for interdicting cross-border violators.

The Tactical Security Infrastructure Deployment Alternative would focus on constructing additional barriers, access roads, and related facilities. The barriers would include selective fencing and vehicle barriers at selected points along the border and would deter and delay cross-border violators. The access roads and related facilities would increase the mobility of agents, and enhance their capabilities for surveillance and for responding to various international border violations. This alternative would help meet CBP's goals by discouraging cross-border violators and improving CBP's capacity to respond.

The Flexible Direction Alternative (the Preferred Alternative) would allow CBP to follow any of the above directions in order to employ the most effective response to the changing threat environment along the Northern Border. This approach would allow CBP to respond more appropriately to a constantly changing threat environment.

Public Scoping Process

CBP developed and executed a public scoping program for the PEIS to identify public concerns to be examined in the PEIS. ''Scoping'' of an EIS is a process of informing diverse stakeholders about an action that an agency is planning and seeking those stakeholders' feedback on the environmental concerns that the action could generate. The intent of the scoping effort is to adopt the scope of the planned environmental document to ensure that it addresses relevant concerns identified by interested members of the public as well as organizations, Native American Tribes, and other government agencies and officials.

CBP's public scoping period for the Northern Border PEIS commenced on July 6, 2010 and concluded on August 5, 2010. *See* 75 FR 38822. The public scoping process was initiated with the publishing of a notice of intent (NOI) notifying the public of CBP's decision to prepare the PEISs. In coordination with the publication of the NOI, display advertisements were published in various newspapers serving local communities, public service announcements were broadcasted on local radio stations, scoping letters were mailed to potentially interested stakeholders consisting of agencies, organizations, and individuals, and a project Web site was developed. Following the publication of the NOI, a series of public scoping meetings were held in July 2010.

CBP encouraged the public to submit comments concerning the scope of the PEIS during the public meetings, or via Web site, e-mail, or letter. The comments CBP received during the public scoping process were used to adapt the scope of the Draft PEIS and to ensure that it addressed relevant concerns identified by interested members of the public as well as organizations, Native American Tribes, and other government agencies and officials. CBP has compiled a list of comments received in a scoping report. This report is available on the project's Web site at: *http://www.NorthernBorderPEIS.com.*

NEPA

This environmental analysis is being conducted pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.,* the Council on Environmental Quality Regulations for Implementing the NEPA (40 CFR parts 1500–1508), and Department of Homeland Security Directive 023–01 (renumbered from 5100.1), *Environmental Planning Program of April 19, 2006.* NEPA addresses concerns about environmental quality and the government's role in protecting it. The essence of NEPA is the requirement that every Federal agency examine the environmental effects of any proposed action before deciding to proceed with it or with some alternative. NEPA and the implementing regulations issued by the President's Council on Environmental Quality call for agencies to document the potential environmental effects of actions they are proposing. Generally, agencies must make those documents public, and seek public feedback on them.

In accordance with NEPA, the PEIS analyzes the effects on the environment of the Northern Border Security Program. CBP will seek public input on these studies and will use them in agency planning and decision making. Because NEPA is a uniquely broad environmental law and covers the full spectrum of the natural and human environment, the PEIS will also address environmental considerations governed by other environmental statutes such as the Clean Air Act, Clean Water Act, Endangered Species Act, and National Historic Preservation Act (NHPA).

NHPA Programmatic Agreement

CBP is developing a Programmatic Agreement (PA) for operations along the Northern Border in accordance with Section 106 of NHPA, 16 U.S.C. 470f, and its implementing regulations (36 CFR part 800). While the PA is being pursued as an independent action from the PEIS, it will be applied to future activities occurring within the Northern Border study area and therefore is relevant to the Northern Border PEIS project. The Northern Border is defined for purposes of the PA as extending from the Atlantic Ocean to the Pacific Ocean encompassing all the States between Maine to Washington, including an area extending approximately 100 miles south of the U.S.-Canada border. This area is identical to the area of study of the PEIS.

CBP is currently consulting and coordinating with the Historic Preservation Officers of the states of Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New York, North Dakota, Pennsylvania, Wisconsin, Vermont, and Washington, and the Advisory Council on Historic Preservation (ACHP) to finalize an agreed upon framework for future Section 106 reviews for CBP actions. The PA will be signed by CBP, the ACHP, State Historic Preservation Officers, and other consulting parties. The signed PA will identify (1) activities and projects carried out by CBP that are agreed do not have the potential to affect properties either listed or eligible for listing in the National Register of Historic Places, and (2) activities that are considered undertakings that do not require consultation under Section 106. Additionally, the PA identifies actions that may have an effect but that will not require Section 106 review by CBP, State or Tribal Historic Preservation Officers, Tribes and other consulting parties, so long as all terms and conditions as described in the PA are satisfactorily met. The signed PA will be valid for five years from the date of

execution, as verified with CBP filing the PA with the ACHP.

Next Steps

After the public comment period on the draft PEIS, CBP will complete a Final PEIS. The Final PEIS will be made available to the public through a Notice of Availability in the **Federal Register**. CBP will then select a programmatic course of action to guide CBP's activities along the Northern Border for the next five to seven years. That decision will be published in the **Federal Register** in a Record of Decision.

Dated: September 14, 2011.

Trent Frazier,

Acting Executive Director, Facilities Management and Engineering, Office of Administration.

[FR Doc. 2011–23993 Filed 9–15–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–37]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Ms. Veronica Rines, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, DAIM–ZS, Room 8536, 2511 Jefferson Davis Hwy, Arlington, VA 22202: (571) 256–8145 (These are not toll-free numbers).

Dated: September 8, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

Title V, Federal Surplus Property Program Federal Register Report for 09/16/2011

Suitable/Available Properties

Building

Kansas

4 Bldgs.,
Ft. Riley,
Fort Riley, KS 66442,
Landholding Agency: Army,
Property Number: 21201130040,
Status: Unutilized.
Directions: 00471, 00470, 00745, 00615.
Comments: Off-site removal only; sq ft. vary among properties; recent use: lodging, storage.

Bldg. 00600,
600 Caisson Hill Rd,
Fort Riley, KS 66442,
Landholding Agency: Army,
Property Number: 21201130042,
Status: Unutilized.
Comments: Off site removal only; 380,376 sq. ft.; recent use: hospital.

Bldgs. 00541 and 08321,
Ft. Riley,
Fort Riley KS,
Landholding Agency: Army,
Property Number: 21201130044,
Status: Unutilized.
Comments: Off site removal only; sq. ft. vary among properties, recent use: lodging.

2 Bldgs.,
Ft. Riley,
Fort Riley KS 66442,
Landholding Agency: Army,
Property Number: 21201130059,
Status: Unutilized.
Directions: 00540, 00541.
Comments: Off-site removal only; sq. ft. vary among properties, recent use: lodging.

Bldg. 00745,
Fort Riley KS 66442,
Landholding Agency: Army,
Property Number: 21201130061,
Status: Unutilized.
Comments: Off-site removal only; 99 square feet; recent use: storage.

Bldg. 00542,
Ft. Riley,
Fort Riley KS 66442,
Landholding Agency: Army,
Property Number: 21201130063,
Status: Unutilized.
Comments: Off-site removal only; 14,528 sq. ft.; recent use: lodging.

2 Bldgs;
Ft. Riley,
Fort Riley KS 66442,
Landholding Agency: Army,
Property Number: 21201130065,
Status: Unutilized.
Directions: 00470, 08327.
Comments: Off-site removal only; sq. ft. vary among properties, recent use: lodging, and training center.

Unsuitable Properties

Building

California

Bldgs. 00186 & 00621,
Fort Hunter Liggett,
Fort Hunter Liggett CA 93928,
Landholding Agency: Army,
Property Number: 21201130067,
Status: Unutilized.
Reasons: Secured Area.

Colorado

Bldg. 06289,
7086 Albanese Loop,
Fort Carson CO 80913,
Landholding Agency: Army,
Property Number: 21201130019,
Status: Unutilized.
Reasons: Secured Area, Extensive deterioration.

Bldg. 06290,
7090 Albanese Loop,
Fort Carson CO 80913,
Landholding Agency: Army,
Property Number: 21201130020,
Status: Unutilized.
Reasons: Extensive deterioration, Secured Area.

6 Bldgs.,
1620–1658 Burris St.,
Fort Carson CO 80913,
Landholding Agency: Army,
Property Number: 21201130023
Status: Unutilized,
Directions: 00626, 00627, 00631, 00633, 00634, 00635.
Reasons: Secured Area.

Florida

Bldg. 00200,
Recreation Area Pool,
Destin FL,
Landholding Agency: Army,
Property Number: 21201130032,
Status: Excess.
Reasons: ≤Secured Area, Extensive deterioration.

Georgia

Bldg. 00TR8, Catoosa Area Training,
Tunnel Hill,
Tunnel Hill GA 30755,
Landholding Agency: Army,
Property Number: 21201130028,
Status: Excess.
Reasons: Extensive deterioration.

14 Bldgs.,
Ft. Benning,
Fort Benning GA 31905,
Landholding Agency: Army,
Property Number: 21201130033,
Status: Underutilized.
Directions: 02850, 02879, 02901, 02902, 02903, 02904, 02905, 02906, 02908, 02909, 02967, 02968, 06733, 08824.
Reasons: Secured Area, Extensive deterioration.

Hawaii

Bldg. 00022 and 00046,
Training Area,
Pohakulou HI 96720,
Landholding Agency: Army,
Property Number: 21201130015,
Status: Unutilized.
Reasons: Extensive deterioration, Secured Area.

2 Bldgs.,
Schofield Barracks,
Wahiawa HI 96786,
Landholding Agency: Army,
Property Number: 21201130054,
Status: Unutilized.
Directions: 01187, 01188.
Reasons: Extensive deterioration.

Illinois

Bldg. 649,
3155 Blackhawk Drive,
Fort Sheridan IL 60037,
Landholding Agency: Army,
Property Number: 21201130018,
Status: Unutilized.
Reasons: Secured Area, Extensive deterioration.

Bldg. 141,
Col. P. Schulstad,
Arlington Heights IL 60005,
Landholding Agency: Army,
Property Number: 21201130055,
Status: Unutilized.
Reasons: Secured Area, Contamination, Extensive deterioration.

Kansas

Bldg 00495,
McPherson,
Fort Leavenworth KS,
Landholding Agency: Army,
Property Number: 21201130029,
Status: Unutilized.
Reasons: Secured Area, Extensive deterioration.

Bldg. 09382,
Fort Riley,
Fort Riley KS 66442,
Landholding Agency: Army,
Property Number: 21201130035,
Status: Unutilized.
Reasons: Extensive deterioration.

4 Bldgs.,
Fort Riley,
Fort Riley KS,
Landholding Agency: Army,
Property Number: 21201130037,
Status: Unutilized.
Directions: 09081, 07123, 1865, 00747.
Reasons: Extensive deterioration.

6 Bldgs.,
Fort Riley,
Fort Riley KS,
Landholding Agency: Army,
Property Number: 21201130038,
Status: Unutilized.
Directions: 09079, 09078, 09455, 09382, 09087, 09381.
Reasons: Extensive deterioration.

Bldg. 07812,
Fort Riley,
Fort Riley KS 66442,
Landholding Agency: Army,
Property Number: 21201130039,
Status: Unutilized.
Reasons: Extensive deterioration.

6 Bldgs.,
Fort Riley,
Fort Riley KS 66442,
Landholding Agency: Army,
Property Number: 21201130041,
Status: Unutilized,
Directions: 09378, 09081, 09379, 09123, 07818, 00747.
Reasons: Extensive deterioration.

Bldgs. 09133 and 1865,
Fort Riley,
Fort Riley KS 66442,
Landholding Agency: Army,
Property Number: 21201130043,
Status: Unutilized.
Reasons: Extensive deterioration.

Bldg, 612,
Fort Riley,
Fort Riley KS 66442,
Landholding Agency: Army,
Property Number: 21201130045,
Status: Unutilized.
Reasons: Extensive deterioration.

5 Bldgs.,
Fort Riley,
Fort Riley KS 66442,
Landholding Agency: Army,
Property Number: 21201130060,
Status: Unutilized,
Directions: 09455, 07634, 00852, 00853.
Reasons: Extensive deterioration.

5 Bldgs.,
Fort Riley,
Fort Riley KS 66442,
Landholding Agency: Army,
Property Number: 21201130062,
Status: Unutilized.
Directions: 00701, 09079, 09380, 1990, 08323.
Reasons: Extensive deterioration.

2 Bldgs.,
Fort Riley,
Fort Riley KS 66442,
Landholding Agency: Army,
Property Number: 21201130064,
Status: Unutilized.
Directions: 09098, 00613.
Reasons: Extensive deterioration.

Missouri

14 Bldgs.,
Camp Clark,
Nevada MO 64772,
Landholding Agency: Army,
Property Number: 21201130046,
Status: Unutilized.

Directions: K0001, K0002, K0003, K0004, K0005, K0006, K0007, K0008, K0010, K0012, K0014, K0016, K0018, K0020.
Reasons: Extensive deterioration.

11 Bldgs.,
Camp Clark,
Nevada MO 64772,
Landholding Agency: Army,
Property Number: 21201130047,
Status: Unutilized.
Directions: J0006, J0007, J0008, J0009, J0010, J0011, J0012, J0013, J0015, J0017, J0019.
Reasons: Secured Area, Extensive deterioration.

12 Bldgs.,
Camp Clark,
Nevada MO 64772,
Landholding Agency: Army,
Property Number: 21201130048,
Status: Unutilized.
Directions: 435, 436, 438, 460, 466, 504, 506, J0001, J0002, J0003, J0004, J0005.
Reasons: Extensive deterioration, Secured Area.

13 Bldgs.,
Camp Clark,
Nevada MO 64772,
Landholding Agency: Army,
Property Number: 21201130049,
Status: Unutilized.
Directions: 00383, 00384, 00385, 00386, 00388, 00389, 00391, 00392, 00402, 00410, 00411, 00425, 00433.
Reasons: Extensive deterioration, Secured Area.

15 Bldgs.,
Camp Clark,
Nevada MO 64772,
Landholding Agency: Army,
Property Number: 21201130050,
Status: Unutilized.
Directions: 00127, 00329, 00337, 00344, 00352, 00356, 00360, 00362, 00363, 00365, 00366, 00367, 00372, 00376, 00380.
Reasons: Extensive deterioration, Secured Area.

New Jersey

14 Bldgs.,
Picatinny Arsenal,
Dover NJ 07806,
Landholding Agency: Army.
Property Number: 21201130017.
Status: Unutilized.
Directions: 1241A, 0031A, 0430A, 0445F, 0507A, 0507B, 00525, 1175, 1505J, 1505K, 03180, 3219A, 03345, 03354.
Reasons: Extensive deterioration, Secured Area.

Bldgs. 3007 & 22C,
Dover NJ 07806,
Landholding Agency: Army,
Property Number: 21201130036,
Status: Unutilized,
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material.

New Mexico

7 Bldgs.,
White Sands Missile Range,
White Sands NM 88002,
Landholding Agency: Army,
Property Number: 21201130058,
Status: Unutilized.
Directions: 00357, 1752, 21236, 21560, 21562, 21925, 23000.
Reasons: Extensive deterioration, Secured Area.

New York

Bldg. 03828,
George St.,
Fort Drum NY 13602,
Landholding Agency: Army,
Property Number: 21201130024,
Status: Underutilized.
Reasons: Extensive deterioration.

Bldg. 01404,
West Point,
West Point NY 10996,
Landholding Agency: Army,
Property Number: 21201130034,
Status: Unutilized.
Reasons: Extensive deterioration.

Bldg. 00849,
849 Upton Rd,
West Point NY 10996,
Landholding Agency: Army,
Property Number: 21201130057,
Status: Underutilized.
Reasons: Secured Area.

North Carolina

4 Bldgs.,
Fort Bragg NC 28310,
Landholding Agency: Army,
Property Number: 21201130001,
Status: Unutilized.
Directions: A5586, A5587, A5783, A5787.
Reasons: Secured Area, Extensive deterioration.

10 Bldgs.,
Fort Bragg,
Fort Bragg NC 28310,
Landholding Agency: Army,
Property Number: 21201130002,
Status: Unutilized.
Directions: A5287, A5377, A5378, A5380, A5381, A5383, A5385, A5386, A5387, A5583.
Reasons: Secured Area, Extensive deterioration.

10 Bldgs.,
Fort Bragg,
Fort Bragg NC 28310,
Landholding Agency: Army,
Property Number: 21201130003,
Status: Unutilized.
Directions: A5078, A5080, A5083, A5084, A5085, A5087, A5277, A5280, A5283, A5284.
Reasons: Secured Area, Extensive deterioration.

Bldg. 31802,
Fort Bragg,
Fort Bragg NC 28310,
Landholding Agency: Army,
Property Number: 21201130004,
Status: Unutilized.
Reasons: Secured Area, Extensive deterioration.

Bldg. 1537,
Fort Bragg,
Fort Bragg NC 28310,
Landholding Agency: Army,
Property Number: 21201130005,
Status: Unutilized.
Reasons: Extensive deterioration.

12 Bldgs.,
Fort Bragg,
Fort Bragg NC 28310,
Landholding Agency: Army,
Property Number: 21201130007,
Status: Unutilized.
Directions: V3408, V3509, V3510, V3610, V3611, V3712, V3810, V3911, X6037, X6088, X6252, A5077.
Reasons: Extensive deterioration, Secured Area.

14 Bldgs.,
Pope Army Field,
Fort Bragg NC 28308,
Landholding Agency: Army,
Property Number: 21201130010,
Status: Unutilized.
Directions: 610, 614, 617, 618, 619, 623, 625, 15905, C7620, M6446, V3111, V3308, V3310, V3312.
Reasons: Extensive deterioration, Secured Area.

Oklahoma

14 Bldgs.,
Fort Sill,
Lawton OK 73501,
Landholding Agency: Army,
Property Number: 21201130056,
Status: Unutilized.
Directions: 00214, 00216, 01445, 01447, 01448, 01468, 02524, 02594, 02809, 6472, 6473, 6474, M1453, M4905.
Reasons: Contamination, Extensive deterioration.

Tennessee

Bldg. 00018,
2280 Hwy 104 W. Suite 2,
Milan TN 38358,
Landholding Agency: Army,
Property Number: 21201130022,
Status: Excess.
Reasons: Within 2000 ft. of flammable or explosive material.

19 Bldgs.,
Fort Campbell,
Fort Campbell TN 42223,
Landholding Agency: Army,
Property Number: 21201130051,
Status: Unutilized.
Directions: 843, 845, 867, 868, 885, 886, 888, 5115, 6615, 6804, 6808, 6809, 6811, 6812, 6843, 7240, 7574, 08062, E6621.
Comments: Reasons for unsuitability vary among properties.
Reasons: Extensive deterioration, Secured Area.

Texas

3 Bldgs.,
Fort Hood,
Fort Hood TX 76544,
Landholding Agency: Army,
Property Number: 21201130025,
Status: Excess.
Directions: 56415, 56608, 57013.
Reasons: Secured Are.a

12 Bldgs.,
Fort Hood,
Fort Hood TX 76544,
Landholding Agency: Army,
Property Number: 21201130026,
Status: Excess.
Directions: 42, 1674, 4166, 4258, 4259, 04263, 04264, 4266, 4267, 4268, 04443, 04465.
Reasons: Secured Area.

7 Bldgs,

Red River Army Depot,
Texarkana TX 75507,
Landholding Agency: Army,
Property Number: 21201130052,
Status: Excess.
Directions: 00122, 00450, 00457, 00458, 00475, 00502, 00545.
Reasons: Extensive deterioration, Secured Area.

Bldgs. 04282 & 04287,
Tank Destroyer Blvd. & 80th St.,
Fort Hood TX 76544,
Landholding Agency: Army,
Property Number: 21201130066
Status: Unutilized
Reasons: Secured Area.

Virginia

Bldg. 00222,
Rte. 114 P.O. Box 2,
Radford VA,
Landholding Agency: Army,
Property Number: 21201130008,
Status: Excess.
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material.

Bldg. 00731,
Radford VA,
Landholding Agency: Army,
Property Number: 21201130009,
Status: Excess.
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 0731A,
Rte 114 P.O. Box 2,
Radford VA,
Landholding Agency: Army,
Property Number: 21201130011,
Status: Excess.
Reasons: Extensive deterioration, Secured Area, Within 2000 ft. of flammable or explosive material.

Bldg. 07352,
Radford VA 24143,
Landholding Agency: Army,
Property Number: 21201130012,
Status: Unutilized.
Reasons: Secured Area, Extensive deterioration, Within 2000 ft. of flammable or explosive material.

Bldgs. 00736 & 0736A,
Radford VA 24143,
Landholding Agency: Army,
Property Number: 21201130013,
Status: Excess.
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 47052,
Radford VA 24143,
Landholding Agency: Army,
Property Number: 21201130014,
Status: Underutilized.
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material, Extensive deterioration.

4 Bldgs.,
8000 Jefferson Davis Hwy,
Richmond VA 23297,
Landholding Agency: Army,
Property Number: 21201130027,
Status: Underutilized.
Directions: 00031, 00032, 00033, 00035.
Reasons: Secured Area.

Bldgs. 2302 & 2303,
Fort Belvoir VA 22060,
Landholding Agency: Army,
Property Number: 21201130031,
Status: Excess.
Reasons: Secured Area.

5 Bldgs.,
Sandston Armory,
Sandston VA 23150,
Landholding Agency: Army,
Property Number: 21201130053,
Status: Unutilized.
Directions: T3700, T3702, T3704, T4500, T4504.
Reasons: Secured Area, Extensive deterioration.

Wisconsin

2 Bldgs,
4850 W. Silver Spring Drive,
Milwaukee WI 53218,
Landholding Agency: Army,
Property Number: 21201130021,
Status: Unutilized,
Directions: 302 & 303.
Reasons: Secured Area, Extensive deterioration.

25 Bldgs.,
Fort McCoy WI 54656,
Landholding Agency: Army,
Property Number: 21201130030,
Status: Unutilized.
Directions: 00547, 00550, 01669, 02101, 02102, 02103, 02105, 02151, 02179, 07061, 08214, MSH18, R018C, R18C1, R18C2, R018G, R018I, R018S, R101A, R101B, R101C, R101H, R101I, R101S, R101U.
Reasons: Secured Area, Extensive deterioration.

[FR Doc. 2011–23414 Filed 9–15–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N184; 96300–1671–0000–P5]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA law requires that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents on or before October 17, 2011.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an e-mail address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may

be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we invite public comment before final action on these permit applications.

III. Permit Applications

A. Endangered Species

Applicant: Graham Banes, Miami, FL; PRT–49805A

The applicant requests a permit to export biological samples obtained from captive-born and captive-held orangutans (*Pongo spp.*) held in zoos in the United States to the Department of Anthropology, University of Cambridge, Cambridge, England, for the purpose of scientific research.

Applicant: Nicole Smolensky, College Station, TX; PRT–47878A

The applicant requests a permit to import biological specimens of African dwarf crocodiles (*Osteolaemus tetraspis tetraspis*) and slender snouted crocodiles (*Crocodylus cataphractus*) collected from the wild in Cameroon and Nigeria for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Los Angeles Zoo and Botanical Gardens, Los Angeles, CA; PRT 52827A

The applicant requests a permit to export eight live, captive-born komodo monitors (*Varanus komodoensis*) to Germany, for the purpose of enhancement of the survival of the species.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Anthony Foyt, Hockley, TX; PRT–50926A

Applicant: Joseph Thompson, Atlanta, GA; PRT–47139A

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–23775 Filed 9–15–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N185; 96300–1671–0000–P5]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the *Endangered Species Act* (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) the application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
Endangered Species			
15744A	San Diego Zoological Society	76 FR 27660; May 12, 2011	September 2, 2011.
30321A	Oklahoma City Zoological Park	76 FR 20705; April 13, 2011	July 22, 2011.
46316A	Lewis Metzger	76 FR 39432; July 6, 2011	August 15, 2011.
47120A	James Block	76 FR 44352; July 25, 2011	August 24, 2011.
46824A	Kendall Kilbourne	76 FR 44352; July 25, 2011	August 29, 2011.
Marine Mammals			
770191	U.S. Fish & Wildlife Service, North Florida Ecological Services Office.	75 FR 9251; March 1, 2010	August 30, 2011.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the *Privacy Act* and *Freedom of Information Act,* by any party who submits a written request for a copy of such documents to:

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–23776 Filed 9–15–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14908–B; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Decision Approving Lands for Conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Sitnasuak Native Corporation. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1604 *et seq.*). The subsurface estate in these lands will be conveyed to Bering Straits Native Corporation when the surface estate is conveyed to Sitnasuak Native Corporation. The lands are in the vicinity of Nome, Alaska, and are located in:

Mineral Survey No. 2280, Alaska

Containing 355.02 acres.

Notice of the decision will also be published four times in the *Nome Nugget.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until October 17, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from:

Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by e-mail at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Eileen Ford,

Land Transfer Resolution Specialist, Land Transfer Adjudication II Branch.

[FR Doc. 2011–23769 Filed 9–15–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON04000 L16100000.DP0000]

Notice of Availability of Draft Resource Management Plan and Draft Environmental Impact Statement for the Kremmling Field Office, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the *National Environmental Policy Act of 1969,* as amended, and the *Federal Land Policy and Management Act of 1976* (FLPMA), as amended, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) and Draft Environmental Impact Statement (EIS) for the Kremmling Field Office (KFO) and by this notice is announcing the opening of the comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP/EIS within 90 days following the date the Environmental Protection Agency publishes its notice of availability of the Draft RMP/EIS in the **Federal Register**. The BLM will announce future meetings or hearings and any other public participation activities at least 15 days in advance through public notices, media releases and/or mailings.

ADDRESSES: You may submit comments related to the Kremmling Draft RMP/EIS by any of the following methods:

- *Web site: http://www.blm.gov/rmp/co/kfo-gsfo.*
- *E-mail: co_kremmlingrmp@blm.gov.*
- *Fax:* (970) 724–9590.
- *Mail:* Bureau of Land Management, Kremmling Field Office, RMP Comments, P.O. Box 68, 2103 East Park Avenue, Kremmling, Colorado 80459.

Copies of the Kremmling Draft RMP/EIS are available in the KFO at the above address.

FOR FURTHER INFORMATION CONTACT: Dennis Gale, RMP Project Manager, telephone (970) 724–3003; see address above; e-mail *ddgale@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Draft RMP/EIS addresses public lands and resources managed by the KFO in Grand, Jackson, Summit and parts of Larimer and Eagle counties, Colorado. These lands are currently managed under the 1984 Kremmling RMP, as amended. The planning area includes approximately 378,000 BLM-administered surface acres and approximately 653,450 subsurface acres of Federal mineral estate that will be subject to this Draft RMP/EIS. Decisions in the Draft RMP/EIS will only apply to BLM-administered public lands and federally-owned subsurface mineral estate.

The Colorado River Valley Field Office and the KFO were originally jointly revising their respective RMPs. Since the two field offices border one another and share some common issues, a combined planning effort was an efficient way to complete the first stages of the plan revisions, such as public scoping and Wild and Scenic River studies. However, given the complexity of the RMP revisions and in response to cooperating agency and internal BLM comments, each field office will issue separate Draft RMP/EISs, and the planning efforts for the two field offices will continue as separate processes on separate schedules.

The Draft RMP/EIS proposes and analyzes four alternatives for future

management of the public lands and resources in the planning area. Alternative A (No Action) would continue the current management situation, managing the lands under the 1984 Kremmling RMP. Alternative B (the BLM's preferred alternative) seeks to allocate limited resources among competing human interests, land uses, and conserve natural and cultural resource values by strategically addressing demands across the landscape. Alternative C emphasizes resource protection and sustaining the ecological integrity of habitats for all priority plant, wildlife and fish species, particularly the habitats needed for conserving and recovering threatened and endangered plant and animal species. Alternative D emphasizes maximizing resource production while maintaining the basic protection needed to sustain resources.

Major issues identified during the public scoping process and addressed in the Draft RMP/EIS include but are not limited to: Travel management and transportation, recreational demand and uses, lands and realty, special designations, urban interface, energy development, rangeland health/upland management, vegetation resources, wildlife resources, water/riparian resources, sagebrush habitat and species, and cultural resources. Section 202(c)(3) of FLPMA requires the Draft RMP/EIS to examine Areas of Critical Environmental Concern (ACEC) designations on BLM-administered lands. ACECs determined to meet the relevance and importance criteria were analyzed within the range of alternatives. The ACECs considered for designation are: Barger Gulch Heritage Area, Kremmling Cretaceous Ammonite Research Natural Area, Kremmling Potential Conservation Area, Kinney Creek, Laramie River, North Park Natural Area, North Sand Hills and Troublesome Creek. If designated, the BLM would limit some resource uses, as needed, to protect the relevant and important values of the ACECs. The ACEC values and resource-use limitations vary by ACEC, and the designation of ACECs themselves varies by alternative.

Consistent with the requirements found at 43 CFR 1610.2, a hearing on potential coal leasing will be combined with a public meeting that will be scheduled and announced during the comment period.

The KFO reviewed its wilderness resource inventory and ensured it was current and maintained in accordance with FLPMA. The inventory consists of wilderness, wilderness study areas and lands with wilderness characteristics. Upon reviewing its wilderness resource inventory, the KFO identified an additional 16,420 acres that possess wilderness characteristics. They were Drowsy Water (8,220 acres), Strawberry (5,830 acres) and the Troublesome Addition (2,340 acres). These additional lands were included in the Draft RMP/EIS' range of alternatives analysis, which considered the impacts of management options on and protection of their wilderness characteristics.

Please note that public comments and information, including names, street addresses and e-mail addresses will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays.

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.

Helen M. Hankins,

Colorado State Director.

Authority : 40 CFR 1506.6, 1506.10, and 43 CFR 1610.2.

[FR Doc. 2011–23622 Filed 9–15–11; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON04000 L16100000.DP0000]

Notice of Availability of Draft Resource Management Plan and Draft Environmental Impact Statement for the Colorado River Valley Field Office, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) and Draft Environmental Impact Statement (EIS) for the Colorado River Valley Field Office and by this notice is announcing the opening of the comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP/Draft EIS within 90 days following the date the Environmental Protection Agency publishes its notice of the Draft RMP/Draft EIS in the **Federal Register**. The BLM will announce future meetings or hearings and any other public participation activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Colorado River Valley Draft RMP/Draft EIS by any of the following methods:

- *Web site: http://www.blm.gov/rmp/co/kfo-gsfo.*
- *E-mail: co_crvrmp@blm.gov.*
- *Fax:* (970) 876–9090.
- *Mail:* Bureau of Land Management, Colorado River Valley Field Office, RMP Comments, 2300 River Frontage Road, Silt, Colorado 81652.

Copies of the Colorado River Valley DRMP/Draft EIS are available in the Colorado River Valley Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: John Russell, RMP Project Manager, *telephone:* (970) 876–9025; see address above; *e-mail: jdrussell@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Draft RMP/Draft EIS addresses public lands and resources managed by the Colorado River Valley Field Office (formerly the Glenwood Springs Field Office) in Eagle, Garfield, Mesa, Pitkin, Rio Blanco, and Routt Counties, Colorado. These lands are currently managed under the 1984 Glenwood Springs RMP, as amended. The planning area includes approximately 505,000 BLM-administered surface acres and approximately 707,000 subsurface acres of Federal mineral estate.

Decisions in the Colorado River Valley RMP will only apply to BLM-administered public lands and federally owned subsurface mineral estate. Except for addressing the wild and scenic river suitability for stream segments determined to be eligible, the Draft RMP/Draft EIS does not address the decisions made in the Roan Plateau Planning Area RMP Amendment and EIS (2008).

The Draft EIS also incorporates and analyzes the U.S. Department of Agriculture, U.S. Forest Service (USFS), White River National Forest Wild and Scenic River suitability study determinations for the USFS-managed segments of the Colorado River (Glenwood Canyon) and Deep Creek.

The Colorado River Valley Field Office and the Kremmling Field Office were originally revising their respective RMPs jointly. Since the two field offices border one another and share some common issues, a combined planning effort was an efficient way to complete the first stages of the plan revisions, such as public scoping and studies. However, given the complexity of the RMP revisions and in response to cooperating agency and internal BLM comments, each field office will issue separate Draft RMP/Draft EISs. The planning effort for the two field offices will continue as separate processes on separate schedules.

This Draft RMP/Draft EIS proposes and analyzes four alternatives for future public land and resource management in the planning area. Alternative A (No Action) would continue the current management situation, managing the lands under the 1984 Glenwood Springs RMP, as amended. Alternative B (the BLM's preferred alternative) seeks to allocate limited resources among competing human interests, land uses, and conservation of natural and cultural resource values by strategically addressing demands across the landscape. Alternative C emphasizes protecting resources and sustaining the ecological integrity of habitats for all priority plant, wildlife, and fish species, particularly the habitats needed for the conserving and recovering threatened and endangered plant and animal species. Alternative D emphasizes maximizing resource production while maintaining the basic protection needed to sustain resources.

Major issues identified during the public scoping process and addressed in the Draft RMP/Draft EIS include, but are not limited to, travel management and transportation, wilderness characteristics, recreational demand and uses, lands and realty, special designations, urban interface, energy development, rangeland health/upland management, vegetation resources, wildlife resources, water/riparian resources, sagebrush habitat and species, and cultural resources.

Pursuant to 43 CFR 1610.7–2(b), this notice announces a concurrent public comment period on proposed Areas of Critical Environmental Concern (ACEC). ACECs meeting the relevance and importance criteria were analyzed within the range of alternatives. ACECs considered for designation include Abrams Creek, Blue Hill, Bull Gulch, Colorado River Seeps, Deep Creek, Dotsero Crater, Glenwood Springs Debris Flow, Grand Hogback, Greater Sage Grouse Habitat, Hardscrabble Mayer Gulch, Hardscrabble Mayer Gulch/East Eagle Ridge, Lower Colorado River, Lyons Gulch, McCoy Fan Delta, Mount Logan Foothills, Sheep Creek Uplands, The Crown Ridge and Thompson Creek.

The proposed ACECs and resource-use limitations are:

- Abrams Creek, 190 acres, Alternative C: No Surface Occupancy (NSO); Visual Resource Management (VRM) Class II; Right-of-Way (ROW) exclusion area; closed to motorized vehicles including snowmobiles.
- Blue Hil, 3,700 acres, Alternatives A, B, C, D: Close to leasing; NSO; VRM Class II; ROW exclusion area; prohibited net increase in motorized/mechanized routes; travel limited to designated routes, including snowmobiles for action alternatives; vegetation treatments allowed if they maintain or enhance the identified relevant and important (R&I) values.
- Bull Gulch, 10,400 acres, Alternatives A, B, C, D: Closed to leasing; NSO; VRM Class I; ROW exclusion area; closed to motorized vehicles, including snowmobiles.
- Colorado River Seeps, 470 acres, Alternative C: NSO; ROW avoidance area; prohibited net increase in motorized/mechanized routes.
- Deep Creek, 2,400 acres, Alternatives A, B, C: Closed to leasing; NSO; closed to motorized/mechanized vehicles, including snowmobiles; vegetation treatments allowed only for the benefit of the identified R&I values; recommended for mineral withdrawal.
- Dotsero Crater, 100 acres, Alternative C: NSO; VRM Class II; ROW exclusion area; closed to motorized vehicles.
- Glenwood Springs Debris Flow, 6,100 acres, Alternatives A, B, C, D: NSO; VRM Class II; ROW avoidance area; prohibited net increase in motorized/mechanized routes; travel limited to designated routes, including snowmobiles for the action alternatives; prescribed fire allowed; natural fire managed for resource benefits; vegetation treatments allowed if they maintain or enhance the identified R&I values.
- Grand Hogback, 14,000 acres, Alternative C: NSO; VRM Class II; ROW avoidance area; unavailable for coal leasing; prohibited net increase in motorized/mechanized routes; prescribed fire allowed; natural fire managed for resource benefits; vegetation treatments allowed if they maintain or enhance the identified R&I values.
- Greater Sage Grouse Habitat, 24,600 acres, Alternative C: Closed to leasing; NSO; VRM Class II; ROW avoidance area; new transmission lines excluded; prohibited net increase in motorized/mechanized routes; closed Castle Peak portion to snowmobiles; Conditions of Approval attached to project proposals, including additional onsite or offsite mitigation to minimize impacts to the R&I values; prescribed fire allowed; natural fire managed for resource benefits; vegetation treatments allowed if they maintain or enhance the identified R&I values.
- Hardscrabble Mayer Gulch, 3,400 acres, Alternative B; 4,200 acres including East Eagle Ridge addition, Alternative C: NSO; VRM Class II; ROW avoidance area; prohibited net increase in motorized/mechanized routes; closed to snowmobiles; prescribed fire allowed; natural fire managed for resource benefits; vegetation treatments allowed if they maintain or enhance the identified R&I values.
- Lower Colorado River, 130 acres, Alternative A: VRM Class II; ROW avoidance area.
- Lyons Gulch, 480 acres, Alternative B, C: NSO; prohibited net increase in motorized/mechanized routes; prescribed fire allowed; natural fire managed for resource benefits; vegetation treatments allowed if they maintain or enhance the identified R&I values.
- McCoy Fan Delta, 220 acres, Alternative C: NSO; VRM Class II; prohibited net increase in motorized/mechanized routes; ROW avoidance area; closed to fossil collection; prescribed fire allowed; natural fire managed for resource benefits; vegetation treatments allowed if they maintain or enhance the identified R&I values.
- Mount Logan Foothills, 3,900 acres, Alternative C: NSO; VRM Class II; ROW avoidance area; travel limited to designated routes including snowmobiles; prescribed fire allowed; natural fire managed for resource benefits; vegetation treatments allowed if they maintain or enhance the identified R&I values.
- Sheep Creek Uplands, 4,500 acres, Alternative C: NSO; VRM Class II; ROW avoidance area; prohibited net increase in motorized/mechanized routes; travel limited to designated routes including snowmobiles; prescribed fire allowed; natural fire managed for resource benefits; vegetation treatments allowed

if they maintain or enhance the identified R&I values.

• The Crown Ridge, 1,000 acres, Alternative C: NSO; VRM Class II; ROW avoidance area; prohibited net increase in motorized/mechanized routes; travel limited to designated routes including snowmobiles; prescribed fire allowed; natural fire managed for resource benefits; vegetation treatments allowed if they maintain or enhance the identified R&I values.

• Thompson Creek, 4,300 acres, Alternative A; 3,400 acres, Alternatives B, C: Closed to leasing; NSO; VRM Class I and III for Alternative A, VRM Class I only for Alternative C; ROW exclusion area; closed to motorized travel including snowmobiles; closed to mechanized travel in Alternative C; vegetation treatments allowed if they maintain or enhance the R&I values; recommended for mineral withdrawal; climbing bolt installation outside the existing climbing fin prohibited.

Consistent with the requirements found at 43 CFR 1610.2, the BLM will schedule and announce a combined hearing on potential coal leasing and a public meeting during the Draft RMP/Draft EIS comment period.

Please note that public comments and information submitted including names, street addresses, and e-mail addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

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.

Authority: 40 CFR 1506.6, 1506.10, and 43 CFR 1610.2.

Helen M. Hankins,

Colorado State Director.

[FR Doc. 2011–23621 Filed 9–15–11; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–0906–8363; 2380–OCR2–NWZ]

Agency Information Collection Activities: Proposed New Collection—Social Science Assessment and Geographic Analysis of Marine Recreational Uses and Visitor Attitudes at Dry Tortugas National Park and Biscayne National Park

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) for a proposed new collection. This notice provides the public and other Federal agencies an opportunity to comment on the paperwork burden of this collection. To comply with the Paperwork Reduction Act of 1995 and as a part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to comment on this IC. We may not conduct or sponsor and a person is not required to respond to a collection unless it displays a currently valid OMB control number.

DATES: To ensure that your comments on this ICR are considered, please submit them on or before October 17, 2011.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via e-mail to *OIRA_DOCKET@omb.eop.gov* or fax at 202–395–5806; and identify your submission as 1024–DRTO/BISC. Please also send a copy your comments to Phadrea Ponds, Information Collections Coordinator, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *phadrea_ponds@nps.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: David K. Loomis, Ph.D. Institute for Coastal Science and Policy, Mail Stop 250, Flanagan, East Carolina University, Greenville, NC 27858–4353, or at *loomisd@ecu.edu* (e-mail). To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (Information Collection Review, currently under review).

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1024–NEW.

Title: Social Science Assessment and Geographic Analysis of Marine Recreational Uses and Visitor Attitudes at Dry Tortugas National Park and Biscayne National Park.

Type of Request: This is a new collection.

Affected Public: Visitors (18 years and older) to Biscayne or Dry Tortugas National Parks.

Respondent Obligation: Voluntary.

Frequency of Collection: One-time.

Estimated Number of Annual Responses: 7,866.

Annual Burden Hours: 952 hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: None.

Abstract: The National Park Service (NPS) Act of 1916, 38 Stat 535, 16 USC 1, *et seq.,* requires that the NPS preserve national parks for the use and enjoyment of present and future generations. The National Park Service is developing a visitor-focused program to reduce recreational impacts on marine resource at Dry Tortugas National Park (DRTO) and Biscayne National Park (BISC). The program management at these ocean units aims to remove and mitigate degradation of ocean resources by enabling visitors to avoid boat grounding, anchor damage, fishing violations, wildlife disturbance, invasive species introduction, pollution and other impacts from boating, fishing, scuba diving, snorkeling and kayaking. The proposed information collection will use a series of surveys to understand visitor attitudes, perceptions and beliefs concerning marine resources and provide a geospatial assessment of geographic locations of visitor uses at DRTO and BISC. The information collected will be used to assess levels and patterns of recreational uses in these parks and develop and evaluate strategic communication plans. This information will support efforts to address marine recreational impacts on sensitive habitats and marine resources, and guide strategies to reduce these impacts through education and outreach, navigational aids, and enhanced compliance with rules and regulations, working closely with the public and marine recreational communities.

Comments: On May 2, 2009, we published a **Federal Register** notice (74 FR 20973) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on July 6, 2009. We

received a comment from one individual regarding this notice. This commenter objected to boaters using the area for recreation purposes. However, in our response, we noted that legislation creating this and other parks of the National Park system specifically allows for this and other public uses. The commenter also suggested that a survey about the recreational habits of citizens is unnecessary. While the survey mentioned by the commenter may be useful for tracking national recreational trends, information about appropriate use levels for specific indicators of quality at Biscayne National Park can only be obtained from the proposed survey.

We again invite comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: September 13, 2011.

Robert M. Gordon,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2011–23848 Filed 9–15–11; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–GAAR; 9924–PYS]

Alaska Region's Subsistence Resource Commission (SRC) Program

AGENCY: National Park Service, Interior.

ACTION: Notice of public meeting for the National Park Service (NPS) Alaska Region's Subsistence Resource Commission (SRC) program.

SUMMARY: The Gates of the Arctic National Park SRC will meet to develop and continue work on NPS subsistence program recommendations and other related subsistence management issues. The NPS SRC program is authorized under Title VIII, Section 808 of the Alaska National Interest Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting to be announced in the **Federal Register**.

Public Availability of Comments: This meeting is open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. This meeting will be recorded and meeting minutes will be available upon request from the park superintendent for public inspection approximately six weeks after the meeting. Before including your address, telephone 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.

If the meeting dates and location are changed, a notice will be published in local newspapers and announced on local radio stations prior to the meeting date. SRC meeting locations and dates may need to be changed based on inclement weather or exceptional circumstances.

Gates of the Arctic National Park SRC Meeting Dates and Location: The Gates of the Arctic National Park SRC will meet at Sophie Station Hotel, 1717 University Avenue South, (907) 479–3650, in Fairbanks, Alaska, on Wednesday, November 9, 2011, and Thursday, November 10, 2011, from 9 a.m. to 5 p.m. or as soon a business is completed.

FOR FURTHER INFORMATION ON THE GATES OF THE ARCTIC NATIONAL PARK SRC MEETING CONTACT: Greg Dudgeon, Superintendent, or Marcy Okada, Subsistence Manager, at (907) 457–5752 or Clarence Summers, Subsistence Manager, NPS Alaska Regional Office, at (907) 644–3603. If you are interested in applying for Gates of the Arctic National Park SRC membership contact the Superintendent, 4175 Geist Road, Fairbanks, AK 99709, (907) 457–5752, or visit the park Web site at: *http://www.nps.gov/gaar/parkmgmt/index.htm.*

Proposed SRC Meeting Agenda

The proposed meeting agenda for each meeting includes the following:

1. Call to order
2. Welcome and Introductions
3. Administrative Announcements
4. Approve Agenda
5. Approval of Minutes
6. SRC Purpose and Membership
7. SRC Member Reports
8. National Park Service Reports
   a. Superintendent
   b. Subsistence Manager
   c. Resource Management
   d. Ranger Report
9. Federal Subsistence Board Update
   a. Wildlife
   b. Fisheries
10. Alaska Board of Game Update
11. Old Business
    a. Subsistence Uses of Bones, Horn, Antlers and Plants Environmental Assessment Update
    b. 2011 SRC Chairs' Workshop
    c. Gates of the Arctic National Park SRC Draft Hunting Plan Recommendation 10–01
12. New Business
13. Public and other Agency Comments
14. SRC Work Session
15. Select Time and Location for Next Meeting
16. Adjourn Meeting

Debora R. Cooper,

Associate Regional Director, Resources and Subsistence.

[FR Doc. 2011–23850 Filed 9–15–11; 8:45 am]

BILLING CODE 4312–HK–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on September 9, 2011, a proposed Consent Decree in *United States* v. *Jacob Goldberg & Son, Inc., et al*, 10 Civ. 3237 (CS), was lodged with the United States District Court for the Southern District of New York.

The proposed Consent Decree resolves claims of the United States, on behalf of the Environmental Protection Agency (''EPA''), under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.,* in connection with the Port Refinery Superfund Site (''SRS Site'') in the Village of Rye Brook, New York, against the defendants Jacob Goldberg & Son,

Inc. (''Goldberg''); Leonard Sherman d/b/a L&B Metals; and L&B Metals, Inc. (together with Sherman, ''L&B''); and defendants Poor Charlie & Company (''Poor Charlie'') and Alexander Fariello. Pursuant to the proposed Consent Decree, Goldberg, L&B, Poor Charlie, and Fariello are required to pay $5,000, $15,000, $195,000, and $250, respectively, to the United States.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Jacob Goldberg & Son, Inc., et al.,* D.J. No. 90–11–3–1142/1. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Consent Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the proposed Consent Decree, please enclose a check in the amount of $6.25 (25 cent per page reproduction cost), payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent decree Library at the stated address.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–23826 Filed 9–15–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on September 7, 2011, a proposed Consent Decree (''Decree'') in *United States* v. *PSC Metals, Inc.,* Civil Action No. 1:11–cv–01886, was lodged with the United States District Court for the Northern District of Ohio.

In this action the United States, on behalf of the U.S. Environmental Protection Agency (''U.S. EPA''), sought penalties and injunctive relief under the Clean Air Act (''CAA'') against PSC Metals, Inc. (''Defendant'') relating to Defendant's Cleveland, Ohio facility (''Facility''). The Complaint alleges that Defendant has violated Section 608(b)(1) of the CAA, 42 U.S.C. 7671g(b)(1) (National Recycling and Emission Reduction Program), and the regulations promulgated thereunder, 40 CFR part 82, subpart F, by failing to follow the requirement to recover or verify recovery of refrigerant from appliances it accepts for disposal. The Consent Decree provides for a civil penalty of $199,000. The Decree also requires Defendant to implement the following measures at all eleven (11) of its scrap yards in Ohio: (1) Purchase equipment to recover refrigerant or contract for such services and provide for such recovery at no additional cost; (2) no longer accept small appliances, motor vehicle air conditioners (''MVACs''), or MVAC-like appliances with cut lines unless the supplier can provide appropriate written verification (*e.g.,* that all refrigerant that had not leaked previously was properly evacuated); (3) require its suppliers to use the verification statement provided in Appendix B that contains the information required by the regulations, unless it has an existing written agreement with that supplier regarding verification; and (4) keep a refrigerant recovery log to document details regarding refrigerant that is recovered by Defendant in the form provided in Appendix A. If Defendant stops accepting small appliances, MVACs and MVAC-like appliances for recycling, it shall be subject to stipulated penalties.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *PSC Metals, Inc.,* D.J. Ref. 90–5–2–1–09606. The Decree may be examined at the Office of the United States Attorney, Northern District of Ohio, 801 West Superior Avenue, Suite 400, Cleveland, OH 44113 (contact Assistant U.S. Attorney Steven Paffilas, (216) 622–3698)) and at U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, IL 60604. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–23778 Filed 9–15–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0016]

Agency Information Collection Activities: Proposed collection; Comments Requested; Application for Registration of Firearms Acquired by Certain Governmental Entities

ACTION: Correction to 30-day notice.

This is a correction to a 60 day notice that published, in the **Federal Register** volume 76, number 176 on Monday, September 12, 2011, pages 56223–56224, which was incorrect. It should have published as a 30 day notice. The 60 day **Federal Register** notice has previously published in the **Federal Register**, as stated below.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 130, page 39900 on

July 7, 2011, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 17, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Gary Schaible at 202–648–7165 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Registration of Firearms Acquired by Certain Governmental Entities.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 10 (5320.10). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, local or tribal Government. *Other:* None.

Need for Collection

The form is required to be submitted by State and local government entities wishing to register an abandoned or seized and previously unregistered National Firearms Act weapon. The form is required whenever application for such a registration is made.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are an estimated 1,500 respondents, who will complete the form within approximately 30 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 3000 total burden hours associated with this collection.

If Additional Information is Required Contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, 145 N Street, NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–23730 Filed 9–15–11; 8:45 am]

BILLING CODE 4410–FY–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 11–08]

Sunshine Act Meeting; Notice of the September 28, 2011, Millennium Challenge Corporation Board of Directors Meeting

AGENCY: Millennium Challenge Corporation.

TIME AND DATE: 10 a.m. to 12 p.m., Wednesday, September 28, 2011.

PLACE: Department of State, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Melvin F. Williams, Jr., Vice President, General Counsel and Corporate Secretary via e-mail at *Corporatesecretary@mcc.gov* or by telephone at (202) 521–3600.

STATUS: Meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board of Directors (the ''Board'') of the Millennium Challenge Corporation (''MCC'') will hold a meeting to discuss update on Tunisia, discussion of the Indonesia compact and the Selection Criteria & Methodology report. The agenda items are expected to involve the consideration of classified information and the meeting will be closed to the public.

Dated: September 14, 2011.

Melvin F. Williams, Jr.,

VP/General Counsel and Corporate Secretary, Millennium Challenge Corporation.

[FR Doc. 2011–23979 Filed 9–14–11; 4:15 pm]

BILLING CODE 9211–03–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the *Federal Advisory Committee Act* (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences (1755).

Dates: October 13, 2011 8:30 a.m.–5,p.m. October 14, 2011 8:30 a.m.–2 p.m.

Place: Stafford I, Room 1235, National Science Foundation, 4201Wilson Blvd. Arlington, Virginia 22230.

Type Of Meeting: Open.

Contact Person: Melissa Lane, National Science Foundation, Suite 705, 4201 Wilson Blvd, Arlington, Virginia 22230; Phone 703–292–8500.

Minutes: May be obtained from the contact person listed above.

Purpose Of Meeting: To provide advice, recommendations, and oversight concerning support for geosciences.

Agenda

October 13, 2011

- Update on Directorate Activities and Plans
- Division Subcommittee Meetings
- Division Subcommittee Reports
- Report on the Merit Review Task Force

October 14, 2011

- Topical Subcommittee Meetings
- Topical Subcommittee Reports
- Panel of Opportunities for Enhancing Diversity in the Geosciences Awardees
- Action Items/Planning for Fall Meeting

Dated: September 13, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–23751 Filed 9–15–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the *Antarctic Conservation Act of 1978* (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the *Antarctic*

Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the *Antarctic Conservation Act of 1978.* NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 17, 2011. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Polly A. Penhale at the above address or (703) 292–7420.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the *Antarctic Conservation Act of 1978* (Pub. L. 95–541), as amended by the *Antarctic Science, Tourism and Conservation Act of 1996,* has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

Permit Application: 2012–007.

1. *Applicant:* Paul Morin, Department of Geology And Geophysics, University of Minnesota, 310 Pillsbury Drive, SE., Minneapolis, MN 55455.

Activity for Which Permit Is Requested

Enter an Antarctic Specially Protected Area. The applicant plans to enter the Antarctic Specially Protect Areas at Cape Royds, Ross Island (ASPA 121) and Cape Crozier (ASPA 124) to collect ground control with highly precise GPS equipment. The applicant will seek out readily identifiable boulders and peaks gathering precise GPS coordinates of that location, and taking notes and picture of the surrounding area. Other activities would include delineating boundaries of penguin colonies, ASPAs, and important environmental features. The data collected will be used to create accurate maps of areas of important scientific and environmental importance within the Ross Sea region.

Location

ASPA 121—Cape Royds, Ross Island, and ASPA 124—Cape Crozier, Ross Island.

Dates

October 10, 2011 to January 31, 2012.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 2011–23707 Filed 9–15–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271; NRC–2011–0074; License No. DPR–28]

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.; Notice of Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision with regard to a petition dated January 14, 2011, Mr. Thomas Saporito, hereinafter referred to as the ''petitioner.'' The petition concerns the operation of the Vermont Yankee Nuclear Power Station (VY).

The petition requested that the U.S. Nuclear Regulatory Commission (NRC): (1) Issue a confirmatory order requiring the licensee to immediately bring the reactor in question to a cold shutdown mode of operation; (2) issue a civil penalty against the licensee; (3) remove the licensee's employees responsible for this matter from NRC licensed activities for a period of no less than 5 years; and (4) perform an immediate NRC investigation and inspection of VY to ensure that all nuclear safety-related systems are properly operational in accordance with the licensee's technical specification and NRC license.

The petition raises concerns originating from inoperability of main steam safety relief valves (SRVs) due to leakage through the shaft to piston thread seals. This event did potentially affect the ability of the SRVs to perform their manual and Automatic Depressurization System (ADS) function since the combined thread seal leakage and accumulator leakage impacted the ability of the SRVs to satisfy design actuation requirements. Due to the redundancy in ADS design, the availability of the high-pressure core injection system, and the availability of a safety-class backup nitrogen supply, the ability to depressurize the reactor was maintained, and there was no potential adverse impact to public health and safety.

The Petition Review Board (PRB) met on February 2, 2011, and made an initial recommendation to accept the petition, in part, concerning the failure of relief valve because this issue met the criteria for review. The NRC communicated this decision to the petitioner, who requested an opportunity to address the PRB to provide comments to the PRB's initial recommendation and additional information in support of the petition. By teleconference on February 14, 2011, the petitioner provided information to the PRB in support of the request for an immediate shutdown and an immediate NRC investigation and inspection of VY. The PRB confirmed its initial recommendation because the additional information provided on February 14, 2011, did not change the PRB's decision to deny the request for immediate action.

The NRC sent a copy of the proposed Director's Decision to the petitioner and the licensee for comment on July 14, 2011. The staff has not received any comments from the licensee. The petitioner responded with comments on August 1, 2011, which have been addressed in the Director's Decision.

Copies of the petition (Agencywide Documents Access and Management System (ADAMS) Accession No. ML110190233) and the Director's Decision (ADAMS Accession No. ML112240960) are available for inspection at the Commission's Public Document Room (PDR) at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* NRC Management Directive 8.11, ''Review Process for 10 CFR 2.206 Petitions'' (ADAMS Accession No. ML041770328), describes the petition review process. Persons who do not have access to ADAMS or who have problems in accessing the documents in ADAMS should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *PDR-Resource@nrc.gov.*

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion,

institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 9th day of September 2011.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–23787 Filed 9–15–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0204]

Proposed Generic Communication; Draft NRC Generic Letter 2011–XX: Seismic Risk Evaluations for Operating Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft generic letter; comment period extension and correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice appearing in the **Federal Register** on September 1, 2011 (76 FR 54507), that requested public comment on Draft NRC Generic Letter 2011–XX: Seismic Risk Evaluations for Operating Reactors. This action is necessary to correct the Docket ID information for submitting comments and accessing publicly available documents related to the draft generic letter in the **ADDRESSES** section and the **SUPPLEMENTARY INFORMATION** section. Due to this error, the NRC is extending the comment period from October 31, 2011, to November 15, 2011.

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; *telephone:* 301–492–3667 or *e-mail: Cindy.Bladey@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 54507 of **Federal Register** document 2011–22422, published September 1, 2011 (76 FR 54507), in the second column, under the section titled **ADDRESSES**, first paragraph, ''NRC–2011–0201'' is corrected to read ''NRC–2011–0204.'' Also, on page 54507 of the same document, in the second column, under the section titled **ADDRESSES**, first bulleted item, ''NRC–2011–0201'' is corrected to read ''NRC–2011–0204.'' On page 54508 of the same document, in the first column, under the section titled **SUPPLEMENTARY INFORMATION**, second bulleted item, ''NRC–2011–0201'' is corrected to read ''NRC–2011–0204.''

Dated at Rockville, Maryland, this 12th day of September, 2011.

For the Nuclear Regulatory Commission.

Cindy Bladey,

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

[FR Doc. 2011–23706 Filed 9–15–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–64; Order No. 847]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Ionia, Iowa post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service*): September 21, 2011; *deadline for notices to intervene:* October 4, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

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 the **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: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 6, 2011, the Commission received a petition for review of the Postal Service's determination to close the Ionia post office in Ionia, Missouri. The petition was filed by William Smart, Mayor of the City of Ionia, Missouri (Petitioner) and was received by the Commission on August 31, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–64 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 11, 2011.

Categories of issues apparently raised. Petitioner contends that: (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); and (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is September 21, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is September 21, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 4, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than September 21, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than September 21, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Emmett Rand Costich is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

September 6, 2011	Filing of Appeal.
September 21, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
September 21, 2011	Deadline for the Postal Service to file any responsive pleading.
October 4, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 11, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
October 31, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
November 15, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
November 22, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
December 29, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–23708 Filed 9–15–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–65; Order No. 848]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Sharpsburg, Iowa post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service*): September 21, 2011; *deadline for notices to intervene:* October 4, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

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 the **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: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 6, 2011, the Commission received a petition for review of the Postal Service's determination to close the Sharpsburg post office in Sharpsburg, Iowa. The petition was filed by Dean and Flossie Breach (Petitioners) and is postmarked August 29, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–65 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 11, 2011.

Categories of issues apparently raised. Petitioners contend that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is September 21, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is September 21, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the

Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioners and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 4, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than September 21, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than September 21, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Jeremy Simmons is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

September 6, 2011	Filing of Appeal.
September 21, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
September 21, 2011	Deadline for the Postal Service to file any responsive pleading.
October 4, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 11, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
October 31, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
November 15, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
November 22, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
December 27, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–23717 Filed 9–15–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–9258; 34–65322; File No. 265–27]

Advisory Committee on Small and Emerging Companies

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Federal Advisory Committee Establishment.

SUMMARY: The Securities and Exchange Commission intends to establish the Securities and Exchange Commission Advisory Committee on Small and Emerging Companies.

ADDRESSES: Written comments may be submitted by the following methods:

Electronic Comments

- Use the Commission's Internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail message to *rule-comments@sec.gov,* including File No. X–XXX 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 No. 265–27. To help us 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/other.shtml*). Comments also will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from your submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Johanna V. Losert, Special Counsel, or Gerald J. Laporte, Office Chief, Office of

Small Business Policy, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–3628, (202) 551–3460.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C.—App., the Commission is publishing this notice that the Chairman of the Commission, with the concurrence of the other Commissioners, intends to establish the Securities and Exchange Commission Advisory Committee on Small and Emerging Companies (the ''Committee''). The Committee's objective is to provide the Commission with advice on its rules, regulations, and policies, with regard to its mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation, as they relate to the following:

(1) Capital raising by emerging privately-held small businesses (''emerging companies'') and publicly traded companies with less than $250 million in public market capitalization (''smaller public companies'') through securities offerings, including private and limited offerings and initial and other public offerings;

(2) Trading in the securities of emerging companies and smaller public companies; and

(3) Public reporting and corporate governance requirements of emerging companies and smaller public companies.

Up to 20 voting members will be appointed to the Committee who can effectively represent those directly affected by, interested in, and/or qualified to provide advice to the Commission on its rules, regulations, and policies as set forth above. The Committee's membership will be balanced fairly in terms of points of view represented and functions to be performed. Non-voting observers for the committee from the North American Securities Administrators Association and the Small Business Administration may also be named.

The Committee may be established 15 days after publication of this notice in the **Federal Register** by filing a charter for the Committee with the Committee on Banking, Housing, and Urban Affairs of the United States Senate and the Committee on Financial Services of the United States House of Representatives. A copy of the charter as so filed also will be filed with the Chairman of the Commission, furnished to the Library of Congress, and posted on the Commission's Web site at *http://www.sec.gov.* An undated copy of the charter is now available at *http://www.faca.gov.*

The Committee will operate for two years from the date it is established or such earlier date as determined by the Commission unless, before the expiration of that time period, its charter is re-established or renewed in accordance with the Federal Advisory Committee Act.

The Committee will meet at such intervals as are necessary to carry out its functions. The charter contemplates that the full Committee will meet three times annually. Meetings of subgroups or subcommittees of the full Committee may occur more frequently.

The charter will provide that the duties of the Committee are to be solely advisory. The Commission alone will make any determinations of action to be taken and policy to be expressed with respect to matters within the Commission's authority as to which the Committee provides advice or makes recommendations. The Chairman of the Commission affirms that the establishment of the Committee is necessary and in the public interest.

By the Commission.

Dated: September 12, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23731 Filed 9–15–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–86; OMB Control No. 3235–0080]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 12d2–2, Form 25.

Notice is hereby given that pursuant to the *Paperwork Reduction Act of 199*5 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval for Rule 12d2–2 (17 CFR 240.12d2–2) and Form 25 (17 CFR 249.25) Removal and Notification of Removal from Listing and/or Registration.

On February 12, 1935, the Commission adopted Rule 12d2–2,[1] and Form 25 under the Securities Exchange Act of 1934 (15 U.S.C. 78b *et seq.*) (''Act''), to establish the conditions and procedures under which a security may be delisted from an exchange and withdrawn from registration under Section 12(b) of the Act.[2] The Commission adopted amendments to Rule 12d2–2 and Form 25 in 2005.[3] Under the amended Rule 12d2–2, all issuers and national securities exchanges seeking to delist and deregister a security in accordance with the rules of an exchange must file the adopted version of Form 25 with the Commission. The Commission also adopted amendments to Rule 19d–1 under the Act to require exchanges to file the adopted version of Form 25 as notice to the Commission under Section 19(d) of the Act. Finally, the Commission adopted amendments to exempt options and security futures from Section 12(d) of the Act. These amendments are intended to simplify the paperwork and procedure associated with a delisting and to unify general rules and procedures relating to the delisting process.

The Form 25 is useful because it informs the Commission that a security previously traded on an exchange is no longer traded. In addition, the Form 25 enables the Commission to verify that the delisting and/or deregistration has occurred in accordance with the rules of the exchange. Further, the Form 25 helps to focus the attention of delisting issuers to make sure that they abide by the proper procedural and notice requirements associated with a delisting and/or a deregistration. Without Rule 12d2–2 and the Form 25, as applicable, the Commission would be unable to fulfill its statutory responsibilities.

There are 15 national securities exchanges that trade equity securities that will be respondents subject to Rule 12d2–2 and Form 25.[4] The burden of complying with Rule 12d2–2 and Form 25 is not evenly distributed among the exchanges, however, since there are many more securities listed on the New York Stock Exchange, the NASDAQ Stock Market, and NYSE Amex than on the other exchanges. However, for purposes of this filing, the Commission staff has assumed that the number of

[1] *See Securities Exchange Act* Release No. 98 (February 12, 1935).

[2] *See Securities Exchange Act* Release No. 7011 (February 5, 1963), 28 FR 1506 (February 16, 1963).

[3] *See Securities Exchange Act* Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

[4] The staff notes that there are additional national securities exchanges that only trade standardized options which are exempt from Rule 12d2–2.

responses is evenly divided among the exchanges. Since approximately 630 responses under Rule 12d2–2 and Form 25 for the purpose of delisting and/or deregistration of equity securities are received annually by the Commission from the national securities exchanges, the resultant aggregate annual reporting hour burden would be, assuming on average one hour per response, 630 annual burden hours for all exchanges (15 exchanges × an average of 42 responses per exchange × 1 hour per response). In addition, since approximately 118 responses are received by the Commission annually from issuers wishing to remove their securities from listing and registration on exchanges, the Commission staff estimates that the aggregate annual reporting hour burden on issuers would be, assuming on average one reporting hour per response, 118 annual burden hours for all issuers (118 issuers × 1 response per issuer × 1 hour per response). Accordingly, the total annual hour burden for all respondents to comply with Rule 12d2–2 is 748 hours (630 hours for exchanges + 118 hours for issuers). The related internal labor costs associated with these burden hours are $40,784.50 total ($33,232.50 for exchanges ($52.75 per response × 630 responses) and $7,552 for issuers ($64 per response × 118 responses)).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted within 60 days of this notice.

Dated: September 13, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23802 Filed 9–15–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 10b–17; SEC File No. 270–427; OMB Control No. 3235–0476.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in the following rule: Rule 10b–17 (17 CFR 240.10b–17).

Rule 10b–17 requires any issuer of a class of securities publicly traded by the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange to give notice of the following specific distributions relating to such class of securities: (1) A dividend or other distribution in cash or in kind other than interest payments on debt securities; (2) a stock split or reverse stock split; or (3) a rights or other subscription offering. Notice shall be either given to the Financial Industry Regulatory Authority, Inc. as successor to the National Association of Securities Dealers, Inc. or in accordance with the procedures of the national securities exchange upon which the securities are registered. The Commission may exempt an issuer of over-the-counter (but not listed) securities from the notice requirement. The requirements of 10b–17 do not apply to redeemable securities of registered open-end investment companies or unit investment trusts.

The information required by Rule 10b–17 is necessary for the execution of the Commission's mandate under the Securities Exchange Act of 1934 to prevent fraudulent, manipulative, and deceptive acts and practices. The Commission has found that not requiring formal notices of the types of distributions covered by Rule 10b–17 has led to a number of abuses including purchasers not being aware of their rights to such distributions. It is only through formal notice of the distribution, including the date of the distribution, that current holders, potential buyers, or potential sellers of the securities at issue will know their rights to the distribution. Therefore, it is only through formal notice that investors can make an informed decision as to whether to buy or sell a security.

There are approximately 10,137 respondents per year. These respondents make approximately 22,093 responses per year. Each response takes approximately 10 minutes to complete. Thus, the total compliance burden per year is 3,682 burden hours. The total internal labor cost for the respondents, associated with producing and filing the reports, is approximately $238,188.58.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Background documentation for this information collection may be viewed at the following link, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 12, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23725 Filed 9–15–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–36; OMB Control No. 3235–0028]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 17f–2(d).

Notice is hereby given that pursuant to the *Paperwork Reduction Act of 1995* (44 U.S.C. 3501 *et seq.*), the Securities

and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17f-2(d) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17f–2(d) requires that records produced pursuant to the fingerprinting requirements of Section 17(f)(2) of the Act be maintained; permits the designated examining authorities of broker-dealers or members of exchanges, under certain circumstances, to store and maintain records required to be kept by this rule; and permits the required records to be maintained on microfilm. The general purpose for Rule 17f–2 is to: (i) Identify security risk personnel; (ii) provide criminal record information so that employers can make fully informed employment decisions; and (iii) deter persons with criminal records from seeking employment or association with covered entities. The rule enables the Commission or other examining authority to ascertain whether all required persons are being fingerprinted and whether proper procedures regarding fingerprint are being followed. Retention of these records for the term of employment of all personnel plus three years ensures that law enforcement officials will have easy access to fingerprint cards on a timely basis. This in turn acts as an effective deterrent to employee misconduct.

Approximately 5,300 respondents are subject to the recordkeeping requirements of the rule. Each respondent keeps approximately 60 new records per year, which takes approximately 2 minutes per record for the respondent to maintain, for an annual burden of approximately 2 hours (60 records times 2 minutes) per respondent or a total annual burden of approximately 10,300 hours (5,300 respondents times 2 hours) for all respondents. All records subject to the rule must be retained for the term of employment plus 3 years. In addition, we estimate the total cost to respondents is approximately $119,000. ($53,000 in estimate third party storage costs plus $66,000 in capital and start up costs).

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Background documentation for this information collection may be viewed at the following link, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: September 12, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23726 Filed 9–15–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on September 19, 2011 at 10 a.m., in the Auditorium, Room L–002.

The subject matters of the Open Meeting will be:

Item 1: The Commission will consider whether to propose a new rule under Section 621 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, to implement the prohibition under Section 621 regarding material conflicts of interest relating to certain securitizations.

Item 2: The Commission will consider whether to propose new rules under Section 764(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act to provide for the registration of security-based swap dealers and major security-based swap participants.

Commissioner Paredes, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: September 13, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23918 Filed 9–14–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65315; File No. SR–EDGX–2011–28]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating To Amendments to EDGX Rules Regarding the Registration and Obligations of Market Makers

September 12, 2011

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 2011, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter XI of the EDGX rulebook to add four new rules regarding the registration and obligations of market makers and amend Rule 1.5 to add definitions of ''Market Maker'' and ''Market Maker Authorized Trader.'' The Exchange also proposes to amend Rule 8.15, Interpretation .01 to expand the list of violations eligible for disposition under the Exchange's Minor Rule Violation Plan (''MRVP'') by adding Rule 11.21(a)(1). The Exchange also proposes to amend EDGX Rule 14.1, entitled ''Unlisted Trading Privileges,'' to restrict trading activities of market makers, and impose a series of reporting and record-keeping requirements on market makers. The text of the proposed rule change is available on the Exchange's Web site at *http://www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide Members the ability to register as Market Makers and to provide for the regulation of Market Makers. Registration as a Market Maker will be purely optional. The process for registration as a Market Maker is contained in proposed Rule 11.18, which provides that applicants must file applications in such form as the Exchange may prescribe. Applicants will be reviewed by the Exchange, which will consider factors including the capital, operations, personnel, technical resources and disciplinary history of the applicant. Each Market Maker must have and maintain the minimum net capital of at least the amount required by Rule 15c3–1 under the Securities Exchange Act of 1934 (the ''Act'').[3] Pursuant to the proposed Rule, an applicant's registration as a Market Maker will become effective upon receipt by the Member of the Exchange's notice of approval of registration. Under proposed Rule 11.18(f), registered Market Makers are designated as dealers on the Exchange for all purposes under the Act and the rules and regulations thereunder.

Proposed Rule 11.18 also provides that the registration of a Market Maker may be suspended or terminated by the Exchange if the Exchange determines that the Market Maker substantially or continually fails to engage in dealings in accordance with Exchange Rules, if the Market Maker fails to meet the minimum net capital conditions, if the Market Maker fails to maintain fair and orderly markets, or if the Market Maker does not have at least one registered Market Maker Authorized Trader (''MMAT'') qualified to perform market making activities as set forth in proposed Rule 11.19(b)(5).[4] Any Market Maker may also withdraw its registration under the proposed Rule. Subsection (d) of the proposed Rule provides that the Exchange may require a certain minimum prior notice period for withdrawal, and may place other conditions on withdrawal and re-registration following withdrawal, as it deems appropriate to maintain fair and orderly markets.

Proposed Rule 11.19 provides for the registration and obligations of MMATs. The Exchange can register a person as a MMAT upon receiving an application in the form prescribed by the Exchange, and MMATs are permitted to enter orders only for the account of the Market Maker for which they are registered. MMATs may be officers, partners, employees, or other associated persons of Members who are registered as Market Makers. To be eligible for registration as a MMAT, a person must complete the training and other programs required by the Exchange and successfully complete the General Securities Representative Examination (Series 7) or equivalent foreign examination module approved by the Exchange. Market Makers must ensure that their MMATs are properly qualified to perform market making activities. The Exchange may grant a person conditional registration as a MMAT as appropriate in the interests of maintaining a fair and orderly market.

In addition, under proposed Rule 11.19, the Exchange may suspend or withdraw the registration of a MMAT if the Exchange determines that the person has caused the Market Maker to fail to comply with the securities laws or rules of the Exchange, if the person fails to perform his or her responsibilities properly, or fails to maintain fair and orderly markets. If a MMAT is suspended, the Market Maker may not allow the person to submit orders. A Member may also withdraw the registration of a MMAT by submitting to the Exchange a written request on a form prescribed by the Exchange.

Proposed Rule 11.20 provides for the registration of Market Makers in a security. A Market Maker may become registered in a newly authorized security or in a security already admitted to dealings on the Exchange by filing a security registration form with the Exchange. Registration in the security shall become effective on the same day that the Exchange approves the registration, unless otherwise provided by the Exchange. In considering the approval of the registration of the Market Maker in a security, the Exchange may consider the financial resources available to the Market Maker, the Market Maker's experience in making markets, the Market Maker's operational capability, the maintenance and enhancement of competition among Market Makers in each security in which they are registered, the existence of clearing arrangements for the Market Maker's transactions and the character of the market for the security. The proposed Rule also provides that a Market Maker may voluntarily terminate its registration in a security by providing the Exchange with a written notice of such termination. The Exchange may require a certain minimum prior notice period for such termination and may place other conditions on withdrawal and re-registration following withdrawal. The Exchange may suspend or terminate the registration of a Market Maker in any security whenever it determines that the Market Maker has not met one or more of its obligations, including if the Exchange determines that the Market Maker has failed to maintain fair and orderly markets.

The Exchange's determinations pursuant to proposed Rules 11.18 through 11.20 may be appealed by any person aggrieved by such determination. The procedures for appeal are established in Chapter X of the Exchange's rulebook.

Finally, Proposed Rule 11.21 sets out the obligations of Market Makers. In general, Market Makers must engage in a course of dealings for their own accounts to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange. The responsibilities of a Market Maker include, without limitation, remaining in good standing with the Exchange and in compliance with all applicable Exchange Rules; informing the Exchange of any material change in its financial or operational condition or personnel;[5] maintaining a current list of MMATs and providing any updates to such list to the Exchange upon any change in MMATs; and clearing and settling transactions through the

[3] 17 CFR 240.15c3–1.

[4] A MMAT whose registration is suspended pursuant to proposed Rule 11.18(c) shall not be deemed qualified within the meaning of Rule 11.18(c)(4).

[5] The Exchange proposes to include an interpretation that reminds Market Makers that, in addition to their obligation under Rule 11.21(a)(3) to ''inform the Exchange of any material change in financial or operational condition'', they are also obligated to submit a copy of such notice with Securities and Exchange Commission (''SEC'') pursuant to Rule 17a–11 under the Act, 17 CFR 240.17a–11. The notice to the Exchange must be sent concurrently with the notice sent to the SEC. *See* EDGX Rule 4.2.

facilities of a registered clearing agency. The latter requirement may be satisfied by direct participation, use of direct clearing services, or by entering into a correspondent clearing arrangement with another Member that clears trades through such agency. Market Makers will be responsible for the acts and omissions of its MMATs. If the Exchange finds any substantial or continued failure by a Market Maker to engage in a course of dealing as specified in this Rule, such Market Maker will be subject to disciplinary action or suspension or revocation of its registration.

Further, proposed Rule 11.21(d) provides that a Market Maker must maintain continuous, two-sided quotations within a designated percentage of the National Best Bid (''NBB'') and National Best Offer (''NBO'', and together with the NBB, the ''NBBO'') (or, if there is no NBB or NBO, the last reported sale). These Market Maker quotation requirements are intended to eliminate trade executions against Market Maker quotations priced far away from the inside market, commonly known as ''stub quotes''. They are also intended to augment and work in relation to the single stock pause standards already in place on a pilot basis for stocks in the S&P 500® Index[6] and the Russell 1000® Index, as well as a pilot list of Exchange Traded Products[7] (the ''Original Circuit Breaker Securities''). Permissible quotes are determined by the individual character of the security, the time of day in which the quote is entered and other factors which are summarized below.

For issues subject to an individual stock trading pause under the applicable rules of a primary listing market, a permissible quote (also known as ''Designated Percentage'') is as follows: (i) A Market Maker's quotes in the Original Circuit Breaker Securities shall not be more than 8% away from the NBBO; (ii) a Market Maker's quotes in National Market System (''NMS'') securities (as defined in Rule 600 of Regulation NMS)[8] that are not Original Circuit Breaker Securities with a price equal to or greater than $1 shall not be more than 28% away from the NBBO; and (iii) a Market Maker's quotes in NMS securities that are not Original Circuit Breaker Securities with a price less than $1 shall not be more than 30% away from the NBBO. For times during Regular Trading Hours when stock pause triggers are not in effect under the rules of the primary listing market (*e.g.,* before 9:45 a.m. and after 3:35 p.m. Eastern time), the Designated Percentage shall be 20% for Original Circuit Breaker Securities, 28% for all NMS securities that are not Original Circuit Breaker Securities with a price equal to or greater than $1, and 30% for all NMS securities that are not Original Circuit Breaker Securities with a price less than $1.

Once a compliant quote is entered, it may rest without adjustment until such time as it moves to within 9.5% away from the NBBO for Original Circuit Breaker Securities, 29.5% away from the NBBO for NMS securities that are not Original Circuit Breaker Securities with a price equal to or greater than $1, and 31.5% away from the NBBO for all NMS securities that are not Original Circuit Breaker Securities with a price less than $1, whereupon the Market Maker must immediately adjust its quote to at least the permissible default level of 8%, 28%, or 30%, respectively, away from the NBBO. During times when a stock pause trigger percentage is not applicable, a Market Maker must enter a quote no further than:

(i) 20% away from the inside (*i.e.,* it may rest without adjustment until it reaches 21.5% away from the inside) for Original Circuit Breaker Securities;

(ii) 28% away from the inside for all NMS securities that are not Original Circuit Breaker Securities with a price equal to or greater than $1 (*i.e.,* it may rest without adjustment until it reaches 29.5% away from the inside); and

(iii) 30% away from the inside for all NMS securities that are not Original Circuit Breaker Securities with a price less than $1 (*i.e.,* it may rest without adjustment until it reaches 31.5% away from the inside).

In the absence of a NBB or NBO, the above calculations will remain the same, but will use the national last sale instead of the absent bid or offer.

However, scenarios may occur in which pricing at the commencement of a trading day, or at the re-opening of trading in a security that has been halted, suspended, or paused pursuant to Rule 11.14(d), is significantly different from pricing for the security at the close of the previous trading day or immediately prior to the halt, suspension, or pause, respectively. These pricing differentials could be the result of corporate actions that occur after the close of the previous trading day or the market's absorption of material information during the halt, suspension, or pause. Based on this concern, the Exchange believes that Market Makers should not be subject to the pricing obligations proposed herein when the last sale of the previous trading day, or immediately prior to a halt, is the only available reference price.

The Exchange therefore proposes that, for NMS stocks, a Market Maker shall adhere to the pricing obligations established by this Rule during Regular Trading Hours,[9] provided, however, that such pricing obligations: (i) Shall not commence during any trading day until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor, and (ii) shall be suspended during a trading halt, suspension, or pause, and shall not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor.

Nothing in the above precludes a Market Maker from voluntarily quoting at price levels that are closer to the NBBO than required under the proposal.

The Exchange proposes to offer functionality to Market Makers to assist them with the quotation obligations proposed by this filing. The Exchange will comply with a Market Maker's instructions for the Exchange to enter a quote on the Market Maker's behalf consistent with proposed paragraph 11.21(d). Such instructions will be entered into the System[10] by the Market Maker prior to 9 a.m. in order to take effect on the same trading day. Under proposed Rule 11.21(e), the Exchange will refresh such two-sided quotations in each security in which a Market Maker is registered for a maximum of ten (10) executions per security per Market Maker. After such time, the Market Maker must contact the Exchange in order for the Exchange to continue such two-sided quotations for another ten (10) executions on behalf of the Market Maker. If the Market Maker does not contact the Exchange, the Exchange will not refresh such two-sided quotations in such securities. The Exchange proposes to enter the initial bid and offer at the Designated Percentage and to cancel and replace the bid or offer if it drifts away from the NBBO to the Defined Limit or away from the Designated Percentage towards the NBBO by a number of percentage points determined by the Exchange. The Exchange will determine and publish this percentage in a circular distributed to Members from time to time. The

[6] *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–EDGX–2010–01).

[7] *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–EDGX–2010–05).

[8] 17 CFR 240.600 [sic].

[9] Defined in EDGX Rule 1.5(y) (as proposed to be re-lettered) as 9:30 a.m. to 4 p.m. Eastern Time.

[10] *See* EDGX Rule 1.5(aa).

Exchange wishes to retain this flexibility in the event it wishes to modify the number periodically in the future, for instance, to mitigate the amount of quotation information resulting from Exchange-generated Market Maker quotes. If a bid or offer entered pursuant to proposed paragraph 11.21(e) is executed, the Exchange will enter a new bid or offer on behalf of a Market Maker. Bids and offers entered by the Exchange consistent with proposed paragraph (e) to replace a cancelled or executed quotation will be entered at the Designated Percentage away from the NBBO. Such orders will be posted by the Exchange as Post Only Orders,[11] and will be maintained on the Exchange during Regular Trading Hours unless cancelled by the Market Maker pursuant to the Exchange's Rules. In the event that a Market Maker cancels the quotations entered by the Exchange in accordance with proposed paragraph (e), such Market Maker remains responsible for compliance with the requirements of paragraph (d).

The Exchange proposes to cross-reference the above-described Market Maker quotation obligations found in paragraph (d) in paragraph (a)(1).

The Exchange believes that these proposed rules will benefit all Exchange participants, because Market Makers will assist in the maintenance of fair and orderly markets, provide additional liquidity to the Exchange, and assist in preventing excess volatility.

Rule 1.5 has been amended to add the definitions of ''Market Maker'' and ''Market Maker Authorized Trader.'' As a result, the rest of Rule 1.5 has been re-lettered accordingly.

Amendments to Exchange Rule 14.1 (Unlisted Trading Privileges)

The Exchange proposes to add Rule 14.1(c)(5) to restrict trading activities of Market Makers and impose a series of reporting and record-keeping requirements on Market Makers. As a result, current EDGX Rule 14.1(c)(5) has been re-numbered as EDGX Rule 14.1(c)(6).

Proposed EDGX Rule 14.1(c)(5) provides for restrictions for any Member registered as a Market Maker on the Exchange (''Restricted Market Maker'') in a derivative securities product (''UTP Derivative Security'') that derives its value from one or more currencies or commodities, or from a derivative overlying one or more currencies or commodities, or is based on a basket or index comprised of currencies or commodities (collectively, ''Reference Assets''). Specifically, proposed EDGX Rule 14.1(c)(5)(A) provides that a Restricted Market Maker in a UTP Derivative Security on the Exchange is prohibited from acting or registering as a Market Maker on any other exchange in any Reference Asset of that UTP Derivative Security, or any derivative instrument based on a Reference Asset of that UTP Derivative Security (collectively, with Reference Assets, ''Related Instruments''). Proposed EDGX Rule 14.1(c)(5)(B) provides that a Restricted Market Maker shall, in a manner prescribed by the Exchange, file with the Exchange and keep current a list identifying any accounts (''Related Instrument Trading Accounts'') for which Related Instruments are traded: (1) In which the Restricted Market Maker holds an interest; (2) over which it has investment discretion; or (3) in which it shares in the profits and/or losses. In addition, a Restricted Market Maker may not have an interest in, exercise investment discretion over, or share in the profits and/or losses of a Related Instrument Trading Account which has not been reported to the Exchange as required by this rule. Proposed EDGX Rule 14.1(c)(5)(C) provides that, in addition to the existing obligations under Exchange rules regarding the production of books and records, a Restricted Market Maker shall, upon request by the Exchange, make available to the Exchange any books, records, or other information pertaining to any Related Instrument Trading Account or to the account of any registered or non-registered employee affiliated with the Restricted Market Maker in which Related Instruments are traded. Proposed EDGX Rule 14.1(c)(5)(D) provides that a Restricted Market Maker shall not use any material, non-public information in connection with trading a Related Instrument.

Finally, existing Rule 14.1(c)(5) is proposed to be re-numbered as 14.1(c)(6). The Exchange also proposes to replace the term ''components of the index or portfolio on which the UTP Derivative Security is based'' with ''Related Instruments'' in that rule.

Amendment to the Exchange's MRVP

The Exchange proposes to amend Rule 8.15, entitled ''Imposition of Fines for Minor Violation(s) of Rules,'' to add Proposed Rule 11.21(a)(1) to the list of rules which would be appropriate for disposition under the Exchange's MRVP.

The proposed addition of Rule 11.21(a)(1), which provides that a Market Maker must maintain continuous, two-sided quotations consistent with the requirements of paragraph (d) (*i.e.,* within a designated percentage of the NBBO (or, if there is no NBB or NBO, the last reported sale)), would allow the Exchange to impose a $100 fine for each violation of this rule. By promptly imposing a meaningful financial penalty for such violations, the MRVP focuses on correcting conduct before it gives rise to more serious enforcement action. The MRVP provides a reasonable means of addressing rule violations that do not necessarily rise to the level of requiring formal disciplinary proceedings, while also providing greater flexibility in handling certain violations. Adopting a provision that would allow the Exchange to sanction violators under the MRVP by no means minimizes the importance of compliance with Exchange Rule 11.21. The Exchange believes that the violation of any of its rules is a serious matter. The addition of a sanction under the MRVP simply serves to add an additional method for disciplining violators of Exchange Rule 11.21. The Exchange will continue to conduct surveillance with due diligence and make its determination, on a case by case basis, whether a violation of Exchange Rule 11.21 should be subject to formal disciplinary proceedings.

The Exchange proposes to implement this rule change, if approved by the Commission, on or about October 15, 2011.

2. Statutory Basis

Approval of the rule changes proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[12] In particular, the proposed changes are consistent with Section 6(b)(5) of the Act,[13] because they would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest by promoting greater liquidity in the Exchange market. The proposed rule change is also designed to support the principles of Section 11A(a)(1)[14] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning minimum market maker

[11] As defined in EDGX Rule 11.5(c)(5).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k–1(a)(1).

quotation requirements. The Exchange believes that the proposed optional functionality to assist Exchange Market Makers in maintaining continuous, two-sided quotations in the securities in which they are registered will encourage Market Makers to remain registered with and trade on the Exchange, thus providing valuable liquidity to the Exchange. At the same time, the Exchange believes that the proposed functionality will keep Exchange-generated quotations within reasonable reach of the NBBO. In addition, the proposed addition of Rule 11.21(a)(1) to the Exchange's MRVP will give the Exchange the ability to promptly impose a meaningful financial penalty for such violations before there is a need for more serious enforcement action.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve or disapprove such proposed rule change; or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

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 No. SR–EDGX–2011–28 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–EDGX–2011–28. 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 Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2011–28 and should be submitted by October 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23772 Filed 9–15–11; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65318; File No. SR–NASDAQ–2011–124]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Options Market

September 12, 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 September 6, 2011, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''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 NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on September 6, 2011. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ 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

NASDAQ is proposing to modify Rule 7050 governing the rebates and fees

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

assessed for option orders entered into NOM. Specifically, NASDAQ is proposing to modify pricing for the Customer Rebate to Add Liquidity in Penny Options by adding an additional volume achievement to earn an enhanced rebate. The Exchange currently pays a Customer Rebate to Add Liquidity in Penny Options based on six volume tiers as follows:

	Monthly volume	Rebate to add liquidity
Tier 1	Participant adds Customer liquidity of up to 24,999 contracts per day in a month	$0.26
Tier 2	Participant adds Customer liquidity of 25,000—59,999 contracts per day in a month	$0.34
Tier 3	Participant adds Customer liquidity of 60,000–124,999 contracts per day in a month	$0.38
Tier 4	Participant adds Customer liquidity of 125,000 or more contracts per day in a month	$0.40
Tier 5	Participant adds (1) Customer liquidity of 60,000 or more contracts per day in a month, and (2) NOM Market Maker liquidity of 60,000 or more contracts per day in a month.	$0.40
Tier 6	Participant adds Customer liquidity of 25,000 or more contracts per day in a month, and (2) the Participant simultaneously qualifies for credit under the Investor Support Program set forth in Rule 7014.	$0.35

To further encourage firms that route Customer orders to increase Customer order flow to the Exchange, the Exchange is proposing to modify the Customer Rebates to Add Liquidity in Penny Pilot by adding a monthly volume target for NOM Participants that qualify for Tiers 2 and 6. Specifically, firms that qualify for Tier 2 by adding Customer Liquidity in Penny Options of 25,000 to 59,999 contracts per day for the month, can receive an additional $0.02 rebate by contributing 750,000 contracts of Customer Liquidity in Penny Options between September 6 and September 30, 2011. Also, firms that qualify for Tier 6 by adding Customer Liquidity in Penny Options of 25,000 or more contracts per day for the month and also qualifying for a credit under NASDAQ's Investor Support Program (set forth in Rule 7014),[3] can receive an additional $0.02 rebate by contributing 750,000 contracts of Customer Liquidity in Penny Options between September 6 and September 30, 2011. NOM Participants that qualify for these two new tiers will receive an additional $0.02 rebate only for executions occurring between September 6 and September 30, 2011; volume executed on September 1, 2011 and September 2, 2011 will not be eligible.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes that the proposed new pricing tiers are equitable, reasonable and not unfairly discriminatory because they continue an existing program to encourage broker-dealers acting as agent for Customer orders to select the Exchange as a venue to post Customer orders. The Exchange believes that its success at attracting Customer order flow benefits all market participants by improving the quality of order interaction and executions at the Exchange.

The Exchange further believes that limiting the new tiers to firms already qualifying for Tiers 2 and 6 (and not those that qualify for Tier 3, 4 and 5) is equitable and not unfairly discriminatory because NOM Participants in Tiers 3, 4, and 5 already earn a higher rebate. For example, a NOM Participant that qualify [sic] for the new tiers will receive a rebate of either $0.36 or $0.37 per contract, whereas NOM Participants that qualify for Tiers 3, 4 and 5 receive a $0.38 per contract rebate.

The Exchange believes that the proposed new pricing tiers for Customer Rebates to Add Liquidity in Penny Options is equitable and not unfairly discriminatory because the Exchange will uniformly pay a Rebate to Add Liquidity to Customers executing Penny Options based on the 750,000 volume target and monthly tiers proposed and discussed herein.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive or rebate opportunities to be inadequate. The Exchange believes that the proposed rebate scheme is competitive and similar to other rebates and tiers opportunities in place on other exchanges. The Exchange believes that this competitive marketplace materially impacts the rebates present on the Exchange today and substantially influenced the proposal set forth above.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] At any time

[3] For a detailed description of the Investor Support Program, *see* Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ–2010–141) (notice of filing and immediate effectiveness) (the ''ISP Filing''). *See also* Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010) (NASDAQ–2010–153) (notice of filing and immediate effectiveness); and 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011) (NASDAQ–2010–154) (notice of filing and immediate effectiveness).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(a)(ii).

within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–124 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–124. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2011–124 and should be submitted on or before October 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23722 Filed 9–15–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65317; File No. SR–NASDAQ–2011–127]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Options Market

September 12, 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 September 1, 2011, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''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 NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on September 1, 2011. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ 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

NASDAQ is proposing to modify Rule 7050 governing the rebates and fees assessed for option orders entered into NOM. Specifically, NASDAQ is proposing to modify pricing for the Customer Rebate to Add Liquidity in Penny Options to revising [*sic*] existing monthly volume tiers. The Exchange currently pays a Customer Rebate to Add Liquidity in Penny Options based on four volume tiers as follows:

	Monthly volume	Rebate to add liquidity
Tier 1	0–499,999	$0.26
Tier 2	500,000–799,999.	0.32
Tier 3	800,000–1,199,999.	0.36
Tier 4	1,200,000 and up.	0.38

By way of example, the Exchange currently pays a Rebate to Add Liquidity of $0.36 per contract to a NOM Participant that executed 900,000 Customer contracts that added liquidity in Penny Options in a given month. If the NOM Participant executed 1,500,000 Customer contracts that added liquidity in Penny Options in a given month, the Exchange currently would pay a Rebate to Add Liquidity of $0.38 per contract. The Exchange believes the existing monthly volume thresholds have incentivized firms that route Customer orders to the Exchange to increase Customer order flow to the Exchange.

To further encourage firms that route Customer orders to increase Customer order flow to the Exchange, the Exchange is proposing to modify the Customer Rebates to Add Liquidity in Penny Pilot Options in several ways. First, the Exchange is converting all tier measurements to average daily volumes from aggregate monthly volumes. This change is not, in and of itself, a material change.

Second, based on its experience with the existing volume tiers, the Exchange is modifying the volume required to

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

qualify for each of the four existing tiers and the rebates earned by firms that qualify for each tier.

• Currently, Tier 1 firms add up to 499,999 contracts of liquidity per month (an average of up to 24,999 per day based on a month containing 20 trading days), and for that volume they receive a rebate of $0.26 per contract. The Exchange is changing Tier 1 to cover up to 24,999 contracts per day, and to pay the same $0.26 rebate. Based on past experience the Exchange anticipates that all firms currently receiving the $0.26 rebate will maintain their current level of rebate.

• Currently, Tier 2 firms add between 500,000 and 799,999 contracts per month (between 25,000 and 39,999 per day), and for that volume they receive a rebate of $0.32 per contract. The Exchange is changing Tier 2 to cover between 25,000 and 59,999 contracts per day, and to pay a rebate of $0.34 per contract.[3] As a result, firms that contribute between 25,000 and 39,999 contracts per day of Customer order liquidity will receive a higher rebate (up from $0.32 to $0.34 per contract). However, firms that contribute between 40,000 and 59,999 contracts per day of Customer order liquidity will receive a lower rebate (down from $0.36 to $0.34 per contract). Based upon current volume levels and past trading patterns, the Exchange anticipates that firms will contribute sufficient liquidity to avoid receiving reduced rebates.

• Currently, Tier 3 firms add between 800,000 and 1,199,999 contracts per month (between 40,000 and 59,999 per day), and for that volume they receive a rebate of $0.36 per contract. The Exchange is changing Tier 3 to cover between 60,000 and 124,999 contracts per day, and to pay a rebate of $0.38 per contract. As a result, firms that contribute between 40,000 and 59,999 contracts per day of Customer order liquidity will receive lower rebates (down from $0.36 to $0.34 per contract) as a result of being in new Tier 2. Based upon current volume levels and past trading patterns, the Exchange anticipates that firms will contribute sufficient liquidity to avoid receiving reduced rebates. Firms that contribute between 60,000 and 124,999 contracts per day are currently in Tier 4, and receive a rebate of $0.38 per contract. The rebate they receive will not change as a result of now being in Tier 3.

• Currently, Tier 4 firms add over 1,200,000 contracts per month (over 60,000 per day), and for that volume they receive a rebate of $0.38 per contract. The Exchange is changing Tier 4 to cover over 125,000 contracts per day, and to pay a rebate of $0.40 per contract. As a result, firms that contribute between 60,000 and 124,999 contracts per day of Customer order liquidity will receive the same rebate of $0.38 per contract as previously received under old Tier 4, and firms that provide over 125,000 contracts per day of Customer order liquidity will receive higher rebates ($0.40 per contract under new Tier 4 up from $0.38 per contract received under old Tier 4).

Finally, the Exchange is adding two new tiers to further encourage the provision of Customer liquidity by participants that also add liquidity to the Exchange in other ways. The first new tier (Tier 5) will provide a higher rebate for Participants that meet two separate criteria: (1) Provide 60,000 or more contracts per day of Customer order liquidity in Penny options, and (2) provide 60,000 or more contracts per day of NOM Market Maker liquidity. By meeting the two criteria, Participants will receive a $0.02 rebate increase ($0.40 for meeting both criteria, as opposed to $0.38 for meeting only the first). For the purposes of determining qualification for this tier, the Exchange will aggregate the trading activity of separate NOM Participants in calculating the average daily volume if there is at least 75% common ownership between the NOM Participants.[4]

In other words, Participants that add significant liquidity as market makers can receive the same Customer rebate as Participants that provide substantially more Customer order liquidity (over 125,000 contracts per day). The Exchange believes this will encourage more participants that also route Customer order flow to register to make markets on the Exchange.

The Exchange is adding new Tier 6 to encourage participants in the Exchange's equity markets to also participate in the Exchange's options market. Specifically, firms that qualify for a credit under the Investor Support Program set forth in NASDAQ Rule 7014[5] by providing retail investor liquidity to NASDAQ's equity market can qualify for a higher rebate on NASDAQ's options market if they contribute 25,000 or more contracts per day of Customer order liquidity in Penny options on NOM. This amounts to a rebate of $0.01 per contract higher for any contracts between 25,000 and 59,999 per day for qualifying participants in both markets ($0.35 per contract) versus those that participate and qualify only on NOM ($0.34 per contract).

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. All similarly situated members are subject to the same fee structure, and access to NASDAQ is offered on fair and non-discriminatory terms.

The Exchange believes that the proposed monthly tier structure for Customer Rebates to Add Liquidity in Penny Options is equitable, reasonable and not unfairly discriminatory because by incentivizing broker-dealers acting as agent for Customer orders to select the Exchange as a venue to post Customer orders will attract Customer order flow and benefit all market participants. While the Exchange is modifying the required liquidity provision to qualify for Tiers 2, 3 and 4, it is also increasing the rebate available to firms that do qualify. As a result, the Exchange believes that broker-dealers acting as agent for Customer orders will in fact be incentivized to bring additional order flow to the Exchange and that they will obtain higher rebates.

Furthermore, the Exchange believes that the proposed Customer monthly volume tier Rebates to Add Liquidity are equitable and not unfairly discriminatory because the Rebates to Add Liquidity are higher in Tiers 2, 3 and 4 for Customers as compared to all other market participants. With respect to Tier 1, the Exchange is proposing to pay a Customer a lower Rebate to Add Liquidity as compared to a Professional and NOM Market Maker. The Exchange believes that this proposal is equitable because the participant submitting

[3] Firms that contribute between 40,000 and 59,999 contracts per day are currently in Tier 3, and receive a rebate of $0.36 per contract.

[4] Aggregation is necessary and appropriate because certain NOM participants conduct Customer and NOM Market Maker trading activity through separate but related broker-dealers.

[5] For a detailed description of the Investor Support Program, *see Securities Exchange Act* Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ–2010–141) (notice of filing and immediate effectiveness) (the ''ISP Filing''). *See also Securities Exchange Act* Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010) (NASDAQ–2010–153) (notice of filing and immediate effectiveness); and 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011) (NASDAQ–2010–154) (notice of filing and immediate effectiveness).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

Customer order liquidity has the opportunity to earn higher rebates with the tier structure as compared to a Professional, who will only receive a $0.29 per contract Rebate to Add Liquidity, and a NOM Market Maker, who will only receive a $0.30 per contract Rebate to Add Liquidity. The Exchange believes it not unreasonable to preserve the existing differential between different types of Participants because the presence of Customer liquidity enhances the quality of trading on the Exchange for all Participants to such a great degree. Additionally, with respect to NOM Market Makers, the proposed fee structure is equitable because market makers have obligations to the market and regulatory requirements,[8] which normally do not apply to other market participants. Customers receive a higher Rebate to Add Liquidity for all tiers as compared to a Firm and Non-NOM Market Maker.[9]

The Exchange believes that new Tier 5 is not unfairly discriminatory because market makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants. The Exchange has set a reasonable goal of 60,000 or more contracts per day for market makers on NOM, an achievable goal that should encourage increased market maker registration and market making activity. The Exchange believes that the $0.02 rebate premium is equitable because that increased market making will, in turn, improve the amount of liquidity available on the Exchange and improve the quality of order interaction and executions on the Exchange.

The Exchange believes that new Tier 6 is equitable and not unfairly discriminatory because it encourages increased activity in both the NASDAQ Options Market and in the Investor Support Program (''ISP'') of the NASDAQ equity market. The goal of the ISP is to incentivize members to provide liquidity from individual equity investors to the NASDAQ Market Center.[10] Alternatively, new Tier 6 will encourage firms that already qualify for a credit under the ISP to increase the amount of Customer order liquidity provided to the NASDAQ Options Market. The addition of such liquidity, either through the ISP or through increased Customer order flow, will benefit all Exchange members that participate in those markets.[11]

The Exchange believes the proposed tier structure for Customer Rebates to Add Liquidity in Penny Options is also reasonable because the amount of the rebate is similar to a tiered rebate offered by NYSE Arca, Inc. (''NYSE Arca''). NYSE Arca adopted a per contract rate on all posted liquidity in Customer Penny Pilot Issues by aggregating total contracts executed that added liquidity in Penny Pilot Issues in a given month.[12]

The Exchange believes that the proposed tier structure for Customer Rebates to Add Liquidity in Penny Options is equitable and not unfairly discriminatory because the Exchange will uniformly pay a Rebate to Add Liquidity to Customers executing Penny Options based on the monthly tiers proposed herein.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive or rebate opportunities to be inadequate. The Exchange believes that the proposed rebate structure and tiers are competitive and similar to other rebates and tiers in place on other exchanges. The Exchange believes that this competitive marketplace impacts the rebates present on the Exchange today and substantially influences the proposals set forth above.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[8] Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5.

[9] A Firm receives a $0.10 per contract Rebate to Add Liquidity and a Non-NOM Market maker receives a $0.25 per contract Rebate to Add Liquidity.

[10] The Commission has expressed its concern that a significant percentage of the orders of individual investors are executed at over the counter (''OTC'') markets, that is, at off-exchange markets; and that a significant percentage of the orders of institutional investors are executed in dark pools. *Securities Exchange Act* Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, ''Concept Release''). In the Concept Release, the Commission has recognized the strong policy preference under the Act in favor of price transparency and displayed markets. The Commission published the Concept Release to invite public comment on a wide range of market structure issues, including high frequency trading and un-displayed, or ''dark,'' liquidity. *See also* Mary L. Schapiro, *Strengthening Our Equity Market Structure* (Speech at the Economic Club of New York, Sept. 7, 2010) (''Schapiro Speech,'' available on the Commission website)(comments of Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that nearly 30 percent of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public).

[11] NASDAQ Rule 7018(a) already provides incentives for firms to participate in both NASDAQ's equity market and its options market.

[12] *See* NYSE Arca's Fee Schedule.

[13] 15 U.S.C. 78s(b)(3)(a)(ii).

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–NASDAQ–2011–127 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–127. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2011–127 and should be submitted on or before October 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23721 Filed 9–15–11; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65324; File No. SR–NASDAQ–2011–122]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Describe Complimentary Services That Are Offered to Certain New Listings on NASDAQ's Global and Global Select Markets

September 12, 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 August 30, 2011, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''NASDAQ Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by NASDAQ. 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

NASDAQ proposes to add rule text explaining services offered by NASDAQ to certain newly listing companies. NASDAQ will implement the proposed rule upon approval.

The text of the proposed rule change is available at *http://nasdaqomx.cchwallstreet.com,* at NASDAQ's principal office, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASDAQ Exchange is a subsidiary of The NASDAQ OMX Group, Inc. (''NASDAQ OMX''). Another subsidiary of NASDAQ OMX is NASDAQ OMX Group Corporate Solutions, Inc. (''Corporate Solutions'').[3] Corporate Solutions offers products and programs to private and public companies, including companies listed on the NASDAQ Exchange and various European exchanges owned by NASDAQ OMX, designed to enhance transparency, mitigate risk, maximize efficiency and facilitate better corporate governance.

The NASDAQ Exchange intends to offer Corporate Solutions' services to certain newly listing companies. Specifically, NASDAQ will offer these services to companies listing on the Global and Global Select Markets in connection with an initial public offering, upon emerging from bankruptcy, or in connection with a spin-off or carve-out from another company (''Eligible New Listings'').[4] In addition, NASDAQ will offer products to companies that switch their listing from the New York Stock Exchange (NYSE) to the Global or Global Select Markets (''Eligible Switches'').

Eligible New Listings and Eligible Switches with a market capitalization of up to $500 million would receive services for two years from the date of listing. These companies would receive the following services, which have a total retail value of approximately

[3] NASDAQ believes that Corporate Solutions is not a ''facility'' of the NASDAQ Exchange. 15 U.S.C. 78c(a)(2). The Act defines ''facility'' to include an exchange's ''premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.'' Corporate Solutions is a distinct entity that is separate from the NASDAQ Exchange and engages in a discrete line of business that is not ''for the purpose of effecting or reporting a transaction'' on an exchange. While this proposal is being filed with the Commission under Section 19(b)(2) of the Act because it relates to services offered in connection with a listing on the NASDAQ Exchange, NASDAQ does not believe it is required to file Corporate Solutions' price schedule or changes that do not relate to services offered in connection with a listing on the NASDAQ Exchange.

[4] A company transferring from the OTCBB or Pink Sheets or from the Capital Market will not be eligible to receive these services.

$94,000 per year.[5] In addition, one-time development fees of approximately $4,000 to establish the services in the first year will be waived.

Governance Services

Board Tools: Companies will receive use of Directors Desk, a comprehensive solution designed to improve board communications and effectiveness while relieving corporate executives of the paperwork and time involved in keeping boards informed, for up to 10 users. This product has an approximate retail value of $20,000 per year.

Whistleblower Hotline: Companies will receive a financial reporting hotline that provides employees and others with a fully-automated, safe and secure means of reporting incidents and concerns. This product has an approximate retail value of $3,500 per year.

Communications Services

Investor Relations Web site: Companies will receive a Web site with all the necessary content and features to communicate with investors, offering easy access to up-to-date information. Included on this Web site will be a corporate governance library containing documents such as the Board committees' charters and the company's code of ethics. These products have a retail value of approximately $16,000 per year.

Press Releases: Companies will be provided $15,000 worth of distribution services for earnings or other press releases, including photographs, and filing of EDGAR and XBRL reports. The actual number of press releases will vary based on their length and the regional distribution network chosen by the company.

Intelligence Services

Market Analytic Tools: Companies will receive a market analytic tool, which integrates corporate shareholder communications, capital market information, investor contact management, and board-level reporting into a unified, easy-to-use, workflow environment for up to four users. This tool also provides information about research and earnings estimates on the company and helps companies identify potential purchasers of their stock using quantitative targeting and qualitative insights. This product has an approximate retail value of $39,000 per year.

Eligible New Listings and Eligible Switches with a market capitalization of $500 million or more would receive the services described above and the additional services set forth below. Eligible Switches with a market capitalization of $500 million or more would receive these services for four years from the date of listing. Eligible New Listings with a market capitalization of $500 million or more would receive these services for two years from the date of listing. NASDAQ proposes to offer Eligible Switches with a market capitalization of $500 million or more four years of services, as opposed to two years of services for other Eligible Switches and Eligible New Listings, because NASDAQ believes that these companies receive comparable services from the NYSE, which they would forgo by switching their listing. The total retail value of the services offered to these companies is approximately $169,000 per year. In addition, one-time development fees of approximately $4,000 to establish the products in the first year will be waived.

Governance Services

Board Tools: Companies will receive an additional five licenses for Directors Desk, with a retail value of approximately $10,000 per year.

Communications Services

Press Releases: Companies will receive an additional $5,000 worth of distribution services.

Intelligence Services

Market Surveillance Tools: Companies will receive a stock surveillance package, under which an analyst will, on a daily basis, utilize a mosaic of public, subscription and issuer-based data sources to monitor the daily movement and settlement activity of the company's stock, provide alerts on significant increases in trading volume and block trading activity, and offer color to any unusual change in stock price. This product has an approximate retail value of $60,000 per year. To fully utilize this service, companies will have to subscribe to, and separately pay for, certain third party information, which is not included.[6]

All NASDAQ-listed companies, including companies on the Capital Market and newly listing companies that do not satisfy the requirements described above, also benefit from other services provided by the NASDAQ Exchange. For example, these companies receive access to the NASDAQ Market Intelligence Desk and NASDAQ Online. The Market Intelligence Desk consists of a team of market professionals that serves as a single source of up-to-the-minute market intelligence, trading analysis, and real-time information to all listed companies. NASDAQ Online provides similar information that allows all listed companies to follow their stock's trading, competitors, and market activity through an online interface.[7]

The NASDAQ Exchange believes that offering governance, communications and intelligence services to newly public companies will help them fulfill their responsibilities as public companies. However, no company is required to use these services as a condition of listing. In addition, the NASDAQ Exchange believes that it is appropriate to offer companies switching from the NYSE a package of services because the NYSE offers comparable services, which these companies would forgo by switching their listing.[8] At the end of the package term, companies may choose to renew these services or discontinue them. If a company chooses to discontinue the services, there would be no affect on the company's continued listing on the NASDAQ Exchange. The NASDAQ Exchange represents that the existence of this program will not adversely affect the funding available for the NASDAQ Exchange's regulatory responsibilities.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls and is designed to prevent unfair discrimination between customers, issuers, brokers, or dealers.

[5] Retail values are based on Corporate Solutions' current price list. If a company does not fully use the services offered in a year, unused services do not carry forward into future years and cannot be used to offset the costs of other services or listing fees.

[6] For example, companies would have to purchase position reports from the Depositary Trust Corporation.

[7] NASDAQ first described NASDAQ Online and the Market Intelligence Desk in connection with 1997 and 2001 fee changes, respectively. *See Securities Exchange Act* Release No. 39613 (February 2, 1998), 63 FR 6789 (February 10, 1998) (SR–NASD–97–83) and *Securities Exchange Act* Release No. 45206 (December 28, 2001), 67 FR 621 (January 4, 2002) (SR–NASD–2001–76).

[8] *Securities Exchange Act* Release No. 65127 (August 12, 2011), 76 FR 51449 (August 18, 2011) (SR–NYSE–2011–20).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4) [sic].

All companies receive some services from NASDAQ, such as NASDAQ Online and the Market Intelligence Desk. NASDAQ believes that offering additional services only to companies listing on the Global and Global Select Markets, and not to companies listing on the Capital Market, reflects the higher demand for these services by the larger companies typically listed on the Global and Global Select markets. NASDAQ also believes that offering different services based on a company's market capitalization is appropriate given that larger companies generally will need more and different governance, communication and intelligence services. The distinction based on market capitalization is clear and transparent. Further, NASDAQ believes that offering services to Eligible New Listings, and not to companies already listed on NASDAQ, is appropriate given that the services offered will help ease the transition of becoming a public company and will help the Eligible New Listings fulfill their new responsibilities as public companies. Based on the above, NASDAQ believes that these distinctions help assure that the services are equitably allocated among issuers as required by Section 6(b)(4) of the Act and do not unfairly discriminate among issuers as required by Section 6(b)(5) of the Act.

NASDAQ proposes to offer services only to companies switching from the NYSE, and not from other exchanges or unlisted markets, or to companies already listed on NASDAQ, because these companies receive comparable services from the NYSE, which they would forgo by switching their listing to NASDAQ. NASDAQ also proposes to offer Eligible Switches with a market capitalization of $500 million or more four years of services, as opposed to two years of services for other Eligible Switches, because the NYSE generally offers these companies more services. As such, NASDAQ believes that these distinctions are not unfairly discriminatory as between issuers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASDAQ Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. All similarly situated companies are eligible for the same package of services. However, no company is required to use the services as a condition of listing. Moreover, the number of companies eligible for these free services (*i.e.,* companies newly listing on NASDAQ) will be very small in comparison to the total number of companies that comprise the target market for the services (*i.e.,* all public companies or, in the case of press release services, all public, private and non-profit companies), so that there can be no competitively meaningful foreclosure of similar services offered by third parties if the proposed rule is approved.

Specifically, there are approximately 23,000 public companies in the United States, including 5,800 companies that are listed on a U.S. exchange. By contrast, only 34 companies in 2009, 77 companies in 2010, and 62 companies through June 30, 2011 would have qualified for free services as Eligible New Listings by virtue of listing in connection with an IPO or a spin-off or a carve out from another company had the proposed rule been in effect.[11] Likewise, only 10 companies in 2009, three companies in 2010, and no companies through June 30, 2011 would have qualified for free services as Eligible Switches had the proposed rule been in effect in those years. So even assuming significant growth in Eligible New Listings and Eligible Switches in future years, the historical experience suggests that no more than approximately 3% of listed companies and well less than 1% of public companies generally would be eligible for complimentary services under the proposed rule in any year. Even if all eligible companies accepted the services and did not purchase comparable services from third party vendors—which NASDAQ believes is unlikely—these levels are far below what would be required for any competitive concern to arise.[12]

Finally, since multiple third party vendors of these services exist, making for a highly competitive market, and since companies can freely move among these vendors, NASDAQ OMX Corporate Solutions would have no ability to lock-in these customers, much less charge them supra-competitively high prices, after the free period has ended. As such, the marketplace will continue to be serviced by multiple vendors and remain highly competitive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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–NASDAQ–2011–122 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–122. 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

[11] NASDAQ has not historically tracked the number of companies listing upon emerging from bankruptcy but believes that number to be fewer than five companies since 2009.

[12] *See, e.g., Gonzalez* v. *Insignares,* 1985–2 Trade Cas. (CCH) ¶ 66,701 (N.D. Ga. 1985) (summary judgment for defendant when 40% of the market was foreclosed); *Kuck* v. *Bensen,* 647 F. Supp. 743 (D. Me. 1986) (dismissal of complaint when 37% of market volume was foreclosed); *Bepco, Inc.* v. *Allied-Signal, Inc.,* 106 F. Supp. 2d 814 (M.D.N.C. 2000) (summary judgment for defendant, in part because foreclosure rates of 18.5% and 21.5% are ''far short'' of substantial).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2011–122 and should be submitted on or before October 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23793 Filed 9–15–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65313; File No. SR–FINRA–2011–043]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend FINRA Rule 0160 (Definitions in FINRA By-Laws)

September 12, 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 August 31, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 0160 (Definitions in FINRA By-Laws). The proposed rule change would transfer certain defined terms from NASD Rule 0120 (Definitions) to FINRA Rule 0160, subject to certain amendments, as well as add new defined terms to reflect the conventions of the consolidated FINRA rulebook. The proposed rule change also would eliminate as unnecessary or duplicative certain definitions contained in NASD Rule 0120.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, at the Commission's Public Reference Room, and at 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, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] the proposed rule change would amend FINRA Rule 0160 (Definitions in FINRA By-Laws). FINRA Rule 0160 provides that a term defined in the FINRA By-Laws shall have the meaning provided in the By-Laws when used in the rules, unless the term is defined differently in a rule, or unless the context of the term within a rule requires a different meaning. NASD Rule 0120 (Definitions) sets forth additional defined terms that apply generally throughout the rules unless the context otherwise requires. Certain rules throughout the FINRA rulebook include defined terms that apply specifically for the purposes of a particular rule.

As further described below, the proposed rule change would transfer certain defined terms from NASD Rule 0120 to FINRA Rule 0160, subject to certain amendments, as well as add new defined terms to reflect the conventions of the Consolidated FINRA Rulebook.[4] The proposed rule change also would eliminate as unnecessary or duplicative certain definitions contained in NASD Rule 0120. Upon Commission approval and implementation by FINRA of the proposed rule change, NASD Rule 0120 will be eliminated from the current FINRA rulebook.[5]

FINRA notes that NYSE Rules 1 through 12 (with the exception of NYSE Rules 2A, 2B and 11)[6] set forth defined terms generally applicable throughout the NYSE rules. NYSE Rule 11 provides that unless the context requires otherwise, the terms defined in NYSE rules shall, for all purposes of the NYSE rules, have the meanings therein specified. FINRA will address NYSE Rules 1 (''The Exchange''), 2 (''Member,'' ''Membership,'' ''Member Firm,'' etc.), 3 (''Security''), 4 (''Stock''), 5 (''Bond''), 6 (''Floor''), 8 (''Delivery''), 9 (''Branch Office Manager''), 11 (Effect of Definitions) and 12 (''Business Day'') as part of a separate phase of the rulebook consolidation process.

Defined Terms Transferring Without Substantive Change to FINRA Rule 0160

The proposed rule change would transfer the following defined terms

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process). For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

[4] FINRA Rule 0160 would be reorganized so that the defined terms are arranged alphabetically, as amended.

[5] Notwithstanding the proposed transfer of certain defined terms from NASD Rule 0120 to FINRA Rule 0160 in the Consolidated FINRA Rulebook, the defined terms in FINRA Rule 0160 would continue to apply equally to both the Transitional Rulebook and the Consolidated FINRA Rulebook, as applicable. *See also* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving File No. SR–FINRA–2008–021), discussing ''Rules of General Applicability.''

[6] As part of the process of developing a Consolidated FINRA Rulebook, FINRA repealed NYSE Rule 2B (No Affiliation between Exchange and any Member Organization) (*see* Securities Exchange Act Release No. 61473 (February 2, 2010), 75 FR 6422 (February 9, 2010) (Order Approving File No. SR–FINRA–2009–087). FINRA will address NYSE Rule 2A (Jurisdiction) as part of a separate rule proposal. Also, FINRA is proposing to delete NYSE Rule 10 (''Registered Representative'') as part of the proposed changes to the consolidated FINRA rules addressing registration requirements. *See Regulatory Notice* 09–70 (December 2009).

from NASD Rule 0120 to FINRA Rule 0160 without substantive change because they are achieving their intended purpose and are appropriate in their application to the consolidated FINRA rules. The proposed rule change would make non-substantive changes, where needed, to reflect FINRA's corporate name, as reflected below in the proposed definitions:

• ''Code of Procedure'': The term ''Code of Procedure'' means the procedural rules contained in the Rule 9000 Series. (proposed FINRA Rule 0160(b)(2))

• ''Customer'': The term ''customer'' shall not include a broker or dealer. (proposed FINRA Rule 0160(b)(4))

• ''Member'': The term ''member'' means any individual, partnership, corporation or other legal entity admitted to membership in FINRA under the provisions of Articles III and IV of the FINRA By-Laws. (proposed FINRA Rule 0160(b)(9))

• ''Person'': The term ''person'' shall include any natural person, partnership, corporation, association or other legal entity. (proposed FINRA Rule 0160(b)(10))

• ''Selling Group'': The term ''selling group'' means any group formed in connection with a public offering, to distribute all or part of an issue of securities by sales made directly to the public by or through members of such selling group, under an agreement which imposes no financial commitment on the members of such group to purchase any such securities except as they may elect to do so. (proposed FINRA Rule 0160(b)(13))

• ''Selling Syndicate'': The term ''selling syndicate'' means any syndicate formed in connection with a public offering, to distribute all or part of an issue of securities by sales made directly to the public by or through participants in such syndicate under an agreement which imposes a financial commitment upon participants in such syndicate to purchase any such securities. (proposed FINRA Rule 0160(b)(14))

Defined Terms Transferring With Minor Changes to FINRA Rule 0160

The term ''Act'' is defined in NASD Rule 0120(a) to mean the Securities Exchange Act of 1934, as amended. The proposed rule change would modify this term to ''Exchange Act'' or ''SEA'' in proposed FINRA Rule 0160(b)(5) to reflect the conventions of the Consolidated FINRA Rulebook.

The term ''By-Laws'' is defined in NASD Rule 0120(c) to mean the By-Laws of the Corporation.[7] The proposed rule change would add to this definition in proposed FINRA Rule 0160(b)(1) the language ''or the FINRA By-Laws'' to clarify that the By-Laws are commonly referred to as either the By-Laws of the Corporation or the FINRA By-Laws.

The term ''Commission'' is defined in NASD Rule 0120(e) to mean the Securities and Exchange Commission (SEC), established pursuant to the Act. The proposed rule change would amend this provision in proposed FINRA Rule 0160(b)(11) to define the term ''SEC'' to mean the Securities and Exchange Commission, which reflects the conventions of the Consolidated FINRA Rulebook.

The term ''completion of the transaction'' is defined in NASD Rule 0120(f)(1) through (f)(4). The proposed rule change would transfer NASD Rule 0120(f)(1) unchanged to proposed FINRA Rule 0160(b)(3)(A) to provide that in the case of a customer who purchases a security through or from a member, except as provided in proposed subparagraph (B), the transaction is complete at the time when such customer pays the member any part of the purchase price, or, if payment is effected by a bookkeeping entry, the time when such bookkeeping entry is made by the member for any part of the purchase price.

The proposed rule change would make minor changes to NASD Rule 0120(f)(2) and (f)(3) to clarify these provisions. The proposed rule change would amend NASD Rule 0120(f)(2) in proposed FINRA Rule 0160(b)(3)(B) to provide that in the case of a customer who purchases a security through or from a member and who makes payment therefore prior to the time when payment is requested or notification is given that payment is due, the transaction is complete at the time when such member delivers, or credits such delivery of, the security to or into the account of such customer. Additionally, the proposed rule change would amend NASD Rule 0120(f)(3) in proposed FINRA Rule 0160(b)(3)(C) to provide that in the case of a customer who sells a security through or to a member, except as provided in proposed subparagraph (D), if any security is not in the custody of the member at the time of sale, the transaction is complete at the time when the security is delivered to the member, and if the security is in the custody of the member at the time of the sale, the transaction is complete the earlier of when the member transfers the security from the account of such customer or the closing date of the transaction.

NASD Rule 0120(f)(4) would transfer unchanged into proposed FINRA Rule 0160(b)(3)(D) to provide that in the case of a customer who sells a security through or to a member and who delivers such security to such member prior to the time when delivery is requested or notification is given that delivery is due, the transaction is complete at the time when such member makes payment to or into the account of such customer.

Defined Terms To Be Added to FINRA Rule 0160

The proposed rule change would add the following defined terms to FINRA Rule 0160 because the terms are used throughout the Consolidated FINRA Rulebook:

• ''FINRA'' would be defined in proposed FINRA Rule 0160(b)(6) to mean, collectively, FINRA, Inc., FINRA Regulation, Inc. and FINRA Dispute Resolution, Inc.

• ''Investment Advisers Act'' would be defined in proposed FINRA Rule 0160(b)(7) to mean the Investment Advisers Act of 1940, as amended.

• ''Investment Company Act'' would be defined in proposed FINRA Rule 0160(b)(8) to mean the Investment Company Act of 1940, as amended.

• ''Securities Act'' would be defined in proposed FINRA Rule 0160(b)(12) to mean the Securities Act of 1933, as amended.

• ''State'' would be defined in proposed FINRA Rule 0160(b)(15) to mean any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.[8]

Defined Terms Not Transferring to FINRA Rule 0160

The proposed rule change would not incorporate certain defined terms in NASD Rule 0120; however, it would not eliminate any substantive FINRA requirements.

The term ''Association'' is defined in NASD Rule 0120(b) to mean, collectively, the NASD, NASD Regulation, and NASD Dispute Resolution. The proposed rule change would delete this term as unnecessary due to the change in NASD's corporate name to FINRA. The term ''Association''

[7] In Article I (i) of the FINRA By-Laws, the term ''Corporation'' is defined to mean ''the National Association of Securities Dealers, Inc. or any future name of this entity'' (*i.e.,* FINRA).

[8] The proposed definition of ''State'' mirrors the definition for the term ''State'' in Section 3(a)(16) of the Exchange Act, as well as in NYSE Rule 2(g).

is not used in the consolidated FINRA rules.[9]

The term ''NASD'' is defined in NASD Rule 0120(j) to mean, collectively, NASD Inc., NASD Regulation, and NASD Dispute Resolution. The proposed rule change would delete this term because it is outdated in light of the change in NASD's corporate name to FINRA.[10]

The term ''Nasdaq'' is defined in NASD Rule 0120(k) to mean The Nasdaq Stock Market, Inc. This term was appropriate for inclusion in the FINRA rulebook when Nasdaq was an affiliate of FINRA. Since FINRA is no longer affiliated with Nasdaq, the proposed rule change would delete this term from the FINRA rulebook.[11]

The term ''NASD Regulation'' is defined in NASD Rule 0120(l) to mean NASD Regulation, Inc. The proposed rule change would delete this term as duplicative because it is defined in the FINRA By-Laws.[12] In Article I (ll) of the FINRA By-Laws, ''NASD Regulation'' is defined to mean NASD Regulation, Inc. or any future name of this entity. The definition in the By-Laws reflects the change in NASD's corporate name to FINRA with the language ''or any future name of this entity.''

The term ''National Adjudicatory Council'' (''NAC'') is defined in NASD Rule 0120(m) to mean the committee of NASD Regulation which may be authorized and directed to act for the Board of Directors of NASD Regulation in a manner consistent with the By-Laws of NASD Regulation, the Rules of the Association, and the Delegation Plan with respect to (1) an appeal or review of a disciplinary proceeding; (2) a statutory disqualification decision; (3) a review of a membership proceeding; (4) a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; (5) the exercise of exemptive authority; and (6) such other proceedings or actions authorized by the Rules of the Association. The proposed rule change would delete this term as duplicative because it is defined in Article I (nn) of the FINRA By-Laws.[13] The By-Laws definition provides that the NAC means a body appointed pursuant to Article V of the FINRA Regulation By-Laws. Article V of the FINRA Regulation By-Laws sets forth in detail the scope of the NAC's authority and includes language that is identical to NASD Rule 0120(m). Article V also sets forth NAC member qualification requirements and meetings specifications, among other things.

The terms ''Rules'' or ''Rules of the Association'' are defined in NASD Rule 0120(o) to mean the numbered rules set forth in the NASD Manual beginning with the Rule 0100 Series, as adopted by the Board of Governors of the NASD pursuant to the By-Laws of the NASD, as hereafter amended or supplemented. The proposed rule change would delete this provision because Article I (vv) of the FINRA By-Laws includes an identical definition for the terms ''Rules of the Corporation'' or ''Rules.''[14]

As noted above, FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The effective date will be no later than 150 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[15] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will provide clarity with respect to the defined terms for the Consolidated FINRA Rulebook by transferring certain defined terms from NASD Rule 0120 to FINRA Rule 0160 (subject to certain amendments), adding new defined terms to FINRA Rule 0160 to reflect the conventions of the Consolidated FINRA Rulebook and eliminating as unnecessary or duplicative certain definitions contained in NASD Rule 0120.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which FINRA consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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–FINRA–2011–043 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–FINRA–2011–043. 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

[9] Notwithstanding the proposed elimination of this defined term from the FINRA rulebook, the term would continue to have the meaning stated in NASD Rule 0120 for purposes of the remaining NASD rules.

[10] *See supra* note 9.

[11] *See supra* note 9.

[12] As noted above, pursuant to FINRA Rule 0160, a term defined in the FINRA By-Laws shall have the meaning provided in the By-Laws when used in the rules, unless the term is defined differently in a rule, or unless the context of the term within a rule requires a different meaning.

[13] *See supra* note 12.

[14] *See supra* note 12.

[15] 15 U.S.C. 78*o*–3(b)(6).

provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2011–043 and should be submitted on or before October 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23792 Filed 9–15–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65316; File No. SR–EDGA–2011–29]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to EDGA Rules Regarding the Registration and Obligations of Market Makers

September 12, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 2011, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter XI of the EDGA rulebook to add four new rules regarding the registration and obligations of market makers and amend Rule 1.5 to add definitions of ''Market Maker'' and ''Market Maker Authorized Trader.'' The Exchange also proposes to amend Rule 8.15, Interpretation .01 to expand the list of violations eligible for disposition under the Exchange's Minor Rule Violation Plan (''MRVP'') by adding Rule 11.21(a)(1). The Exchange also proposes to amend EDGA Rule 14.1, entitled ''Unlisted Trading Privileges,'' to restrict trading activities of market makers, and impose a series of reporting and record-keeping requirements on market makers. The text of the proposed rule change is available on the Exchange's Web site at *http://www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide Members the ability to register as Market Makers and to provide for the regulation of Market Makers. Registration as a Market Maker will be purely optional. The process for registration as a Market Maker is contained in proposed Rule 11.18, which provides that applicants must file applications in such form as the Exchange may prescribe. Applicants will be reviewed by the Exchange, which will consider factors including the capital, operations, personnel, technical resources and disciplinary history of the applicant. Each Market Maker must have and maintain the minimum net capital of at least the amount required by Rule 15c3–1 under the Securities Exchange Act of 1934 (the ''Act'').[3] Pursuant to the proposed Rule, an applicant's registration as a Market Maker will become effective upon receipt by the Member of the Exchange's notice of approval of registration. Under proposed Rule 11.18(f), registered Market Makers are designated as dealers on the Exchange for all purposes under the Act and the rules and regulations thereunder.

Proposed Rule 11.18 also provides that the registration of a Market Maker may be suspended or terminated by the Exchange if the Exchange determines that the Market Maker substantially or continually fails to engage in dealings in accordance with Exchange Rules, if the Market Maker fails to meet the minimum net capital conditions, if the Market Maker fails to maintain fair and orderly markets, or if the Market Maker does not have at least one registered Market Maker Authorized Trader (''MMAT'') qualified to perform market making activities as set forth in proposed Rule 11.19(b)(5).[4] Any Market Maker may also withdraw its registration under the proposed Rule. Subsection (d) of the proposed Rule provides that the Exchange may require a certain minimum prior notice period for withdrawal, and may place other conditions on withdrawal and re-registration following withdrawal, as it deems appropriate to maintain fair and orderly markets.

Proposed Rule 11.19 provides for the registration and obligations of MMATs. The Exchange can register a person as a MMAT upon receiving an application in the form prescribed by the Exchange, and MMATs are permitted to enter orders only for the account of the Market Maker for which they are registered. MMATs may be officers, partners, employees, or other associated persons of Members who are registered as Market Makers. To be eligible for registration as a MMAT, a person must complete the training and other programs required by the Exchange and successfully complete the General Securities Representative Examination (Series 7) or equivalent foreign examination module approved by the Exchange. Market Makers must ensure that their MMATs are properly qualified to perform market making activities. The Exchange may grant a person conditional registration as a MMAT as appropriate in the interests of maintaining a fair and orderly market.

In addition, under proposed Rule 11.19, the Exchange may suspend or withdraw the registration of a MMAT if the Exchange determines that the person has caused the Market Maker to fail to comply with the securities laws or rules of the Exchange, if the person fails to

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.15c3–1.

[4] A MMAT whose registration is suspended pursuant to proposed Rule 11.18(c) shall not be deemed qualified within the meaning of Rule 11.18(c)(4).

perform his or her responsibilities properly, or fails to maintain fair and orderly markets. If a MMAT is suspended, the Market Maker may not allow the person to submit orders. A Member may also withdraw the registration of a MMAT by submitting to the Exchange a written request on a form prescribed by the Exchange.

Proposed Rule 11.20 provides for the registration of Market Makers in a security. A Market Maker may become registered in a newly authorized security or in a security already admitted to dealings on the Exchange by filing a security registration form with the Exchange. Registration in the security shall become effective on the same day that the Exchange approves the registration, unless otherwise provided by the Exchange. In considering the approval of the registration of the Market Maker in a security, the Exchange may consider the financial resources available to the Market Maker, the Market Maker's experience in making markets, the Market Maker's operational capability, the maintenance and enhancement of competition among Market Makers in each security in which they are registered, the existence of clearing arrangements for the Market Maker's transactions and the character of the market for the security. The proposed Rule also provides that a Market Maker may voluntarily terminate its registration in a security by providing the Exchange with a written notice of such termination. The Exchange may require a certain minimum prior notice period for such termination and may place other conditions on withdrawal and re-registration following withdrawal. The Exchange may suspend or terminate the registration of a Market Maker in any security whenever it determines that the Market Maker has not met one or more of its obligations, including if the Exchange determines that the Market Maker has failed to maintain fair and orderly markets.

The Exchange's determinations pursuant to proposed Rules 11.18 through 11.20 may be appealed by any person aggrieved by such determination. The procedures for appeal are established in Chapter X of the Exchange's rulebook.

Finally, Proposed Rule 11.21 sets out the obligations of Market Makers. In general, Market Makers must engage in a course of dealings for their own accounts to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange. The responsibilities of a Market Maker include, without limitation, remaining in good standing with the Exchange and in compliance with all applicable Exchange Rules; informing the Exchange of any material change in its financial or operational condition or personnel [5]; maintaining a current list of MMATs and providing any updates to such list to the Exchange upon any change in MMATs; and clearing and settling transactions through the facilities of a registered clearing agency. The latter requirement may be satisfied by direct participation, use of direct clearing services, or by entering into a correspondent clearing arrangement with another Member that clears trades through such agency. Market Makers will be responsible for the acts and omissions of its MMATs. If the Exchange finds any substantial or continued failure by a Market Maker to engage in a course of dealing as specified in this Rule, such Market Maker will be subject to disciplinary action or suspension or revocation of its registration.

Further, proposed Rule 11.21(d) provides that a Market Maker must maintain continuous, two-sided quotations within a designated percentage of the National Best Bid (''NBB'') and National Best Offer (''NBO'', and together with the NBB, the ''NBBO'') (or, if there is no NBB or NBO, the last reported sale). These Market Maker quotation requirements are intended to eliminate trade executions against Market Maker quotations priced far away from the inside market, commonly known as ''stub quotes''. They are also intended to augment and work in relation to the single stock pause standards already in place on a pilot basis for stocks in the S&P 500® Index [6] and the Russell 1000® Index, as well as a pilot list of Exchange Traded Products [7] (the ''Original Circuit Breaker Securities''). Permissible quotes are determined by the individual character of the security, the time of day in which the quote is entered and other factors which are summarized below.

For issues subject to an individual stock trading pause under the applicable rules of a primary listing market, a permissible quote (also known as ''Designated Percentage'') is as follows: (i) A Market Maker's quotes in the Original Circuit Breaker Securities shall not be more than 8% away from the NBBO; (ii) a Market Maker's quotes in National Market System (''NMS'') securities (as defined in Rule 600 of Regulation NMS) [8] that are not Original Circuit Breaker Securities with a price equal to or greater than $1 shall not be more than 28% away from the NBBO; and (iii) a Market Maker's quotes in NMS securities that are not Original Circuit Breaker Securities with a price less than $1 shall not be more than 30% away from the NBBO. For times during Regular Trading Hours when stock pause triggers are not in effect under the rules of the primary listing market (*e.g.,* before 9:45 a.m. and after 3:35 p.m. Eastern time), the Designated Percentage shall be 20% for Original Circuit Breaker Securities, 28% for all NMS securities that are not Original Circuit Breaker Securities with a price equal to or greater than $1, and 30% for all NMS securities that are not Original Circuit Breaker Securities with a price less than $1.

Once a compliant quote is entered, it may rest without adjustment until such time as it moves to within 9.5% away from the NBBO for Original Circuit Breaker Securities, 29.5% away from the NBBO for NMS securities that are not Original Circuit Breaker Securities with a price equal to or greater than $1, and 31.5% away from the NBBO for all NMS securities that are not Original Circuit Breaker Securities with a price less than $1, whereupon the Market Maker must immediately adjust its quote to at least the permissible default level of 8%, 28%, or 30%, respectively, away from the NBBO. During times when a stock pause trigger percentage is not applicable, a Market Maker must enter a quote no further than:

(i) 20% away from the inside (*i.e.,* it may rest without adjustment until it reaches 21.5% away from the inside) for Original Circuit Breaker Securities;

(ii) 28% away from the inside for all NMS securities that are not Original Circuit Breaker Securities with a price equal to or greater than $1 (*i.e.,* it may rest without adjustment until it reaches 29.5% away from the inside); and

(iii) 30% away from the inside for all NMS securities that are not Original Circuit Breaker Securities with a price less than $1 (*i.e.,* it may rest without adjustment until it reaches 31.5% away from the inside).

In the absence of a NBB or NBO, the above calculations will remain the

[5] The Exchange proposes to include an interpretation that reminds Market Makers that, in addition to their obligation under Rule 11.21(a)(3) to ''inform the Exchange of any material change in financial or operational condition'', they are also obligated to submit a copy of such notice with Securities and Exchange Commission (''SEC'') pursuant to Rule 17a–11 under the Act, 17 CFR 240.17a–11. The notice to the Exchange must be sent concurrently with the notice sent to the SEC. *See* EDGA Rule 4.2.

[6] *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–EDGA–2010–01).

[7] *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–EDGA–2010–05).

[8] 17 CFR 240.600 [sic].

same, but will use the national last sale instead of the absent bid or offer.

However, scenarios may occur in which pricing at the commencement of a trading day, or at the re-opening of trading in a security that has been halted, suspended, or paused pursuant to Rule 11.14(d), is significantly different from pricing for the security at the close of the previous trading day or immediately prior to the halt, suspension, or pause, respectively. These pricing differentials could be the result of corporate actions that occur after the close of the previous trading day or the market's absorption of material information during the halt, suspension, or pause. Based on this concern, the Exchange believes that Market Makers should not be subject to the pricing obligations proposed herein when the last sale of the previous trading day, or immediately prior to a halt, is the only available reference price.

The Exchange therefore proposes that, for NMS stocks, a Market Maker shall adhere to the pricing obligations established by this Rule during Regular Trading Hours,[9] provided, however, that such pricing obligations: (i) Shall not commence during any trading day until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor, and (ii) shall be suspended during a trading halt, suspension, or pause, and shall not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor.

Nothing in the above precludes a Market Maker from voluntarily quoting at price levels that are closer to the NBBO than required under the proposal.

The Exchange proposes to offer functionality to Market Makers to assist them with the quotation obligations proposed by this filing. The Exchange will comply with a Market Maker's instructions for the Exchange to enter a quote on the Market Maker's behalf consistent with proposed paragraph 11.21(d). Such instructions will be entered into the System [10] by the Market Maker prior to 9 a.m. in order to take effect on the same trading day. Under proposed Rule 11.21(e), the Exchange will refresh such two-sided quotations in each security in which a Market Maker is registered for a maximum of ten (10) executions per security per Market Maker. After such time, the Market Maker must contact the Exchange in order for the Exchange to continue such two-sided quotations for another ten (10) executions on behalf of the Market Maker. If the Market Maker does not contact the Exchange, the Exchange will not refresh such two-sided quotations in such securities. The Exchange proposes to enter the initial bid and offer at the Designated Percentage and to cancel and replace the bid or offer if it drifts away from the NBBO to the Defined Limit or away from the Designated Percentage towards the NBBO by a number of percentage points determined by the Exchange. The Exchange will determine and publish this percentage in a circular distributed to Members from time to time. The Exchange wishes to retain this flexibility in the event it wishes to modify the number periodically in the future, for instance, to mitigate the amount of quotation information resulting from Exchange-generated Market Maker quotes. If a bid or offer entered pursuant to proposed paragraph 11.21(e) is executed, the Exchange will enter a new bid or offer on behalf of a Market Maker. Bids and offers entered by the Exchange consistent with proposed paragraph (e) to replace a cancelled or executed quotation will be entered at the Designated Percentage away from the NBBO. Such orders will be posted by the Exchange as Post Only Orders,[11] and will be maintained on the Exchange during Regular Trading Hours unless cancelled by the Market Maker pursuant to the Exchange's Rules. In the event that a Market Maker cancels the quotations entered by the Exchange in accordance with proposed paragraph (e), such Market Maker remains responsible for compliance with the requirements of paragraph (d).

The Exchange proposes to cross-reference the above-described Market Maker quotation obligations found in paragraph (d) in paragraph (a)(1).

The Exchange believes that these proposed rules will benefit all Exchange participants, because Market Makers will assist in the maintenance of fair and orderly markets, provide additional liquidity to the Exchange, and assist in preventing excess volatility.

Rule 1.5 has been amended to add the definitions of ''Market Maker'' and ''Market Maker Authorized Trader.'' As a result, the rest of Rule 1.5 has been re-lettered accordingly.

Amendments to Exchange Rule 14.1 (Unlisted Trading Privileges)

The Exchange proposes to add Rule 14.1(c)(5) to restrict trading activities of Market Makers and impose a series of reporting and record-keeping requirements on Market Makers. As a result, current EDGA Rule 14.1(c)(5) has been re-numbered as EDGA Rule 14.1(c)(6).

Proposed EDGA Rule 14.1(c)(5) provides for restrictions for any Member registered as a Market Maker on the Exchange (''Restricted Market Maker'') in a derivative securities product (''UTP Derivative Security'') that derives its value from one or more currencies or commodities, or from a derivative overlying one or more currencies or commodities, or is based on a basket or index comprised of currencies or commodities (collectively, ''Reference Assets''). Specifically, proposed EDGA Rule 14.1(c)(5)(A) provides that a Restricted Market Maker in a UTP Derivative Security on the Exchange is prohibited from acting or registering as a Market Maker on any other exchange in any Reference Asset of that UTP Derivative Security, or any derivative instrument based on a Reference Asset of that UTP Derivative Security (collectively, with Reference Assets, ''Related Instruments''). Proposed EDGA Rule 14.1(c)(5)(B) provides that a Restricted Market Maker shall, in a manner prescribed by the Exchange, file with the Exchange and keep current a list identifying any accounts (''Related Instrument Trading Accounts'') for which Related Instruments are traded: (1) In which the Restricted Market Maker holds an interest; (2) over which it has investment discretion; or (3) in which it shares in the profits and/or losses. In addition, a Restricted Market Maker may not have an interest in, exercise investment discretion over, or share in the profits and/or losses of a Related Instrument Trading Account which has not been reported to the Exchange as required by this rule. Proposed EDGA Rule 14.1(c)(5)(C) provides that, in addition to the existing obligations under Exchange rules regarding the production of books and records, a Restricted Market Maker shall, upon request by the Exchange, make available to the Exchange any books, records, or other information pertaining to any Related Instrument Trading Account or to the account of any registered or non-registered employee affiliated with the Restricted Market Maker in which Related Instruments are traded. Proposed EDGA Rule 14.1(c)(5)(D) provides that a Restricted Market Maker shall not use any material, non-public information in connection with trading a Related Instrument.

Finally, existing Rule 14.1(c)(5) is proposed to be re-numbered as

[9] Defined in EDGA Rule 1.5(y) (as proposed to be re-lettered) as 9:30 a.m. to 4 p.m. Eastern Time.

[10] *See* EDGA Rule 1.5(aa).

[11] As defined in EDGA Rule 11.5(c)(5).

14.1(c)(6). The Exchange also proposes to replace the term ''components of the index or portfolio on which the UTP Derivative Security is based'' with ''Related Instruments'' in that rule.

Amendment to the Exchange's MRVP

The Exchange proposes to amend Rule 8.15, entitled ''Imposition of Fines for Minor Violation(s) of Rules,'' to add Proposed Rule 11.21(a)(1) to the list of rules which would be appropriate for disposition under the Exchange's MRVP.

The proposed addition of Rule 11.21(a)(1), which provides that a Market Maker must maintain continuous, two-sided quotations consistent with the requirements of paragraph (d) (*i.e.,* within a designated percentage of the NBBO (or, if there is no NBB or NBO, the last reported sale)), would allow the Exchange to impose a $100 fine for each violation of this rule. By promptly imposing a meaningful financial penalty for such violations, the MRVP focuses on correcting conduct before it gives rise to more serious enforcement action. The MRVP provides a reasonable means of addressing rule violations that do not necessarily rise to the level of requiring formal disciplinary proceedings, while also providing greater flexibility in handling certain violations. Adopting a provision that would allow the Exchange to sanction violators under the MRVP by no means minimizes the importance of compliance with Exchange Rule 11.21. The Exchange believes that the violation of any of its rules is a serious matter. The addition of a sanction under the MRVP simply serves to add an additional method for disciplining violators of Exchange Rule 11.21. The Exchange will continue to conduct surveillance with due diligence and make its determination, on a case by case basis, whether a violation of Exchange Rule 11.21 should be subject to formal disciplinary proceedings.

The Exchange proposes to implement this rule change, if approved by the Commission, on or about October 15, 2011.

2. Statutory Basis

Approval of the rule changes proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[12] In particular, the proposed changes are consistent with Section 6(b)(5) of the Act,[13] because they would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest by promoting greater liquidity in the Exchange market. The proposed rule change is also designed to support the principles of Section 11A(a)(1)[14] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning minimum market maker quotation requirements. The Exchange believes that the proposed optional functionality to assist Exchange Market Makers in maintaining continuous, two-sided quotations in the securities in which they are registered will encourage Market Makers to remain registered with and trade on the Exchange, thus providing valuable liquidity to the Exchange. At the same time, the Exchange believes that the proposed functionality will keep Exchange-generated quotations within reasonable reach of the NBBO. In addition, the proposed addition of Rule 11.21(a)(1) to the Exchange's MRVP will give the Exchange the ability to promptly impose a meaningful financial penalty for such violations before there is a need for more serious enforcement action.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve or disapprove such proposed rule change; or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

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 No. SR–EDGA–2011–29 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–EDGA–2011–29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k–1(a)(1).

2011–29 and should be submitted by October 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23774 Filed 9–15–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65319; File No. SR–NASDAQ–2011–073]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Instituting Proceedings To Determine Whether to Disapprove Proposed Rule Change To Adopt Additional Listing Requirements for Reverse Mergers

September 12, 2011.

I. Introduction

On May 26, 2011, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt additional listing requirements for a company that has become public through a combination with a public shell, whether through a reverse merger, exchange offer, or otherwise (a ''Reverse Merger''). The proposed rule change was published for comment in the **Federal Register** on June 14, 2011.[3] On July 25, 2011, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or to institute proceedings to determine whether to disapprove the proposed rule change, to September 12, 2011.[4] The Commission received two comment letters on the proposal.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to disapprove the proposed rule change.

II. Description of the Proposal

The Exchange proposes to adopt additional listing standards for companies that become public through a Reverse Merger,[6] to address significant regulatory concerns, including accounting fraud allegations that have recently arisen with respect to Reverse Merger companies. In its filing, Nasdaq noted, among other things, that there have been widespread allegations of fraudulent behavior by certain Reverse Merger companies, leading to concerns that their financial statements cannot be relied upon.[7] Nasdaq also stated that it was aware of situations where it appeared that promoters and others intended to manipulate prices of Reverse Merger companies' securities higher to help meet Nasdaq's initial listing bid price requirement, and where companies have gifted stock to artificially satisfy Nasdaq's public holder listing requirement.[8] As a result of these concerns, Nasdaq believes certain ''seasoning'' requirements in connection with the listing of Reverse Merger companies are appropriate.

Specifically, Nasdaq proposes to prohibit a Reverse Merger company from applying to list until the combined entity has traded in the U.S. over-the-counter market, on another national securities exchange, or on a foreign exchange for at least six months following the filing of all required information about the Reverse Merger transaction, including audited financial statements, to the Commission.[9] Further, Nasdaq proposes to require that the Reverse Merger company maintain a minimum of a $4 bid price on at least 30 of the 60 trading days immediately prior to submitting the listing application. Finally, under the proposed rule, Nasdaq would not approve any Reverse Merger company for listing unless the company has timely filed its two most recent financial reports with the Commission if it is a domestic issuer or comparable information if it is a foreign private issuer.

III. Comment Letters

The Commission received two comment letters on the proposal.[10] One commenter[11] objects broadly to the proposed ''seasoning'' requirement,[12] while the other supports the objectives of the proposed rule change, but believes it should include a particular exception.[13]

One commenter expressed the view that the proposal could have a ''chilling effect of discouraging exciting growth companies from pursuing all available techniques to obtain the benefits of a public listed stock and greater access to capital.''[14] The commenter further noted, in response to Nasdaq's justifications for the proposed rule change, that virtually all of the suggestions of wrongdoing involve Chinese companies that completed reverse mergers, but that a number of other Chinese companies that completed full traditional initial public offerings face the very same allegations, so that focusing on the manner in which these companies went public may not be appropriate. Rather than imposing a seasoning requirement, the commenter suggests Nasdaq review regulatory histories and financial arrangements with promoters, and refrain from listing companies where the issues are great. In any event, he recommends an exemption from the seasoning requirement for a company coming to the exchange with a firm commitment underwritten public offering. In addition, the commenter expressed concern that the requirement to maintain a $4 trading price for 30 days prior to the listing application is unfair, and unrealistic to expect companies to achieve in the over-the-counter markets, and suggests it be eliminated.

Another commenter expressed support for the proposed rule change's objective to protect investors from potential accounting fraud, manipulative trading, abusive practices

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64633 (June 8, 2011), 76 FR 34781 (''Nasdaq Notice'').

[4] *See* Securities Exchange Act Release No. 64956 (July 25, 2011), 76 FR 45636 (July 29, 2011).

[5] *See* Letter from David Feldman dated August 30, 2011 (''Feldman Letter'') and letter from Richard Rappaport, Chief Executive Officer, WestPark Capital, Inc. to Elizabeth M. Murphy, Secretary, Commission dated September 2, 2011 (WestPark Letter'').

[6] For purposes of the Nasdaq proposal, Nasdaq would treat as a Reverse Merger any transaction whereby an operating company becomes public by combining with a public shell, whether through a reverse merger, exchange offer, or otherwise. However, a Reverse Merger would not include the acquisition of an operating company by a listed company satisfying the requirements of IM–5101–2 (relating to companies whose business plan is to complete one or more acquisitions) or a business combination described in Rule 5110(a) (relating to a listed company that combines with a non-Nasdaq entity, resulting in a change of control of the company and potentially allowing the non-Nasdaq entity to obtain a Nasdaq listing, sometimes called a ''back-door listing''). A reverse merger would also not include a Substitution Listing Event, as defined in Rule 5005(a)(39) (proposed to be renumbered as Rule 5005(a)(40)), such as the formation of a holding company to replace the listed company or a merger to facilitate a re-incorporation, because in these cases the operating company is already a listed entity.

[7] *See* Nasdaq Notice.

[8] *Id.*

[9] According to the Nasdaq proposal, the six month period would not begin to run until the filing of a Form 8–K. A company must file a Form 8–K within four days of completing a reverse merger. The Form 8–K must contain audited financial statements and information comparable to the information provided in a Form 10 for the registration of securities. *See* Form 8–K Items 2.01, 5.06, and 9.01(c).

[10] *See,* note 5, *supra.*

[11] *See* Feldman Letter.

[12] *Id.*

[13] *See* WestPark Letter.

[14] *See* Feldman Letter.

or other inappropriate behavior on the part of companies, promoters and others.[15] The commenter, however, recommended that, in order to avoid unnecessary burdens on smaller capitalization issuers, the proposed rule change be modified to exclude Form 10 share exchange transactions from the reverse merger definition, or provide an exception for a reverse merger company listing in connection with a firm commitment underwritten public offering. This commenter also recommended that Nasdaq consider requiring companies listing on the exchange to engage a recognized independent diligence firm to conduct a forensic audit and issue a forensic diligence report prior to approval of the listing application.

IV. NYSE and NYSE Amex Proposals

On July 22, 2011, the New York Stock Exchange LLC (''NYSE'') [16] and the NYSE Amex LLC (''NYSE Amex'') [17] each filed a proposed rule change to adopt additional listing requirements for a company that has become public through a Reverse Merger. NYSE and NYSE Amex filed these proposed rule changes for similar reasons as Nasdaq—to address significant regulatory concerns, including accounting fraud allegations, that have recently arisen with respect to Reverse Merger companies. The NYSE and NYSE Amex proposals, while similar to the Nasdaq proposal in many respects, contain certain provisions that materially differ from the Nasdaq proposal. For example, the NYSE and NYSE Amex proposals would prohibit a Reverse Merger company from applying to list until it has traded in another market for one year after the combined entity submits all required information about the transaction, including audited financial statements, to the Commission. The NYSE and NYSE Amex proposals also would require the maintenance of the minimum stock price for listing on an ''absolute and an average basis for a sustained period'' of time immediately preceding the filing of the initial listing application and through listing. In addition, NYSE and NYSE Amex would not approve any Reverse Merger company for listing unless the company has timely filed with the Commission all required reports since the consummation of the Reverse Merger, including at least one annual report containing audited financial statements for a full fiscal year commencing on a date after the date of filing of a Form 8–K, or Form 20–F, relating to the Reverse Merger. Finally, the NYSE and NYSE Amex proposals include an exemption from the proposed listing requirements for Reverse Merger companies when the listing is in connection with an initial firm commitment underwritten public offering where the proceeds will be at least $40 million and the offering is occurring subsequent to or concurrently with the Reverse Merger. The comment period for each of the NYSE and NYSE Amex proposals expired on August 31, 2011, and the Commission currently is reviewing the comments received.

V. Proceedings To Determine Whether To Disapprove SR–NASDAQ–2011–073 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal that are discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B), the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 6(b)(5) of the Act [18] requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Nasdaq's proposal would require Reverse Merger companies to meet certain ''seasoning'' requirements prior to listing, and is designed to address significant regulatory concerns, including accounting fraud allegations, that have recently arisen with respect to Reverse Merger companies. As noted above, NYSE and NYSE Amex subsequently filed proposed rule changes designed to address the same concerns as the Nasdaq proposal. Although similar to the Nasdaq proposal in many respects, certain provisions of the NYSE and NYSE Amex proposals materially differ from the Nasdaq proposal, including a one-year instead of a six-month seasoning period, and a more general requirement to maintain the minimum listing price for a ''sustained period,'' rather than on at least 30 of the 60 trading days prior to filing the listing application. Unlike the Nasdaq proposal, the NYSE and NYSE Amex proposals also include an exemption for Reverse Merger companies that list in connection with certain underwritten public offerings.

The Commission shares the concerns of Nasdaq, as well as NYSE and NYSE Amex, with respect to fraud and manipulation in connection with the formation of Reverse Merger companies and their listing on an exchange. The Commission also believes that meaningful enhancements to exchange listing standards, including more rigorous seasoning requirements that are appropriately targeted at Reverse Merger companies could help prevent fraud and manipulation in this area, and protect investors and the public interest. Because of the importance of this issue, however, the Commission believes the Nasdaq proposal should be considered together with the NYSE and NYSE Amex proposals, to assure that the exchanges develop and implement consistent and effective enhancements to their listing standards, to best address the serious concerns that have arisen with respect to the listing of Reverse Merger companies. Accordingly, in light of the material differences between the Nasdaq proposal and the NYSE and NYSE Amex proposals, and the concerns raised by commenters, the Commission believes that questions are raised as to whether Nasdaq's proposal is consistent with the requirements of Section 6(b)(5) of the Act, including whether the proposed listing requirements would prevent fraud and manipulation, promote just and equitable principles of trade, or protect investors and the public interest.

VI. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any others they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is inconsistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulation thereunder.

[15] *See* WestPark Letter.

[16] *See* Securities Exchange Act Release No. 65034 (August 4, 2011), 76 FR 49513 (August 10, 2011) (SR–NYSE–2011–38).

[17] *See* Securities Exchange Act Release No. 65033 (August 4, 2011), 76 FR 49522 (August 10, 2011) (SR–NYSEAmex–2011–55).

[18] 15 U.S.C. 78f(b)(5).

Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[19]

Interested persons are invited to submit written data, views and arguments regarding whether the proposed rule change should be disapproved by October 17, 2011. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 26, 2011.

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–NASDAQ–2011–073 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–073. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–073 and should be submitted on or before October 17, 2011. Rebuttal comments should be submitted by October 26, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23735 Filed 9–15–11; 8:45 am]

BILLING CODE 8011–01–P

[19] Section 19(b) (2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[20] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65314; File No. SR–NYSEAmex–2011–69]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Options Fee Schedule To Add Clarifying Language With Respect to Marketing Charges Generally and Marketing Charges for Directed Orders, and To Add New and Clarifying Language With Respect to Marketing Charges for Electronic Complex Orders

September 12, 2011.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 6, 2011, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Options Fee Schedule (the ''Schedule'') to add clarifying language with respect to marketing charges generally and marketing charges for Directed Orders, and to add new and clarifying language with respect to marketing charges for Electronic Complex Orders. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, on the Commission's Web site at *http://www.sec.gov,* and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The current Schedule in footnote 11 describes the distribution of the pool of monies for marketing charges for non-Directed Orders, but does not include any language addressing the marketing charges for Directed Orders or Electronic Complex Orders. Currently, the pool of monies resulting from collection of marketing charges on electronic Directed Orders is controlled by the NYSE Amex Options Market Maker to which the order was directed.[4] In addition, Electronic Complex Orders are treated in the same manner as non-Directed Orders, and consequently, the pool of monies resulting from collection of marketing charges on such orders is controlled by a Specialist or e-Specialist.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See, e.g.,* Securities Exchange Act Release No. 61849 (April 6, 2010), 75 FR 18556 (April 12, 2010) (SR–NYSEAmex–2010–30).

[5] The Exchange recently reinstituted the standard marketing charges for Electronic Complex Order executions that had been temporarily waived in July 2010. *See* Securities Exchange Act Release No. 64524 (May 19, 2011), 76 FR 30412 (May 25, 2011) (SR–NYSEAmex–2011–30). The Exchange had been informed by several Order Flow Providers that the absence of marketing charges for Customer executions in the complex order book was hindering their ability to route complex order flow to the Exchange, particularly since competing exchanges do allow for the collection of marketing charges on complex orders. Consequently, the Exchange recently resumed its prior practice of

Continued

After reviewing the current Schedule and the manner in which marketing charges are handled for Electronic Complex Orders, the Exchange has determined to add clarifying language to the Schedule with respect to marketing charges generally and marketing charges for Directed Orders, and to add new and clarifying language to it with respect to marketing charges for Electronic Complex Orders.[6] The changes to the Schedule are described below.

First, the Exchange proposes to amend footnote 11 of its Schedule to add a clarifying introductory statement that the footnote applies only to marketing charges.

Second, the current text in footnote 11 relating to the collection and distribution of marketing charges for non-Directed Orders would remain unchanged. That text provides that the pool of monies resulting from the collection of marketing charges on electronic non-Directed Order flow is controlled by the Specialist or the e-Specialist with superior volume performance over the previous quarter for distribution by the Exchange at the direction of such Specialist or e-Specialist to eligible payment accepting firms. In making this determination the Exchange, on a class by class basis, evaluates Specialist and e-Specialist performance based on the number of electronic contracts executed at NYSE Amex per class. The Specialist/e-Specialist with the best volume performance controls the pool of marketing charges collected on electronic non-Directed Order flow for these issues for the following quarter.

Third, the Exchange proposes to add text thereafter stating its existing policy that the pool of monies resulting from collection of marketing charges on electronic Directed Order flow will be controlled by the NYSE Amex Options Market Maker to which the order was directed, and distributed by the Exchange at the direction of such NYSE Amex Options Market Maker to payment accepting firms.

Fourth, the Exchange proposes to add new text to footnote 11 stating that an ATP Holder that submits an Electronic Complex Order to the Exchange may designate an NYSE Amex Options Market Maker to receive the marketing charge and the pool of monies resulting from the collection of such marketing charges will be distributed by the Exchange at the direction of such NYSE Amex Options Market Maker to payment accepting firms. If an ATP Holder submits an Electronic Complex Order to the Exchange without designating an NYSE Amex Options Market Maker, the pool of monies resulting from the collection of such marketing charges will be distributed in the same manner as non-Directed Order flow, as is currently the practice (and as described above).

Finally, the Exchange proposes technical changes to footnote 11 to correct references to defined terms.

The Exchange is not proposing any change to NYSE Amex Options Rule 900.3NY(s), which sets forth the definition of Directed Order, NYSE Amex Options Rule 964.1NY, which discusses the conditions NYSE Amex Options Specialists and Market Makers must meet to receive Directed Orders, or NYSE Amex Options Rule 980NY, which governs Electronic Complex Order trading and provides that the Specialist Pool and Directed Order Market Maker guaranteed participation afforded in NYSE Amex Options Rule 964NY does not apply to executions against an Electronic Complex Order. The proposed change would only affect the distribution of the pool of monies resulting from marketing charges for Electronic Complex Orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the ''Act''),[7] in general, and Section 6(b)(4) of the Act,[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the clarifying changes to the Schedule described above will provide more transparency to the marketing charge practices on the Exchange. The Exchange also believes that providing ATP Holders with the option to submit Electronic Complex Orders to the Exchange and designate an NYSE Amex Options Market Maker to direct the resulting marketing charges will help to attract additional Electronic Complex Orders to the Exchange, which will benefit all market participants. 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 or discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[9] of the Act and subparagraph (f)(2) of Rule 19b–4[10] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2011–69 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex-2011–69. This

treating Electronic Complex Orders in the same manner as any other orders for the purpose of assessing payment for order flow charges in order to remain competitive.

[6] NYSE Amex is not proposing to change the amount of the marketing charges as part of this rule change.

[7] 15 U.S.C. 78f(b). [sic]

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex-2011–69 and should be submitted on or before October 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23771 Filed 9–15–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket Number: DOT–OST–2011–0170]

Agency Request for Renewal of a Previously Approved Collection; Disclosure of Code Sharing Arrangements and Long-Term Wet Leases

AGENCY: Office of the Secretary.

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. We are required to publish this notice in the **Federal Register** by the *Paperwork Reduction Act of 1995,* Public Law 104–13.

DATES: Written comments should be submitted by November 15, 2011.

ADDRESSES: You may submit comments (identified by DOT Docket Number OST–2011–0170) through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Aleta Best, (202) 493–0797, Office of the Assistant Secretary for Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 2105–0537.

Title: Disclosure of Code Sharing Arrangements and Long-Term Wet Leases.

Type of Review: Renewal of an information collection.

Abstract: Codesharing is the name given to a common airline industry marketing practice where, by mutual agreement between cooperating carriers, at least one of the airline designator codes used on a flight is different from that of the airline operating the aircraft. In one version, two or more airlines each use their own designator codes on the same aircraft operation. Although only one airline operates the flight, each airline in a codesharing arrangement may hold out, market, and sell the flight as its own in published schedules. Codesharing also refers to other arrangements, such as when a code on a passenger's ticket is not that of the operator of the flight, but where the operator does not also hold out the service in its own name. Such codesharing arrangements are common between commuter air carriers and their larger affiliates, and the number of arrangements between U.S. air carriers and foreign air carriers has also been increasing. Arrangements falling into this category are similar to leases of aircraft with crew (wet leases).

The Department recognizes the strong preference of air travelers for on-line service (service by a single carrier) on connecting flights over interline service (service by multiple carriers). Codesharing arrangements are, in part, a marketing response to this demand for on-line service. Often, codesharing partners offer services similar to those available for on-line connections with the goal of offering ''seamless'' service (*i.e.,* service where the transfers from flight to flight or airline to airline are facilitated). For example, they may locate gates near each other to make connections more convenient or coordinate baggage handling to give greater assurance that baggage will be properly handled.

Codesharing arrangements can help airlines operate more efficiently because they can reduce costs by providing a joint service with one aircraft rather than operating separate services with two aircraft. Particularly in thin markets, this efficiency can lead to increased price and service options for consumers or enable the use of equipment sized appropriately for the market. Therefore, the Department recognizes that codesharing, as well as long-term wet leases, can offer significant economic benefits.

Although codesharing and wet-lease arrangements can offer significant consumer benefits, they can also be misleading unless consumers know that the transportation they are considering for purchase will not be provided by the airline whose designator code is shown on the ticket, schedule, or itinerary and unless they know the identity of the airline on which they will be flying. The growth in the use of codesharing, wet-leasing, and similar marketing tools, particularly in international air transportation, had given the Department concern about whether the then-current disclosure rules (14 CFR 399.88) protected the public interest adequately and led the Department to adopt specific regulations requiring the disclosure of code-sharing arrangements and long-term wet leases on March 15, 1999. (14 CFR part 257)

These regulations required U.S. airlines, foreign airlines and travel agents doing business in the United States, to notify passengers of the existence of code-sharing or long-term wet lease arrangements. It also required U.S. airlines, foreign airlines and travel agents to tell prospective consumers, in all oral communications before booking transportation, that the transporting airline is not the airline whose designator code will appear on travel documents and identify the transporting airline by its corporate name and any other name under which that service is held out to the public.

Respondents: All U.S. air carriers, foreign air carriers, computer reservations systems (CRSs), and travel

[11] 17 CFR 200.30–3(a)(12).

agents doing business in the United States, and the traveling public.

Number of Respondents: 16,000, excluding travelers.

Frequency: At 15 seconds per call and an average of 1.5 calls per trip, a total of 22.5 seconds per respondent or traveler, for the approximately 33% of codeshare itineraries that involve personal contact.

Total Annual Burden: Annual reporting burden for this data collection is estimated at 618,750 hours for all travel agents and airline ticket agents, based on 15 seconds per phone call and an average of 1.5 phone calls per trip, for the approximately 33% of codeshare itineraries that involve personal contact. Most of this data collection (third party notification) is accomplished through highly automated computerized systems.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

Authority : The *Paperwork Reduction Act of 1995;* 44 U.S.C. chapter 35, as amended; and 49 CFR 1:48.

Dated: September 12, 2011.

Todd M. Homan,

Director, Office of Aviation Analysis.

[FR Doc. 2011–23770 Filed 9–15–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0052]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated August 25, 2011, Norfolk Southern Railway (NS) has submitted information to amend and clarify the scope of a June 14, 2011, petition to the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 236. FRA had assigned the petition Docket Number FRA–2011–0052 as published in **Federal Register** (Ref. Volume 76, No. 135, Thursday, July 14, 2011, Page 41556).

NS seeks a waiver of compliance from the cab signal system requirements found in 49 CFR 236.566, *Locomotive of each train operating in train stop, train control, or cab signal territory; equipped.* Specifically, NS seeks relief to operate nonequipped engines used in switching and transfer service, with or without cars such as work trains, wreck trains, ballast cleaners to and from work, and engines and rail diesel cars moving to and from shops, in the following locations with all movements at restricted speeds not exceeding 15 mph.

1. Operations on the Pittsburgh Line, Harrisburg Division, from CP Cannon at MP–PT 118.9 near Duncannon, PA, to CP Harrisburg at MP–PT 105.1 near Harrisburg, PA.

2. Operations on the Pittsburgh Line, Pittsburgh Division, from CP Cannon at MP–PT 118.9 near Duncannon, PA, to CP Solomon at MP–PT 352.5 near Pittsburgh, PA, with an absolute block to be established in advance of each movement of foreign trains and engines between CP Bloom at MP–PT 351.6 near Pittsburgh, PA, and CP Solomon.

3. Operations on the Fort Wayne Line, Pittsburgh Division, from CP Rochester at MP–PC 29.5, near East Rochester, PA, to CP Alliance at MP–PC 83.2., with an absolute block to be established in advance of each nonequipped movement.

4. Operations on the Conemaugh Line, Pittsburgh Division, from CP Conpit at MP–LC 0.0, near Bolivar, PA, to CP Kiski at MP–LC 47.8, near Freeport, PA, with an absolute block to be established in advance of each nonequipped movement.

NS argues that relief is in the public interest. The waiver of 49 CFR 236.566 requirements in these areas is important to maintaining efficient rail operations in the region. Exemptions have been previously granted for the operation of nonequipped locomotives in cab signal system territory at nearby locations and the relief requested in this application is a consistent extension of those currently granted exceptions.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by October 31, 2011, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on September 13, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2011–23840 Filed 9–15–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2010–0100]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated April 29, 2011, the Brownsville & Rio Grande International Railroad (BRG) has

petitioned the Federal Railroad Administration (FRA) for a modification to its waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 232 and 215. FRA assigned the petition Docket Number FRA–2010–0100.

BRG seeks a modification to its waiver of compliance with certain requirements of 49 CFR part 232, *Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices* and 49 CFR part 215, *Railroad Freight Car Safety Standards.* Presently, BRG's relief permits trains transferred by Union Pacific Railroad (UP) (under Waiver Petition Docket Number FRA–2007–28340 from the U.S./Mexico border interchange with the Kansas City Southern De Mexico Railway (KCSM) at Brownsville, Texas) to move from BRG's interchange point with UP at Milepost (MP) 4.48 to the BRG inspection point between MP 8.0 and MP 9.0, where required FRA inspections are performed. Occasionally, trains destined for interchange to BRG are delayed at UP's Olmito Yard by additional Federal agency inspection activities. BRG petitions for a modification to its present relief to allow the railroad to pick up trains at Olmito Yard (in lieu of the interchange point at MP 4.48). On those occasions, BRG would continue to perform the required FRA inspections between MP 8.0 and MP 9.0 in accordance with its present relief under FRA–2010–0100.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by October 31, 2011 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on September 13, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2011–23829 Filed 9–15–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011 0111]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel JUBILEE; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before October 17, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0111. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel JUBILEE is:

Intended Commercial use of Vessel: ''Vessel will be used in sailing school program to teach basic sailing, bareboat charter, coastal and offshore navigation, basic cruising and basic racing.''

Geographic Region: ''South Carolina, North Carolina, Georgia, Florida, Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts.''

The complete application is given in DOT docket MARAD–2011–0111 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the

name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By order of the Maritime Administrator.

Dated: August 25, 2011.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2011–22671 Filed 9–15–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35549]

Canadian Pacific Railway Company—Trackage Rights Exemption—Consolidated Rail Corporation

Pursuant to a written trackage rights agreement,[1] Consolidated Rail Corporation (CRC) will agree to grant overhead trackage rights to Canadian Pacific Railway Company (CP) over CRC's Foreman Wye between the connection with Norfolk Southern Railway Company's (NS) Detroit District Subdivision at or near NS milepost 5.2± and a connection with CSX Transportation, Inc.'s (CSXT) Detroit Subdivision at or near CSXT milepost CH 5.0± in the vicinity of Fort Street, a distance of approximately 1,980 feet, in Wayne County, Mich. (the Line).

The earliest this transaction may be consummated is October 1, 2011, the effective date of the exemption (30 days after the exemption was filed).

According to CP, the purpose of the transaction is to allow for a more efficient routing of CP's trains into CP's intermodal facility at Oak Yard in Detroit, Mich. To improve operational efficiency, CP wishes to move in its own trains the Port of Vancouver intermodal freight (POV freight) currently handled by CSXT under a switching support agreement from NS's Oakwood Yard to CP's intermodal facility. To handle the POV freight from Oakwood Yard to its intermodal facility at Oak Yard in its own trains, CP asserts that it will need to acquire trackage rights over the Line to connect with its trackage rights over CSXT's Detroit Subdivision between milepost CH 5.0± and milepost CH 13.5± at Oak Yard.[2]

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by September 23, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35549, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on W. Karl Hansen, Leonard, Street and Deinard, Professional Association, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402 (Counsel for CP).

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 13, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–23812 Filed 9–15–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35548]

Canadian Pacific Railway Company—Trackage Rights Exemption—CSX Transportation, Inc.

Pursuant to a written trackage rights agreement,[1] CSX Transportation, Inc. (CSXT) has agreed to grant overhead trackage rights to Canadian Pacific Railway Company (CP) between milepost CH 5.0±, in the vicinity of Fort Street at a connection between CSXT and Consolidated Rail Corporation's (CRC) Foreman Wye, and milepost CH 7.5±, at or near Michigan Avenue on CSXT's Detroit Subdivision, a distance of approximately 2.5 miles in Wayne County, Mich. (the Line).[2]

The earliest this transaction may be consummated is October 1, 2011, the effective date of the exemption (30 days after the exemption was filed).

According to CP, the purpose of the transaction is to increase the operating efficiency of CP and CSXT in Detroit, Michigan and allow for a more efficient routing of CP's trains into CP's intermodal facility at Oak Yard in Detroit. CP and CSXT wish to cancel a switching support agreement under which CSXT handles CP's Port of Vancouver intermodal freight (POV freight) moving via Norfolk Southern Railway Company's Oakwood Yard to CP's intermodal facility. To handle the POV freight from Oakwood Yard to its intermodal facility at Oak Yard in its own trains following termination of the switching support agreement, CP asserts that it will need to acquire trackage rights over the Line to connect with its previously granted trackage rights over CSXT's Detroit Subdivision between milepost CH 7.5± and milepost CH 13.5± at Oak Yard.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway Co.—Trackage Rights—Burlington Northern, Inc.,* 354

[1] A redacted version of the draft trackage rights agreement between CRC and CP was filed with the notice of exemption. The unredacted version, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

[2] In a related concurrent filing in *Canadian Pacific Railway—Trackage Rights Exemption— CSX Transportation, Inc.,* FD 35548, CP seeks authority to acquire trackage rights over approximately 2.5 miles of CSXT's Detroit Subdivision between milepost CH 5.0± and milepost CH 7.5±. In *Canadian Pacific Railway—Trackage Rights Exemption—CSX Transportation, Inc.,* FD 34033 (STB served May 31, 2001), CP acquired trackage rights over CSXT's Detroit Subdivision between milepost CH 7.5± and milepost 13.5±.

[1] A redacted version of the trackage rights agreement between CSXT and CP was filed with the notice of exemption. The unredacted version, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

[2] This transaction is related to a concurrently filed verified notice of exemption in FD 35549, *Canadian Pacific Railway Company—Trackage Rights Exemption—Consolidated Rail Corporation,* in which CP seeks to obtain overhead trackage rights over CRC's Foreman Wye, between Norfolk Southern Railway Company milepost 5.2± and CSXT milepost CH 5.0±, a total distance of approximately 1,980 feet, in Wayne County, Mich.

I.C.C. 605 (1978), as modified in *Mendocino Coast Railway, Inc.—Lease and Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by September 23, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35548, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on W. Karl Hansen, Leonard, Street and Deinard, Professional Association, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402 (Counsel for CP).

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 13, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–23811 Filed 9–15–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposal That Electronic Filing of Bank Secrecy Act (BSA) Reports Be Required; Comment Request

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: FinCEN is proposing to require electronic filing of certain Bank Secrecy Act (BSA) reports not later than June 30, 2012. This requirement will significantly enhance the quality of our electronic data, improve our analytic capabilities in supporting law enforcement requirements and result in significant reduction in real costs to the United States Government and ultimately to U.S. taxpayers. Specifically, we propose mandatory electronic submission of *all* BSA reports *excluding* the Report of International Transportation of Currency or Monetary Instruments (CMIR).[1]

DATES: Comments should be submitted on or before November 15, 2011.

ADDRESSES: Written comments should be submitted to: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, Attention: PRA Comments—BSA Required Electronic Filing. BSA Required Electronic Filing comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov,* with the caption, ''Attention: BSA Required Electronic Filing,'' in the body of the text.

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (not a toll free call).

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Helpline at 800–949–2732, select option 7.

SUPPLEMENTARY INFORMATION:

Title: Bank Secrecy Act, Reporting Forms, (31 CFR chapter X).

Abstract: The statute generally referred to as the ''Bank Secrecy Act,'' Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury (Secretary), *inter alia,* to require financial institutions to file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[2] Regulations implementing Title II of the BSA appear at 31 CFR Chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

The Secretary was granted authority with the enactment of Title 31 U.S.C., to require financial institutions and other persons to file various BSA reports. The information collected on the reports is required to be provided pursuant to Title 31 U.S.C., as implemented by FinCEN regulations found throughout 31 CFR chapter X. The information collected pursuant to this authority is made available to appropriate agencies and organizations as disclosed in FinCEN's Privacy Act System of Records Notice.[3]

Current Action: In support of Treasury's paperless initiative and efforts to make the government operations more efficient, FinCEN has chosen to mandate electronic filing of certain BSA reports effective June 30, 2012.

This requirement will significantly enhance the quality of our electronic data, improve our analytic capabilities in supporting law enforcement requirements, and result in a significant reduction in real costs to the U.S. government and ultimately to U.S. taxpayers. Specifically, we propose to make mandatory the electronic submission of all BSA reports *excluding* the CMIR.[4]

Background: Since October 2002, FinCEN has provided financial institutions with the capability of electronically filing BSA reports through its system called BSA E-Filing. Effective August 2011, the system was expanded to support individuals filing the Report of Foreign Bank and Financial Accounts (FBAR) report. BSA E-Filing is a secure, Web-based electronic filing system. It is a flexible solution for financial institutions or individuals, whether they file one BSA report or thousands. BSA E-Filing is an accessible service that filers can access by using their existing internet connections regardless of connection speed. In addition, it is designed to minimize filing errors and provide enhanced feedback to filing institutions or individuals, thereby providing a significant improvement in data quality.

BSA E-Filing, which is provided free of charge, features streamlined BSA information submission; faster routing of information to law enforcement; greater data security and privacy compared with paper forms; long-term

[1] All CMIRs are filed with the Department of Homeland Security's Customs and Border Protection (CBP) at the port of entry/exit or mailed to the Commissioner of Customs in Washington, DC. There are no electronic filing capabilities at the ports. A CBP contractor keys the data on the completed form into a data tape that is electronically uploaded to the BSA database. FinCEN receives no paper filed CMIRs.

[2] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA PATRIOT Act), Public Law 107–56.

[3] Treasury Department bureaus such as FinCEN renew their System of Records Notices every three years unless there is cause to amend them more frequently. FinCEN's System of Records Notice was most recently published at 73 FR 42405, 42407–9 (July 21, 2008).

[4] *See supra* note 1.

cost savings to institutions, individuals, and the government; and insures compatibility with future versions of BSA reports.

In addition, BSA E-Filing offers the following features not available on paper:

- Electronic notification of submissions, receipt of submission, and errors, warnings, and alerts;
- Batch validation;
- Acknowledgement that a currency transaction report (CTR) and or suspicious activity report (SAR) was filed;
- Feedback reports to filers;
- Faster receipt for money services businesses of registration acknowledgement letter;
- Ability to send and receive secure messages;
- Use of Adobe forms that allows users to create templates, reducing data entry but still providing for printing paper copies if the filer wants to use a paper copy for its internal review and approval processes;
- Ability for supervisory users to assign system roles to their staff; and
- Availability of helpful training materials.

In 2010, we initiated a complete redesign and rebuilding of a new system-of-record that significantly enhances FinCEN's current technical capabilities to receive, process, share, and store BSA data. A significant part of this upgrade was the implementation of state-of-the-art electronic reporting or information collection tools. As of July 1, 2011, over 84% of BSA reports are filed electronically with FinCEN.[5] FinCEN annually measures customer satisfaction with BSA E-Filing and has a performance goal of at least 90% satisfaction; in Fiscal Year 2010, 96% of customers were satisfied with BSA E-Filing.[6] To enroll with BSA E-Filing financial institutions or individuals go to *http://bsaefiling.fincen.treas.gov/main.html* and follow four easy steps.

As a result of the 2010 initiative, FinCEN is in the process of fielding a new BSA Collection, Processing, and Analytic system. The new system, which includes significant e-filing improvements, is designed to support the most efficient state-of-the-art electronic filing. The database will accept XML-based dynamic reports as well as certain other file formats. The various file formats[7] will be provided to permit integration into in-house systems or for use by service providers.

All filings (batch, computer-to-computer, and discrete) will be initiated through the BSA E-Filing system[8] using current registration and log-in procedures. Although batch and computer-to-computer filing processes will remain unchanged, the file format will change to match the database. Batch and computer-to-computer filers will file reports, which are based on an electronic file specification that will be provided free of charge. Discrete filings (the replacement for submitting a single paper report) will be based on Adobe *LiveCycle Designer ES* dynamic forms. The discrete function is available for all small business report filers (as well as individuals). The discrete filing function will be accessed by logging into the BSA E-Filing System and entering a pre-approved user ID and password. During log-in to the discrete filing option, filers will be prompted through a series of questions.[9]

After log-in, a financial institution filing a report through the discrete function will answer another set of questions that will establish a subset of the data fields appropriate to the filer's specific type of filing institution.

Today's proposal requiring filers to submit certain BSA reports electronically using the free FinCEN BSA E-Filing system will provide a range of benefits. Electronic filing will also facilitate the rapid dissemination of financial and suspicious activity information in connection with BSA filings, making information contained in these filings more readily available to—and more easily searchable by—law enforcement, the financial regulatory community, and other users of BSA data. Additionally, the proposal to require certain BSA reports to be filed electronically will result in a significant reduction in the use of paper, producing a positive environmental impact. Further, the implementation of the proposal has the potential to save the government a few million dollars per year through the reduction of expenditures associated with current paper processing, in particular the physical intake and sorting of incoming reports, and the electronic keying of reported information into the database.

Security: Mandatory electronic filing will provide increased security not available with paper filings. At the present time, all paper reports are mailed to the IRS Enterprise Computing Center—Detroit (ECC–D) as unclassified mail with no special handling via the U.S. Postal Service system. On occasion, mailed paper reports have been delayed, and in some cases damaged beyond readability. A financial institution may not discover that a report was not received by ECC–D until many months after the report was due.[10] For example, problems with delivery of reports may not be discovered until the financial institution is examined by its regulator, and the regulator compares a list of the reports that are posted to the database against the institution's official files. The BSA E-Filing System is a secure 128-bit single socket layer protected Web-based filing system. Reports received are acknowledged and any noted errors are reported back to the filer. This process provides the filer with a record that the required filing was received, as well as suggestions on how to improve the accuracy of their future reports. Reports originated by the filer are posted securely directly to the database, thereby significantly reducing or eliminating possibility of data compromise.

Filer Impact Assessment

a. *Depository institutions:* Based on information available we believe this change in filing procedures will have minimal impact on depository institutions. All depository institutions are currently required to file quarterly call or thrift financial reports with their regulator electronically through a Web-based portal provided by the appropriate federal regulator. This same electronic connectivity may be used to file BSA reports with FinCEN by logging in to the BSA E-Filing System Web-based portal.

b. *Broker-Dealers, Future-Commission Merchants (FCMs), Introducing Brokers in Commodities (IB–Cs), and Mutual Funds:*[11] Based on information available we believe this change in filing procedures will have minimal impact on these filing institutions. This group is highly automated and enjoys robust electronic buying and selling systems with sophisticated processing

[5] As of July 2011, there are over 12,000 registered e-filers. Of the 1250 major filers, 659 are currently e-filing. FinCEN anticipates that many current paper filers will convert to e-file when the new BSA E-Filing system becomes available.

[6] *See* FinCEN's 2010 Annual Report, available at *http://www.fincen.gov/news_room/rp/files/annual_report_fy2010.pdf.*

[7] The XML Schema, ACSII, and the electronic file specifications will be provided at no cost to filers.

[8] BSA E-Filing is a free Web-based service provided by FinCEN. More information on the filing methods may be accessed at *http://bsaefiling.fincen.treas.gov/main.html.*

[9] A series of predetermined questions designed to establish the type of institution and filing in much the same manner as used in widely accepted income tax filing software.

[10] The missing report becomes more critical if it was reporting suspicious activity—especially when relating to terrorist financing.

[11] FinCEN is considering adding a SAR reporting requirement to Investment Adviser's (IA's) registered with the SEC. Mandatory e-filing will have minimum impact on this group.

and reporting systems.[12] Currently the Securities and Exchange Commission (SEC) mandates electronic filing,[13] as does the Commodity Futures Trading Commission (CFTC).[14]

c. *Insurance companies:* Based on information available we believe this change in filing procedures will have minimal impact on these institutions. This group is highly automated.[15]

d. *Casinos and Card Clubs:*[16] Based on information available we believe this change in filing procedures will have minimal impact on these institutions.

e. *Money Services Businesses (MSBs):* Information gained from a review of the MSB filings of the currency transaction report (CTR), SAR, and Registration of Money Services Business (RMSB) forms indicates that some impact to this group can be expected. Information in trade journals and other publications, along with informal comments from the Internal Revenue Service Small Business/Self Employed, indicate that most filers have Internet connectivity. MSBs routinely accept and process credit card transactions requiring automated communications with the approving card center. They also routinely place orders for goods and services through the Internet and electronically access bill paying services. Additionally, basic Internet access can be obtained through a simple inexpensive dial-up connection or at professional external Internet facilities such as service providers for those MSBs without Internet connectivity. Lastly, FinCEN has included provisions for requesting a hardship exception in this notice in case unforeseen situations arise.[17]

f. *Service Providers:* There is a network of third-party service providers with which financial institutions may contract to provide electronic filing services to the BSA E-Filing System. FinCEN believes this group to be highly automated and many are already using the BSA E-Filing System. We do not anticipate that this proposal will have an impact on this group.

g. *Small businesses:*[18] In support of small businesses, FinCEN's Office of Compliance will provide a temporary hardship exemption capability. A small business may request, and may be granted, an emergency extension of up to one year if it can document a sufficiently serious problem that prevents compliance with the new filing requirements. The approved extension will be effective for one year from the effective date of this notice.[19] A hardship request based solely on a lack of Internet connectivity or a business decision to restrict Internet connectivity will not be considered adequate justification for an extension.

h. *Individual filers:* Effective August 2011, FinCEN expanded its support of electronic filing to individuals.[20] The capability to file the Report of Foreign Bank and Financial Accounts (FBAR Form TD F 90–22.1) became available and individuals worldwide can sign up to file their individual FBAR's by accessing the FinCEN E-Filing Web site. Based on new applications to date, there is no indication of any issues with individuals using this new capability.

Paperwork Reduction Act (PRA)

Type of Review: Review of a new proposal to mandate the electronic filing of BSA reports.

Affected Public: Businesses or other for-profit and non-profit institutions.

Frequency: As required.

Estimated Burden: Effective with the FinCEN IT Modernization, BSA reporting will be supported by seven BSA reports.[21] The burden for electronic filing and recordkeeping of each BSA report is reflected in the OMB approved burden [22] for each of these reports. The non-reporting recordkeeping burden is reflected separately.[23]

Estimated number of respondents for all reports = 74,900.[24]

Estimated Total Annual Responses for all reports = 16,172,770.

Estimated Total Annual Burden Hours = 20,874,761.[25]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained pursuant to the BSA must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information only by electronic means is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents (filers), including through the use of automated collection techniques or other forms of information technology; (e) the practicality of utilizing external Internet facilities or service providers to occasionally file BSA reports, (f) estimates of capital or start-up costs and costs of operation, maintenance, or purchase of services to provide information by filers that currently do not have Internet access, and (g) the enhanced security of sensitive information and significant cost savings of electronic filing.

Dated: September 13, 2011.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2011–23841 Filed 9–15–11; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Information Collection Activity; Proposed Collection

AGENCY: Internal Revenue Service (IRS), Treasury.

[12] Currently both the SEC and the CFTC require electronic reporting, The SEC through the EDGAR system and the CFTC through the NFC Windjammer and Easy File systems.

[13] *See http://www.sec.gov/info/edgar/regoverview.htm.*

[14] For financial institutions subject to CFTC oversight *See* NFA Electronic Filings at *http://www.nfa.futures.org/NFA-electronic-filings/index.HTML.*

[15] *See* the National Insurance Producer Registry (NIPR) at *http://www.nipr.com/.* NIPR is a unique public-private partnership that supports the work of the states and the National Association of Insurance Commissioners (NAIC) in making the producer-licensing process more cost-effective, streamlined and uniform for the benefit of regulators, the insurance industry and the consumers they protect and serve.

[16] Casinos and Card Clubs with gross annual gaming revenues in excess of $1 million (see 31 CFR1010.100 (t)(5)(ii) and (6)(ii)).

[17] See Filer impact paragraph ''g.''

[18] See the Small Business Administration's (SBA) Web site *http://www.sba.gov/content/what-sbas-definition-small-business-concern* for SBA's definition of a small business concern.

[19] Request for emergency extension will be mailed to: Department of the Treasury, Financial Crimes Enforcement Network, Attention RPP–CP, PO Box 39, Vienna, VA 22183 or may be e-mailed to: *regcomments@fincen.gov.*

[20] See page 3 *Background.*

[21] BSA–SAR, BSA–CTR, Designation Of Exempt Person, CMIR, RMSB, Foreign Bank Account Report, and the Report of Cash Over $10,000 Received in a Trade or Business (Form 8300).

[22] See OMB Control Numbers 1506–0065, 1506–0064, 1506–0009, 1506–0013, 1506–0014, 1506–0018.

[23] See OMB Control Numbers 1506–0051 through 1506–0059.

[24] All filers subject to BSA reporting requirements excluding CMIR. *See supra* note 1.

[25] Includes all reporting and recordkeeping burden associated with filing BSA reports.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before November 15, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Nuclear Decommissioning Funds; Revised Schedules of Ruling Amounts.

OMB Number: 1545–1511.

Regulation Project Number: REG–209828–96 (TD 8758–final).

Abstract: This regulation relates to requests for revised schedules of ruling amounts for nuclear decommissioning reserve funds under section 468A(d) of the Internal Revenue Code. The regulation eases the burden on affected taxpayers by permitting electing taxpayers with qualifying interests in nuclear power plants to adjust their ruling amounts under a formula or method rather than by filing a request for a revised schedule of ruling amounts.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 9, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–23719 Filed 9–15–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4419

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4419, Application for Filing Information Returns Electronically (FIRE).

DATES: Written comments should be received on or before November 15, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application for Filing Information Returns Electronically (FIRE).

OMB Number: 1545–0387.

Form Number: 4419.

Abstract: Under section 6011(e)(2)(a) of the Internal Revenue Code, any person, including corporations, partnerships, individuals, estates and trusts, who is required to file 250 or more information returns must file such returns magnetically or electronically. Payers required to file on magnetic media or electronically must complete Form 4419 to receive authorization to file.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, non-profit institutions, and Federal, State, local or tribal governments.

Estimated Number of Respondents: 15,000.

Estimated Time per Respondents: 26 minutes.

Estimated Total Annual Burden Hours: 6,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of

the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 9, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–23714 Filed 9–15–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 14242

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 14242, Reporting Abusive Tax Promotions or Preparers.

DATES: Written comments should be received on or before November 15, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reporting Abusive Tax Promotions or Preparers.

OMB Number: 1545–XXXX.

Form Number: Form 14242.

Abstract: The IC form is used to report an abusive tax avoidance scheme and tax return preparers who promote such schemes. IC is collected to combat abusive tax promoters. Respondents can be individuals, businesses and tax return preparers.

Current Actions: This is a new request for OMB approval.

Type of Review: Existing IC in use that does not contain an OMB control number.

Affected Public: Individuals or Households, Farms, Businesses and other for-profit or not-for-profit organizations.

Estimated Number of Respondents: 360.

Estimated Time per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 3,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 12, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–23716 Filed 9–15–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1098–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1098–C, Contributions of Motor Vehicles, Boats, and Airplanes.

DATES: Written comments should be received on or before November 14, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Contributions of Motor Vehicles, Boats, and Airplanes.

OMB Number: 1545–1959.

Form Number: 1098–C.

Abstract: Section 884 of the *American Jobs Creation Act of 2004* (Pub. L. 108–357) added new paragraph 12 to section 170(f) for contributions of used motor vehicles, boats, and airplanes. Section 170(f)(12) requires that a donee organization provide an acknowledgement to the donor of this type of property and is required to file the same information to the Internal Revenue Service. 1098–C may be used as the acknowledgement and it, or an acceptable substitute, must be filed with the IRS.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and households, businesses and other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 1,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 9, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–23713 Filed 9–15–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for the IRS Individual Taxpayer Burden Survey

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the IRS Individual Taxpayer Burden Survey.

DATES: Written comments should be received on or before November 15, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: IRS Individual Taxpayer Burden Survey.

OMB Number: 1545–2212.

Form Number: CS–11–276.

Abstract: Each year, individual taxpayers in the United States submit more than 140 million tax returns to the Internal Revenue Service (IRS). The IRS uses the information in these returns, recorded on roughly one hundred distinct forms and supporting schedules, to administer a tax system whose rules span thousands of pages. Managing such a complex and broad-based tax system is costly but represents only a fraction of the total burden of the tax system. Equally, if not more burdensome, is the time and out-of-pocket expenses that citizens spend in order to comply with tax laws and regulations.

The IRS has conducted prior surveys of individual taxpayers in 1984, 1999, 2000, 2007. Changes in tax regulations, tax administration, tax preparation methods, and taxpayer behavior continue to alter the amount and distribution of taxpayer burden. To update our understanding of this burden, the IRS contracted Westat to survey individual taxpayers regarding the time and money taxpayers spend in response to their Federal income tax obligations. We intend to conduct an updated survey to better reflect the current tax rules and regulations, the increased usage of tax preparation software, increased efficiency of such software, changes in tax preparation regulations, the increased use of electronic filing, the behavioral response of taxpayers to the tax system, the changing use of services, both IRS and external, and related information collection needs.

The purpose of the IRS entity surveys is to provide Congress and the President with accurate estimates of the costs incurred by corporations, partnerships, limited liability companies, tax-exempt organizations, and government entities in complying with Federal rules and regulations.

The critical items on the survey concern respondents' time and cost burden estimates for complying with tax filing regulations. Additional items on the survey will serve as contextualizing variables for interpretation of the burden items. These items include information regarding tax preparation methods and activities, tax-related recordkeeping, gathering materials, learning about tax law, using IRS and/or non-IRS taxpayer services, and tax form completion.

Current Actions: New surveys are being added to this collection. Surveys Covered Under This Clearance Request.

Individual Taxpayers:

2010 Individual Burden Survey,
2011 Individual Burden Survey,
2011 Post-Filing Burden Survey,
2012 Individual Burden Survey, and
2012 Post-Filing Burden Survey.

Entity Taxpayers:

2010 Tax Exempt Entity Burden Survey and

2011 Business Taxpayers Burden Survey.

This form is being submitted for renewal purposes only.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals, Businesses and other for-profit organizations.

Each respondent will receive either a letter with instructions to complete the survey (web-first) or a letter and survey (mail-first), which they may spend about one minute reading. Each potential respondent will participate only once. The potential response rate, which varies depending on the type of survey, is indicated in the burden estimate charts below.

Estimated time to complete the surveys is based on results from prior cognitive interviews. We estimate that it will take approximately the same time to complete the mail, web and phone versions of the questionnaire. The content included in each instrument will be the same.

The total annual burden estimates for the covered surveys is as follows:

2010 Surveys 5,033 hours
2011 Surveys 7,726 hours

2012 Surveys 4,066 hours

The estimated burden for each survey is itemized below:

Activity	Number of respondents	Frequency of response	Average time (minutes)	Annual hour burden
2010 Individual Taxpayer Burden Survey				
Reading invitation letter & reminder postcards	20,000	1	1	333
Survey Completion	10,000	1	18	3,000
Total				3,333
2010 Tax Exempt Entity Burden Survey				
Reading invitation letter & reminder postcards	12,000	1	1	200
Survey Completion	6,000	1	15	1,500
Total				1,700
2011 Individual Taxpayer Burden Survey				
Reading invitation letter & reminder postcards	20,000	1	1	333
Survey Completion	10,000	1	18	3,000
Total				3,333
2011 Post-Filing Burden Survey				
Testing*	27	1	60	27
Reading invitation letter & reminder postcards	8,000	1	1	133
Survey Completion	2,400	1	15	600
Total				760
2011 Business Taxpayer Burden Survey				
Reading invitation letter & reminder postcards	24,000	1	1	400
Survey Completion	9,400	1	20	3,133
Total				3,633
2012 Individual Taxpayer Burden Survey				
Reading invitation letter & reminder postcards	20,000	1	1	333
Survey Completion	10,000	1	18	3,000
Total				3,333
2012 Post-Filing Burden Survey				
Reading invitation letter & reminder postcards	8,000	1	1	133
Survey Completion	2,400	1	15	600
Total				733

The annual burden cost to respondents is estimated to total $107,455 (5,033 hours x $21.35) for 2010, $164,950 (7,726 hours x $21.35) for 2011, and $86,809 (4,066 hours x $21.35) for 2012. This estimate is derived using $21.35, the May 2010 average wage rate from the Bureau of Labor and Statistics Occupational Employment Statistics Survey.

*The FY2011 Post-Filing Burden Survey will be the first attempt to collect information from the post-filing population in a manner that allows integrated analysis with pre-filing and post-filing burden. To better inform our survey effort and to ensure proper representation among post-filing groups (Correspondence Audits, Field/Office Audits, Appeals and Collections) in the survey test process, we are requesting additional respondents for survey testing for this survey only.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the

collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 12, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–23715 Filed 9–15–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Citizens Coinage Advisory Committee Meeting

ACTION: Notification of Citizens Coinage Advisory Committee September 27, 2011, public meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for September 27, 2011.

Date: September 27, 2011.

Time: 9 a.m. to 12 noon.

Location: Conference Room A, United States Mint, 801 9th Street, NW., Washington, DC 20220.

Subject: Review and consideration of reverse candidate designs for the 2013 Presidential $1 Coin Program.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Andy Fishburn, United States Mint Liaison to the CCAC; 801 9th Street, NW.; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6525.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: September 13, 2011.

Richard A. Peterson,

Deputy Director, United States Mint.

[FR Doc. 2011–23843 Filed 9–15–11; 8:45 am]

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 455

Medicaid Program; Recovery Audit Contractors; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 455

[CMS–6034–F]

RIN 0938–AQ19

Medicaid Program; Recovery Audit Contractors

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements section 6411 of the Patient Protection and Affordable Care Act (the Affordable Care Act), and provides guidance to States related to Federal/State funding of State start-up, operation and maintenance costs of Medicaid Recovery Audit Contractors (Medicaid RACs) and the payment methodology for State payments to Medicaid RACs. This rule also directs States to assure that adequate appeal processes are in place for providers to dispute adverse determinations made by Medicaid RACs. Lastly, the rule directs States to coordinate with other contractors and entities auditing Medicaid providers and with State and Federal law enforcement agencies.

DATES: *Effective Date:* These regulations are effective on January 1, 2012.

FOR FURTHER INFORMATION CONTACT: Joanne Davis, (410) 786–5127.

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Law

The Medicaid program is a cooperative Federal/State program designed to allow States to receive matching funds from the Federal Government to finance medical assistance to eligible low income beneficiaries. Medicaid was enacted in 1965 by the passage of the Social Security Act Amendments of 1965 creating title XIX of the Social Security Act (the Act).

States may choose to participate in the Medicaid program by submitting a State Plan for medical assistance that is approved by the Secretary of the U.S. Department of Health and Human Services. While States are not required to participate in the Medicaid program, all States, the District of Columbia, and the territories do participate. Once a State elects to participate in the program, it is required to comply with its State Plan, as well as the requirements imposed by the Act and applicable Federal regulations.

CMS is the primary Federal agency providing oversight of State Medicaid activities and facilitating program integrity efforts. Our administration of the Medicaid program requires that we expend billions of dollars in Federal matching payments to States for Medicaid expenditures. We also have an obligation to prevent, identify, and recover improper payments to individuals, contractors, and organizations.

In November 2009, the President signed Executive Order (E.O.) 13520 in an effort to reduce improper payments by increasing transparency in government and holding agencies accountable for reducing improper payments. On March 22, 2010, the Office of Management and Budget (OMB) issued guidance for agencies regarding the implementation of E.O. 13520 entitled Part III to OMB Circular A–123, Appendix C (Appendix C). Appendix C outlines the responsibilities of agencies, determines the programs subject to E.O. 13520, defines supplemental measures and targets for high priority programs, and establishes reporting requirements under E.O. 13520 and procedures to identify entities with outstanding payments.

Section 6411 of the Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010) (the Affordable Care Act) directs States to establish programs by December 31, 2010 in which they will contract with 1 or more Recovery Audit Contractors (Medicaid RACs). The Medicaid RACs will review Medicaid claims submitted by providers of services for which payment may be made under the State Plan or a waiver of the State Plan to identify overpayments and underpayments.

Section 6411(a)(1) of the Affordable Care Act amended section 1902(a)(42) of the Act to provide that ''the State shall establish a program under which the State contracts (consistent with State law and in the same manner as the Secretary enters into contracts with recovery audit contractors under section 1893(h) * * *) with 1 or more recovery audit contractors for the purpose of identifying underpayments and overpayments and recouping overpayments * * *'' To offer context for our approach to the Medicaid RAC program, we provide background discussion on the Medicare RAC program under section 1893(h) of the Act.

B. Medicare RACs

Medicare RACs are private entities with which CMS contracts to identify underpayments and overpayments as well as recoup overpayments, until recently, limited to Medicare's fee-for-service program. Initially authorized by the Congress as a 3-year demonstration program by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173, enacted on December 8, 2003) (MMA), Medicare RACs were permanently authorized in the Tax Relief and Health Care Act of 2006 (Pub. L. 109–432, enacted on December 20, 2006)(TRHCA).

During the Medicare RAC demonstration period, CMS contracted with RACs to review claims from Medicare participating providers and suppliers in New York, Florida, California, Arizona, Massachusetts, and South Carolina. From 2005 through 2008, the Medicare RACs identified and corrected over $1 billion in improper payments. The majority, or 96 percent, of the improper payments were overpayments, while the remaining 4 percent were underpayments. As a result of the demonstrated cost effectiveness of the Medicare RACs, the TRHCA required CMS to implement a nationwide Medicare RAC program. The TRHCA directed CMS to expand the Medicare RAC program nationwide by January 1, 2010.

In our evaluation of the Medicare RAC demonstration, providers were surveyed and they identified to CMS a number of concerns and processes that needed to be improved. For example, Medicare RACs were reportedly inconsistent in documenting their ''good cause'' for reviewing a claim. In addition, providers complained that a lack of physician presence on Medicare RAC staffs contributed to Medicare claims incorrectly being denied. As a result, we met with stakeholders, including the provider community, and made a number of changes to improve the Medicare RAC program. In the permanent Medicare RAC program, CMS directed Medicare RACs to consistently document their ''good cause'' for reviewing a claim. In addition, CMS now requires each Medicare RAC to hire a minimum of 1.0 Full Time Equivalent (FTE) physician Medical Director to oversee the medical record review process; assist nurses, therapists, and certified coders upon request; manage quality assurance procedures; and maintain relationships with provider associations.

Both the MMA and the TRHCA required CMS to pay Medicare RACs on a contingency fee basis. Currently, CMS

pays Medicare RACs a contingency fee rate ranging between 9 and 12.50 percent. These contingency fees were not fixed by CMS, but were established by the contractors through a bidding process with CMS. Providers may appeal Medicare RAC determinations through the established Medicare appeals process. During the demonstration period, Medicare RACs were required to return contingency fees if the claim determination was overturned on the first level appeal. However, Medicare RACs were entitled to retain contingency fees if the determination was overturned on subsequent levels of appeal. In the permanent Medicare RAC program, CMS requires Medicare RACs to return the contingency fee payment if the determination is overturned at any stage of the appeals process.

C. Existing State Contingency Fee Contracts

There is precedent for State Medicaid contingency fee contracts for purposes of recovering Medicaid overpayments subject to third party liability (TPL) requirements. Section 1902(a)(25) of the Act requires States to take all reasonable measures to determine the legal liability of third parties to pay for medical assistance furnished to a Medicaid recipient under the State Plan. Several States have elected to do so through the use of contingency fee arrangements with TPL contractors. In addition, several States currently contract with contingency fee contractors to recover Medicaid overpayments unrelated to TPL. In a memorandum to CMS Regional Administrators dated November 7, 2002, we revised our policy prohibiting Federal financial participation (FFP) for States to pay costs to contingency fee contractors, unrelated to TPL. The revised policy allowed contingency fee payments if the following conditions were met: (1) The intent of the contingency fee contract must be to produce savings or recoveries in the Medicaid program and (2) the savings upon which the contingency fee payment is based must be adequately defined and the determination of fee payments documented to CMS's satisfaction.

II. Provisions of the Proposed Medicaid RAC Rule

In the November 10, 2010 **Federal Register** (75 FR 69037), we published a proposed rule that set forth guidance to States related to Federal/State funding of Medicaid RACs and the payment methodology for State payments to Medicaid RACs in accordance with the Affordable Care Act. We proposed adding new regulatory provisions in 42 CFR part 455 subpart F governing Program Integrity—Medicaid.

Section 6411(a) of the Affordable Care Act amended and expanded section 1902(a)(42) of the Act to require States to establish Medicaid RAC programs by December 31, 2010, to contract with 1 or more contractors to audit Medicaid claims and to identify underpayments and overpayments and collect overpayments. While States were required to establish their Medicaid RAC programs by December 31, 2010, via the State Plan amendment (SPA) process, the Medicaid RAC programs were not required to be implemented by this date. In the November 10, 2010 proposed rule, we stated that, absent an exception, States were required to fully implement their Medicaid RAC programs by April 1, 2011.

The difference between establishing and implementing Medicaid RAC programs was clarified for States prior to the publication of the proposed rule. On October 1, 2010, we issued a State Medicaid Director (SMD) letter providing preliminary guidance to States on the implementation of their RAC programs. In the SMD letter, States were advised that they should attest that they would establish a Medicaid RAC program by submitting a SPA to CMS no later than December 31, 2010, or indicate that they would be seeking to be excepted from one or more of the proposed provisions, or indicate that they would be seeking a complete exception from establishing a Medicaid RAC program. Subsequently, on February 1, 2011, we issued an *Informational Bulletin* stating that the proposed April 1, 2011 implementation date would be delayed, in part, to ensure that States would be able to comply with the provisions of the final rule.

Section 1902(a)(42)(B) of the Act directs all States to establish Medicaid RAC programs, subject to the exceptions and requirements as the Secretary may require. This provision enables CMS to vary the Medicaid RAC program requirements, or except a State from establishing a Medicaid RAC program in certain circumstances, including where it would be inconsistent with State law. For example, the Secretary may exempt a State from the requirement to pay Medicaid RACs on a contingent basis for collecting overpayments when State law expressly prohibits contingency fee contracting. However, some other fee structure could be required under any exception.

Similarly, during the Medicaid RAC SPA process, some States advised CMS that they were required to enact legislation before amending their State plans. Because the establishment of a Medicaid RAC program is accomplished by a SPA, some State legislatures did not have the opportunity to convene and enact the amendment to their State plans prior to December 31, 2010. In this case, those States submitted requests to delay establishing Medicaid RAC programs until after those State legislatures met. CMS granted these requests.

Also, there were circumstances, unrelated to the examples above, where States sought exceptions from some or all of the requirements of the Medicaid RAC program. Accordingly, § 455.516 proposed that States seeking exceptions from contracting with Medicaid RACs must submit a written justification for the request to CMS. We anticipate granting complete Medicaid RAC program exceptions rarely, and only under the most compelling of circumstances.

Section 6411(a) of the Affordable Care Act amended section 1902(a)(42) of the Act, regarding States Medicaid RAC programs:

- Under section 1902(a)(42)(B)(ii)(I) of the Act, payments must be made to a Medicaid RAC under contract with a State only from amounts recovered. As discussed in the proposed rule, we interpret this to mean that payments to Medicaid RACs may not exceed the total amounts recovered. For example, if a Medicaid RAC's efforts result in the recovery of a total of $1 million, the fees paid to the RAC for its work regarding both overpayments and underpayments must not exceed $1 million. The intent of the statute is for States and the Federal government to reduce improper payments in the Medicaid program in order to realize savings. Additionally, we interpret this to mean that payments to contractors were not made based upon amounts merely identified but not recovered, or amounts that may initially be recovered but that subsequently must be repaid due to determinations made in appeals proceedings.

In the proposed rule, we stated that the payment methodology determinations for States, as well as the timing of payments to Medicaid RACs for their work, were separate but closely related issues. We stated that the distinction between amounts recovered and amounts identified had implications for how States structured and administered payment agreements with Medicaid RACs, as well as the timing of Medicaid RACs' receipt of payments. We offered two options illustrating ways that States could structure payments.

In option one, for example, State A paid RAC A its fee when RAC A identified and recovered an overpayment. If provider A appealed and prevailed at any stage, RAC A would be required to return any portion of the contingency fee that corresponded to the amount of an overpayment that was overturned at any level of appeal.

In the second option, State B determined it would pay RAC B its contingency fee at the point at which the recovery amount is fully adjudicated; that is, at the conclusion of any and all appeals available to provider B. At that point, State B would pay RAC B a contingency fee based on the amount recovered.

• Under section 1902(a)(42)(B)(ii)(II)(aa) of the Act, payments to a Medicaid RAC contractor must be made on a contingent basis for collecting overpayments from the amounts recovered. In the proposed rule, we noted that we were aware that the Medicaid RAC program, by virtue of the differences between the Medicare and Medicaid programs, would not operate identically to the Medicare RAC program. We recognized that each State must tailor its Medicaid RAC activities to the uniqueness of its own State, and indicated that we would not prescribe a set contingency fee rate for States. Instead, we would implement certain guidelines based upon section 1902(a)(42)(B) of the Act and our experience with the Medicare RAC program, but allow States the discretion to set their fees within those guidelines.

Medicaid RACs will contract with States and territories to identify and collect overpayments, and will be paid on a contingency fee basis by the States. In the Medicare RAC program, CMS contracts with Medicare RACs to identify and recover overpayments from Medicare providers, and are paid on a contingency fee basis by CMS. In the proposed rule, we recognized the differences among States and territories when coordinating the collection of overpayments with RACs. The statute requires Medicaid RACs to collect overpayments. However, some States may not be able to delegate the collection of overpayments to contractors, while other States may have other restrictions.

Currently, there are 4 Medicare regional RACs operating. Those RACs are paid an average contingency fee rate of 10.86 percent by CMS, with the highest rate being 12.50 percent. We interpret the statutory language that States must establish a Medicaid RAC program ''in the same manner as the Secretary enters into contracts with'' Medicare RACs to mean that some of the provisions of the Medicare RAC program, generally, should serve as a model for the proposed Medicaid RAC program, not that Medicaid RACs should be structured identically to Medicare RACs. Accordingly, in § 455.510(b)(3) and (b)(4), we stated that CMS would not provide FFP for any amount of a State's contingency fee in excess of the then highest Medicare RAC contingency fee rate unless a State requests an exception from CMS and provides an acceptable justification.

We proposed that, in the absence of an approved exception, a State may only pay a RAC from the overpayments collected, and may only receive FFP on a contingency fee up to the highest Medicare RAC contingency rate. Any additional payment from the State to the RAC must be made using State-only funds. FFP is not available for administrative expenditure claims for the marginal difference between the highest Medicare fee and the State's contingency fee. For example, unless an exception applies, if the highest Medicare RAC contingency fee is 12.50 percent and the State pays a Medicaid RAC 14 percent, we will not pay the Federal match on the 1.50 percent difference. In other words, the State must use State-only funds to make up the difference between the State's 14 percent contingency fee and the 12.50 percent contingency fee ceiling. Currently, the Medicare RAC contracts have an established period of performance of up to 5 years, beginning in calendar year 2009. Initially, the maximum contingency fee rate for which FFP will be available for States to pay Medicaid RACs will be the highest Medicare RAC contingency fee, which is 12.50 percent. We anticipate that fee will be the maximum rate when States implement their RAC programs. Subsequently, we will make States aware of any modifications to the payment methodology for contingency fees and Medicaid RAC maximum contingency rates for which FFP will be available by publishing in a **Federal Register** notice, by December 31, 2013, the maximum Medicare contingency fee rate, which will apply to FFP availability for any Medicaid RAC contracts covering the period of performance beginning on July 1, 2014. The established rate will be in place for 5 years, or until we publish a new maximum rate in the **Federal Register**.

The Medicare RAC program is still a relatively new program. In our early outreach campaign to provide technical support and assistance to States in the procurement of their RAC contracts, we studied many of the lessons learned from the Medicare RAC Demonstration, as well as the current provisions of the permanent Medicare RAC program and sought to incorporate many lessons learned in this final rule. For example, we proposed that States require their Medicaid RACs to employ trained medical professionals to review Medicaid claims, as we now require the Medicare RACs to do. We indicated that States should also be cognizant of potential organizational conflicts of interest and should take affirmative steps to identify and prevent any conflicts of interest.

In the proposed rule, we reported that the Office of Inspector General of the U.S. Department of Health and Human Services (HHS–OIG) had found that the Medicare RACs identified over $1 billion in improper payments, but referred only two cases of potential fraud to CMS. HHS–OIG opined that Medicare RACs had no incentive to make fraud referrals because the RACs did not receive contingency fees for those referrals. In the proposed rule, we cautioned States, in their design of Medicaid RAC programs, to ensure that the Medicaid RACs report instances of fraud and/or abuse in addition to the pursuit of overpayments. At § 455.508(b), we proposed that whenever RACs had reasonable grounds to believe that fraud and/or abuse had occurred, they must report it to the appropriate law enforcement officials. We solicited comments on these proposals, as well as other issues that States should consider in the design of their RAC programs. At § 455.508(c), we proposed that Medicaid RACs must meet the additional requirements that States may establish.

• Under section 1902(a)(42)(B)(ii)(II)(bb) of the Act, payment to a Medicaid RAC for identifying underpayments may be made in any amount as the State may specify. Currently, Medicare RACs are paid a contingency fee to identify underpayments, similar to the way in which they are paid to identify and recover overpayments. In the proposed rule, we stated that a State may elect to use a similar approach, or elect to establish a set fee or some other fee structure for the identification of underpayments. Consistent with a State's obligation to ensure that it pays the correct amount to the right provider for the appropriate service at the right time for the right beneficiary, whatever methodology a State chooses must adequately incentivize the detection of underpayments. At § 455.510(c), we proposed granting States the flexibility to specify the underpayment fee for Medicaid RACs. Additionally, we stated

that CMS would monitor the methodologies and amounts paid by States to Medicaid RACs to identify underpayments, and may consider future additional regulation depending on what data reveal over time.

Section 1902(a)(42)(B)(ii)(I) of the Act requires that payments to a Medicaid RAC only come from amounts recovered. We proposed that Federal matching payments were not available for RAC contingency fees paid in excess of the overpayment amounts collected. The proposed rule stated that the total fees paid to a Medicaid RAC included both the amounts associated with: (1) Identifying and recovering overpayments; and (2) identifying underpayments. Due to the requirement in section 1902(a)(42)(B)(ii)(I) of the Act that contingency fees only come from amounts recovered, total fees must not exceed the amount of overpayments collected.

In the proposed rule, we cited data from the Medicare RAC Demonstration that overpayment recoveries by Medicare RACs exceeded underpayment identification by more than a 9:1 ratio. Therefore, we concluded that States would not need to maintain a reserve of recovered overpayments to fund Medicaid RAC costs associated with identifying underpayments. However, we proposed that States maintain an accounting of amounts recovered and paid.

We also proposed that States report overpayments to CMS based on the net amount remaining after all fees are paid to the Medicaid RAC. In the proposed rule, we linked the treatment of the fees and expenditures to the specific statutory language implementing the Medicaid RAC requirements and did not extend it to Medicaid overpayment recoveries in other contexts.

We stated, for example, RAC X's fee for overpayment identification is 10 percent of the recovery amount. The fee for identification of underpayments is 10 percent of the amount identified. If an overpayment recovery amount was $100, and the total amount of underpayment was $20, the total fees paid to the Medicaid RAC would be $12 ($10 for the identification and recovery of the overpayment and $2 for the identification of the underpayment). The State would report the recovery (collection) amount of $100 and the $10 RAC fee at the original match rate for the overpayment and the $2 RAC fee at the match rate for payment of the underpayment. If the State paid a provider based on the Medicaid RAC-identified underpayment, and that expenditure was claimed in accordance with timely filing requirements, we proposed, the $20 expenditure would be matched at the regular Federal Medical Assistance Percentage (FMAP), or the appropriate FFP rate.

Currently, § 433.312 directs States to refund the Federal share of overpayments, regardless of whether the State actually recovers the overpayments from the provider. In the proposed rule, we noted that this requirement, and all other requirements relating to overpayments, would apply to Medicaid RAC-identified overpayments. Therefore, if a Medicaid RAC identified an overpayment to a provider, the State would refund the Federal share of the overpayment amount to the Federal Government, regardless of whether the State collected the overpayment.

- Under section 1902(a)(42)(B)(ii)(III) of the Act, States must have an adequate appeals process for entities to challenge adverse Medicaid RAC determinations. We proposed at § 455.512 that States must provide appeal rights available under State law or administrative procedures to Medicaid providers that seek review of an adverse Medicaid RAC determination. We proposed two alternatives the State could use to achieve this. In alternative one, a State may utilize an existing appeals infrastructure to adjudicate Medicaid RAC appeals. The State would submit to CMS a proposal describing the appeals process, which would need to be approved prior to implementing its RAC program.

In alternative two, a State may elect to establish a separate appeals process for RAC determinations, which must also ensure providers adequate due process in pursuing an appeal. Accordingly, in § 455.512 we proposed to give States the flexibility to determine the appeals process that will be available to providers seeking review of adverse RAC determinations. However, through the State Plan amendment (SPA) process, each State has indicated that it already has in place an administrative appeals infrastructure they will use for a provider to appeal an adverse Medicaid RAC determination.

Finally, we also noted in the proposed rule that the potential length of a State's administrative appeals process may have an impact on the methodology or structure of the payment agreement between a State and a Medicaid RAC. For example, in a contract between State X and RAC X, where State X's administrative appeal process can extend for 2 years, RAC X may not receive payment for an extended period of time. Accordingly, RAC X's contingency fee rate will most likely reflect operating, maintenance and legal costs over that period. Alternatively, in State Y, completion of the administrative appeals process takes 9 months. A contract between State Y and RAC Y may reflect a different contingency fee rate.

- Under section 1902(a)(42)(B)(ii)(IV)(aa) of the Act, for purposes of section 1903(a)(7) of the Act, expenditures made by the State to carry out the Medicaid RAC program are necessary for the proper and efficient administration of the State Plan or waiver of the plan. We interpret this reference to section 1903(a)(7) of the Act to mean that amounts expended by a State to establish and operate the Medicaid RAC program (aside from fee payments, the treatment of which is discussed elsewhere in this preamble) are to be shared by the Federal Government at the 50 percent administrative rate. Therefore, we proposed at § 455.514(b), that FFP is available to States for administrative costs subject to reporting requirements.

We also proposed that States would report to CMS certain elements describing the effectiveness of their Medicaid RAC programs. These proposed elements included general program descriptors (for example, contract periods of performance, contractors' names) and program metrics (for example, number of audits conducted, recovery amounts, number of cases referred for potential fraud). These elements will be provided in sub-regulatory guidance specified by CMS.

- Sections 1902(a)(42)(B)(ii)(IV)(bb) and 1903(d) of the Act apply to amounts recovered (not merely identified) under the Medicaid RAC program. In the proposed rule, we indicated that a State would be required to refund the Federal share of the net amount of overpayment recoveries *after* deducting the contingency fees paid to a RAC (in conformance with the restrictions discussed above, including the maximum allowed RAC contingency fee and the exception process). In other words, a State would be required to take a RAC's contingency fee ''off the top'' *before* calculating the Federal share of the overpayment recovery to be returned to CMS. The amounts recovered would be subject to a State's quarterly expenditure estimates and the funding of the State's share.

Additionally, we noted in the proposed rule that the U.S. territories operate under a separate funding authority that is statutorily-capped. As a result of the limitations placed on FFP by section 1108(g) of the Act, territories would need to assess the feasibility of implementing and funding Medicaid RAC contractors in their jurisdictions.

As of the date of this final rule, all of the territories requested and were granted exceptions from establishing RAC programs. These exceptions will not be reassessed. Should RAC programs become feasible due to a change in circumstances, the territories can amend their State Plans to establish RAC programs.

- Under section 1902(a)(42)(B)(ii)(IV)(cc) of the Act, States and their Medicaid RACs must coordinate their efforts with other contractors or entities performing audits of entities receiving payments under the State Plan or waiver in the State, including State and Federal law enforcement agencies. In the proposed rule, we emphasized that Medicaid RACs were not intended to, and would not, replace any State program integrity or audit initiatives or programs. We proposed under § 455.508(b) that an entity that wanted to enter into a contract with a State to perform the functions of a Medicaid RAC must agree to coordinate its audit recovery efforts with other entities.

In the proposed rule, we stated that although overlapping or multiple provider audits may be necessary, we hoped to minimize the likelihood of overlapping audits. Section 1902(a)(42)(B)(ii)(IV)(cc) of the Act directs States to assure CMS that they will coordinate Medicaid RAC audit activity with an array of other entities that also conduct audits of Medicaid providers. Providers are currently subject to audits by the States' routine program integrity audits, CMS' Medicaid Integrity Contractors' (MICs) audits, as well as audits conducted by other State and Federal entities. For example, the MICs perform audits of providers, on behalf of CMS, in order to identify overpayments. Payment Error Rate Measurement (PERM) audits are ongoing CMS audits that measure improper payments in the Medicaid and Children's Health Insurance Program and error rates for each program. As we stated in the proposed rule, we anticipate working both internally and with the States to minimize this administrative burden on Medicaid providers.

In addition to the obligation to coordinate auditing efforts to reduce the overburdening of Medicaid providers, we also wanted to ensure coordination between Medicaid RACs and law enforcement organizations so that suspected cases of fraud and abuse were processed through the appropriate channels. Law enforcement organizations may conduct audits or investigations of Medicaid providers in addition to Federal and State agencies. Those organizations include, but are not limited to, the HHS–OIG, the U.S. Department of Justice, including the Federal Bureau of Investigation, State Medicaid Fraud Control Units (MFCUs), other Federal and State law enforcement agencies, as appropriate, and CMS. We concluded that States are in the best position to coordinate audit activities.

We also proposed at § 455.508(b) that a Medicaid RAC must report fraud or criminal activity to the appropriate law enforcement officials whenever it has reasonable grounds to believe that such activity has occurred.

III. Analysis of and Responses to Public Comments

We received 76 timely comments on the November 10, 2010 proposed rule (75 FR 69037) from State associations, hospitals, medical associations, providers, managed care organizations, and contingency fee contractors. We reviewed each commenter's comments and grouped related comments. After associating like comments, we placed them in categories based on subject matter. Summaries of the public comments received and our responses to those comments are set forth below.

A. General

Comment: One commenter requested clarification and asked CMS to consider addressing the fundamental differences between Medicaid RACs and Medicare RACs.

Response: Medicaid RACs are State funded, designed, procured, operated and administered programs authorized by section 6411 of the Affordable Care Act to identify underpayments and overpayments and to recover overpayments to Medicaid providers, on a contingency fee basis. Medicare RACs are regionally operated contractors that are federally funded, procured, operated and administered programs authorized permanently by section 302 of the TRHCA to identify underpayments and overpayments and to recoup overpayments under parts A and B of the Medicare program. The Congress provided for payments to the Medicare RACs on a contingency fee basis for correcting overpayments and identifying underpayments. In constructing this final rule, we took into consideration these fundamental differences between the Medicaid and Medicare programs along with feedback from commenters on how these differences can be addressed as well as how best practices from the Medicare RAC program can be incorporated.

Comment: One commenter asserted that CMS should seek input from States concerning reporting metrics and that a cooperative approach to this requirement should provide CMS with the data needed for oversight of the program but not be overly burdensome to the States.

Response: We agree with the comment regarding reporting metrics. We anticipate working with States to develop performance metrics and will issue sub-regulatory guidance regarding specific reporting criteria when appropriate.

Comment: One commenter indicated that the Medicaid RAC program would be further enhanced by developing consistent objective criteria for States to follow and this information should be publicly available to establish a baseline for the community.

Response: We agree that the Medicaid RAC program should have consistent and objective criteria. As a result of comments from stakeholders, we considered and are finalizing the following provisions:

- State coordination of recovery audit efforts with other auditing entities (§ 455.506(c)).
- State reporting of fraud and/or abuse, as defined by § 455.2, to its MFCU or other appropriate law enforcement agency (§ 455.506(d)).
- State established limit on the number and frequency of medical records requested by a RAC (§ 455.506(e)).
- The entity must hire a minimum of 1.0 FTE Contractor Medical Director who is a Doctor of Medicine or Doctor of Osteopathy in good standing with the relevant State licensing authorities and has relevant work and educational experience. A State may seek to be excepted, in accordance with § 455.516, from requiring its RAC to hire a minimum of 1.0 FTE Contractor Medical Director by submitting to CMS a written request for CMS review and approval (§ 455.508(b)).
- A requirement that RACs hire certified coders unless the State determines that certified coders are not required for the effective review of Medicaid claims (§ 455.508(c)).
- The RAC must work with the State to develop an education and outreach program component, including notification of audit policies and audit protocols (§ 455.508(d)).
- Mandatory RAC customer service measures, including: Providing a toll-free customer service telephone number in all correspondence sent to providers and staffing the toll-free number during normal business hours from 8:00 a.m. to 4:30 p.m. in the applicable time zone (§ 455.508(e)(1)); compiling and maintaining provider approved addresses and points of contact

(§ 455.508(e)(2)); mandatory acceptance of provider submissions of electronic medical records on CD/DVD or via facsimile at the providers' request (§ 455.508(e)(3)); and notifying providers of overpayment findings within 60 calendar days (§ 455.508(e)(4)).

- A three-year maximum claims look-back period (§ 455.508(f)).
- Timely referral of suspected cases of fraud and/or abuse by the Medicaid RAC to the State (§ 455.508(h)).
- Return of contingency fees within a reasonable timeframe as prescribed by the State if a Medicaid RAC determination is reversed at any level of appeal (§ 455.510(b)(3)).

Comment: One commenter indicated that parallel Medicare and Medicaid RAC standards are consistent with CMS' aim of harmonization of the anti-fraud activities of the Medicare and Medicaid programs under the Center for Program Integrity (CPI).

Response: We agree with the commenter. Medicaid RAC programs are, by statute, administered differently than Medicare RAC programs. However, we have concluded that many aspects of the Medicaid RAC program can operate in alignment with the Medicare RAC program including the following: Staffing requirements (§ 455.508(a), (b), and (c)); State and RAC development of an education and outreach program, including notification of audit policies and protocols (§ 455.508(d)); minimum customer service measures including: Providing a toll-free customer service telephone number in all correspondence sent to providers and staffing the toll-free number during normal business hours from 8:00 a.m. to 4:30 p.m. in the applicable time zone (§ 455.508(e)(1)); compiling and maintaining provider approved addresses and points of contact (§ 455.508(e)(2)); mandatory acceptance of provider submissions of electronic medical records on CD/DVD or via facsimile at the providers' request (§ 455.508(e)(3)); notifying providers of overpayment findings within 60 calendar days (§ 455.508(e)(4)); a 3 year maximum claims look-back period (§ 455.508(f)); and a State established limit on the number and frequency of medical records requested by a RAC (§ 455.506(e)).

Comment: Several commenters indicated that processes should be developed to minimize provider burden to the greatest extent possible in connection with the identification of improper payments. Additionally, the commenters stated that the final rule should incorporate increased accountability and transparency provisions which ultimately became part of the permanent Medicare RAC program.

Response: Again, we have concluded that many aspects of the Medicaid RAC program can operate in alignment with the Medicare RAC program, consistent with State law, thereby minimizing provider burden including the following: Staffing requirements (§ 455.508(a)), (b), and (c)); State and RAC development of an education and outreach program, including notification of audit policies and protocols (§ 455.508(d); minimum customer service measures including: Providing a toll-free customer service telephone number in all correspondence sent to providers and staffing the toll-free number during normal business hours from 8:00 a.m. to 4:30 p.m. in the applicable time zone (§ 455.508(e)(1)); compiling and maintaining provider approved addresses and points of contact (§ 455.508(e)(2)); mandatory acceptance of provider submissions of electronic medical records on CD/DVD or via facsimile at the providers' request (§ 455.508(e)(3)); notifying providers of overpayment findings within 60 calendar days (§ 455.508(e)(4)); a 3 year maximum claims look-back period (§ 455.508(f)); and a State established limit on the number and frequency of medical records requested by a Medicaid RAC (§ 455.506(e)). States are obligated to coordinate auditing efforts to reduce the overburdening of Medicaid providers.

Comment: One commenter expressed concern with the implementation of a ''Medicare based audit program'' due to budget deficits in the States and pressure to look for opportunities to find savings in the already underfunded Medicaid program.

Response: We understand the commenter's concerns. However, the Affordable Care Act requires the implementation of a Medicaid RAC program, with certain exceptions as permitted by the Secretary. Because the Affordable Care Act requires States to contract with RACs on a contingency fee basis, out-of-pocket expenses should be minimized. Therefore, the majority of the program costs will be offset by overpayment recoveries. Further, Medicaid RACs are part of a significant initiative to reduce waste and improper payments and recoup the improper payments. Accordingly, we believe that the Medicaid RAC program will lead to significant savings for States, as indicated in Section VI. of this final rule, titled ''Regulatory Impact Analysis.''

Comment: One commenter urged CMS to balance the goal of recovery of funds improperly paid with the ''respectful treatment of the overwhelming number of Medicaid providers who continue to provide healthcare services at substantially less than market rates and who diligently attempt to abide by all applicable regulations and payment policies.'' Another commenter suggested that providers would no longer participate in Medicaid and its clients would no longer have access to care.

Response: We agree that Medicaid providers deserve to receive respectful treatment from CMS and we understand the commenters' concerns regarding the burden of additional audits on providers. In the proposed rule, we specifically emphasized that States and their RACs must undertake coordination efforts to reduce the potential overburdening of Medicaid providers, as well as ensuring that suspected cases of fraud and abuse are processed through the appropriate channels. We emphasized that it is the State's obligation to ensure that RACs do not duplicate or compromise the efforts of other entities performing audits. In the final rule, we require at § 455.506(c) that States must coordinate the recovery audit efforts of their RACs with other auditing entities.

Comment: One commenter stated that the Department of Health and Human Services (HHS) should better target program integrity dollars to efforts that have the most opportunity for success.

Response: We believe that the Medicare and Medicaid RAC programs are an investment in successful program integrity efforts. In FY 2010, Medicare RACs identified and corrected $92.3 million in combined overpayments and underpayments. Eighty-two percent of all RAC corrections were collected overpayments, and 18 percent were identified underpayments that were refunded to providers. We expect that States will realize a similar ratio of overpayments to underpayments in connection with the implementation of the Medicaid RAC program, and will examine the trends among the States over several years.

Comment: One commenter indicated that HHS should clarify whether it is considering or recommending to the Congress that it eliminate the Audit Medicaid Integrity Contractor (MIC) and Review of Provider MIC effort since it appears to be duplicative of the Medicaid RAC program.

Response: We disagree that the work of MICs, both Audit and Review of Provider, is duplicative of Medicaid RACs. As stated previously, Federal MICs are better positioned to address certain Medicaid program

vulnerabilities than State-administered RACs.

Comment: One commenter recommended that CMS require States to provide transparency in coding/billing rules and guidelines, share screening guidelines for medical necessity determinations, and provider education. According to the commenter, this can ensure provider success as well as develop a framework for auditing bodies to follow. This commenter believes that existing State rules and guidelines are often vague or unwritten. Therefore, audits should not be allowed except where the State has promulgated clear criteria.

Response: We agree that States should be as transparent as possible with regard to their Medicaid RAC programs. While we are not requiring States to provide coding/billing guidelines, we are requiring RACs to work with the State to develop a provider education and outreach program, including notification of audit policies and protocols for auditing bodies and providers to have clearly defined roles and expectations (§ 455.508(d)).

Comment: One commenter indicated that allowing contingency fees to be based on actual recoveries puts a ''tremendous strain on a company's cash flow.'' The commenter indicated that a company has to prepare for a long lead time between providing the service of identifying a recovery and being paid after a governmental agency has made the effort to collect the recovery and then process the payment. This commenter further stated that the company providing the service has no input or control over the collection process and must rely on the good faith of the agency to process payments in a timely and efficient manner.

Response: We disagree with this comment because we do not believe that there is credible evidence to suggest that any State agency would intentionally withhold compensation from one of its contractors. As envisioned, a State and a RAC would voluntarily enter into a contractual agreement with provisions protecting both parties' interests. Thus, the agency would agree to pay the RAC according to the contractual agreement. As a general rule, contingency fee contractors should be aware of the financial risk of working on a contingency fee basis. In addition, States have an incentive to collect overpayments as soon as possible. Moreover, the RAC can recoup overpayments directly from providers if its contract with the State is structured to permit RAC collection of overpayments.

Comment: One commenter expressed concern that the proposed rule does not reflect the potential savings associated with the correction of repeated provider billing errors. Thus, the current rule does not incentivize a RAC to help a State stop systemic overpayments as that would eliminate the RAC's contingency fee. This commenter suggested that HHS consider some method to reward a RAC for identifying and reporting solutions to a State which would end overpayments that occur from system error or other administrative problems on an ongoing basis.

Response: While we encourage States to work with their RACs to identify potential State vulnerabilities or other similar problem areas, a RAC reward for the activities is outside the scope of the proposed and final rules. Generally, a Medicaid RAC is required to review post-payment claims for the purpose of identifying and collecting overpayments as well as identifying underpayments. Sections 1902(a)(42)(B)(i) and (ii)(I)(aa) of the Act require RACs to be compensated on a contingency fee basis for the identification and recovery of overpayments, to the extent it is consistent with State law. The statute does not require Medicaid RACs to identify State administrative issues. We encourage States to evaluate identified overpayments to determine if trends are apparent and whether solutions can be developed to address noted vulnerabilities.

Comment: Several commenters indicated that the final rule should require CMS, State Medicaid agencies (SMAs), and RACs to use program ''fixes'' to educate providers as well as implement payment system changes to avoid billing mistakes before they are made.

Response: We agree and have included, in this final rule, a requirement for States and their RACs to develop an education and outreach program at § 455.508(d), including notification to providers of audit policies and protocols. We believe that States should implement additional process improvements to their payment systems to the extent possible. Those improvements should not substitute for program integrity initiatives or programs to ensure that proper payments are made to providers.

Comment: One commenter suggested that CMS place oversight of the State Medicaid RAC programs and Medicare RAC contractors within the CMS CPI. Based on its core function and experience base, CPI is uniquely positioned to oversee the Medicare and Medicaid RACs because its duties are to perform Medicare and Medicaid program integrity activities.

Response: While we appreciate the commenter's suggestion, the Medicaid RACs will be procured, administered and operated by the States according to State laws and regulations. Additionally, there will be no privity of contract between CMS and the Medicaid RACs. We recently provided support and technical assistance to the States in the form of sub-regulatory guidance, all-State call forums, webinars, and a video entitled ''Medicaid RACs: Are You Ready?'' We will continue to provide technical support and assistance to States after publication of this final rule. The appropriate CMS component to oversee the Medicare RAC program is outside the scope of this final rule.

Comment: One commenter indicated that it was fundamentally opposed to contingency fees in Medicare and Medicaid auditing. According to the commenter, this type of behavior has the overwhelming tendency to push auditors ''to take a chance'' and inappropriately deny claims.

Response: We understand the concerns of the commenter. However, the statute requires Medicaid RACs to be paid on a contingency fee basis for the identification and recovery of overpayments. Contingency fee contracting is a type of payment methodology that has been a standard practice accepted among private healthcare payers for more than 20 years. In the final rule, we clarified that Medicaid RACs will only review post-payment claims for overpayments and underpayments. Accordingly, the Medicaid RACs will not deny claims.

Comment: One commenter expressed concern that the proposed rule does not indicate that CMS is aware of abuses to providers. As support, the commenter cited anecdotes experienced by providers during the Medicare RAC Demonstration period. According to the commenter, CMS was advised of the ''horrific costs incurred by providers in fighting denials, particularly in California, and the extremely high percentage of denials overturned * * * but tremendous cost had been incurred and the damage was done in terms of reputation, reallocation of resources, etc.''

Response: We disagree with the comment. While we are aware of issues in California, we are not aware of explicit ''abuses to providers.'' We have attempted to address the concerns of providers and incorporate the lessons learned from the Medicare RAC Demonstration period into the permanent Medicare RAC program, including, but not limited to, requiring

the Medicare RAC to document their ''good cause'' for reviewing a claim and requiring each Medicare RAC to hire a minimum of 1.0 Full Time Equivalent (FTE) physician Medical Director to oversee the program. In addition, we have attempted to incorporate those lessons learned in the Medicare RAC program to the development of the Medicaid RAC program.

Comment: One commenter expressed disappointment that the proposed rule does not contain best practices from the Medicare RAC Demonstration and recommends that CMS reconsider its proposed Medicaid RAC program policies in the final rule.

Response: We agree with the spirit of the comment. As a result of numerous comments from stakeholders, we are making modifications to the proposed Medicaid RAC program in this final rule. For example, we are requiring in this final rule that each Medicaid RAC hire a minimum of 1.0 FTE Contractor Medical Director who is a Doctor of Medicine or Doctor of Osteopathy. A State may request an exception, in accordance with § 455.516, from requiring its RAC to hire a minimum of 1.0 FTE Contractor Medical Director by submitting written justification and receiving approval from CMS. We finalize this provision at § 455.508(b). We are also requiring Medicaid RACs to hire certified coders unless the State determines that certified coders are not required for the effective review of Medicaid claims. We finalize this provision at § 455.508(c). Additionally, we are requiring State and RAC development of an education and outreach program for providers, including notification of audit policies and protocols (§ 455.508(d)); minimum customer service measures, including those measures found in the Medicare RAC program such as: Providing a toll-free customer service telephone number in all correspondence sent to providers and staffing the toll-free number during normal business hours from 8:00 a.m. to 4:30 p.m. in the applicable time zone (§ 455.508(e)(1)); compiling and maintaining provider approved addresses and points of contact (§ 455.508(e)(2)); mandatory acceptance of provider submissions of electronic medical records on CD/DVD or via facsimile at the providers' request (§ 455.508(e)(3)); notifying providers of overpayment findings within 60 calendar days (§ 455.508(e)(4)); a 3 year maximum claims look-back period (§ 455.508(f)); and a State-established limit on the number and frequency of medical records requested by a RAC (§ 455.506(e)). States may request exceptions to § 455.508(f) through the SPA process, and RACs may request from States, exceptions to § 455.506(e).

Comment: One commenter recommended that States should implement the RAC program, through the use of ''regional RACs'' to minimize provider burden and to maximize consistency and efficiency.

Response: We agree that regional Medicaid RACs can be an innovative strategy for States to share resources. There is nothing in the statute that would preclude a group of States from joining together to contract with a Medicaid RAC. There has been some State interest in forming/procuring a regional RAC. We encourage their efforts. However, we will not mandate that States adopt this strategy.

Comment: One commenter asserted that requiring close oversight of the RAC program will be challenging due to budget constraints.

Response: We understand the commenter's concerns. However, the Medicaid RACs are part of a significant initiative to reduce improper payments and recoup the overpayments that have occurred.

Comment: One commenter requested that CMS provide ''extremely tight monitoring'' of Medicaid RAC review, auditing behavior and denial patterns if CMS interprets section 6411 of the Affordable Care Act to mandate contingency fees regarding the identification and recoupment of overpayments.

Response: Section 1902(a)(42)(B)(ii)(II)(aa) of the Act mandates that RACs be paid on a contingency fee basis for the identification and recoupment of overpayments. We will oversee State implementation of Medicaid RAC programs to ensure compliance with the Act and these regulations, but do not anticipate the need to, as the commenter suggests, engage in ''extremely tight monitoring'' at this point. States have attested through their SPAs that they will implement a Medicaid RAC program consistent with this final rule (unless a State has been granted an exception).

Comment: Several commenters suggested that ''[t]he audit should include all of Medicaid, and not be restricted to narrow areas. This will ensure the maximum benefit of program recoveries and preventive actions on the broadest scope possible.''

Response: We believe that States should have the ability to direct the audit targets, but that, so long as consistent with State direction, the RACs should have the ability to audit the entire Medicaid program.

Comment: Several commenters questioned CMS' authority to require States to continue existing program integrity efforts. Most of these commenters recommended that CMS exempt States that have Medicaid Integrity Programs or similar audit programs from the requirement to establish RAC programs. These commenters argued that there is no statutory authority for CMS to compel States to maintain levels of funding and activity for a duplicate program, and questioned the assertion that States have no option to choose to either be audited by a Federal MIC or establish a Medicaid RAC program. Several commenters also expressed concern that the continuation of existing program integrity efforts greatly reduces flexibility and creates duplicative audits and review processes which may ultimately impact provider participation and access to care. Finally, one commenter recommended that CMS remove the requirement to continue existing program integrity activities completely.

Response: Continuation of existing program integrity activities is important to ensure a comprehensive State program integrity program that includes more than a claims auditing program, such as the Medicaid RAC program. Other critical components of a Medicaid integrity program include Surveillance and Utilization Review (SUR) unit activities, MMIS system monitoring, and fraud prevention and detection activities, including coordination with law enforcement.

We disagree that the Medicaid RAC program is duplicative of the Federal national audit program, in which Federal MICs conduct audits of Medicaid providers. In particular, while RACs are an efficient way to identify payment errors, they are not the most effective approach to identify or prevent fraudulent practices. Federal MICs can focus on audit issues that may be less advantageous for a contingency-fee based contractor. In addition, fraudulent schemes may not lead to overpayment recoveries, which provide the source of RAC fees. Moreover, Medicaid RAC programs are poised to address State-specific issues stemming from the individual characteristics of each State's Medicaid program (for example, special payment structures under a Medicaid demonstration) and will focus on the needs and vulnerabilities associated with a particular State. In contrast, Federal MICs are poised to address vulnerabilities on a regional and national basis. These regional and national trends would likely go undetected by an individual Medicaid

RAC. Accordingly, the national audit program is complementary to a State Medicaid RAC program.

We are not exempting States that have Medicaid integrity programs from establishing a Medicaid RAC program. Although there is no specific requirement in the Affordable Care Act regarding the continuation of program integrity efforts, the Congress directed CMS to promulgate regulations to carry out section 6411 of the Affordable Care Act with full awareness of the various program integrity initiatives for which it had given previous authority and that are currently in place in States. Congress did not relax any of those previously authorized program integrity activities in the Affordable Care Act. We take this to mean that Congress intended this policy to supplement previously authorized program integrity activities at both the State and Federal levels. We also believe that States should play a significant role in coordinating the audit activities of their respective integrity programs, RACs, and any other auditing entities under contract with the State. We are very concerned about provider participation and beneficiary access to care as well as minimizing the potential for multiple audits of the same provider. However, States should not supplant existing State program integrity initiatives with a Medicaid RAC program because of the fundamentally different and complementary approaches of the two audit programs.

B. Implementation Date

Comment: Several commenters expressed concern that ''States must fully implement their Medicaid RAC programs by April 1, 2011.'' While some commenters recommended specific alternative implementation dates ranging between July 1, 2011 and January 1, 2012, the majority of the commenters asserted that April 1, 2011, did not allow States enough time to complete the procurement process, or allow States that require legislative authority to obtain approval for contracting with RACs. One commenter requested clarification as to the meaning of ''fully implement'' by April 1, 2011. Another commenter suggested voluntary implementation, on the part of States, from the present date until January 1, 2012.

Response: Although we proposed an implementation date of April 1, 2011, the date was contingent upon the rule being finalized. We recognize the need to provide a reasonable period of time between publication of the final rule and the date for required implementation of the Medicaid RAC program to ensure States' compliance with the final rule. Accordingly, absent an exception, States will be required to implement their RAC programs by January 1, 2012.

Comment: One commenter asked if there will be a penalty if a State does not implement a RAC program.

Response: When a State elects to participate in the Medicaid program, it is required to comply with its State Plan, as well as the requirements imposed by the Act and applicable Federal regulations. Section 1902(a)(42)(B)(i) of the Act requires States to implement RAC programs, which is consistent with States' commitment to promote program integrity. Additionally, States are required by section 1903(a)(7) of the Act to administer funding necessary for the proper and efficient administration of the State Plan or waiver of the plan. If the Secretary deems that a Medicaid RAC program is necessary to ensure the integrity and the efficiency of a State's Medicaid program, a State's failure to implement the program may violate section 1903(a)(7) of the Act. A potential consequence of a State's failure to implement a RAC program is the loss of FFP. If a State is unable to implement a RAC program, then that State should request from CMS an exception either from a specific Medicaid RAC program requirement(s) or a complete exception from implementing the RAC program. However, as stated in the proposed rule, we will grant complete exceptions from the Medicaid RAC program or exceptions to RAC requirements only rarely and only under the most compelling of circumstances.

Comment: One commenter recommended that CMS adopt a phase-in strategy similar to the Medicare program to ensure that the provider community can actively participate in outreach programs.

Response: We provided early guidance for States with regard to the creation and implementation of a Medicaid RAC program. States already have the ability to request delayed implementation of RAC programs through the Medicaid SPA process. Additionally, we provided support and technical assistance to the States in the form of sub-regulatory guidance, all-State call forums, webinars and an informative video entitled ''Medicaid RACs: Are You Ready?'' We fully anticipate continuing to provide technical assistance after the publication of the final rule. Therefore, we are not adopting a global phase-in strategy.

C. Program Requirements

Comment: Numerous commenters inquired about the overall program approach of the Medicaid RAC program. One commenter indicated that it interpreted the Affordable Care Act to read that Medicaid RACs should be established in the same manner as CMS currently contracts with Medicare RACs, and with the same program requirements. Several commenters suggested that CMS should standardize program elements of the Medicare RACs into Medicaid RAC programs. Several commenters expressed their concerns that a variation in Medicaid RAC program requirements between bordering States would cause an undue burden on providers that operate nationally or in multiple States.

Response: Consistent with the flexibility afforded States in the design and operation of their Medicaid programs, we did not prescribe every element of the Medicaid RAC program in the proposed rule. We received many comments encouraging CMS to adopt measures in the Medicaid RAC program that could operate in alignment with Medicare RAC requirements. We considered the effect of aligning Medicare provisions upon individually State-run programs and existing State laws and regulations and balanced that with the spirit of the statute. Accordingly, in the final rule, we are requiring certain specific program elements that are consistent with the program elements established by the Medicare RAC program. These program elements include the following:

- Requiring the entity to hire a minimum of 1.0 FTE Contractor Medical Director who is a Doctor of Medicine or Doctor of Osteopathy in good standing with the relevant State licensing authorities and has relevant work and educational experience. A State may seek to be excepted, in accordance with § 455.516, from requiring its RAC to hire a minimum of 1.0 FTE Contractor Medical Director by submitting to CMS a written request for CMS review and approval (§ 455.508(b));
- Requiring the entity to hire certified coders unless the State determines that certified coders are not required for the effective review of Medicaid claims (§ 455.508(c));
- Requiring the development of an education and outreach program component, including notification to providers of audit policies and protocols (§ 455.508(d));
- Requiring RAC customer service measures including: Providing a toll-free customer service telephone number in all correspondence sent to providers

and staffing the toll-free number during normal business hours from 8:00 a.m. to 4:30 p.m. in the applicable time zone (§ 455.508(e)(1)); compiling and maintaining provider approved addresses and points of contact (§ 455.508(e)(2)); mandatory acceptance of provider submissions of electronic medical records on CD/DVD or via facsimile at the providers' request (§ 455.508(e)(3)); notifying providers of overpayment findings within 60 calendar days (§ 455.508(e)(4));

- 3-year maximum claims look-back period (§ 455.508(f));
- State established limit on the number and frequency of medical records requested by a RAC (§ 455.506(e));
- State coordination of recovery audit efforts with other auditing entities (§ 455.506(c)); and
- Return of contingency fees within a reasonable timeframe as prescribed by the State, if a Medicaid RAC determination is overturned at any level of appeal (§ 455.510(b)(3)). As noted below, States will have flexibility as to timing of payment.

In addition, we strongly encourage States to adopt specific program elements that are part of the permanent Medicare RAC program within the flexibility States have to design and implement their RAC programs in the following areas:

- Medical necessity reviews;
- Extrapolation of audit findings;
- External validation of accuracy of RAC findings; and
- Types of claims audited.

For contingency fees, States maintain the flexibility of paying contingency fees either from amounts identified and recovered, but not fully adjudicated, or after the overpayment was fully adjudicated and all appeals available to the provider were exhausted. As noted above, the RAC will be required to return the contingency fee, within a reasonable timeframe as prescribed by the State that corresponds to the amount of the overpayment if an adverse determination is overturned at any level of appeal.

Program elements where we will grant States complete flexibility regarding the design, procurement, administration and operation of their RAC programs, largely because of the requirements of State laws, are as follows:

- Underpayment methodology;
- State appeals process;
- Contingency fee rates (States have complete flexibility in the contingency fee rates they pay, exclusive of FFP. However, we will provide FFP only for amounts that do not exceed the then-highest contingency fee rate paid to Medicare RACs);
- State exclusion of claims;
- Bundling of procurements; and
- Coordination of the collection of RAC overpayments.

With regard to the providers serving beneficiaries in multiple States that expressed concern about the variation among Medicaid RAC program elements, we believe that a strong education and outreach campaign developed by the States and RACs and required as a part of every Medicaid RAC program will help alleviate the concerns that were expressed.

As we described in more detail, in sections II. and III.G. of this final rule, we are granting States the flexibility to design their appeals processes, but States are required by section 1902(a)(42)(B)(ii)(III) of the Act to have an adequate process for entities to appeal adverse RAC determinations.

Comment: One commenter suggested that Medicaid RAC program goals be created based on the error rate established by the Payment Error Rate Measurement (PERM) program.

Response: PERM addresses specific error measures in the Medicaid program. Under section 1902(a)(42)(B)(i) of the Act, the Medicaid RACs shall identify underpayments and overpayments and shall recoup overpayments. Thus, there is no authority under Federal law for Medicaid RAC programs to apply any measure except to ensure that States make no improper payments to providers.

Comment: One commenter inquired whether existing patient identifiers can be used so that files can be readily retrieved by the provider.

Response: We do not intend for States to deviate from processes that are already in place to readily identify claims. We encourage States to work with their contractors to include the necessary fields to effectively identify overpayments and/or underpayments.

Comment: Several commenters stated that during the Medicare RAC Demonstration, many providers experienced inappropriate and arbitrary RAC denials. These commenters indicated that the RAC neither informed providers of the types of issues they were auditing, nor did they provide a rationale for adverse determinations. Additionally, commenters reported RACs audited claims using the wrong payment codes and audited claims from several years ago. According to commenters, this led to provider appeals, 64 percent of which were decided in the favor of the provider.

Response: As stated previously, we are applying numerous lessons learned from the Medicare RAC demonstration. We are requiring in this final rule that each Medicaid RAC must hire a minimum of 1.0 FTE Contractor Medical Director who is a Doctor of Medicine or Doctor of Osteopathy in good standing with the relevant State licensing authorities and has relevant work and educational experience. A State may seek to be excepted, in accordance with § 455.516, from requiring its RAC to hire a minimum of 1.0 FTE Contractor Medical Director by submitting to CMS a written request for CMS review and approval. We finalize this provision at § 455.508(b). We are also requiring Medicaid RACs in this final rule to hire certified coders unless the State determines that certified coders are not required for the effective review of Medicaid claims. We finalize this provision at § 455.508(c). Finally, we are requiring that there be a 3 year maximum claims look-back period. We finalize this provision at § 455.508(f).

Comment: One commenter inquired whether Medicaid RACs are required to comply with the reopening regulation located at § 405.980 similar to Medicare RACs, which requires a RAC to have good cause before it reopens a claim.

Response: Section 405.980 applies to administrative appeals under the Medicare program. States have different administrative appeal processes from the Medicare program. Accordingly, we did not require States to comply with the reopening regulation as set forth in the Medicare RAC program. As stated previously, States will retain the flexibility to design, procure, operate, and administer their RAC programs in accordance with State laws, regulations, and policies.

Comment: One commenter suggested that patients not receive a letter regarding a Medicaid RAC audit until the appeal process has ended and a determination is final, similar to the Medicare program.

Response: The Medicaid RAC program is designed to review claims submitted by providers of items and services or other individuals furnishing items and services for which payment has been made under section 1902(a) of the Act. Accordingly, States have the flexibility to decide the issue of patient notification of final claims resolution.

Comment: Several commenters stated that the best way to reduce common billing and coding mistakes is through targeted education and outreach, rather than onerous audits performed by outside contractors with incentives to deny claims. These commenters asserted that education and outreach

efforts are insufficient across the Medicare and Medicaid programs.

Response: We agree that targeted education and outreach is one way of reducing common billing and coding mistakes. Accordingly, we have finalized at § 455.508(d), that States and their RACs are required to develop a education and outreach program as part of their Medicaid RAC programs. This includes, at a minimum, notification of audit policies and protocols.

Comment: Several commenters recommended the exclusion of medical necessity reviews from the Medicaid RAC program.

Response: We disagree with the commenters. Providers are required to furnish medically necessary services in State Medicaid plans and medical necessity reviews by Medicaid RACs are permitted to the extent they are consistent with State laws and regulations.

Comment: Several commenters suggested that if medical necessity reviews are permitted in Medicaid RAC programs, then CMS should issue key oversight provisions in the final rule to mitigate incentives for aggressive and/or inaccurate medical necessity review denials.

Response: We disagree that we should issue oversight provisions regarding medical necessity reviews in the Medicaid RAC program. Providers are required to furnish medically necessary services in accordance with State Medicaid plans, and thus medical necessity reviews by Medicaid RACs are permitted to the extent the reviews are consistent with State laws and regulations. In those cases, we encourage States to adopt measures reflected in the Medicare RAC program sub-regulatory guidance. We intend to continue providing technical assistance to States that will inform them of best practices from the Medicare RAC program. Accordingly, we decline to issue oversight provisions in the final rule regarding medical necessity reviews.

Comment: Several commenters recommended that if medical necessity reviews are permitted in the Medicaid RAC program and an improper payment is identified, providers should be allowed to re-bill for the lower appropriate claim amount.

Response: If a Medicaid RAC identifies an improper payment as a result of a medical necessity review, or any RAC review, the issue of whether a provider is permitted to re-bill a corrected claim is governed by State law, regulation, and policy which set time limits on the submission of providers' claims.

Comment: One commenter recommended increased physician involvement in medical necessity reviews.

Response: In the Medicare RAC program, no physician involvement is required in medical necessity reviews. We require that registered nurses (RNs) must be utilized, and that the Medicare RAC generally, employ a Medical Director. Similarly, we have finalized at § 455.508(b), that each RAC must hire a minimum of 1.0 FTE Contractor Medical Director who is a Doctor of Medicine or Doctor of Osteopathy in good standing with the relevant State licensing authorities and has relevant work and educational experience. A State may seek to be excepted, in accordance with § 455.516, from requiring its RAC to hire a minimum of 1.0 FTE Contractor Medical Director by submitting to CMS a written request for CMS review and approval. In addition, States that elect to permit medical necessity reviews in their Medicaid RAC programs should develop criteria consistent with their own State laws and regulations.

Comment: One commenter recommended that CMS establish reporting mechanisms to monitor contractor accuracy when reviewing claims for medical necessity in the Medicaid RAC program.

Response: If States elect to include medical necessity reviews in their Medicaid RAC program, we encourage the States to monitor the reviews for accuracy. We have finalized § 455.502(c) and § 455.514(b) which require State reporting. Additionally, we will issue sub-regulatory guidance, generally, on reporting and performance metrics for Medicaid RACs.

Comment: One commenter recommended that CMS should establish appropriate guidelines for Medicaid RAC medical necessity reviews, and require the RACs to have qualified personnel with both the clinical and regulatory experience to review medical necessity review claims.

Response: We disagree that CMS should establish guidelines for medical necessity reviews conducted by Medicaid RACs. States must follow the guidance that is provided in State Medicaid plans, State law, regulation, and policy. In the final rule at § 455.508(b), however, we are requiring that each RAC must hire a minimum of 1.0 FTE Contractor Medical Director who is a Doctor of Medicine or Doctor of Osteopathy in good standing with the relevant State licensing authorities and has relevant work and educational experience. A State may seek to be excepted, in accordance with § 455.516, from requiring its RAC to hire a minimum of 1.0 FTE Contractor Medical Director by submitting to CMS a written request for CMS review and approval.

Comment: Several commenters suggested that Medicaid RACs should conduct sample medical necessity audits to support the data identifying the pattern of errors that will be targeted through the audits.

Response: As previously stated, if States elect to include medical necessity reviews in their Medicaid RAC programs, we encourage the States to monitor the reviews for accuracy.

Comment: Several commenters recommended that final validation of medical necessity review denials should be signed off by a physician.

Response: In the Medicare RAC program, a physician's approval is not required in the validation of a medical necessity review denial. States have the flexibility to determine the parameters for medical necessity reviews. Therefore, we are not requiring final validation of medical necessity review by a physician.

Comment: Several commenters recommended that the RACs be required to submit a rationale for each medical necessity review to the SMA for review and approval.

Response: Similar to the Medicare RAC program in which the agency formed a ''New Issue Review Board'' which approves audit issues prior to widespread review, we encourage the formation of State review teams for Medicaid RACs that can approve new audit issues prior to review. We will provide technical assistance to States who decide to include medical necessity reviews in their Medicaid RAC programs.

Comment: One commenter recommended that the SMA be required to share training materials with providers that are used by Medicaid RACs to conduct a medical necessity review.

Response: Although we will not require States to share Medicaid RAC training materials with providers, we encourage States and SMAs, consistent with their laws, regulations, and policies, to make every effort to ensure transparency in the Medicaid RAC program. Additionally, we have finalized § 455.508(d), which requires an education and outreach component in every Medicaid RAC program including, at a minimum, notification to providers of audit policies and protocols.

Comment: One commenter recommended that CMS exclude medical necessity reviews in States where prior authorization programs

require medical necessity reviews prior to payment approval.

Response: To the extent that medical necessity reviews are consistent with Medicaid State Plans, State laws or regulations, medical necessity reviews are permitted. Accordingly, we did not adopt the commenter's recommendation.

Comment: One commenter suggested that CMS and SMAs use RAC audit findings to educate providers and implement payment system fixes to avoid billing mistakes before they are made.

Response: We agree with the comment. If Medicaid RACs identify program vulnerabilities as a result of their findings, we encourage RACs to share this information with States so that they can implement corrective action, such as pre-payment edits or other similar system fixes. States can also use RAC findings to develop provider education in an attempt to prevent billing errors.

Comment: Several commenters expressed concern that all staff conducting automated or complex reviews must demonstrate knowledge of the State's published Medicaid guidelines and coding criteria for the dates and types of services.

Response: We believe that States should make the relevant Medicaid coverage guidelines and coding criteria available as part of the procurement process. This can be done in detail within the request for proposal or by providing the necessary links where guidelines and criteria are located for the various program types.

Comment: A commenter requested that the Medicaid RAC Statement of Work (SOW) exclude Evaluation and Management (E & M) Services from RAC review.

Response: States that contract with a RAC engage the RAC for the purpose of reviewing claims submitted by providers for items or services for which payment has been made under the Medicaid program. We expect that E & M Services, that is, those services provided by physicians and non-physician practitioners to evaluate patients and manage their care, will be included within the scope of Medicaid RAC review.

Comment: A commenter suggested having an internal State agency staff member review claims before auditing by the Medicaid RAC.

Response: We do not oppose States setting up processes to ensure the validity of claims before a determination is made as to whether a claim is an overpayment or underpayment. Because of the uniqueness of each State Medicaid program, the States should have the flexibility to design their Medicaid RAC programs specific to their individual program needs.

Comment: One commenter strongly recommended hiring professionally trained and certified coders, who have the appropriate skill sets that would facilitate improved reviews and reduce duplicative work in reviewing records correctly.

Response: We agree with the commenter. Accordingly, we have included § 455.508(c) in this final rule which requires Medicaid RACs to hire certified coders unless the State determines that certified coders are not required for the effective review of Medicaid claims.

Comment: Several commenters suggested that the final rule require each Medicaid RAC to have a minimum of 1.0 FTE physician Medical Director who is currently licensed; has relevant work experience in the health insurance industry; has extensive knowledge of Medicaid coverage and payment rules; and has appropriate clinical experience practicing medicine. Other commenters suggested that CMS not require Medicaid RACs to hire physician Medical Directors, but require that the appropriate level of medical expertise be staffed by the RAC to review medical records. The commenters also suggested that the medical personnel not have a record of adverse disciplinary actions.

Response: We agree with those commenters who suggested that the Medicaid RACs should each hire a Medical Director who is a Doctor of Medicine or a Doctor of Osteopathy and has relevant work and educational experience. Accordingly, we have finalized at § 455.508(b) that each Medicaid RAC must hire a minimum of 1.0 FTE Contractor Medical Director who is a Doctor of Medicine or Doctor of Osteopathy in good standing with the relevant State licensing authorities and has relevant work and educational experience. A State may seek to be excepted, in accordance with § 455.516, from requiring its RAC to hire a minimum of 1.0 FTE Contractor Medical Director by submitting to CMS a written request for CMS review and approval. We also require Medicaid RACs at § 455.508(a) to employ personnel who are trained medical professionals, as defined by the State, in good standing with the relevant State licensing authorities, where applicable, to review Medicaid claims.

Comment: One commenter requested that CMS consider clarifying the language in the final rule to include State policies and provider handbooks, where Medicaid RACs would review post-payment claims for overpayments and underpayments consistent with State laws and regulations.

Response: States have a certain amount of flexibility to design their Medicaid RAC program according to their needs. We believe that States' current practices regarding the processing of claims, including the use of policies and provider handbooks, should not differ in the Medicaid RAC program. Accordingly, each State should provide its RAC with all available resources to help facilitate claim review.

Comment: One commenter requested that CMS clarify the types of technical abilities that an entity wishing to perform as a Medicaid RAC must demonstrate, as referenced in proposed § 455.508 of the regulation, and incorporate other examples of technical abilities in addition to, trained medical professionals in the final rule.

Response: We expect that RACs will have the ability to review claims submitted by providers of items and services for which payment has been made under section 1902(a) of the Act as required by § 455.506(a). We have finalized § 455.508(a), which requires RACs to employ trained medical professionals, as defined by the State, to review Medicaid claims. These trained medical professionals could include, for example, nurses or physical therapists. States have the discretion to determine the types of medical professionals they require based upon their individual Medicaid RAC program needs.

Comment: One commenter requested that CMS recognize that not all recovery efforts require trained medical professionals; their experience with claims review includes the significant input of non-medical trained professionals, including CPAs, coding professionals, investigators, and accountants who are able to identify inappropriate payments that arise out of non-clinical issues.

Response: We appreciate the comment and recognize that the review of claims could involve a variety of disciplines to ensure the identification of inappropriate payments. However, we have finalized at § 455.508(a), (b), and (c) that Medicaid RACs must hire trained medical professionals, as defined by the State, to review Medicaid claims, each RAC must hire a minimum of 1.0 FTE Contractor Medical Director who is a Doctor of Medicine or Doctor of Osteopathy in good standing with the relevant State licensing authorities and has relevant work and educational experience. A State may seek to be excepted, in accordance with § 455.516, from requiring its RAC to hire a

minimum of 1.0 FTE Contractor Medical Director by submitting to CMS a written request for CMS review and approval. In addition, the Medicaid RAC must hire certified coders (unless the State determines that certified coders are not required for the effective review of Medicaid claims).

Comment: A commenter suggested that CMS use the Medicare definition of ''good cause'' found in our regulation at § 405.986 as a floor in its final regulation for the Medicaid RAC program. This commenter also suggested that providers should have the right to challenge a lack of good cause to review a claim by the Medicaid RACs. Another commenter requested that CMS require Medicaid RACs to document good cause for claim review.

Response: RACs are required to review Medicaid claims. States will have the flexibility to establish requirements regarding the documentation of good cause to review a claim. Additionally, States may consider establishing requirements regarding the documentation of good cause to review a claim if they do not already have this requirement. In addition to those program elements specifically required, we encourage States to replicate the Medicare practices that would be beneficial to their Medicaid RAC programs, including, without limitation, documentation of good cause. However, we will not require States to document good cause because that requirement applies to the Medicare administrative appeals process. Each State has already assured CMS via the State Plan amendment process that it has in place an administrative appeals infrastructure whereby a provider may avail itself of its due process rights to appeal an adverse Medicaid RAC determination. States, therefore, must follow their own administrative appeals processes, which may or may not require documentation of good cause.

Comment: One commenter requested that CMS institute an issue approval process similar to the process now provided in the Medicare RAC program.

Response: In general, issues reviewed by the Medicare RACs are approved by CMS prior to widespread review. CMS uses a New Issue Review Board to provide oversight in conjunction with issues that are reviewed by the Medicare RACs. States may opt to establish an issue review board similar to the Medicare RAC program in which they consider topics for audit review. States will have the flexibility to determine the issues that are relevant to their respective Medicaid programs which will be subject to Medicaid RAC review.

Comment: One commenter suggested that CMS require Medicaid RACs to hold ''meet and greet'' forums.

Response: We recognize that each State has different considerations and must tailor its Medicaid RAC activities to the uniqueness of its own State. Accordingly, we will not require Medicaid RACs to hold ''meet and greet'' forums. However, we believe that States should promote transparency in their respective RAC programs. A ''meet and greet'' forum is an example of one way a State can promote transparency in its RAC program by allowing providers to interact with the contractor's personnel.

Comment: Several commenters asked that CMS require the following customer service measures that will assist providers in ensuring the timely submission of sufficient documentation to support the services billed and generally increase the efficiency of the process:

1. Implement timeframes for RAC determinations and notification of the same.
2. Require RACs to obtain correct provider addresses and points of contact.
3. Require RACs to give extensions to providers if RAC provider notices are sent to a wrong address or other extenuating circumstances.
4. Require RACs to maintain websites and post audit issues.
5. Require RACs to maintain provider portals of customer service information.
6. Require RACs to provide a toll-free phone number in case of questions.
7. Require RACs to respond to providers in a timely manner.
8. Require RACs to give providers a rationale for denials.
9. Require RACs to send correspondence to providers in clearly marked envelopes.
10. Implement deadlines for submission of medical records and clearly indicate those deadlines in an Additional Documentation Request (ADR) letter and indicate in that letter the suggested documentation that will assist RACs in adjudicating the claim.
11. Initiate contact with the provider who is the focus of the audit before issuing an overpayment determination for failure to submit documentation.
12. Accept provider submission of medical records on CD/DVD or via facsimile.

Response: After consideration of these numerous comments, we are requiring at § 455.508(e), that Medicaid RACs provide minimum customer service measures including: Providing a toll-free customer service telephone number in all correspondence sent to providers and staffing the toll-free number during normal business hours from 8:00 a.m. to 4:30 p.m. in the applicable time zone(§ 455.508(e)(1)); compiling and maintaining provider approved addresses and points of contact(§ 455.508(e)(2)); mandatory acceptance of provider submissions of electronic medical records on CD/DVD or via facsimile at the providers' request (§ 455.508(e)(3)); notifying providers of overpayment findings within 60 calendar days (§ 455.508(e)(4)). States should also rely upon internal processes and procedures for notification requirements and identify specific timeframes for required responses between the Medicaid RAC and providers, if possible.

Comment: Several commenters asked that the proposed rule require each Medicaid RAC to include a toll-free customer service telephone number in all correspondence sent to providers.

Response: We agree and have finalized at § 455.508(e) the requirement that Medicaid RACs must provide minimum customer service measures including: Providing a toll-free customer service telephone number in all correspondence sent to providers and staffing the toll-free number during normal business hours from 8:00 a.m. to 4:30 p.m. in the applicable time zone (§ 455.508(e)(1)).

Comment: One commenter asked if the notification of findings of overpayments or underpayments would include information on how overpayments may be repaid/offset, time limits for repayment without interest, and information on timeliness of additional payments and methods of additional payments.

Response: We have finalized at § 455.508(e)(4), that RACs must notify providers of overpayment findings within 60 calendar days. Also, at § 455.510(c)(3), we require States to notify providers of underpayments that are identified by the RACs. Each State will have the discretion to determine any additional information that it wants to include in provider notifications.

Comment: One commenter asked CMS to require States and their RACs to give advance notice to providers of audit focus areas in preparation for reviews, as occurs in the Medicare RAC program.

Response: States have a certain degree of flexibility to design their Medicaid RAC programs to fit their individual needs. We believe that States should promote transparency in their RAC programs. States requiring RACs to give advanced notice to providers of audit areas in preparation of a review is an

example of how States can facilitate transparency.

Comment: One commenter asked CMS to require States to be transparent with regard to their coding/billing rules and guidelines as well as the screening guidelines that are used for making medical necessity determinations.

Response: We encourage States to make coding/billing rules and guidelines available to the extent possible to promote transparency.

Comment: Some commenters recommended that CMS develop a Medicaid RAC national SOW, similar to the Medicare RAC program.

Response: We disagree with the comment. The proposed Medicaid RAC program will not be one national program, like Medicare; rather it will be more than 50 State-specific programs. In this context, it would be nearly impossible to standardize the SOW for the Medicaid RAC program, as Medicare does. We have previously stated that as a result of comments, we have reconsidered the proposal to allow States complete flexibility regarding most aspects of their RAC programs, and have finalized at § 455.506 and § 455.508 certain requirements for States and their RACs to better align with Medicare RACs. With regard to Medicaid RAC program elements where we encourage States to adopt those measures that were incorporated into the permanent Medicare RAC program, we will continue to provide technical assistance after the publication of the final rule.

Comment: Several commenters expressed concern about allowing the RAC to develop or apply its own coverage, payment, or billing policies.

Response: States establish Medicaid coverage, payment and billing policies. The contract established with the RAC should address how the RAC will audit claims based on those established policies. Whether or not RACs develop or apply their own coverage, payment or billing policies is a contract issue resolved between States and their RACs.

Comment: Commenters expressed concern that small and solo practice physicians are already overwhelmed as a result of requests for records by other audit programs. Other commenters suggested that CMS require the RACs to assume the cost of copying and mailing, as well as allow for the electronic submission of records.

Response: We agree with the commenters with regard to limiting the number of medical records that may be requested by a Medicaid RAC. Accordingly, we have finalized at § 455.506(e) that States must set limits on the number and frequency of medical records to be reviewed by the RACs, subject to requests for exceptions from RACs. With regard to the costs of copying and mailing, as well as the electronic submission of records, we require at § 455.508(e)(3) mandatory acceptance of provider submissions of electronic medical records on CD/DVD or via facsimile at the provider's request.

Comment: One commenter requested guidance regarding the parameters associated with potential conflicts of interests that may develop as a result of the same contractor performing services on behalf of providers, for example, coding and billing as well as seeking to perform RAC audits of these same providers in which they acted as consultants.

Response: We indicated in the proposed rule that States should be cognizant of the potential for conflicts of interest, and should take steps to identify and prevent conflicts of interest. These conflicts of interest may arise among contractors or their subcontractors that perform audit related services for providers and then seek to perform audit recovery services on behalf of the State.

Comment: One commenter requested that the Medicaid RAC obtain approval from CMS to audit new issues and to post CMS-approved issues on the Medicaid RAC's website prior to the claims review similar to the current Medicare RAC process.

Response: The Medicaid RAC program differs from the Medicare RAC program in that it is a State-run program. Accordingly, specific areas of RAC review should be determined by the State in conjunction with its RAC. We recognize that there could be issues that are unique to a particular State in terms of areas that should be the focus of an audit. Therefore, we believe States are in the best position to make this determination.

Comment: One commenter requested that CMS clarify whether RAC contracts must be for a period of 5 years, similar to the term for Medicare RAC contracts.

Response: As stated earlier, States will have the flexibility to set periods of performance in their respective Medicaid RAC contracts that fit their program needs and are consistent with State law.

Comment: One commenter requested that CMS require States to use a validation contractor to independently examine Medicaid RAC vulnerability and claim determinations, and to issue annual accuracy scores.

Response: While we will not require States to engage a validation contractor, we believe that States should set targets for validation of the accuracy of RAC determinations and measure those targets accordingly. In addition, we plan on developing performance metrics in conjunction with the States to assist with determining the accuracy of RAC reviews.

Comment: One commenter requested that CMS require Medicaid RACs to accept electronic documentation submission in response to RAC audits.

Response: As part of the customer service measures, we are requiring Medicaid RACs at § 455.508(e)(3) to accept electronic submissions of medical record documentation to facilitate provider response in connection with RAC audit requests, without compromising the security and privacy of that data, unless the State requests and receives an exception from CMS.

Comment: One commenter suggested that CMS include additional provisions in the final rule that will serve to protect independent community pharmacies against abusive auditors and audit practices by requiring RACs to accept the records of a hospital, physician, or other authorized practitioner that are made available by the pharmacy to validate pharmacy records and prescriptions for confirming the accuracy of Medicaid claims filed by the pharmacy.

Response: We disagree that it is necessary to include additional provisions to protect independent pharmacies against abusive audit practices. States will have the flexibility to design their Medicaid RAC programs consistent with their laws, regulations, and policies.

Comment: One commenter requested that CMS include licensed pharmacists or a company representative in the RAC auditing process.

Response: We decline to require Medicaid RACs to hire licensed pharmacists or company representatives. However, States have the flexibility to require Medicaid RACs to hire licensed pharmacists or company representatives if they so choose. We are finalizing staffing requirements at § 455.508 (a), (b) and (c).

Comment: One commenter suggested that CMS require Medicaid RACs to form panels comprised of practicing physicians representing various specialties, which can advise RACs on medical issues.

Response: We do not oppose States requiring Medicaid RACs to form panels of practicing physicians who represent various specialties that can advise them on medical issues. We encourage States to adopt measures that will promote transparency and improved

communication among States, Medicaid agencies, Medicaid RACs, and providers.

Comment: One commenter suggested that CMS require each Medicaid RAC auditor to be trained on Medicaid payment and coverage policy relating to all target areas approved by the State, billing and re-billing protocols, and the Medicaid appeals process. Each RAC auditor should also be required to demonstrate proficiency in these areas prior to conducting audits.

Response: We understand the concerns of the commenter regarding the need to have highly trained personnel. At § 455.508(a), we require that Medicaid RACs hire trained medical professionals, as defined by the State, to review Medicaid claims.

Comment: One commenter urged CMS to designate a percentage of recovered program dollars to improve education, increase pre-payment claim edits to eliminate payment of duplicate claims and those obviously submitted in error (for example, age-specific services provided to a patient outside the designated age range), and to provide continuous outreach with information on newly discovered and commonly occurring billing errors in both the Medicare and Medicaid programs.

Response: We agree with the commenter that education and outreach is a necessary element to Medicaid RAC programs. Accordingly, we include in this final rule at § 455.508(d), the requirement that States and RACs develop an education and outreach program, including notification to providers of audit policies and protocols. We will not require States to designate a percentage of recovered program dollars to improve education and increase pre-payment claim edits.

Comment: A commenter recommended that CMS consider relief in the presence of a disaster, whether widespread or in an individual location, in the way of an extension of the deadline for receipt of records or refund, acceptance of reconstructed records or exemption from review for records that were completely destroyed, and/or delay of reviews for up to 6 months.

Response: States should already have policies and procedures in place for handling unanticipated events when they occur, including provisions for requests of records.

Comment: Several commenters requested CMS to exclude payments made to disproportionate share hospitals (DSH) or special hospital payments from the scope of Medicaid RAC review in the final rule.

Response: We do not believe that DSH payments or special hospital payments should be excluded in the final rule. States have the flexibility to determine whether those payments should be the focus of RAC review.

Comment: One commenter suggested that CMS require States to publish Medicaid and Medicare RAC audit reports for public viewing.

Response: We believe that States should be as transparent as possible with regard to their Medicaid RAC programs. While we will not require States to publish Medicaid audit reports, we encourage States to consider making those reports available for public viewing.

D. Definitions

Comment: One commenter requested that CMS offer a definition of ''overpayment.''

Response: For purposes of the Medicaid RAC program, we believe that States should define ''overpayment'' consistent with 42 CFR 433.304 which defines ''overpayment'' as ''the amount paid by a Medicaid agency to a provider which is in excess of the amount that is allowable for services furnished under section 1902 of the Act and which is required to be refunded under section 1903 of the Act.''

Comment: One commenter indicated that the proposed rule does not include a definition of ''underpayment.'' In addition, this commenter suggested that the definition of underpayment could range from: (a) Broad and include a service that was never billed by a provider, to (b) narrow and reflect an error that was made in the reimbursement calculation.

Response: For purposes of the Medicaid RAC program, we believe that States should define ''underpayment'' consistent with their State law and/or plans. In the Medicare RAC program, an ''underpayment'' is generally defined as an amount paid to a provider or supplier for items or services furnished to a Medicare beneficiary at a lesser amount due and payable under the Act, implementing regulations, and policies.

E. Contingency Fees

Comment: One commenter inquired whether RAC determinations include cost-based adjustments or cost-based settlements. This commenter also wanted to know whether contingency fees would be paid to a Medicaid RAC for those determinations.

Response: We understand that certain States use cost reports for reimbursement of Medicaid claims. Accordingly, States need the flexibility to structure their RAC programs to permit review of cost-based services to identify and recover potential overpayments as well as identify underpayments. Therefore, contingency fees are payable to a Medicaid RAC for the identification and recovery of overpayments from cost-based service providers. With regard to whether a RAC determination can include cost-based settlements, we believe the State has the authority to make adjustments to a provider's cost report and/or cost-based settlements based upon a RAC determination.

Comment: One commenter indicated that the proposed rule fails to require RACs to return their contingency fee if a denial is overturned at any stage of the appeals process. Another commenter suggested that allowing States to determine at what stage in the Medicaid RAC process, post-recovery, that the RACs will receive contingency fees preserves an unacceptable risk of improper incentives which might otherwise encourage a Medicaid RAC to prematurely or even improperly identify and recover funds from a provider. Another commenter suggested that RACs should be paid upon recovery rather than after adjudication.

Response: With regard to the timing of RAC payments, we are finalizing the requirement at § 455.510(b)(2) that States must have the flexibility to determine at what stage of the audit process their RACs may receive contingency fees for the collection of overpayments from Medicaid providers. In addition, if the provider appeals the overpayment determination and the determination is reversed at any level of the appeals process, we are also requiring Medicaid RACs to return their contingency fees within a reasonable timeframe as prescribed by the State, as reflected in this final rule at § 455.510(b)(3). For example, a State should specify in its contract with the Medicaid RAC the timeframe in which the State expects the RAC to return the contingency fee, that is, repayment will occur on the next applicable invoice. As we indicated in the proposed rule, payments to RACs may not be made based upon amounts merely identified but not recovered or amounts initially recovered from providers but that are subsequently repaid due to determinations made in appeals proceedings. Accordingly, if a State pays a contingency fee to a RAC based upon amounts recovered prior to the conclusion of the appeals process that is available to a provider, then the RAC must return the portion of the contingency fee that corresponds to the amount of the overpayment that is reversed at any level of appeal. We do not believe that this improperly

incentivizes a RAC to identify and recover funds from a provider.

Comment: One commenter suggested that CMS' illustration regarding the timing of payment to the RAC that would permit payment to the RAC when it recovers an overpayment but would subsequently require reimbursement by the RAC if the recovery is overturned on appeal, is directly contrary to CMS' interpretation of ''payments to contractors may not be made based upon amounts merely identified but not recovered, or amounts that may initially be recovered but that subsequently must be repaid due to determinations made in appeals proceedings.''

Response: We disagree with the comment. The illustration mentioned by the commenter is consistent with the Act which requires the amount paid to a RAC to be from the overpayment amount recovered. If a State pays a RAC prior to the adjudication of the appeals process, then the RAC must refund the amount paid by the State within a reasonable timeframe as prescribed by the State, in connection with the overpayment in the event the overpayment is reversed at any level of appeal. For example, a State should specify in its contract with the Medicaid RAC the timeframe in which the State expects the RAC to return the contingency fee, that is, repayment will occur on the next applicable invoice.

Comment: One commenter indicated that the cap on contingency fees creates an unnecessary administrative burden on States with smaller Medicaid programs which may not be able to attract qualified contractors at the rate provided for in the proposed rule. Specifically, the commenter stated that it is administratively burdensome to pay for the excess with State only funds or request and receive an exception to the cap. Commenters further indicated that the market should determine an equitable contingency fee rate on a State by State basis. Another commenter indicated that limiting contingency rates will create the unintended consequence of limiting recoveries. This commenter was concerned that artificial rate caps would preclude an auditing firm from uncovering complex improper payments because it will not be able to do so profitably. Alternatively, another commenter suggested raising the cap to 18 percent but CMS should continue to have an exception process. Finally, other commenters indicated that strict limits should be set on the amount of contingency fees.

Response: We believe that the contingency fee rates for identifying and collecting overpayments should be reasonable and determined by each State, taking into account factors, for example, the level of effort to be performed by the RAC and the size of the State's Medicaid population. We recognize that each State has different considerations and must tailor its Medicaid RAC activities to the unique factors of its own State. Nevertheless, based upon our experience with the Medicare RACs, we believe that the contingency fee paid to a State Medicaid RAC should not be in excess of the highest fee paid to a Medicare RAC unless the State can provide sufficient justification. The Medicaid RAC contingency fee limit may be adjusted periodically to maintain parity with the Medicare RAC contingency fee cap.

Comment: One commenter requested that CMS use guidance as reflected in the Medicare RAC SOW to pay contingency fees to identify underpayments.

Response: We disagree with the commenter. Section 1902(a)(42)(B)(ii)(II) of the Act requires States to pay Medicaid RACs for the identification of underpayments from amounts recovered and ''in such amounts as the State may specify.'' Therefore, States have discretion to pay RACs for the identification of underpayments so long as the payments are from amounts recovered. In FY 2010, the Medicare RACs identified and corrected $92.3 million in combined overpayments and underpayments. Eighty-two percent of all RAC corrections were collected overpayments, and 18 percent were identified underpayments that were refunded to providers. We expect that States will realize a similar ratio of overpayments to underpayments in connection with the implementation of the Medicaid RAC program. That is, CMS requires at § 455.510(c)(2) that States must ''adequately'' incentivize the detection of underpayments identified by the RACs. We will evaluate individual States' indicators of adequacy, using the Medicare RAC benchmark, and will examine the trends among the States over several years.

Comment: One commenter requested clarification regarding whether the contingency fee percentage may vary according to a specific Medicaid RAC focus area of review.

Response: We do not object to a State using a tiered structure for contingency fee payments to its Medicaid RAC, so long as the maximum fee percentage does not exceed the highest fee we pay to the Medicare RACs. We will not pay FFP for amounts paid to RACs above the highest fee paid to Medicare RACs, unless the State requests and is granted an exception to that maximum rate. Any tiered structure must also ensure that the Medicaid RACs are incentivized to identify underpayments as well as overpayments.

Comment: One commenter requested clarification of CMS' expectations with regard to fees paid for the identification of underpayments when a State lacks the legal authority to pay fees for the action. This commenter recommended that CMS consider including alternatives that achieve the goal to incentivize the identification of underpayments.

Response: If a State is legally prohibited from requiring a RAC to identify underpayments, then a State may submit to CMS a written request for an exception related to this requirement.

Comment: One commenter opposed any exception to an increase in the FFP limit as a result of an exception to pay a Medicaid RAC a contingency fee that is higher than the Medicare RAC contingency fee. The commenter maintains that the contingency fee structure is inappropriate for any RAC program because it ''perversely incentivizes RACs to engage in bounty hunting, which leads to increased expenses and administrative burdens for providers.'' In addition, this commenter stated that allowing the State to obtain exceptions for the maximum FFP is needless and exacerbates the predatory nature of RAC audits.

Response: The statute requires Medicaid RACs to be paid on a contingency basis for the identification of overpayments. Thus, States do not have an option with regard to the method of payment for the identification of overpayments for their RACs unless State law prohibits the arrangement. We also recognize that certain States may need an exception to the contingency fee cap. For example, States with small Medicaid populations may need to pay a much larger contingency fee rate to attract RAC contractors to work in their State. Accordingly, under certain circumstances, a State may request authorization to pay a RAC a higher contingency fee than the maximum amount for which FFP is paid. Therefore, we disagree that exceptions to pay a RAC a higher contingency than the Medicare RAC contingency fee rate of 12.5 percent are never justified.

Comment: Several commenters suggested that the proposed contingency fee structure imposes no disincentive on RACs for pursuing situations where there is little or no solid evidence of an overpayment. The commenters recommended that payments to RACs should: (1) Be made only upon conclusion of all provider appeals; and (2) not compensate RACs for the time

required for appeals to be exhausted. A few commenters also suggested that RACs should be required to pay a penalty to compensate providers for claims ultimately determined to be unfounded or falsely identified.

Response: As previously stated, we have surveyed States that have RAC-like programs which utilize a contingency fee payment structure and have not learned of any circumstances in which RACs were improperly incentivized to recover overpayments from Medicaid providers. In addition, our evaluation of the Medicare RAC program provides a basis for contingency payments to RACs for the identification and recovery of overpayments. Therefore, we will not compel States to require RACs to pay a penalty to providers for claims ultimately determined to be unfounded. With regard to the timing of payments to RACs, States need the flexibility to determine the most appropriate payment methodology given the uniqueness of its own State. Accordingly, States should decide when it is most appropriate to pay Medicaid RACs for their work.

Comment: Several commenters suggested that because the law provides a strong financial incentive for RACs to focus on overpayments and not the identification of underpayments, CMS should require States to apply the same contingency fee schedule for overpayments to underpayments. One commenter stated that the ''small, flat fee'' for underpayments is unacceptable. This commenter also suggested that CMS should require States to increase their underpayment fee when RACS are not applying a balanced approach to identifying underpayments and overpayments.

Response: With regard to underpayments, we have proposed that a State may choose to pay its RAC a contingency fee for the identification of underpayments, similar to Medicare RACs, or a State may opt to establish a set fee or some other structure for the identification of underpayments. We believe that States should have the flexibility to determine the best payment structure consistent with their State Plans. We also included language in the final rule at § 455.10(c)(2) indicating that States must adequately incentivize their RACs to identify underpayments. In FY 2010, 82 percent of all Medicare RAC corrections were collected overpayments, and 18 percent were identified underpayments that were refunded to providers. We expect that States will realize a similar ratio of overpayments to underpayments in connection with the implementation of the Medicaid RAC program. We will evaluate individual States' indicators of adequacy, using the Medicare RAC benchmark, and will examine the trends among the States over several years.

Comment: One commenter suggested that CMS clarify that underpayments discovered through RAC audits are only payable if claims are filed by the provider within prescribed timeframes.

Response: Generally, RACs are required to review post-payment claims. If a Medicaid claim is not timely filed by a provider, then it would seem that the claim is not payable. Accordingly, these claims should not be subject to RAC review. If a RAC identifies an underpayment and the time for re-filing a claim has passed in accordance with State law, we believe the State has the discretion to determine whether the provider may re-file the claims with the correct information.

Comment: One State commenter indicated that the proposed rule does not state that underpayments must be reimbursed. This commenter stated that providers are responsible for reviewing their remittance advice to determine if they were paid correctly. Further, any adjustments must be made within specific timeframes. This commenter stated that requiring States to reimburse providers for underpayments outside of existing timeliness rules is not appropriate.

Response: The Act mandates that RACs be compensated for the identification of underpayments to providers. While the statute is silent regarding the remittance of underpayments to providers as a result of RAC identification of the underpayments, we are concerned about provider participation in the Medicaid program as well as States making proper payments to providers. Accordingly, we believe that States should compensate all providers for any identified underpayments to the extent possible and consistent with State law. States must notify providers of underpayments that are identified by their Medicaid RACs. We have included this requirement in this final rule at § 455.510(c)(3).

Comment: One commenter appreciated the flexibility extended to States regarding the fees paid to RACs for the identification of underpayments. The commenter, however, disagreed with CMS' approach with regard to the possibility of additional rulemaking should CMS deem it necessary as a result of future CMS review of data, indicating that RACs are not appropriately incentivized to identify underpayments. This commenter believes any further Federal regulation of underpayment identification will create an undue burden on the States and requested that it be removed from consideration.

Response: We appreciate the comment. However, the burden of potential future rulemaking is outside the scope of this final rule. Nevertheless, further rulemaking may be necessary to achieve the statutory mandate for Medicaid RACs to identify underpayments. Accordingly, we have maintained this language in this final rule.

Comment: Several commenters suggested that CMS should require SMAs to: (1) Monitor the volume of underpayment audits conducted by the RACs; (2) increase the underpayment fee if a RAC is not applying a balanced approach to identifying underpayments and overpayments; and (3) include information on the general methods used to identify Medicaid underpayments in the RAC annual report as well as the steps taken to ensure a balance between underpayment and overpayment review. Another commenter recommended that the Medicaid RAC be required to submit annual reports that include information on methods used to identify underpayments, the number of underpayments identified, and any steps taken to ensure that underpayments are addressed.

Response: As stated in the proposed rule, we expect to monitor the methodologies and amounts paid by States to Medicaid RACs to identify underpayments. We may consider future rulemaking depending on the data we review regarding RAC incentive to pursue underpayments. At this time, we are not requiring States to submit annual reports. However, we plan to issue sub-regulatory guidance on future reporting requirements. Accordingly, we will consider the commenters' suggestions regarding the data elements for an annual report. At this time, we will not require States to increase the fee paid to RACs for the detection of underpayments.

Comment: One commenter requested clarification as to whether States can choose to issue payments only to certain providers based upon underpayments that are identified by the RAC versus identified underpayments of all providers. This commenter also mistakenly asserted that Medicaid RACs are only paid for dollars recovered on overpayments and suggested that RACs also be paid for the identification of underpayments.

Response: States are required to pay RACs for the identification of overpayments as well as the identification of underpayments.

Although the statute is silent regarding actual payments to providers as a result of RAC identification of underpayments, we believe that States should compensate all providers for any identified underpayments consistent with State law.

Comment: One commenter suggested that Medicaid RACs should be required to identify underpayment determinations and ensure that the underpayments are remitted to providers in a timely fashion. In addition, this commenter suggested that the States and/or CMS should ensure that Medicaid RACs have the system capability to identify underpayments before they begin auditing claims.

Response: The Act requires States to establish programs to contract with a Medicaid RAC for the purpose of, in relevant part, identifying underpayments. Accordingly, the task of identifying underpayments should be included in the SOW that is part of the contract between a State and its RAC. Therefore, we will assume that a State has verified that its RAC has the capability to identify underpayments even before a RAC has begun auditing claims. With regard to remittance of underpayments, it is the State that is responsible for the payment, not the RAC. The RAC is required to identify, not remit, an underpayment. Although we recognize that the State has discretion with regard to timing of the remittance of underpayments, we encourage States to remit identified underpayments to providers within a reasonable timeframe.

Comment: One commenter pointed out that the proposed rule indicates that ''CMS contracts with Medicare RACs to identify and recover overpayments from Medicare providers, and to identify and *pay* underpayments to Medicare providers.'' (Emphasis added). This commenter requested that CMS clarify this statement given that he has not found any other reference to RACs *making payments* to Medicare providers for identified underpayments.

Response: We agree with the commenter. Medicare RACs do not pay underpayments to Medicare providers. The Medicare program pays underpayments to providers.

Comment: One commenter disagrees with CMS' proposed approach to publishing the maximum Medicaid RAC contingency fee consistent with the schedule of publishing the maximum Medicare RAC contingency fee every 5 years. The next update is scheduled for 2013. Specifically, the commenter stated that because fee structures can change over the life of a contract, CMS should publish any modifications to the Medicare RAC payment methodology and contingency rates within 30 days of the modification as opposed to the existing 5-year schedule. In addition, another commenter suggested not requiring the States to conform to the Medicare timetable because Medicaid RACs will be tailored to each State's needs and States need the ability to set rates and increases that are not restricted by Medicare requirements.

Response: While we proposed to publish the maximum Medicaid RAC contingency fee consistent with the highest Medicare RAC fee, a State is not precluded from increasing the rate paid to its RAC outside of that schedule if necessary. To the extent that a State needs to increase the rate paid to its RAC before the expiration of the scheduled 5-year Medicare RAC contingency fee, the State can submit a SPA describing that an increase is required to reflect whether the State is paying the amount above the Medicare rate with State-only funds, or is requesting matching FFP.

Comment: One commenter suggested removing the contingency fee cap because it will allow States to pursue individualized RAC programs that align the fees with the complexity and scale of the workload and allow smaller States to garner a larger field of bidders from which to choose. Another commenter indicated that States need the flexibility to establish contingency fees separately from Medicare due to the difficulty States will have in reacting to the changes associated with the implementation of a RAC program in light of various State budgeting and contracting/procurement constraints. In addition, a commenter suggested that States need the ability to set rates and increases that are not restricted by Medicare requirements because the Medicaid RAC program needs to be tailored to each State's needs. Therefore, commenters suggested not requiring the States to conform to the higher Medicare contingency fee rate cap.

Response: Based upon our experience with the Medicare RACs, we believe that the contingency fee paid to a State Medicaid RAC should not be in excess of the highest fee paid to a Medicare RAC *unless* the State can provide sufficient justification. We recognize that States with small Medicaid populations may need to pay a much larger contingency fee rate to attract the RAC contractors to work in their State. For example, if a State receives a proposal from a prospective contractor for a contingency fee that is higher than the maximum contingency fee set by CMS for Medicare RACs but it accurately reflects the scope of work to be performed in that particular State, then the State should submit a request for an exception to CMS for consideration.

Comment: One commenter believes that the Affordable Care Act does not specifically mandate that a State Medicaid RAC contingency fee be linked to the Medicare RAC maximum contingency fee. One commenter stated that the contingency fee cap is not in the best interests of the Federal Government, the State or the taxpayer, and is not consistent with the law. Commenters suggested letting the competitive procurement process define the contingency fee percentage limit for Medicaid, as was done for the Medicare RAC program at its inception. One commenter requested that State contingency-based recovery contracts competitively procured at a higher percentage rate be ''grandfathered'' in at those higher rates with a State commitment to transition to the lower percentage limit with the next procurement cycle.

Response: Section 1902(a)(42)(B)(i) of the Act requires States to ''establish a program under which the State contracts (consistent with State law and in the same manner as the Secretary enters into contracts with recovery audit contractors under section 1893(h) [of the Act], subject to such exceptions or requirements as the Secretary may require . * * *'' Although the Act does not specifically set the State Medicaid RAC contingency fee, we believe that the contingency fee paid to a State Medicaid RAC should not be in excess of the highest fee paid to a Medicare RAC *unless* the State can provide sufficient justification that it is consistent with the statute. If a State cannot procure a contractor at the 12.5 percent rate, then a State can request an exception from CMS. For those States that may already have a RAC-like program in place in which the contingency fee is higher than the Medicare rate, we will work with these States to establish an acceptable resolution, which may or may not include ''grandfathering'' in the higher rate.

Comment: One commenter requested clarification with regard to the process associated with State requests for approval to pay a RAC a contingency fee that is higher than the 12.5 percent cap set by CMS. This commenter questioned how CMS will assure nationwide consistency on contingency rate approval decisions if States have to submit their requests for approval to the appropriate CMS Regional Office(s). Other commenters wanted clarification regarding the general exception process.

Response: Generally, State requests for approval for exceptions from the requirements of the RAC program, including higher contingency fees, are made using the SPA process and are determined by the Secretary, through delegated authority provided to CMS. CMS, through partnerships between CPI, the Center for Medicaid, CHIP and Survey & Certification (CMCS), and individual CMS Regional Offices, reviews and considers requests for exceptions. CMS strives to ensure consistency to the extent possible with regard to responses to State exception requests. We will review all relevant facts and circumstances surrounding requests for an exception. If a State's request for a higher contingency fee is denied, the decision is appealable to the Departmental Appeals Board. State commenters with additional questions regarding the process associated with exceptions to the RAC program, including questions about the SPA process, should contact their CMS Regional Office.

Comment: One commenter expressed concern that CMS will be injecting itself into a State's decision-making process on a Federal mandate by denying a State's request for using a higher contingency rate and the associated FFP.

Response: Generally, when a State completes a new State Plan preprint page or SPA because of changes in its Medicaid program, it must be approved by CMS in order for the State to receive Federal matching funds. This holds true for the majority of changes to a Medicaid program when FFP is at issue, not just with regard to the Medicaid RAC program. We have the authority to approve a SPA when FFP is at issue. If we deny a SPA or elements thereof, then the State has the right to appeal the decision.

Comment: One commenter recommended that States be given the flexibility to deploy the most appropriate procurement process for their individual State so long as they are within the legal confines of State and Federal procurements laws and regulations, including bundling Medicaid RAC procurements with other services or combining multiple States with one RAC vendor. Another commenter requested that the bundling of RAC services with other recovery services—such as a TPL contractor—should not be permitted because it will limit competition by excluding the most qualified Medicaid RAC firms. This commenter suggested that TPL contractors may not have the skill set to effectively handle complex reviews.

Response: We expect that all States will procure a RAC contractor. If a State feels that its unique situation may preclude it from meeting this expectation, a State must submit a request for an exception to CMS. However, if a State is interested in ''bundling'' its RAC procurement with other services performed by an existing contractor, then the State must execute a separate task order outlining the requirements of the RAC program with the existing contractor. If a number of States are interested in combining resources and utilize one contractor for their respective RAC programs, we do not object if there are no conflicts of interest and the arrangement comports with Federal and State law.

Comment: One commenter suggested that States should be permitted to apply for an exception from the RAC program to the extent that a State is unable to attract and acquire a RAC vendor.

Response: States are required to procure a RAC contractor. To the extent that a State is having difficulty procuring that contractor, then that State should contact CMS to discuss a potential resolution, which may include additional time to procure a qualified contractor. It is unlikely that we will grant an exception from the entire RAC program as a result of a State needing additional time to procure a RAC vendor.

Comment: One commenter requested public access to the payment rates furnished to Medicaid RACs, similar to the public availability of Medicare RAC payment rates.

Response: We decline to require States to publicly post their Medicaid RAC payment rates. However, we encourage States to make this information available to the extent possible to promote transparency.

Comment: One commenter requested that CMS allow States to engage in contractual agreements with RACs that limit RAC reimbursements to an amount less than the total amount recovered, but to grant States flexibility in meeting this requirement. This would include allowing States to recover from the provider both the amount of the overpayment and the contingency fee when overpayments have been identified.

Response: Section 1902(a)(42)(B)(i) of the Act mandates that payments made to RACs ''shall be made to such contractor only from amounts recovered'' and that the payments ''shall be made on a contingent basis.'' Allowing States to recover the contingency fee for the RAC from the provider is inconsistent with the language in the statute. To the extent that State law prohibits it from complying with the statute, then the State should submit a request for an exception to CMS for consideration.

Comment: One commenter indicated that a large number of pharmacy claims being audited include those claims that are questionable due to administrative or clerical errors. This commenter suggested that providers should only be expected to pay the part of the claim that is determined to be an overpayment, not the ''clean'' portion of the claim or those resulting portions of the claim that are the result of technical or administrative errors.

Response: Medicaid RACs are statutorily mandated to audit Medicaid claims for the purpose of identifying and recouping overpayments as well as identifying underpayments. We would expect a provider to return any identified overpayment to the State Medicaid program. To the extent there are additional errors associated with the claim that do not relate to the RAC's required purpose, the issue is outside the scope of the proposed rule.

Comment: One commenter requested clarification about the following statement in the proposed rule: ''States must ensure that they do not pay in total RAC fees more than the total amount of overpayments collected.'' Specifically, the commenter inquired whether this is in the aggregate across all audits during a particular time period or if it applies to one particular audit.

Response: States must track the aggregate of claims that are identified as overpayments to appropriately calculate the contingency fees owed to the RAC. States must also account for the costs associated with the identification of underpayments. States must ensure that they do not pay in total RAC fees more than the total amount of overpayments collected.

F. Coordination

Comment: Several commenters expressed concern regarding the duplication of audits. These commenters suggested that CMS should prohibit Medicaid RACs from conducting audits on claims that are already under review by a Medicaid Integrity Contractor or other entity in the final regulation. Commenters also suggested that Medicaid RACs should be required to use a RAC data warehouse to identify any claims that are being reviewed by the RAC or other Medicaid audit program. In addition, the commenters suggested that the final regulation should exclude from RAC review, claims in which payment has been denied and/or withdrawn.

Response: We are concerned about minimizing the potential for multiple audits of the same provider. We recognize the need to minimize the burden on providers associated with responding to multiple audit requests, to the extent possible. States and their RACs are statutorily mandated to coordinate auditing efforts with those of other entities conducting audits of providers receiving payments for Medicaid claims. We have finalized this requirement at § 455.506(c). Under certain limited instances, overlapping audits may be necessary or otherwise unavoidable. For example, if a claim has been reviewed by a Medicaid RAC, and it suspects fraud, then that claim must be referred to law enforcement for review. However, in an effort to limit duplicate audit activity, we have included language in this final rule at § 455.508(g) indicating that Medicaid RACs should not audit a claim that has already been audited or is currently being audited by another entity, including the Medicare RACs. However, we decline to require States to create or use a data warehouse at this time. First, we are not aware of the existence of a data warehouse containing State Medicaid claims data. We are aware that States that have existing RAC-like programs have systems in place to achieve coordination. For example, one SMA reviews a list of claims to ensure that there are no open audits or referrals, whereas another SMA screens cases and meets monthly with its MFCU in an effort to achieve coordination. Second, we are aware that States have limited resources and cannot mandate the creation of a data warehouse. Ultimately, we believe that States need the flexibility to determine the best method of achieving coordination with the resources available to them. With regard to the review of denied claims, the Act requires Medicaid RACs to review Medicaid claims for overpayments. Accordingly, we do not see the need to change the regulation to incorporate denied claims in the final rule. With regard to claims that have been filed and subsequently withdrawn by the provider, we believe that the claims, to the extent that no payment has been made, should not be the subject of RAC review.

Comment: One commenter suggested that CMS should provide centralized access to claims data or State policies to limit the burden on States.

Response: There is no centralized repository of Medicaid claims data. We have and will continue to work with States to provide technical assistance to help States comply with implementation requirements and lessen the burden on States.

Comment: One commenter recommended coordination between vendors when requesting records from hospitals.

Response: We are aware of the potential for overlapping audits of the same provider by multiple auditing entities and are concerned about minimizing the potential for multiple audits of the same provider. States have the flexibility to achieve coordination within a reasonable timeframe. Coordination among auditing entities in a State is achievable. We have learned that States that already have RAC-like programs have systems in place to coordinate the efforts of auditing entities to minimize provider burden. In addition, we are working to assist States with coordination of their auditing efforts with those of other entities.

Comment: In anticipation of the proposed implementation date of April 1, 2011, one commenter suggested that CMS should allow States additional time to accomplish certain tasks to ensure effective implementation of RAC contracts, including coordination of audit activity. Specifically, this commenter indicated that there must be time for careful consideration of how duplicate audit activity will be avoided.

Response: We are aware of the potential for overlapping audits of the same provider by multiple auditing entities and are concerned about minimizing the potential for multiple audits of the same provider. In response to several commenters, we have delayed implementation of this final rule until January 1, 2012. Therefore, States have an opportunity to achieve coordination within a reasonable timeframe. Coordination among auditing entities in a State is achievable. Indeed, we have learned that States that already have RAC-like programs have systems in place to coordinate the efforts of auditing entities to minimize provider burden.

Comment: One commenter inquired whether RACs are required to coordinate their auditing efforts with other entities that conduct cost-based audits for settlement.

Response: The statute requires a State and any contractors under contract with the State to coordinate their recovery audit efforts with other contractors or entities performing audits of entities receiving payments under the State Plan or waiver in the State. Accordingly, at the direction of the State, a RAC is required to coordinate its auditing efforts with those of other auditing entities, including those performing cost-based audits of Medicaid claims.

Comment: One commenter suggested that CMS should include a provision in the final rule requiring CMS and the State to monitor the coordination efforts of States and their RACs to ensure that the coordination is taking place.

Response: We have already surveyed the coordination efforts of States that have a RAC-like program in place. We are very interested in learning about the different methods of coordination that will be utilized by the States. Although we decline to put a monitoring requirement in the final rule, we plan to do this on an informal basis. In addition, as discussed in our responses to other comments, we expect the State to play a vital role with regard to coordination of entities seeking to audit providers who receive payments under the State Medicaid Plan or waiver in the State. We have included language in this final rule requiring States to coordinate the recovery audit efforts of their RACs with other auditing entities at § 455.506(c).

Comment: Several commenters suggested that proposed § 455.508 lack specificity with regard to oversight of RAC eligibility requirements. These commenters also expressed concern about the administrative burden associated with having to respond to multiple requests for the same documentation from different auditors in a given period of time.

Response: The State, not CMS, determines whether its RAC has the ability to perform the requirements outlined in § 455.508. CMS is not involved in the RAC selection process. With regard to the coordination of audits, we are concerned about minimizing the potential for multiple audits of the same provider. We recognize the need to minimize the burden on providers associated with responding to multiple audit requests, to the extent possible. States and their RACs are required to coordinate auditing efforts with other entities conducting audits of Medicaid claims. We finalize this requirement at § 455.506(c). However, we have also included language in this final rule at § 455.508(g) indicating that Medicaid RACs should not audit claims that have already been subject to audit or that are currently being audited by another entity. We recognize that subsequent reviews of claims by other auditing entities may be necessary or otherwise unavoidable. Finally, we hope to develop a system to facilitate State coordination among auditing entities.

Comment: One commenter suggested that once a claim has been reviewed by an auditing entity, that claim should not be subject to review by another auditing

entity. For example, if a claim is selected for review by a Medicaid RAC contractor and the claim has previously been reviewed by a State's internal audit department or fraud unit, then the claim should be exempt from any RAC review. Similarly, if a RAC reviews a claim, then a State internal audit department should not subsequently review that claim or include it in a universe of claims that are part of any audit extrapolation.

Response: Generally, if a claim is already subject to review and an overpayment is collected as a result of the audit process, then the claim should not be subsequently reviewed by another auditing entity for the same purpose. We have included language in the final rule at § 455.508(g). However, there are circumstances in which claims may be the subject of multiple reviews, including, but not limited to, potential fraud. Accordingly, the claims at issue may be subject to subsequent review.

Comment: One commenter agreed with CMS' approach to allow States the flexibility to coordinate the collection of overpayments identified by the RAC rather than the RAC itself collecting the overpayment. The commenter currently collects the overpayments from providers and requested CMS approval to continue to collect the overpayments.

Response: We appreciate the commenter's support and inquiry. Generally, States utilize the SPA process to seek our approval regarding any change to their Medicaid programs. States interested in the changes should contact CMS directly with regard to its SPA.

Comment: One commenter recommended that CMS allow States to contract with RACs to only identify overpayments and underpayments and not require the collection of any identified overpayments.

Response: RACs are not required to collect identified overpayments. We specified in the proposed rule at § 455.506(b) that States have the discretion to coordinate the recoupment of overpayments with their RACs. We recognized that States may not be able to delegate the collection of overpayments to contractors and, therefore, granted States the flexibility of coordinating the collection of overpayments. We are finalizing § 455.506(b) as proposed.

Comment: One commenter requested guidance from CMS with regard to the role of Medicare RACs and Medicaid RACs in reviewing claims for dually eligible beneficiaries, those enrolled in both the Medicare and Medicaid programs.

Response: Medicaid RACs are not prohibited from reviewing claims for dually eligible beneficiaries. However, to the extent possible we want to minimize provider burden and if the claims were already reviewed by a Medicare RAC, then the Medicaid RAC should not review the claims. We note that there is little financial incentive for Medicaid RACs to review claims involving dually eligible beneficiaries since Medicare is the primary payer on claims for dual eligibles. Additionally, many States already use TPL contractors to identify overpayments involving eligibility issues.

Comment: One commenter suggested that States should have the flexibility to coordinate with other State and Federal agencies performing audits of providers who receive payment in connection with services furnished to Medicaid beneficiaries. Other commenters suggested coordination between auditing companies when requesting records from hospitals.

Response: States and their RACs are required to coordinate their auditing efforts with other entities that perform audits of providers that receive payments under the State Medicaid Plan. We believe that States have a significant role in coordinating the auditing efforts of their respective integrity programs, RACs, and any other auditing entities under contract with the State as well as any Federal agency seeking to audit a State's Medicaid providers. To the extent a State plays an active role in coordinating the efforts of the various entities seeking to review Medicaid claims, we believe that this will help to minimize the potential for multiple requests for records from different auditing entities.

Comment: One commenter requested that CMS delay implementation of the final rule until coordination issues are resolved.

Response: We disagree with the comment. Implementation of the final rule is not contingent on coordination of auditing entities. As previously discussed, we are very concerned about minimizing provider burden associated with responding to multiple audits and are working to develop a system for States to help facilitate coordination. Additionally, we note that the new effective date for the rule will be January 1, 2012, due in part, to the additional time it will take for States to be prepared for implementation.

Comment: One commenter inquired whether States are required to exclude Payment Error Rate Measurement (PERM) claims from Medicaid RAC review.

Response: Section 1902(a)(42)(B)(i) of the Act mandates that States and their RACs coordinate their ''recovery audit efforts with other contractors or entities performing audits of entities receiving payments under the State plan or waiver in the State * * * .'' The Act requires the State and its RAC to coordinate with the PERM contractor. PERM uses a random sample of claims to develop the error rates. Accordingly, if certain claims have already been audited by the PERM contractor, then the State, to the extent possible, should not subject the same claims to a subsequent audit by its Medicaid RAC. However, we recognize that the PERM contractor may in fact include claims in its sample that were previously audited by the Medicaid RAC since the PERM is measuring the error rate of payments that do not meet statutory, regulatory or administrative requirements.

Comment: One commenter who participated in the CMS Webinar ''Contract Template: Statements of Work,'' in which coordination with other entities such as CMS and OGC was discussed, inquired about the meaning of ''OGC'' and what the State is supposed to coordinate with those entities.

Response: ''OGC'' is an acronym for the Office of the General Counsel, which is the legal advisor to the Department of Health and Human Services. Coordination with OGC is not necessary, as OGC does not conduct audits of Medicaid claims. With regard to coordination, States and their RACs are required to coordinate their auditing efforts with other entities that perform audits of providers that receive payments under the State Medicaid plan. We believe that States have a significant role in coordinating the auditing efforts of their respective integrity programs, RACs, and any other auditing entities under contract with the State as well as any Federal agency that is conducting potential fraud reviews or seeking to review State Medicaid providers.

Comment: One commenter asked if an Audit Medicaid Integrity Contractor already requested records from a provider for certain claims but did not complete the review at CMS direction, whether the claims should be suppressed from review by a Medicaid RAC.

Response: Generally, if there were no audit findings associated with the review of certain claims, then the claims may be subject to additional review unless the State determines that there is no basis for the audit of the claims.

Comment: One commenter noted that allowing States to contract with more

than one RAC poses the risk of duplicate audits of the same provider. This commenter, therefore, suggested that the proposed rule should be modified to ensure that when a State contracts with more than one RAC, the State and its RACs should be required to coordinate their efforts to prevent duplication of audits.

Response: We agree with the comment and are making this change in this final rule at § 455.506(c).

Comment: Several commenters recommended that States be allowed to manage the reporting and referral of potential fraud to law enforcement. They proposed that RACs would report suspected fraud to States and the States would then refer it to the appropriate law enforcement entities such as the ''MFCUs, SMA, Federal OIG and local law enforcement.'' The States would be able to provide a more comprehensive referral to law enforcement by providing information on past interaction with or conduct by the provider in question. They indicated that State coordination of fraud and/or abuse is consistent with Federal and State laws and regulations.

Response: We agree that States are in the best position to know of potentially fraudulent activities by providers in their States. Accordingly, we have specified in this final rule at § 455.506(d) that States, not RACs, have the responsibility to make referrals of suspected fraud to the MFCU or other appropriate law enforcement agency.

Comment: Several commenters requested that CMS reconsider the scope of work and/or expertise of the Medicaid RAC to distinguish fraud or criminal activity from erroneous billing. These commenters believe that suspicion of fraud and criminal activity should be referred for further investigation by other MICs with expertise to determine whether or not a referral to law enforcement is appropriate.

Response: We understand the concerns of commenters. We believe that States should determine whether there is a sufficient basis for a fraud referral to their State MFCUs or other appropriate law enforcement agency. Accordingly, we are making this change in this final rule at § 455.506(d).

Comment: One commenter indicated that CMS' proposed standard of ''reasonable grounds'' concerning law enforcement referrals in proposed § 455.508 of the regulation, is subject to variable interpretation and could result in inappropriate referrals. This commenter stated that CMS must clearly define the term ''reasonable grounds'' and include examples of same.

Response: Based upon the comments received, we have changed the responsibility of making fraud referrals to law enforcement from the Medicaid RACs to the States. We have reflected this change in this final rule at § 455.506(d). We believe that this is consistent with existing Federal regulations that govern State referrals of fraud and abuse, as defined by § 455.2, to the appropriate law enforcement agency as well as require the State to adhere to certain fraud referral standards. In addition, we have removed the language regarding ''reasonable grounds'' from this final rule. We have also included in this final rule at § 455.508(h) that Medicaid RACs must refer suspected cases of fraud and/or abuse to the State in a timely manner. We expect States to provide clear definitions of timely referrals in its contract with the RAC or other applicable guidance.

Comment: One commenter recommended that CMS adopt the recommendations in the OIG Medicare RAC Referral Report. That report outlined a number of recommendations including requiring Medicare RACs to receive mandatory training on the identification and referral of fraud.

Response: We disagree with the commenter. In the permanent Medicare RAC program, we provided RACs with a presentation about fraud in Medicare, the definition of fraud, and examples of potential Medicare fraud. The OIG stated in its report that because Medicare RACs do not receive their contingency fee for cases they refer and are determined to be fraud, there may be a disincentive for RACs to refer to cases of potential fraud. Medicaid RACs are a State operated program, whereas the Medicare RACs are a national program. Accordingly, the responsibility of making fraud referrals should belong to the State instead of the Medicaid RAC, as initially proposed. We have finalized this change at § 455.506(d).

Comment: One commenter requested the removal of the requirement of immediate referral for suspicion of fraud to law enforcement from the final rule. The commenter suggested the requirement exceeds the authority of the statute. The commenter continued that he/she did not believe that the determination of what may constitute reasonable grounds for referral is within the purview of Medicaid RACs, or that RACs should be required to make the referrals.

Response: We agree that the Medicaid RACs should not have the responsibility to make fraud referrals and that the responsibility belongs to the State. Accordingly, we have made the change in this final rule by adding new subparagraph § 455.506(d). In addition, we have included in this final rule at § 455.508(h) that the Medicaid RAC must refer suspected cases of fraud and/or abuse to the State in a timely manner, as defined by the State. We expect States to provide clear definitions of timely referrals in the contract with its RAC or other applicable guidance.

Comment: One commenter requested clarification on how States and Medicaid RACs will be notified of efforts initiated by the OIG or criminal investigations to facilitate coordination of efforts. The commenter expressed concern that routine RAC activities such as record requests may alert providers and subsequently jeopardize investigations.

Response: We have finalized that States are required to make referrals of suspected fraud and/or abuse to the MFCU or other appropriate law enforcement agency at § 455.506(d). We believe the States play a significant role with regard to coordination generally, and should share information regarding investigative activities or other auditing efforts in the States with their RACs to the extent possible. However, nothing in this final rule requires the Office of Inspector General or other law enforcement authorities to disclose investigative information to Medicaid RACs.

G. Appeals Process

Comment: One commenter asked about the error rate associated with the RACs finding improper payments that ultimately are reversed on appeal. Another commenter asked about the frequency with which an organization believes a RAC has made an error but does not want to go through the appeal process.

Response: We presume that the commenter was inquiring about data from the Medicare RAC program. In the Medicare RAC program, we have contracted with a validation contractor that does an accuracy review for CMS. That contractor reviews a sample of claims each month (overpayments and no findings) to determine if the Medicare RAC was making accurate decisions. In the Medicare RAC Demonstration, only 8.2% of all claims with an improper payment were overturned on appeal. We do not have specific data with regard to providers that decline to appeal Medicare RAC determinations or that believe that a RAC determination was made in error.

Comment: One commenter asked who bears the cost of the appeal if an adverse Medicaid RAC determination is appealed. Specifically, the commenter

inquired as to whether the State would be able to claim FFP for the cost of the appeal if the appeal reversed the RAC determination. The commenter also wanted to know if the determination is upheld, whether the provider could include the costs in its cost report.

Response: The cost of a State's appeal would be an allowable administrative cost under the State's Cost Allocation Plan. If a State is establishing a new appeals process for RAC determinations, the State may have to amend its Cost Allocation Plan to cover the new appeals process. A provider's appeal costs are administrative costs that are not allowable under Medicaid.

Comment: One commenter asked how long the appeal process would take an organization to go through.

Response: We are not mandating a single appeals process that all States must use for RAC appeals, therefore the length of time for a provider's appeal in a given State will differ, based on the nature of the State's appeals process and the issues on appeal. However, under section 1902(a)(42)(B)(ii)(III) of the Act, all States must have an appeals process in place for providers to appeal adverse RAC determinations.

Comment: A few commenters asked whether they must seek CMS approval if they intend to use their existing appeals process, or if the requirement to submit to CMS a proposal describing the appeals process which must be approved prior to implementation of the RAC programs applied only when the State intended to establish a separate RAC appeals process or when the State did not currently have an appeals process in place.

Response: The proposed rule provided States with 2 options for their appeals process from which States may choose as they deem appropriate: (1) Either take advantage of an existing appeals process, or (2) establish a separate appeals process for RAC determinations. The proposed rule also required States to submit a proposal describing the appeals process, which we would approve prior to the State implementing its RAC program. In this final rule, we now clarify that we will only require a description and prior approval of any *new* RAC appeals process that a State will use, not any existing appeals process.

Comment: One commenter encouraged CMS to prohibit any ability for States to establish a new appeals process. The commenter believed a new appeals process would be problematic for those providers that have entities in more than one State, as each would have to comply with more than one process to submit appeals on a timely basis.

Response: We are not mandating a single appeals process that all States must use for RAC appeals. Given that each State has provided us with assurances through the SPA process that it will comply with the statutory requirement to provide an adequate appeals process for entities to appeal adverse RAC determinations, it would be unreasonably burdensome on the States for us to impose a single appeals process for RAC appeals. We are not prohibiting States from establishing a new appeals process for RAC appeals. States will have the flexibility to determine what form of appeals process best suits their respective RAC programs. We are aware that responding to multiple States' processes could be a challenge for providers that are enrolled in multiple States' Medicaid programs. However, the providers would have been involved with the RACs' overpayment determination processes and should have received notice of appeals timeframes.

Comment: One commenter noted that the language of the preamble to the proposed rule refers to ''ensuring providers adequate due process rights'' while the proposed regulation at § 455.512 only provides for general appeal rights with no mention of due process. The commenter recommends strengthening the rule by changing § 455.512 to read ''States shall provide appeal rights that ensure adequate due process under State law or administrative procedures to Medicaid providers that seek review of an adverse Medicaid RAC determination.''

Response: We appreciate the commenter's concerns, however we note that section 1902(a)(42)(B)(ii)(III) of the Act only refers to ''an adequate process for entities to appeal any adverse determination.'' To allow the States maximum flexibility and to accommodate differences in State laws regarding due process, we are not prescribing specific requirements for an appeals process for adverse RAC determinations. Instead, consistent with the statutory language, we are requiring States to provide an adequate appeals process. Therefore, we decline to revise § 455.512 in accordance with the commenter's request.

Comment: A commenter asked whether the RAC program contractor activities may include legal defense of an appealed overpayment determination, or, in other words, whether the State may contractually obligate the RAC to defend its findings in the administrative appeal. The commenter also asked whether the State specific requirements must be articulated in the SPA.

Response: When designing their RAC programs, States have the discretion to require their RACs by contract to appear in the State's administrative or judicial appeals hearings to defend the RACs' overpayment findings. The Medicaid SPA does not require a detailed description of the State's RAC program. However, in this final rule, we are finalizing at § 455.502(c) the requirement that the State report to CMS elements describing the effectiveness of the State's RAC program, including, but not limited to, general program descriptors (for example, contract periods of performance, contractors' names) and metrics (for example, number of audits conducted, recovery amounts, number of cases referred for potential fraud). CMS will provide sub regulatory guidance to States related to performance metrics, State reporting requirements and other milestones contained in the RAC program.

Comment: A commenter asked CMS to add clarifying language in 42 CFR part 455 subpart F that the SMA and not the RAC is the final arbiter of whether an overpayment or underpayment has been discovered.

Response: When an overpayment is discovered it is governed by § 433.316 of the regulation. To the extent that an overpayment discovered in the course of a RAC audit is not the result of fraud, it would be subject to § 433.316(c). The issue is not which party is the final arbiter of the overpayment, but which party has taken the action that results in the overpayment being discovered. The party that discovered the overpayment would depend upon the process established in the State's RAC contract and which action occurs first in time: From whom communications with providers are initiated, that is SMA or the RAC, and whether the RAC initiates recoupment proceedings.

Comment: One commenter requested that CMS reconsider its position that States could share a part of recovery from a civil or criminal fraud proceeding with a RAC. The commenter was concerned that CMS might unintentionally create strong incentives (through the prospect for multiple damages) that RACs would presume potential fraud where unfounded. The commenter suggested that even without an incentive under the Medicare RAC demonstration, RACs often inaccurately determined the existence of overpayments, with 64 percent of contested cases overturned on appeal, and cited the June 2010, ''*CMS Update to the RAC Demonstration Report.*''

Response: We proposed that nothing would preclude a State from agreeing to pay a RAC a contingency fee from funds recovered and returned to the State as the State share of an overpayment (or restitution) at the close of the civil or criminal proceeding. It would be within the State's discretion to design a RAC program that paid a contingency fee to a RAC on this basis, that is, if the RAC contributed to the recovery and the recovery was fully adjudicated. We are sensitive to the potential for creating an incentive for contingency fees for fraud recoveries. However, given that a fully adjudicated fraud recovery could take several years, we believe the potential pay-off for the RAC would be outweighed by the delay in the payment. We recognize that the Medicare RAC Demonstration program experienced a moderate overturn rate and are hopeful that States will be able to design programs that take the Medicare RAC experience, including overturn rate, into consideration to reduce the burden on the providers and State Medicaid programs.

Comment: One commenter urges CMS to modify the proposed rule to permit only the second option that CMS proposed for structuring payments to RACs in which a State pays a RAC only when the recovery amount is fully adjudicated and all appeals available to the provider have been concluded. Adoption of the second option, the commenter argues, is not only consistent with the expressed interpretation of the statute by CMS, it is also sound policy, as it would incentivize Medicaid RACs to conduct their audits with greater care to avoid errors that would generate appeals. The commenter believes the first option in which a State pays a RAC when the RAC recovers an overpayment and the State requires reimbursement by the RAC if the recovery is overturned on appeal is inconsistent with the language of section 1902(a)(42)(B)(ii)(I) of the Act, which requires that payment must be made only from amounts recovered.

Response: As we stated in the proposed rule, we interpret the statute to mean that (a) payments may not exceed the total amounts recovered, and (b) payments may not be made based upon amounts merely identified but not recovered, or amounts that may initially be recovered but that subsequently must be repaid due to determinations made in appeals proceedings. Therefore, under (a), because the payment is a contingency fee it is relative to the amounts recovered; and under (b), the identified amounts must be recovered for the contingency fee to be paid to the RAC, or the contingency fee must be recouped from the RAC if a recovered overpayment is found at any level of appeal to not have been overpaid by the provider. While some RACs may find the second contingency fee option to be a disincentive to committing errors when performing audits, we think that a delay of as long as two years to be paid the contingency fee would act as a disincentive to contracting with the States at all. We are permitting the States the most flexibility in designing their RAC programs, which includes the timing of payment to their RACs.

Comment: One commenter noted that the level of provider appeals related to RAC determinations could, according to the commenter, ''drive substantial program costs.'' The commenter asked for clarification as to whether the expenses related to the additional appeals will be subtracted from the Federal share to be refunded.

Response: As stated above, a State's appeal costs would be an allowable administrative cost under the State's Cost Allocation Plan. A provider's appeal costs are administrative costs that are not allowable under Medicaid.

Comment: Several commenters recommended a discussion period between RACs and the providers prior to the commencement of the right to appeal to avoid inaccurate determinations of overpayments. During the discussion period, the providers could provide RACs with information necessary to make an accurate determination. The commenters noted that when the discussion period was implemented in the Medicare RAC program, providers and RACs avoided the time and expense of going through the appeals process. The commenters suggested that SMAs would participate when issues arose regarding RACs' interpretation of the State Plan and other Medicaid payment policies. One commenter recommended a discussion period of 25 days. Another commenter suggested that CMS and the States should monitor how Medicaid RACs observe the discussion period so that it is not treated as a mere formality but, rather, a meaningful opportunity for the parties to address any errors in the determination.

Response: We appreciate the commenters' suggestions and are cognizant of the lessons we might learn from the Medicare RAC program, as well as other audit programs. Providers that submit additional information to auditors during the discussion or comment period may avoid subsequent appeals or they may find that the auditor's findings will stand. Section 1902(a)(42)(B) of the Act establishes a State RAC program, which we are interpreting to grant States the flexibility to design programs, consistent with their State laws and that meet the needs of their States. We will not mandate that States use discussion periods, either at all or of any specified duration. However, we encourage States to require a discussion or comment period prior to a RAC's audit becoming final, as is commonplace in audits. If a State chooses to implement a discussion or comment period in its RAC program, we recommend but do not require that the State monitor the RAC's compliance with that discussion or comment period requirement.

Comment: Several commenters suggested that we should require each State to prescribe a clear appeals process that is robust and provides for multiple levels of appeal. Some commenters urged us to prescribe specific requirements for Medicaid appeals.

Response: We are not mandating a single appeals process that all States must use for RAC appeals nor dictating the manner of the appeals processes that the States must implement for RAC appeals. In the event that, through the SPA process, a State proposed a process that did not provide entities with an adequate opportunity to appeal adverse RAC determinations, we would engage in discussions with the State about its appeals process until the State was able to provide assurances that its appeals process was compliant with section 1902(A)(42)(B)(ii)(III) of the Act. Given that each State has provided us with assurances that it will comply with the statutory requirement to provide an adequate appeals process for entities to appeal adverse RAC determinations, it would be unreasonably burdensome on the States for us to impose a single appeals process for RAC appeals.

Comment: Several commenters objected that our proposed rule failed to prevent RACs from recouping funds associated with denials under appeal. The commenters also objected that the proposal failed to require RACs to return their contingency fee if a denial is overturned at any stage of the appeals process. The commenters believe that CMS' silence on these important issues in the proposed rule will result in overzealous and inappropriate denials on the part of the Medicaid RACs, and urge that RACs must not be able to recoup funds until the appeals process is exhausted and must not receive their contingency fee in cases where the denial is overturned.

Response: We proposed 2 payment options to provide States with the most flexibility in designing their RAC programs: (1) States may pay RACs from

amounts identified and recovered, but not fully adjudicated, but the RAC would be required to return any contingency fee that corresponded to the amount of an overpayment overturned on appeal; or, (2) States could pay the RAC after the overpayment was fully adjudicated, that is after the exhaustion of all appeals available to the provider. We disagree that we failed to require RACs to return their contingency fee if a denial is overturned during the appeals process. In the first option as we described it in our proposal, the RAC would be required to return any portion of the contingency fee that corresponded to the amount of the overpayment overturned at any level of appeal.

The commenters are concerned that the opportunity for a contingency fee will act as an incentive to the RACs to find overpayments, even if those are later overturned on appeal and the RACs must return the contingency fee. We believe that the possibility of a contingency fee being overturned would be outweighed by the likelihood that the State would not be able to attract a RAC for its RAC program, were the State limited to payment of the contingency fee after exhaustion of appeals. The appeals process can take years and a RAC would go unpaid for all its cases in the initial years while providers exhausted their appeal rights.

Comment: Several commenters noted that the proposed rule does not require the Medicaid RAC to provide any data on the number of claims appealed and the number of denials overturned during the appeals process. The commenters recommend that these data be captured on a timely basis and urge that the data be used to hold RACs accountable for inappropriate denials. The commenters also urge that information on appeal turnover rates be shared with the public. Two of the commenters also suggested that RACs with a turnover rate of 25 percent or greater per year should be subject to a monetary penalty.

Response: Whether States should require RACs to provide any data on the number of claims appealed or the number of denials overturned during the appeals process, or any penalty to be assessed for high appeal turnover rates is within the discretion of the States when designing their RAC programs. Whether to release Medicaid RAC appeal turnover rates is subject to each State's laws and rules. We proposed that the States provide us with elements describing the effectiveness of the RAC programs, including general program descriptors (contract periods of performance, contractors' names, etc.) and program metrics (number of audits conducted, recovery amounts, number of cases referred for potential fraud, etc.). We will issue sub-regulatory guidance to the States regarding the data to be provided.

Comment: One commenter suggested that CMS set minimum appeal rights that all States must incorporate into their appeals processes. The commenter suggested that a standardized Medicaid RAC appeals process include the following minimum elements:

1. A clearly defined appeals process describing the providers' rights and responsibilities, including the right to submit documentary evidence and to be heard in person.
2. A minimum discussion period, such as 120 days, to rebut the RAC response.
3. A multi-tiered appeals process which provides for an independent review.
4. A process by which recoupment is delayed until the appeals process is finished or has reached a certain stage.
5. A description of how interest will be applied to overpayment determinations.
6. Timeframes regarding appeal deadlines, providing supporting documentation, and issuing review decisions.
7. Detailed decisions describing the basis for upholding the overpayment determination and informing the provider of further appeal rights and deadlines.
8. Agreements between the State, the Medicaid RAC, and any other entities involved in the Medicaid RAC process to ensure the timely and accurate flow of information.
9. Penalties for noncompliance with time frames that should apply to both the provider and the entity adjudicating the RAC appeal.

Response: States will have the flexibility to design their RAC programs, including the content of and signatories to agreements regarding the States' RAC programs, as well as whether there will be a discussion or comment period, and what interest will apply to overpayments. We are finalizing that States have two options to pay contingency fees to RACs: States may pay RACs from amounts identified and recovered, but not fully adjudicated, but the RAC would be required to return any contingency fee that corresponded to the amount of an overpayment overturned at any level of appeal within a reasonable timeframe as prescribed by the State; alternatively, the State may pay the RAC after the overpayment is fully adjudicated, that is after the exhaustion of all appeals available to the provider. We leave the States with the flexibility to select the option that works better for their programs.

Comment: One commenter suggested specific recommendations that if the current State appeals process is at the Administrative Law Judge level only, CMS should impose requirements on the States to implement a tiered appeals process to allow review by an independent, non-government entity as a first or second level of appeal. In addition, CMS should require establishment of timeframes both for providers to submit their appeals, prior to recoupment, and for those entities reviewing the appeals to conclude their work and report the outcome to the providers.

Response: We are neither mandating a single appeals process that all States must use for RAC appeals, nor are we dictating the manner of the appeals processes that the States must implement for RAC appeals, including details as timeframes for any part of the appeals process.

Comment: One commenter appreciated our proposed requirement that State Medicaid RACs must use trained medical professionals, and that the RAC programs must have an adequate appeals process and coordinate with other auditors and law enforcement.

Response: We appreciate the comment. We are finalizing the following requirements: States must require their RACs to employ trained medical professionals, as defined by the State, to review Medicaid claims at § 455.508(a); States must provide appeal rights under State law or administrative procedures to Medicaid providers that seek review of an adverse Medicaid RAC determination at § 455.512; and that States must make referrals of suspected fraud and/or abuse to the MFCU or other appropriate law enforcement agency at § 455.506(d).

Comment: One commenter recommended that we develop a robust and consistent infrastructure to support the Medicaid RAC appeals process, including publishing information about the process online, to reduce confusion and ambiguity experienced by providers.

Response: While we are sensitive to the challenges of multiple States' audits and appeals for providers serving in multiple States' Medicaid programs, we have no plans at this time to establish or implement any online data repository regarding State Medicaid RAC appeals processes.

Comment: One commenter encouraged States to utilize their existing appeals processes rather than to

establish new Medicaid RAC appeals processes that would require a learning curve. The commenter also encouraged CMS to establish timeframes for the RACs to respond to providers during the appeals processes. The commenter believed that the RACs should be held accountable in their response period to ensure timeliness in addressing denials.

Response: The States have the flexibility either to take advantage of an existing appeals process or to establish a separate appeals process for RAC determinations. It is within the States' discretion which option they choose. We are not dictating the manner of the appeals processes, including timeframes for RAC responses during the appeals process.

Comment: One commenter noted that Medicare RACs demonstrated a lack of sufficient review of claims, understanding, and due diligence to take the appropriate amount of time and ensure their information is accurate before submitting a denial letter to the provider. Therefore, the commenter suggested that CMS hold RACs accountable and require them to conduct due diligence, ensuring accurate and timely denial letters are submitted to providers under audit.

Response: We are applying the lessons we have learned in the Medicare RAC program; however, the States have a certain degree of flexibility to design their RAC programs, including the development of RAC audit protocols and the content of its findings. However, we agree with the commenter that the RAC should timely notify providers of its overpayment findings. We have finalized at § 455.508(e)(4) that RACs must notify providers of its overpayment findings within 60 calendar days.

Comment: One commenter suggested that patients not receive a letter regarding an audit until the appeals process has ended and the determination is final. The commenter also recommended that CMS publish written policies and procedures of all processes to promote consistency and provider knowledge, as well as proper understanding of these processes.

Response: In the course of routine Medicaid provider audits, Medicaid beneficiaries are contacted to verify receipt of services. Accordingly, we decline to restrict SMAs in the ordinary conduct of audits. Additionally, Medicaid RACs are individually State operated, administered and procured programs. Therefore, CMS will not publish written policies and procedures about State processes.

Comment: A few commenters supported our proposed approach to allow States to use existing appeals structures.

Response: We appreciate the commenters' support.

Comment: One commenter had several recommendations for the audit and appeals process regarding notices to providers during the audit; notifications of findings of overpayments or underpayments; time limits for repayment; and information on the right to rebut the findings and the right to appeal. The commenter specifically recommended that the notice to providers should explain the right to appeal, specific requirements for appealing, and the effect of an appeal on the timing of repayment or offset and applicable interest; and that contact information should be provided for both rebuttal and appeal inquiries.

Response: Each State has a certain degree of flexibility with regard to the design of its RAC program, including whether to use an existing appeals process or to establish an alternate appeals process for RAC determinations. We are not mandating those details as part of the content of the RAC's findings. However, we believe that the RAC should timely notify providers of its overpayment findings. We have finalized at § 455.508(e)(4) that RACs must notify providers of its overpayment findings within 60 calendar days.

Comment: One commenter requested that CMS require the Medicaid RAC process mirror the Medicare RAC program to alleviate the stress of managing audits in multiple States and ensure the process is more seamless for providers. The commenter also requested that CMS require an independent decision maker such as an Administrative Law Judge at some level of the appeal process to protect providers and the Medicaid program, providing oversight and an unbiased opinion.

Response: We are sensitive to the challenge that audits in multiple States can present to providers that serve multiple States' Medicaid programs. Nevertheless, we are neither mandating a single appeals process that all States must use for RAC appeals, nor are we dictating the manner of the appeals processes that the States must implement for RAC appeals, including who will be the decision makers in their appeals processes. Given that each State has provided us with assurances through the SPA process that it will comply with the statutory requirement to provide an adequate appeals process for entities to appeal adverse RAC determinations, it would be unreasonably burdensome on the States for us to impose a single appeals process for RAC appeals.

Comment: One commenter recommended that CMS conduct a thorough review of State appeals processes and establish some level of consistency across States, and include provisions that will require adequate documentation of those processes including establishing time frames in which documentation should be provided by RACs to providers who are interested in filing an appeal. The commenter also recommended that CMS include provisions that would require States to keep appeal processes independent of RAC activities. The commenter was concerned that because RAC fees are based on the amount of the overpayment collected, RACs have an added incentive to avoid potential provider appeals. The commenter suggested that all appeals processes should be done by the State and not the RAC or other entities that may have an interest in the outcome of the appeal.

Response: Each State has a certain degree of flexibility in the design of its RAC program, and we are not mandating a single appeals process that all States must use for RAC appeals, nor are we dictating the manner of the appeals processes, including timeframes for providing documentation to providers for filing an appeal and how the appeals process would be structured. We are requiring that the States operate a RAC program that meets the requirements of the statute, including providing an adequate appeals process: section 1902(a)(42)(B)(ii)(III) of the Act requires an adequate appeals process for providers to appeal any adverse Medicaid RAC determinations. While we appreciate the commenter's concerns that RAC activities be separate from the appeals process, we are not mandating the structure of each State's RAC program.

Comment: One commenter recommended clarification of the rule describing providers' rights to appeal and that we require peer review of overpayments.

Response: Each State has a certain degree of flexibility to design its RAC program, including whether to use an existing appeals process or to establish an alternate appeals process for RAC determinations and how the appeals process will function in that State. While we are requiring that States require their RACs to employ trained medical professionals, as defined by the State, to review medical claims, it is within the States' discretion to determine whether to use medical professionals to review Medicaid RACs'

findings prior to the recoupment of overpayments.

Comment: One commenter recommended that due to an already overburdened system, we should require the establishment of a concrete timeframe for the record requests, the actual audit, and the appeals process.

Response: We are sensitive to the demands of audits on States' and providers' time. However, States have the flexibility with regard to the design of its Medicaid RAC appeals processes. Therefore, we are not mandating those details as timeframes for records requests, the duration of the audit, or the appeals process.

Comment: One commenter noted that the State would have a disincentive to establish a vigorous, unbiased appeals process because it is required to return the Federal share under § 433.312 even if the State is unable to recover the overpayment from the provider.

Response: Under section 1903(d)(2)(C) of the Act and § 433.312, the State will have a year to attempt to recover an overpayment from a provider, except in cases of fraud where the time period may be longer. Then, the State must return the Federal share regardless of whether it does in fact recover the overpayment. However, if a determination is overturned on appeal, the State can request a refund of the Federal share through processes outlined in § 433.320. Thus, we disagree with the commenter that there is a disincentive for States to establish a vigorous, unbiased appeals process. States are required under section 1902(a)(42)(B)(ii)(III) of the Act to establish an adequate process for providers to appeal adverse RAC determinations. We are confident that States will afford providers vigorous and unbiased appeals processes.

Comment: One commenter suggested that CMS review each State's appeals process to determine its reasonableness. The commenter recommended that timeframes for filing appeals and making decisions on the appeals should allow providers to more easily keep track of all the levels of reconsideration and review as well as timely filing dates for all the appeal levels. CMS should very closely monitor the different appeals systems and remain alert to the concerns of providers if unreasonableness, inconsistency and unnecessary complexity overwhelm provider efforts to be compliant.

Response: Each State has the flexibility to design its Medicaid RAC appeals process, including whether to use an existing appeals process or to establish an alternate appeals process for RAC determinations. While we are requiring States to submit a description and obtain prior approval of any new RAC appeals process that a State will use (not any existing appeals process), we are not dictating the manner of the appeals process that the States must implement for RAC appeals.

H. Payment—General/Federal Share/ Administrative Match

Comment: One commenter asserted that CMS should require States to implement automatic positive payment adjustments to providers through the ''X12 835 transaction process.''

Response: This comment is outside of the scope of the proposed regulation. Therefore, we decline to accept this suggestion.

Comment: One commenter asked for clarification regarding what activities are eligible for administrative matching.

Response: Section 1903(a) of the Act directs payment of FFP, at different matching rates, for amounts ''found necessary by the Secretary for the proper and efficient administration of the State plan.'' The Secretary is the final arbiter of which activities fall under this definition. Claims held under this authority must be directly related to the administration of the Medicaid program.

Comment: A few commenters requested and/or recommended an enhanced FFP rate for implementing the Medicaid RAC program. Other commenters recommended an enhanced FFP match of 90 percent, and one commenter recommended a rate of 75 percent.

Response: Because enhanced Federal match was not specifically authorized by the Affordable Care Act, activities associated with the procurement, operation and administration of a Medicaid RAC do not qualify for enhanced Federal match.

Comment: One commenter requested that CMS clarify whether a State's statute allows the State to directly receive the overpayment instead of delegating the collection responsibility to the RAC.

Response: In the proposed rule, we acknowledged the differences among the States and territories regarding the issue of coordinating with Medicaid RACs for the collection of overpayments. We stated that the statute requires Medicaid RACs to collect overpayments, but some States may not be legally able to delegate the collection of overpayments to contractors. Accordingly, we finalize at § 455.506(b) that States will have the discretion to coordinate the collection of overpayments with their Medicaid RACs.

Comment: One commenter suggested that there is a need for a standard traceable recovery identifier to be used from beginning to end to allow for reconciliation.

Response: We recommend that States explore efficient and innovative processes to detect and/or prevent improper payments. However, we do not require States to implement uniform processing systems for payments to providers.

Comment: One commenter requested that CMS clarify the budget and accounting standards that States must comply with when accounting for transactions with Medicaid RACs.

Response: Estimates of Federal funds on overpayments should be included in the Form CMS–37 reports, following the requirements for reporting of collections and overpayments, not collected within one year, as required by § 433.312. States should already have an accounting process in place to record overpayments when discovered, as well as the Federal share received, and for recording collections and reporting collections on the Form CMS–64 as they occur, and reporting outstanding overpayments at the end of the one-year period. States should follow those same accounting standards and procedures to account for Medicaid RAC overpayments and collections and the required reporting as indicated above, although they should be identified as RAC overpayments and collections to facilitate determination and reporting of RAC fees.

Comment: One commenter requested that CMS clarify when CMS expects repayment of the Federal share of overpayments. The commenter stated that CMS should give States up to one year to remit the Federal share of the funds recovered. Providing States with up to one year to remit funds will allow States the opportunity to recoup funds from future payments.

Response: Under section 1903(d)(2) of the Act, States have up to one year to recover overpayments before an adjustment is made in the Federal payment to the State to account for that overpayment. The Federal share of collections should be reported when received, if collected within the one-year period. At the end of that period, the Federal share of the uncollected overpayment amount must be refunded to the Federal government.

Comment: One commenter requested clarification regarding proposed language provided at sections 1902(a)(42)(B)(ii)(IV)(bb) and 1903(d) of the Act as it applies to amounts recovered under the Medicaid RAC program. There, the commenter noted

that ''[w]e propose that a State must refund the Federal share of the net amount of overpayment recoveries *after* deducting a RAC's fee payments.'' The commenter wanted CMS to assure that there is no potential conflict with interpretation of language from page 75 FR 69041 of the proposed rule discussing repayment of the Federal portion. Additionally, the commenter wanted clarification that the Federal share should be refunded from overpayments or amounts actually recovered.

Response: The reporting will identify the overpayment recoveries received and the RAC fees paid, which will ensure that the fees do not exceed the recoveries. Additionally, overpayments for which the one-year period for collection has expired will be reported to repay the Federal share.

The reporting on the recoveries (collections) will distinguish between recoveries reported within the one-year period to collect (refunded on the current report) and collections for overpayments previously refunded due to the expiration of the one-year period (not refunded on the current report as the amount was previously refunded). The Federal share of overpayment amounts collected within one year from discovery is to be refunded when collected (recovered); the Federal share of overpayment amounts not collected at the end of the one-year period must be refunded at that time.

Comment: One commenter indicated that § 433.312 requires States to refund the Federal share of overpayments, regardless of whether the State actually recovers the overpayments from providers. This commenter sought clarification that there was no conflict with other sections of the proposed rule which stated that RACs are paid from amounts ''actually *recovered* from the provider after all appeals and negotiations are finalized, and not on amounts *identified.''*

Response: We do not believe that these provisions are in conflict. One concept involves the return of FFP to the Federal Government, whereas the other pertains to the timing of payment to a RAC by a State. In the proposed rule, we indicated that the requirement for States to refund the Federal share of overpayments applied to overpayments that are identified by the RAC. Therefore, if a Medicaid RAC identifies an overpayment, the State is required to refund the Federal share of the overpayment amount if not collected by the expiration of the one-year period. The State's obligation to return FFP is independent of its obligation to compensate a RAC for the work it performs. That occurs when an overpayment is collected and a corresponding contingency fee is paid to the RAC.

Comment: One commenter indicated that the initial identification of overpayment amounts may be subject to change because findings are often reversed or revised after additional information is obtained, and some findings are thrown out through the appeals process. If the RAC contractor is not paid until overpayments are actually recovered, it makes sense that the Federal portion of those recovered funds would be repaid to the Federal government after an appeals process is completed.

Response: The refunding of the Federal share is governed by the overpayment regulation at § 433.312, as discussed above. If the appeals process changes the overpayment amount after the expiration of the one-year period for collection and the State reported that overpayment, the overpayment amount can then be adjusted on the Form CMS–64.9ORAC for reporting RAC overpayments that have not been collected at the end of the one-year period.

Comment: One commenter recommended that the final rule should be updated to reflect how recoveries are handled via a payment plan.

Response: If a State provides a payment plan which recovers the total overpayment within one year from discovery, the recoveries are reported as received. If the payment plan exceeds the one-year period, the recoveries are refunded as collected during the one-year period and then the balance is refunded on the overpayments schedule. Subsequent recoveries of that balance would be reported for the purpose of showing that fees paid do not exceed recoveries, but would not be refunded as it would have already been refunded through the reporting on the overpayment schedule.

Comment: One commenter recommended that CMS remove reference to payment when addressing RAC fees in proposed section 1902(a)(42)(B)(ii)(IV)(bb) of the Act: ''We propose that a State must refund the Federal share of the net amount of overpayment recoveries after deducting a RAC's fee payments . * * * In other words, a State would take the RAC's fee 'off the top' before calculating the Federal share of the overpayment recovery to be returned to CMS.''

Response: We are uncertain what the commenter is suggesting regarding removing the reference to payment when addressing the RAC fee. The statute requires that the RAC ''program is carried out in accordance with such requirements as the Secretary shall specify including * * * that section 1903(d) [of the Act] shall apply to amounts recovered under the program.'' In the proposed rule we indicated that the ''State would take a RAC's fee payment 'off the top' *before* calculating the Federal share of the overpayment recovery to be returned to CMS''. We clarify the reporting in this final rule. In order to adequately identify recoveries and fees paid, States must report both the overpayment recoveries and associated fees using the same Federal share (FMAP rate) that is applicable to the overpayments. Similarly, the fees paid for identifying underpayments will be reported at the same FMAP rate appropriate to the payment of that underpayment amount, or the current FMAP rate if the underpayment is not paid.

Comment: One commenter recommended that the reconciliation process with historical data should be visible to both the RAC and the provider.

Response: States have certain flexibilities in which to design, procure, administer, and operate their RAC programs. While we decline to adopt the commenter's recommendation, we encourage States to adopt measures that will promote transparency and efficiency in the Medicaid RAC program.

Comment: One commenter suggested that CMS revise its proposed methodology for RAC payment to permit State flexibility, allowing States the option to claim contingency fees for RACs consistent with current administrative FFP claiming protocols for existing TPL and non-TPL overpayment recovery contracts. The State believes that requiring States to run an accounting process for RAC contingency fees that may differ from existing non-RAC overpayment recovery contingency fee claiming processes is administratively burdensome and invites opportunity for error.

Response: In the proposed rule, we considered requiring States to treat RAC contingency fees at the administrative rate of 50 percent. However, we determined that the language in the legislation supported treating the fees at the FMAP rate applicable to the recovery. This provides a higher benefit for States than treating the fees at the administrative rate.

Comment: One commenter indicated that the proposed rule does not specify that providers must request reimbursement for underpayments. The commenter further indicated that providers must be responsible and

accountable for their claims and the State should not be required to make payments without the provider submitting a claim.

Response: As previously stated, we are concerned about provider participation in the Medicaid program as well as States making proper payments to providers. We believe that States should compensate providers for identified underpayments, consistent with State law. We are requiring States, in this final rule at § 455.510(c)(3), to inform providers about underpayments that are identified by their Medicaid RACs.

Comment: One commenter indicated that its Medicaid Management Information System (MMIS) only retains claims available for adjustment for two years. Additionally, it asserted that adjudicating claims or adjustments outside of the regulated time frames creates technical accounting and recording problems.

Response: We understand the commenter's concerns. However, consistent with § 433.322, States are required to maintain a separate record of all overpayment activities for each provider in a manner that satisfies the retention and access requirements of 45 CFR part 74, subpart D. However, we are finalizing at § 455.508(f) that the maximum look-back period for claims review is three years. If a State's MMIS system only retains adjustable claims data for only two years, a State may request an exception from CMS through the SPA process. We believe this flexibility also enables States to address concerns pertaining to adjudication and adjustments.

I. Exceptions

Comment: Several commenters recommended that CMS clarify its position on whether Medicaid RACs will review Medicaid managed care claims. Most, if not all, of these commenters recommended that CMS provide guidance exempting Medicaid managed care claims from review by Medicaid RACs, and focus only on fee-for-service claims. However, one commenter indicated that it interpreted the proposed rule to include Medicaid managed care claims within the scope of Medicaid RAC review. The commenter made several recommendations, including restating previous recommendations for Parts C and D of the Medicare program.

Response: While the proposed rule was silent on the issue of whether managed care claims would be included in the scope of review by the Medicaid RACs, we clarify in the final rule that States may exclude Medicaid managed care claims from review by Medicaid RACs. We are finalizing at § 455.506(a)(1) that Medicaid RACs will only be required to review fee-for-service claims until that time as a permanent Medicare managed care RAC program is fully operational or a viable State Medicaid model is identified, at which point, we may engage in future rulemaking with regard to the review of managed care claims by Medicaid RACs.

Comment: One commenter suggested that CMS include an exemption for Medicaid payments made from the ''CMMI or other delivery system reform programs.''

Response: We appreciate the commenter's suggestion regarding the Center for Medicare and Medicaid Innovation (CMMI) and other delivery reform programs CMS is implementing. States have the discretion to exclude review of claims that are submitted in connection with payment or delivery system reform programs until the time a viable RAC model is identified.

Comment: One State recommended that CMS' final rule should exempt Medicaid RAC programs in States with less than 125,000 enrolled Medicaid beneficiaries. Additionally, other commenters suggested that States with low PERM error rates will experience limited recoveries from the RAC program. Therefore, the States should be exempt from establishing Medicaid RAC programs. Another commenter requested an exception to proposed § 455.510(b)(3) and § 455.510(b)(4) for States with low numbers of Medicaid providers and beneficiaries and/or expenditures. Finally, one commenter expressed its concern about repetitive audits leading to diminished provider access. The commenter continued that it will not be able to attract a RAC for less than 12.5 percent, the contingency fee cap.

Response: The Secretary has discretionary authority to grant exceptions from program requirements and complete exemptions from establishing a Medicaid RAC program, to a State, upon a State's submission of justification for its request. States were advised that they may request exceptions through the SPA process. We emphasize that complete exceptions will be granted rarely and under exceptional circumstances. States are timely notified as to whether their requests will be granted prior to the expiration of the 90 day clock.

J. ICR Comments

Comment: One commenter anticipated that the appeals process will consume 100–200 hours per case at a minimum, rather than the 60 hours that we estimated.

Response: We appreciated the comment, but each State's appeals process will vary, as will individual cases. Therefore, we have provided estimates in our analysis to capture this variance.

Comment: One commenter asked for details on the elements that must be reported to CMS, and also for clarification on how and when the elements must be reported.

Response: Section 455.502(c) of the final rule requires States to report to CMS certain elements regarding the effectiveness of their RAC programs. These elements include, but are not limited to, general program descriptors and program metrics to evaluate the effectiveness of their Medicaid RAC programs. We are currently developing these elements, and will share them with States via sub-regulatory guidance.

Comment: One commenter estimated the full reporting requirement to take each State 10 through 15 hours per month to query, aggregate, and submit the data to CMS.

Response: We understand the burden associated with this requirement includes the time and effort put forth by the State to aggregate data to report on the effectiveness of its RAC program.

K. RIA Comments

Comment: Several commenters disagreed with our assertion in the proposed rule that most providers will experience limited financial impact from the Medicaid RAC program. The commenters stated that their member organizations have expended significant resources responding to RAC requests and many have hired additional staff to meet the demands of the Medicare RAC program. They anticipate that their costs will be exacerbated if the Medicaid RAC rule is not revised to incorporate policies necessary to avoid aggressive and overzealous RAC denials.

Response: CMS has closely examined many of the lessons learned from the Medicare RAC demonstration in parallel with the current provisions of the permanent Medicare RAC program, and incorporated those best practices into this final rule. As a result, we believe this will limit the burden and associated financial impact on providers. We also clarify that Medicaid RACs will conduct audits of Medicaid providers for overpayments and underpayments, and not deny payments. In addition, we finalize a number of provisions that address providers' concerns, including those related to overzealous RAC auditors. For example, at § 455.506(c), we finalize that States must coordinate

the recovery audit efforts of their RACs with other auditing entities. At § 455.506(e), we require States to set limits on the number and frequency of medical records to be reviewed by the RACs, subject to requests for exceptions from RACs. At § 455.508 (a), (b) and (c), we prescribe mandatory staffing requirements for RACs. At § 455.508(d), we require States and their RACs to develop an education and outreach program which includes notification to providers of audit policies and protocols. At § 455.508(e), we require RACs to provide several mandatory customer service measures in their programs. At § 455.508(f), we prescribe a maximum look back period of 3 years from the date of the claim. At § 455.508(g), we prohibit RACs from auditing claims that have already been audited or that are currently being audited by another entity. At § 455.510(b)(3), we finalize that if a provider appeals a RAC overpayment determination and that determination is reversed, at any level, the RAC must return the contingency fees associated with that payment. We expect that these provisions will encourage RACs to perform their work with diligence and restraint. At § 455.510(c)(2) and (c)(3), we require States to adequately incentivize RACs to detect underpayments and notify providers about underpayments that are identified by RACs, respectively. Lastly, we finalize at § 455.512, the requirement for States to provide an adequate appeals process for providers. We are sensitive to the challenge that responding to audits and appeals in multiple States can present to providers that participate in multiple States' Medicaid programs.

Comment: One commenter requested that CMS reconsider its statement that the proposed rule will have no significant impact on Medicaid providers and consider the resources and time that providers must devote to Medicaid RAC requests for medical records, appeals, etc. The commenter noted that CMS should also consider the exponential impact of this program when combined with other audit programs. The commenter urged CMS to take steps in the final rule to minimize these costs.

Response: We are aware of the challenge of responding to multiple requests for audits for providers that serve in State Medicaid programs. Under section 1902(a)(42)(B)(ii)(IV)(cc) of the Act, States must coordinate their audit efforts with other contractors and entities performing audits or providers, including efforts with law enforcement. In an effort to minimize provider burden, we have included in this final rule at § 455.508(g) that Medicaid RACs should not audit claims that have already been audited or are currently being audited by another entity as well as a provision at § 455.506(e) requiring the State to set limits on the number and frequency of medical records to be reviewed by its RAC (subject to RAC requests for an exception to this requirement). Lastly, as detailed in the previous response, this final rule modeled several requirements on RACs based on the lessons learned from providers' past experience with the Medicare RAC demonstration. As a result, we believe this will limit the financial impact on providers.

IV. Provisions of the Final Regulations

After consideration of the comments reviewed and further analysis of specific issues, we are adopting the provisions of the proposed rule as final with several revisions. Those provisions of the final rule that differ from the proposed rule are as follows:

- States may exclude Medicaid managed care claims from review by Medicaid RACs (§ 455.506(a)(1)).
- States must coordinate the recovery audit efforts of their Medicaid RACs with other auditing entities (§ 455.506(c)).
- States must make referrals of suspected fraud and/or abuse to the MFCU or other appropriate law enforcement agency (§ 455.506(d)).
- States must set limits on the number and frequency of medical records to be reviewed by the Medicaid RACs subject to requests for exceptions made by the RACs (§ 455.506(e)).
- Each RAC must hire a minimum of 1.0 FTE Contractor Medical Director who is a Doctor of Medicine or Doctor of Osteopathy in good standing with the relevant State licensing authorities and has relevant work and educational experience. A State may seek to be excepted, in accordance with § 455.516, from requiring its RAC to hire a minimum of 1.0 FTE Contractor Medical Director by submitting to CMS a written request for CMS review and approval (§ 455.508(b)).
- RACs must hire certified coders unless the State determines that certified coders are not required for the effective review of Medicaid claims (§ 455.508(c)).
- RACs must work with the State to develop an education and outreach program (including notification of audit policies and protocols) (§ 455.508(d)).
- RACs must provide minimum customer service measures including: Providing a toll-free customer service telephone number in all correspondence sent to providers, and staffing the toll-free number during normal business hours from 8:00 a.m. to 4:30 p.m. in the applicable time zone (§ 455.508(e)(1)); compiling and maintaining provider approved addresses and points of contact (§ 455.508(e)(2)); mandatory acceptance of provider submissions of electronic medical records on CD/DVD or via facsimile at the providers' request (§ 455.508(e)(3)); notifying providers of overpayment findings within 60 calendar days (§ 455.508(e)(4)).
- RACs must not review claims that are older than 3 years from the date of the claim, unless it receives approval from the State (§ 455.508(f)).
- RACs should not audit claims that have already been audited or that are currently being audited by another entity (§ 455.508(g)).
- If a provider appeals a Medicaid RAC overpayment determination and the determination is reversed, at any level, then the Medicaid RAC must return its contingency within a reasonable timeframe as prescribed by the State (§ 455.510(b)(3)).
- States must adequately incentivize the detection of underpayments (§ 455.510(c)(2)).
- States must notify providers of underpayments that are identified by the Medicaid RACs (§ 455.510(c)(3)).
- States must provide appeal rights under State law or administrative procedures to Medicaid providers that seek review of an adverse Medicaid RAC determination (§ 455.512).

In addition to the inclusion of provisions in the final rule that differ from the proposed rule, we are retaining the following provisions, described below, as published in the proposed rule.

We have retained proposed ''Subpart F—Medicaid Recovery Audit Contractors Program'' that will implement section 1902(a)(42)(B) of the Act, which sets forth provisions relating to States establishing recovery audit contractor programs in which States will contract with 1 or more Medicaid RACs to audit Medicaid claims and to identify underpayments and identify and recover overpayments. We are also retaining the following sections:

A. Purpose (§ 455.500)

In § 455.500, we set forth the purpose of the new subpart F. The regulations will implement section 1902(a)(42)(B) of the Act that establishes the Medicaid RAC program.

B. Establishment of Program (§ 455.502)

In § 455.502(a), we establish the Medicaid RAC program as a measure for States to promote the integrity of the Medicaid program. At § 455.502(b), we

require that States enter into contracts with one or more RACs to carry out the activities described in § 455.506. At § 455.502(c), we require that States report on certain elements describing the effectiveness of their Medicaid RAC program.

C. Definitions (§ 455.504)

In § 455.504(a), we define the Medicaid RAC program as a recovery audit contractor administered by a State to identify overpayments and underpayments and recoup overpayments. At § 455.504(b), we define the Medicare RAC program as a recovery audit contractor program administered by CMS to identify overpayments and underpayments and recoup overpayments.

D. Activities to be Conducted by Medicaid RACs and States (§ 455.506)

At § 455.506(b), States will have discretion over the manner in which they coordinate with Medicaid RACs' for the recoupment of overpayments.

E. Eligibility Requirements for Medicaid RACs (§ 455.508)

At § 455.508(a), we provide that an entity must have the technical capability to carry out the activities described in § 455.506, including employing trained medical professionals to review Medicaid claims. At § 455.508(i), we provide that RACs must meet other requirements as the State may require.

F. Payments to RACs (§ 455.510)

At § 455.510(a), fees paid to RACs must be made only from amounts recovered. At § 455.510(b), we require the State to determine the contingency fee rate paid to a Medicaid RAC for the identification and recovery of overpayments. At § 455.510(b)(1), we require that the contingency fee paid to Medicaid RACs be based on a percentage of the recovered overpayment amount. At § 455.510(b)(2), States must determine at what stage of the audit process Medicaid RACs will receive their contingency fee. At § 455.510(b)(4), except as provided in paragraph (b)(5), we will not provide FFP for any amount of contingency fee that exceeds the then highest contingency fee rate paid to a Medicare RAC. At § 455.510(b)(5), on a case-by-case basis, we will review and consider substantially justified requests from States to pay Medicaid RAC(s) a contingency fee higher than the highest Medicare RAC contingency fee. At § 455.510(c)(1), we require that States determine the fee paid to Medicaid RACs to identify underpayments.

G. Federal Share of State Expense for the Medicaid RAC Program (§ 455.514)

At § 455.514(a), funds expended by States to carry out the Medicaid RAC program must be considered necessary for the proper and efficient administration of the States Plan or waivers of the Plan. Additionally, in § 455.514(a), the Federal share of State expenses does not include fees paid. At § 455.514(b), FFP is available to States for administrative costs of operation and maintenance of Medicaid RACs, subject to CMS' reporting requirements.

H. Exceptions From Medicaid RAC Programs (§ 455.516)

At § 455.516, States that seek to be excepted from any of the requirements of the Medicaid RAC program must submit to CMS a written justification for the request and obtain CMS approval.

I. Applicability to the Territories (§ 455.518)

At § 455.518, the provisions in § 455.500 through § 455.516 are applicable to Guam, Puerto Rico, U.S. Virgin Islands, American Samoa and the Commonwealth of the Northern Mariana Islands.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the OMB for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We solicited public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. ICRs Regarding State Submission of Certain Elements Describing the Effectiveness of Their Medicaid RAC Programs (§ 455.502)

Section 455.502(c) requires States to submit certain elements describing the effectiveness of their Medicaid RAC programs. These elements include, but are not limited to general program descriptors and program metrics that will evaluate effectiveness. The burden associated with this requirement will be the time and effort put forth by the State to aggregate data to report on the effectiveness of its RAC program. We estimate it will take each State 2 hours to perform this task. The estimated annual burden for this requirement is 112 hours (56 States × 2 hours) at an estimated cost of $3,778.88 ($33.74/hr labor × 112 hours). The work will be performed by a mid-level analyst whose salary is the average hourly salary as determined by the Bureau of Labor Statistics as of December 2010, not seasonally adjusted. This hourly wage reflects 48 percent fringe benefits and overhead costs.

B. ICRs Regarding State Justifications to Pay Higher Contingency Fees (§ 455.510)

Section 455.510(b)(5) requires States to submit justifications to CMS to pay Medicaid RACs a contingency fee higher than the highest Medicare RAC. The burden associated with this requirement is the time and effort put forth by the State to prepare and submit a justification. We estimate it will take each State 60 hours to perform this task if they submit the justification. The estimated annual burden for this requirement is 3,360 hours (56 States × 60 hours) at an estimated total cost of $113,366.40 ($33.74/hr labor × 3,360 hours). The work will be performed by a mid-level analyst whose salary is the average hourly salary as determined by the United States Bureau of Labor Statistics as of December 2010, not seasonally adjusted. This hourly wage reflects 48 percent fringe benefits and overhead costs.

C. ICRs Regarding Medicaid RAC Provider Appeals (§ 455.512)

Section 455.512 requires States to provide administrative appeal procedures for Medicaid providers that seek review of an adverse Medicaid RAC determination. The burden associated with this requirement is the time and effort put forth by the State to prepare and provide administrative appeal procedures. We estimate it will take each State 60 hours to perform these tasks. The estimated annual burden for this requirement is 3,360 hours (56 States × 60 hours) at a cost of $192,696 ($57.35/hr labor × 3,360 hours). The work will be performed by an attorney whose salary is the average hourly salary as determined by the United States Bureau of Labor Statistics as of December 2010, not seasonally

adjusted. This hourly wage reflects 48 percent fringe benefits and overhead costs.

D. ICRs Regarding Federal Share of State Expense for the Medicaid RAC Program (§ 455.514)

Section 455.514(b) provides that FFP will be available to States for the Federal share of State expenses for the Medicaid RAC program, subject to CMS' reporting requirements. The burden associated with a State reporting quarterly expenditure estimates is currently approved under OMB control number 0938–0067 with an expiration date of August 31, 2011. CMS recently submitted its request for a 3-year extension of the August expiration date. This rule will not significantly affect the requirements under OMB # 0938–0067. The Form CMS–64 is a collection of forms in which States are already required to report routine Medicaid recoveries to CMS on a quarterly basis. This task is accomplished electronically. The final rule requires States to account for, separately, Medicaid RAC overpayment recoveries and the corresponding contingency fees associated with the recoveries. We estimate that it will take each State 4 hours/quarterly to meet this requirement; therefore, the total annual burden associated with this requirement is 896 hours(56 States × 4 hours × 4 quarters) at an annual total estimated cost of $43,285.76($48.31/hour labor × 896 hours). The work will be performed by a computer systems analyst whose salary is the average hourly salary as determined by the United States Bureau of Labor Statistics as of December 2010, not seasonally adjusted. This hourly wage reflects 48 percent fringe benefits and overhead costs.

E. ICRs Regarding Exceptions From Medicaid RAC Programs (§ 455.516)

Section 455.516 requires a State that is seeking an exception from any of the requirements of the Medicaid RAC program to submit a written justification to CMS. The burden associated with this requirement is the time and effort put forth by the State to prepare and submit a written justification for the request. We estimate it will take each State 20 hours to meet this requirement. During the SPA process, we received exception requests from 14 States. Therefore, the total annual burden associated with this requirement is 280 hours (14 responses × 20 hours) at a cost of $9,447.20 ($33.74/hr labor × 280 hours). We estimate that the work was performed by a mid-level analyst whose salary is the average hourly salary as determined by the United States Bureau of Labor Statistics as of December 2010, not seasonally adjusted. This hourly wage reflects 48 percent fringe benefits and overhead costs.

TABLE 1: Annual Recordkeeping and Reporting Requirements

Regulation Sections	OMB Control No.	Respondents	Responses	Burden per Response (hours)	Total Annual Burden (hours)	Hourly Labor Cost of Reporting ($)	Total Labor Cost of Reporting ($)	Total Capital/ Maintenance Costs ($)	Total Cost ($)
§455.502	0938-New	56	56	2	112	33.74	3778.88	11,200	14,978.88
§455.510	0938-New	56	56	60	3360	33.74	113,366.40		113,366.40
§455.512	0938-New	56	56	60	3360	57.35	192,696		192,696
§455.514	0938-0067	56	224	4	896	48.31	43,285.76		43,285.76
§455.516	0938-New	14	14	20	280	33.74	9447.20	3,000	12,447.20
Total		238	406	146	8008	168.70	362,574.24	14,200	376,774.24

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this final rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, [CMS–6034–F] Fax: (202) 395–6974; or E-mail: *OIRA_submission@omb.eopage.gov.*

VI. Regulatory Impact Analysis

A. Introduction

We have examined the impacts of this rule as required by Executive Orders 12866 on Regulatory Planning and Review (September 30, 1993) and 13563 on Improving Regulation and Regulatory Review (January 18, 2011). Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This final rule has been designated an ''economically significant'' rule under section 3(f)(1) of Executive Order 12866. In addition, this is a major rule under the Congressional Review Act (5 U.S.C. 804(2)). Accordingly, the rule has been reviewed by the Office of Management and Budget.

B. Statement of Need

Section 6411(a) of the Affordable Care Act amended and expanded section 1902(a)(42) of the Act to require States to establish Medicaid RAC programs by December 31, 2010, to contract with 1 or more contractors to audit Medicaid claims, and to identify underpayments and overpayments and collect overpayments. Section 1902(a)(42)(B) of the Act requires all States to establish Medicaid RAC programs, subject to the exceptions and requirements as the Secretary may require.

Medicaid RACs are State programs designed to produce savings in State Medicaid expenditures by detecting improper payments to Medicaid providers. The majority of State expenditures will be derived from the contingency fee payments to Medicaid RACs.

This final rule will: (1) Implements section 6411 of the Affordable Care Act and provides guidance to States related to Federal/State funding of State start-up, operation and maintenance costs of Medicaid RACs and the payment methodology for State payments to Medicaid RACs; (2) requires States to assure that adequate appeal processes are in place for providers to dispute adverse determinations made by Medicaid RACs; and (3) requires States to coordinate with other contractors and entities auditing Medicaid providers, as well as with State and Federal law enforcement agencies.

C. Overall Impact

This final rule applies to States' requirement to contract with Medicaid RACs to perform audits of Medicaid providers on a contingency fee basis. The majority of anticipated savings, as a result of the provisions in this rule, are related to improper payments. However, as seen in the Medicare RAC Demonstration period, we expect a limited financial impact on most providers, as significant improper payments are relatively rare. The CMS Office of the Actuary (OACT) estimated the potential impact on Federal Medicaid costs and savings. OACT used the historical experience from the Medicare program to estimate potential savings to Medicaid. The estimates in the final rule differ from those in the proposed rule primarily as a result of the new implementation date of January 1, 2012, versus that of April 1, 2011, in the proposed rule. These estimates are highly uncertain, and as a result we offer estimates for FYs 2012 through 2016 to illustrate the potential effects of this program. As a result, OACT's estimates for FYs 2012 through 2016 are presented in Table 2.

TABLE 2—ESTIMATED MEDICAID IMPACT RESULTING FROM THE EXPANSION OF THE RECOVERY AUDIT CONTRACTOR PROGRAM

[FYs 2012–2016]

	Estimated savings ($Millions) FYs 2012–2016					
	2012	2013	2014	2015	2016	2012–2016
Federal share	$60	$190	$280	$330	$360	$1,220
State share	50	140	200	250	270	910
Total	110	330	480	580	630	2,130

D. Detailed Impacts

The Medicaid RACs are part of a significant initiative to reduce waste and improper payments and recoup the improper payments. The estimated impact on the Medicaid program, as presented in Table 2, reflects an aggregate net savings of $2.13 billion for FYs 2012 through 2016. This includes an estimated net savings of $1.22 billion to the Federal Medicaid program and a net savings of $910 million to the State Medicaid program, for the same time period of FYs 2012 through 2016. Because the Affordable Care Act requires States to contract with RACs on a contingency fee basis, out-of-pocket expenses should be minimized. Therefore, the majority of the program costs will be offset by overpayment recoveries.

CMS experience from the Medicare RAC demonstration has shown that overpayment recoveries by Medicare RACs represented over 96 percent of the improper payments, while underpayments accounted for the remaining 4 percent of the improper payments. (*Medicare RAC Program: An Evaluation of the 3–Year Demonstration, January 2008*). As a result, we continue to believe that States would not need to maintain a reserve of recovered overpayments to fund Medicaid RAC costs associated with identifying underpayments. We do, however, require States to maintain an accounting of amounts recovered and paid. States must report overpayments to CMS based on the net amount remaining after all fees are paid to the

Medicaid RAC. As discussed earlier, Medicaid RACs may only receive payments through the contingency fee arrangement made in accordance with these requirements and the limitations relating to the maximum contingency fee amount, unless a State receives an exception from CMS. No additional FFP is available for any other State payment made to the RACs. The treatment of the fees and expenditures are linked to specific statutory language implementing the Medicaid RAC requirements and not extended to Medicaid overpayment recoveries in other contexts.

Regarding appeal costs, a State's appeal costs would be an allowable administrative cost under the State's Cost Allocation Plan. A provider's appeal costs are administrative costs that are not allowable under Medicaid. With regard to the impact upon providers, as discussed earlier in the preamble, we closely examined many of the lessons learned from the Medicare RAC demonstration, in parallel with the current provisions of the permanent Medicare RAC program and incorporated those best practices into this final rule. As a result, we believe this will limit the burden and associated financial impact on providers. Furthermore, we finalize a number of measures that address providers' concerns of overzealous RAC auditors. For example, at § 455.506(c), we finalize that States must coordinate the recovery audit efforts of their RACs with other auditing entities. At § 455.506(e), we require States to set limits on the number and frequency of medical records to be reviewed by the RACs, subject to requests for exceptions from RACs. At § 455.508 (a), (b) and (c), we prescribe mandatory staffing requirements for RACs. At § 455.508(d), we require States and their RACs to develop an education and outreach program which includes notification to providers of audit policies and protocols. At § 455.508(e), we require RACs to provide several mandatory customer service measures. At § 455.508(f), we prescribe a maximum look back period of 3 years from the date of the claim. At § 455.508(g), we prohibit RACs from auditing claims that have already been audited or that are currently being audited by another entity. At § 455.510(b)(3), we finalize that if a provider appeals a RAC overpayment determination and that determination is reversed, at any level, the RAC must return the contingency fees associated with that payment. At § 455.510(c)(2) and (c)(3), we require States to adequately incentivize RACs to detect underpayments and notify underpayments that are identified by RACs, respectively. Lastly, we finalize at § 455.512, the requirement for States to provide an adequate appeals process for providers.

E. Alternatives Considered

In the proposed rule, we stated that States would have complete flexibility with regard to most, if not all, of the Medicaid program elements. We wanted to account for differences in the size of the State, Medicaid population, amount of expenditures, and other State-specific characteristics, for example, allowing smaller States the flexibility to vary the requirements that would otherwise overburden them financially.

For example, North Dakota, Wyoming, Rhode Island and Connecticut may not have the volume of Medicaid expenditures that a State such as California would have. Requiring a Connecticut RAC to hire 1.0 FTE Medical Director, we believe, would increase the labor costs to a RAC, and subsequently to the State. Initially, we considered allowing States to determine the appropriate personnel for RACs to hire. However, we received a number of comments regarding the need for 1.0 FTE Medical Director to oversee the review of claims in the RAC program due to the high overturn rates found in the Medicare RAC Demonstration period and numerous provider complaints. Accordingly, we decided to include the requirement of a minimum of 1.0 FTE Contractor Medical Director who is a Doctor of Medicine or Doctor of Osteopathy in good standing with the relevant State licensing authorities and has relevant work and educational experience. A State may seek to be excepted, in accordance with § 455.516, from requiring its RAC to hire a minimum of 1.0 FTE Contractor Medical Director by submitting to CMS a written request for CMS review and approval.

In addition, we considered giving States complete flexibility with regard to setting their own claims look-back periods based upon State specific laws and regulations regarding their claims look-back periods, which varied from three to seven years. As a result of many stakeholder comments, we reconsidered and now include a 3-year maximum look back period, similar to the Medicare RAC program. States will have the option of requesting exceptions to this provision.

F. Accounting Statement

As required by OMB Circular A–4 available at *http://www.whitehouse.gov/omb/circulars_a004_a-4*, in Table 3, we have prepared an accounting statement table showing the classification of the impacts associated with the implementation of section 6411 in this final rule.

TABLE 3—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED NET SAVINGS, FROM FY 2012 TO FY 2016

[in $Millions]

Category	Transfers			
Annualized monetized transfers	Year dollar	Units discount rate		Period covered
	2010	7%	3%	FYs 2012–2016
	Primary Estimate	−$233.9	−$239.6	
From	Federal Government to providers			
	Primary Estimate	−$174.5	−$178.7	
From	State Governments to providers			

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) (15 U.S.C. 604), as modified by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121), requires agencies to determine whether proposed or final rules would have a significant economic impact on a substantial number of small

entities and, if so, to prepare a Regulatory Flexibility Analysis and to identify in the notice of proposed rulemaking or final rulemaking any regulatory options that could mitigate the impact of the proposed regulation on small businesses. For purposes of the RFA, small entities include businesses that are small as determined by size standards issued by the Small Business Administration, nonprofit organizations, and small governmental jurisdictions). Individuals and States are not included in the definition of a small business entity.

For purposes of the RFA, we assume that approximately 75 percent of Medicaid providers are considered small businesses according to the Small Business Administration's size standards (with total revenues of $35 million or less in any one year), and 80 percent are nonprofit organizations. Medicaid providers are required, as a matter of course, to follow the guidelines and procedures as specified in State and Federal laws and regulations. The Medicaid providers must retain accurate billing records for the requisite period of time. Additionally, Medicaid providers must cooperate in audits conducted by the State and/or Federal Governments and their agents. Lastly, the majority of the economic impacts associated with this final rule are a direct result of the recovery of improper payments. Therefore, the Secretary has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. For the same reason as Stated above, the Secretary has determined that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

VIII. Unfunded Mandates Reform Act Analysis

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold is approximately $136 million. This final rule applies to the States' requirement to procure Medicaid RACs to perform audits of Medicaid providers on a contingency fee basis. State expenditures associated with this final rule will initially involve directing or allocating personnel resources to procurement activities. Per the terms of the contracts, States will not be expending funds over $136 million for RACs to perform the contracts. Associated costs that may include the operation of RAC programs, collateral State personnel costs, and maintenance of records are not expected to exceed the $136 million threshold. Therefore, this final rule is not anticipated to have an effect on State, local, or tribal governments in the aggregate, or by the private sector of $136 million or more.

IX. Federalism Analysis

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that it will not have substantial direct effects on the rights, roles, and responsibilities of States, local or tribal governments.

List of Subjects in 42 CFR Part 455

Fraud, Grant programs-health, Health facilities, Health professions, Investigations, Medicaid, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 455—PROGRAM INTEGRITY—MEDICAID

■ 1. The authority citation for part 455 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302), section 1902(a)(42)(B) (42 U.S.C. 1396a (a)(42(B)).

■ 2. New subpart F is added to part 455 to read as follows:

Subpart F—Medicaid Recovery Audit Contractors Program

Sec.

455.500 Purpose.
455.502 Establishment of program.
455.504 Definitions.
455.506 Activities to be conducted by Medicaid RACs and States.
455.508 Eligibility requirements for Medicaid RACs.
455.510 Payments to RACs.
455.512 Medicaid RAC provider appeals.
455.514 Federal share of State expense for the Medicaid RAC program.
455.516 Exceptions from Medicaid RAC programs.
455.518 Applicability to the territories.

Subpart F—Medicaid Recovery Audit Contractors Program

§ 455.500 Purpose.

This subpart implements section 1902(a)(42)(B) of the Act that establishes the Medicaid Recovery Audit Contractor (RAC) program.

§ 455.502 Establishment of program.

(a) The Medicaid Recovery Audit Contractor program (Medicaid RAC program) is established as a measure for States to promote the integrity of the Medicaid program.

(b) States must enter into contracts, consistent with State law and in accordance with this section, with one or more eligible Medicaid RACs to carry out the activities described in § 455.506 of this subpart.

(c) States must comply with reporting requirements describing the effectiveness of their Medicaid RAC programs as specified by CMS.

§ 455.504 Definitions.

As used in this subpart—

Medicaid RAC program means a recovery audit contractor program administered by a State to identify overpayments and underpayments and recoup overpayments.

Medicare RAC program means a recovery audit contractor program administered by CMS to identify underpayments and overpayments and recoup overpayments, established under the authority of section 1893(h) of the Act.

§ 455.506 Activities to be conducted by Medicaid RACs and States.

(a) Medicaid RACs will review claims submitted by providers of items and services or other individuals furnishing items and services for which payment has been made under section 1902(a) of the Act or under any waiver of the State Plan to identify underpayments and overpayments and recoup overpayments for the States.

(1) States may exclude Medicaid managed care claims from review by Medicaid RACs.

(b) States may coordinate with Medicaid RACs regarding the recoupment of overpayments.

(c) States must coordinate the recovery audit efforts of their RACs with other auditing entities.

(d) States must make referrals of suspected fraud and/or abuse, as

defined in 42 CFR 455.2, to the MFCU or other appropriate law enforcement agency.

(e) States must set limits on the number and frequency of medical records to be reviewed by the RACs, subject to requests for exception from RACs to States.

§ 455.508 Eligibility requirements for Medicaid RACs.

An entity that wishes to perform the functions of a Medicaid RAC must enter into a contract with a State to carry out any of the activities described in § 455.506 under the following conditions:

(a) The entity must demonstrate to a State that it has the technical capability to carry out the activities described in § 455.506 of this subpart. Evaluation of technical capability must include the employment of trained medical professionals, as defined by the State, who are in good standing with the relevant State licensing authorities, where applicable, to review Medicaid claims.

(b) The entity must hire a minimum of 1.0 FTE Contractor Medical Director who is a Doctor of Medicine or Doctor of Osteopathy in good standing with the relevant State licensing authorities and has relevant work and educational experience. A State may seek to be excepted, in accordance with § 455.516, from requiring its RAC to hire a minimum of 1.0 FTE Contractor Medical Director by submitting to CMS a written request for CMS review and approval.

(c) The entity must hire certified coders unless the State determines that certified coders are not required for the effective review of Medicaid claims.

(d) The entity must work with the State to develop an education and outreach program, which includes notification to providers of audit policies and protocols.

(e) The entity must provide minimum customer service measures including:

(1) Providing a toll-free customer service telephone number in all correspondence sent to providers and staffing the toll-free number during normal business hours from 8:00 a.m. to 4:30 p.m. in the applicable time zone.

(2) Compiling and maintaining provider approved addresses and points of contact.

(3) Mandatory acceptance of provider submissions of electronic medical records on CD/DVD or via facsimile at the providers' request.

(4) Notifying providers of overpayment findings within 60 calendar days.

(f) The entity must not review claims that are older than 3 years from the date of the claim, unless it receives approval from the State.

(g) The entity should not audit claims that have already been audited or that are currently being audited by another entity.

(h) The entity must refer suspected cases of fraud and/or abuse to the State in a timely manner, as defined by the State.

(i) The entity meets other requirements as the State may require.

§ 455.510 Payments to RACs.

(a) *General.* Fees paid to RACs must be made only from amounts recovered.

(b) *Overpayments.* States must determine the contingency fee rate to be paid to Medicaid RACs for the identification and recovery of Medicaid provider overpayments.

(1) The contingency fees paid to Medicaid RACs must be based on a percentage of the overpayment recovered.

(2) States must determine at what stage in the Medicaid RAC audit process, after an overpayment has been recovered, Medicaid RACs will receive contingency fee payments.

(3) If a provider appeals a Medicaid RAC overpayment determination and the determination is reversed, at any level, then the Medicaid RAC must return the contingency fees associated with that payment within a reasonable timeframe, as prescribed by the State.

(4) Except as provided in paragraph (5) of this section, the contingency fee may not exceed that of the highest Medicare RAC, as specified by CMS in the **Federal Register**, unless the State submits, and CMS approves, a waiver of the specified maximum rate. If a State does not obtain a waiver of the specified maximum rate, any amount exceeding the specified maximum rate is not eligible for FFP, either from the collected overpayment amounts, or in the form of any other administrative or medical assistance claimed expenditure.

(5) CMS will review and consider, on a case-by-case basis, a State's well-justified request that CMS provide FFP in paying a Medicaid RAC(s) a contingency fee in excess of the then-highest contingency fee paid to a Medicare RAC.

(c) *Underpayments.* (1) States must determine the fee paid to a Medicaid RAC to identify underpayments.

(2) States must adequately incentivize the detection of underpayments.

(3) States must notify providers of underpayments that are identified by the RACs.

§ 455.512 Medicaid RAC provider appeals.

States must provide appeal rights under State law or administrative procedures to Medicaid providers that seek review of an adverse Medicaid RAC determination.

§ 455.514 Federal share of State expense of the Medicaid RAC program.

(a) Funds expended by States for the operation and maintenance of a Medicaid RAC program, not including fees paid to RACs, are considered necessary for the proper and efficient administration of the States' plan or waivers of the plan.

(b) FFP is available to States for administrative costs of operation and maintenance of Medicaid RACs subject to CMS' reporting requirements.

§ 455.516 Exceptions from Medicaid RAC programs.

A State may seek to be excepted from some or all Medicaid RAC contracting requirements by submitting to CMS a written justification for the request for CMS review and approval through the State Plan amendment process.

§ 455.518 Applicability to the territories.

The aforementioned provisions in § 455.500 through § 455.516 of this subpart are applicable to Guam, Puerto Rico, U.S. Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Authority: (Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: May 6, 2011.

Marilyn Tavenner,

Principal Deputy Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

Approved: August 9, 2011.

Kathleen Sebelius,

Secretary, Health and Human Services.

[FR Doc. 2011–23695 Filed 9–14–11; 8:45 am]

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Part III

Environmental Protection Administration

40 CFR Part 50
Approval of Air Quality Implementation Plans; California; San Joaquin Valley; Attainment Plan for 1997 8-Hour Ozone Standard; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0589; FRL–9464–9]

Approval of Air Quality Implementation Plans; California; San Joaquin Valley; Attainment Plan for 1997 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve state implementation plan (SIP) revisions submitted by California to provide for attainment of the 1997 8-hour ozone national ambient air quality standards in the San Joaquin Valley (SJV). These SIP revisions are the 2007 Ozone Plan (revised 2008 and 2011) and SJV-related portions of the 2007 State Strategy (revised 2009 and 2011). EPA is proposing to approve the emissions inventories, reasonably available control measures demonstration, provisions for transportation control strategies and measures, provisions for advanced technology/clean fuels for boilers, reasonable further progress (RFP) and attainment demonstrations, transportation conformity motor vehicle emissions budgets for all RFP milestone years and the attainment year, contingency measures for failure to make RFP or attain, and Clean Air Act section 182(e)(5) new technologies provisions and associated commitment to adopt contingency measures. EPA is also proposing to approve commitments to measures and reductions by the SJV Air Pollution Control District and the California Air Resources Board. In the alternative, EPA is proposing to disapprove the SIP with respect to certain provisions for transportation control strategies and measures sufficient to offset any growth in emissions from growth in vehicle miles traveled or the number of vehicle trips.

DATES: Written comments must be received on or before October 17, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0622, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions.
- *E-mail: wicher.frances@epa.gov.*
- *Mail or deliver:* Marty Robin, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically on the *http://www.regulations.gov* Web site and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. While all documents in the docket are listed in the index, some documents may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at 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 below.

Copies of the SIP materials are also available for inspection at the following locations:

- California Air Resources Board, 1001 I Street, Sacramento, California 95812, and
- San Joaquin Valley Air Pollution Control District, 1990 E. Gettysburg, Fresno, California 93726.

The SIP materials are also electronically available at: *http://aqmd.gov/aqmp/07aqmp/index.html, http://www.valleyair.org/Air_Quality_Plans/AQ_Final_Adopted_Ozone2007.htm* and *http://www.arb.ca.gov/planning/sip/sip.htm.*

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 972–3957, *wicher.frances@epa.gov.*

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Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. The 1997 8-Hour Ozone Standard and the San Joaquin Valley Ozone Nonattainment Area

A. Background on the 1997 8-Hour Ozone NAAQS

Ground-level ozone pollution is formed by the reaction of volatile organic compounds (VOC) [1] and nitrogen oxides (NO_X) in the atmosphere in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of pollution sources including on- and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints.

Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases. Ozone exposure also has been associated with increased susceptibility to respiratory

[1] California plans sometimes use the term Reactive Organic Gases (ROG) for VOC. These terms are essentially synonymous. For simplicity, we use the term VOC to mean either VOC or ROG.

infections, medication use, doctor visits, and emergency department visits and hospital admissions for individuals with lung disease. Ozone exposure also increases the risk of premature death from heart or lung disease. Children are at increased risk from exposure to ozone because their lungs are still developing and they are more likely to be active outdoors, which increases their exposure. See ''Fact Sheet, Proposal to Revise the National Ambient Air Quality Standards for Ozone,'' January 6, 2010 and 75 FR 2938 (January 19, 2010).

On July 18, 1997, EPA revised the primary and secondary national ambient air quality standards (NAAQS or standard) for ozone to replace the existing 1-hour ozone standard of 0.12 parts per million (ppm) with an 8-hour standard set at 0.08 ppm. 62 FR 33856.[2] EPA revised the ozone standard after considering substantial evidence from numerous health studies demonstrating that serious health effects are associated with exposures to ozone concentrations above the levels of these revised standards.

B. The SJV 8-Hour Ozone Nonattainment Area

Following promulgation of a new or revised NAAQS, EPA is required by Clean Air Act (CAA) section 107(d) to designate areas throughout the Nation as attaining or not attaining the NAAQS. On April 15, 2004, EPA designated the SJV as nonattainment for the 1997 8-hour ozone standard and classified the area as ''serious'' under CAA section 181(a)(1) and 40 CFR 51.903(a), Table 1. See 69 FR 23858 at 23888–89 (April 30, 2004) and 40 CFR 81.305. The designation and classification became effective on June 15, 2004. In 2007, California requested that EPA reclassify the SJV from ''serious'' to ''extreme'' nonattainment for the 1997 8-hour ozone standard under CAA section 181(b)(3).[3] We granted California's request on May 5, 2010 and reclassified the SJV to extreme nonattainment for the 1997 8-hour ozone standard effective June 4, 2010. See 75 FR 24409.

The SJV 8-hour ozone nonattainment area is home to almost 4 million people and is the Nation's leading agricultural area. Stretching over 250 miles from north to south and averaging 80 miles wide, it is partially enclosed by the Coast Mountain range to the west, the Tehachapi Mountains to the south, and the Sierra Nevada range to the east. It encompasses over 23,000 square miles and includes all or part of eight counties: San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings, and the valley portion of Kern. For a precise description of the geographic boundaries of the San Joaquin Valley 8-hour ozone nonattainment area, see 40 CFR 81.305. The local air district which has primary responsibility for developing a plan to attain the 1997 8-hour ozone NAAQS in this area, is the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or District).

Ambient 8-hour ozone values in the SJV vary depending on the location with the highest values being recorded on its eastern edge from Fresno to south of Bakersfield. For the 2008–2010 period, the 8-hour ozone design value for the area is 0.104 ppm, recorded at the Arvin-Bear Mountain Boulevard monitoring site southeast of Bakersfield.[4]

II. CAA and Regulatory Requirements for 1997 8-Hour Ozone Nonattainment Area SIPs

States must implement the 1997 8-hour ozone standard under Title 1, part D of the CAA, which includes section 172, ''Nonattainment plan provisions,'' and subpart 2, ''Additional Provisions for Ozone Nonattainment Areas'' (sections 181–185).

In order to assist states in developing effective plans to address their ozone nonattainment problem, EPA issued the 8-hour ozone implementation rule. This rule was finalized in two phases. The first phase of the rule addresses classifications for the 1997 8-hour ozone standard, applicable attainment dates for the various classifications, and the timing of emissions reductions needed for attainment. See 69 FR 23951 (April 30, 2004). The second phase addresses SIP submittal dates and the requirements for reasonably available control technology and measures (RACT and RACM), reasonable further progress (RFP) demonstration, modeling and attainment demonstrations, contingency measures, and new source review. See 70 FR 71612 (November 29, 2005). The rule is codified at 40 CFR part 51, subpart X.[5] We discuss each of these CAA and regulatory requirements for 8-hour ozone nonattainment plans in more detail below.

III. California's State Implementation Plan Submittals To Address Ozone Attainment in the San Joaquin Valley

A. California's SIP Submittals

Designation of an area as nonattainment starts the process for a state to develop and submit to EPA a SIP providing for attainment of the NAAQS under title 1, part D of the CAA. For 8-hour ozone areas designated as nonattainment effective June 15, 2004, this SIP was due by June 15, 2007. See CAA 172(b) and 40 CFR 51.908(a) and 51.910.

California has made five SIP submittals to address the CAA's planning requirements for attaining the 1997 8-hour ozone standard in the San Joaquin Valley. We refer to these submittals collectively as the ''[SJV] 2007 8-Hour Ozone SIP.'' The two principal ones are the SJVUAPCD's 2007 Ozone Plan (also Plan) and the California Air Resources Board's (CARB) State Strategy for California's 2007 State Implementation Plan (2007 State Strategy).

1. SJV 2007 Ozone Plan

The 2007 Ozone Plan was adopted by the District's Governing Board on April 30, 2007 and by CARB on June 14, 2007 and submitted to EPA on November 16, 2007.[6] It includes an attainment demonstration, commitments by the SJVUAPCD to adopt control measures to achieve emissions reductions from sources under its jurisdiction (primarily stationary sources), and motor vehicle emissions budgets (MVEB) used for transportation conformity purposes. The attainment demonstration includes air quality modeling, an analysis of CAA section 172 reasonably available control

[2] In March 2008, EPA completed another review of the primary and secondary ozone standards and tightened them further by lowering the level for both to 0.075 ppm. 73 FR 16436 (March 27, 2008).

[3] See SJVUAPCD Governing Board Resolution No. 07–04–11a (April 30, 2007), p. 4; CARB Resolution No. 07–20 (June 14, 2007), p. 6; and letter, James Goldstene, Executive Officer, CARB to Wayne Nastri, Regional Administrator, EPA Region 9, November 17, 2007.

[4] See EPA, Air Quality System Preliminary Design Report dated September 18, 2011 in the docket for today's proposal. A design value is an ambient concentration calculated using a specific methodology to evaluate monitored air quality data and is used to determine whether an area's air quality meets a NAAQS. The methodology for calculating design values for the 8-hour ozone NAAQS is found in 40 CFR part 50, Appendix I.

[5] EPA has revised or proposed to revise several elements of the 8-hour ozone implementation rule since its initial promulgation in 2004. See, *e.g.,* 74 FR 2936 (January 16, 2009); 75 FR 51960 (August 24, 2010); and 75 FR 80420 (December 22, 2010). None of these revisions affect any provision of the rule that is applicable to EPA's proposed actions on the SJV 2007 8-hour Ozone SIP.

[6] See San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Governing Board Resolution 07–04–11a: In the Matter of Adopting the San Joaquin Valley Unified Air Pollution Control District 2007 Ozone Plan, April 30, 2007; CARB Resolution No. 07–20, June 14, 2007; letter, James N. Goldstene, Executive Officer, CARB to Wayne Nastri, Regional Administrator, EPA Region 9, November 16, 2007 with enclosures; and letter, James N. Goldstene, Executive Officer, CARB to Wayne Nastri, Regional Administrator, EPA Region 9, February 1, 2008 with enclosures (revising the RFP demonstrations for the South Coast and San Joaquin Valley air basins).

measures (RACM), base year and projected year emissions inventories, and contingency measures. On April 24, 2009, CARB submitted a minor amendment to the 2007 Ozone Plan's strategy to extend the adoption date for Control Measure S–Gov–5 ''Composting Green Waste.'' [7]

2. CARB 2007 State Strategy

To demonstrate attainment, the 2007 Ozone Plan relies to a large extent on measures and commitments in CARB's 2007 State Strategy. The 2007 State Strategy was adopted by CARB on September 27, 2007 and submitted to EPA on November 16, 2007.[8] It describes CARB's overall approach to addressing, in conjunction with local plans, attainment of both the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS in all nonattainment areas in the State, including the San Joaquin Valley. It also includes CARB's commitments to propose 15 defined State measures [9] and to obtain specific amounts of aggregate reductions of VOC and NO_X emissions in the SJV from sources under the State's jurisdiction, which are primarily on- and off-road motor vehicles and engines, consumer products, and fuels.

On August 12, 2009, CARB submitted the ''Status Report on the State Strategy for California's 2007 State Implementation Plan (SIP) and Proposed Revision to the SIP Reflecting Implementation of the 2007 State Strategy,'' dated March 24, 2009 and adopted April 24, 2009 (2009 State Strategy Status Report).[10] This submittal updated the 2007 State Strategy to reflect its implementation during 2007 and 2008.

In today's proposal, we are evaluating only those portions of the 2007 State Strategy and its revisions that are relevant for attainment of the 8-hour standard in the San Joaquin Valley.

3. CARB 2011 Ozone SIP Revisions

On July 29, 2011, CARB submitted the ''8-Hour Ozone State Implementation Plan Revisions and Technical Revisions to the $PM_{2.5}$ State Implementation Plan Transportation Conformity Budgets for the South Coast and San Joaquin Valley Air Basins,'' dated June 20, 2011 and adopted July 21, 2011 (2011 Ozone SIP Revisions).[11] This submittal updates both the 2007 State Strategy and the SJV 2007 Ozone Plan. Specifically, it amends CARB's rulemaking schedule for the Agricultural Engines measure.[12] It also updates the emissions inventories, RFP demonstration, contingency measures, and transportation conformity MVEB for the SJV to reflect rule adoptions and improvements to emissions inventories. CARB provided supplemental documentation for the 2011 Ozone SIP Revisions on August 10, 2011 (2011 Ozone SIP Revision Supplement).[13]

Future references in this proposal to the 2007 State Strategy and to the SJV 2007 Ozone Plan will be to the Strategy as revised in 2009 and 2011 and the Plan as revised in 2009 and 2011, respectively, unless otherwise noted.

B. CAA Procedural and Administrative Requirements for SIP Submittals

CAA sections 110(a)(1) and (2) and 110(l) require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submittal of a SIP or SIP revision. To meet this requirement, every SIP submittal should include evidence that adequate public notice was given and an opportunity for a public hearing was provided consistent with EPA's implementing regulations in 40 CFR 51.102.

Both the District and CARB have satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption and submittal of the 2007 Ozone Plan. The District conducted public workshops, provided public comment periods, and held a public hearing prior to the adoption of the Plan on April 30, 2007. See 2007 Ozone Plan, p. ES–1 and SJVUAPCD Governing Board Resolution, p. 3. CARB provided the required public notice and opportunity for public comment prior to its June 14, 2007 public hearing on the Plan. See CARB Resolution No. 07–20. The District also provided the required public notice and hearing on the 2009 revision to the Plan. See SJVUAPCD Governing Board Resolution No. 08–12–18, December 18, 2008, p. 2.

CARB conducted public workshops, provided public comment periods, and held a public hearing prior to the adoption of the 2007 State Strategy on September 27, 2007. See CARB Resolution No. 07–28. CARB also provided the required public notice, opportunity for public comment, and a public hearing prior to its April 24, 2009 adoption of the 2009 State Strategy Status Report and its July 21, 2011 adoption of the 2011 Ozone SIP Revisions. See CARB Resolution No. 09–34 and CARB Resolution No. 11–22.

The SIP submittals include proof of publication for notices of District and CARB public hearings, as evidence that all hearings were properly noticed. We find, therefore, that each of the five submittals that comprise the SJV 2007 8-Hour Ozone SIP meets the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l).

CAA section 110(k)(1)(B) requires EPA to determine whether a SIP submittal is complete within 60 days of receipt. This section also provides that any plan submittal that EPA has not affirmatively determined to be complete or incomplete will be deemed complete by operation of law six months after the date of submittal. EPA's SIP completeness criteria are found in 40 CFR part 51, Appendix V.

The November 16, 2007 submittal of the 2007 Ozone Plan and the April 24, 2009 submittal revising the Plan became complete by operation of law on May 15, 2008 and October 24, 2009, respectively. The November 16, 2007 submittal of the 2007 State Strategy and the August 12, 2009 submittal of the 2009 revisions to the Strategy became complete by operation of law on May 16, 2008 and February 12, 2010, respectively. We found the submittal of the 2011 Ozone SIP Revisions complete on August 23, 2011.[14]

[7] See SJVUAPCD Governing Board Resolution No. 08–12–18, December 18, 2008; and letter, James N. Goldstene, Executive Officer, CARB to Laura Yoshii, Acting Regional Administrator, EPA Region 9, April 24, 2009, with enclosures.

[8] See CARB Resolution No. 07–28, September 27, 2007 with attachments and letter, James N. Goldstene, Executive Officer, CARB, to Wayne Nastri, Regional Administrator, EPA Region 9, November 16, 2007 with enclosures.

[9] The 2007 State Strategy also includes measures to be implemented by the California Bureau of Automotive Repair (Smog Check improvements) and the California Department of Pesticide Regulation (VOC reductions from pesticide use). See 2007 State Strategy, pp. 64–65 and CARB Resolution 7–28, Attachment B, p. 8.

[10] See CARB Resolution No. 09–34, April 24, 2009, with attachments and letter, James N. Goldstene, Executive Officer, CARB, to Laura Yoshii, Acting Regional Administrator, EPA Region 9, August 12, 2009 with enclosures. Only pages 11–27 of the 2009 State Strategy Status Report are submitted as a SIP revision. The balance is for informational purposes only. See Attachment A to the CARB Resolution No. 09–34.

[11] See CARB Resolution No. 11–22, July 21, 2011 and letter, James N. Goldstene, Executive Officer, CARB to Jared Blumenfeld, Regional Administrator, EPA Region 9, July 29, 2011, with enclosures.

[12] In May 2011, CARB adopted other updates and revisions to its rulemaking schedule in the 2007 State Strategy. See CARB, *Progress Report on Implementation of $PM_{2.5}$ State Implementation Plans (SIP) for the South Coast and San Joaquin Valley Air Basins and Proposed SIP Revisions,* submitted on May 18, 2011 (2011 Progress Report). We proposed to approve those revisions on July 13, 2011 (76 FR 41338).

[13] Letter, Lynn Terry, Deputy Executive Office, CARB, to Deborah Jordan, Director, Air Division, EPA Region 9, August 10, 2011.

[14] Letter, Deborah Jordan, EPA Region 9 to James Goldstene, CARB, August 23, 2011.

IV. Review of the SJV 2007 Ozone Plan and the SJV Portion of the 2007 State Strategy

We summarize our evaluation of the SJV 2007 8-Hour Ozone SIP's compliance with applicable CAA and EPA regulatory requirements below. Our detailed evaluation can be found in the TSD for this proposal which is available online at *http://www.regulations.gov* in docket number EPA–R09–OAR–2010–0589 or from the EPA contact listed at the beginning of this notice.

A. Emissions Inventories

1. Requirements for Emissions Inventories

CAA section 182(a)(1) requires each state with an ozone nonattainment area classified under subpart 2 to submit, within two years of the area's designation as nonattainment, a ''comprehensive, accurate, current inventory of actual emissions from all sources'' of the relevant pollutant or pollutants in accordance with guidance provided by EPA. CAA 182(a)(1), 40 CFR 51.915. EPA has issued the ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' EPA–454/R–05–001, November 2005 (''EI Guidance'') which provides guidance on how to develop base year and future year baseline emissions inventories for 8-hour ozone, $PM_{2.5}$, and regional haze SIPs. For areas that were initially designated nonattainment for the 8-hour ozone standard in 2004, EPA recommends using calendar year 2002 as the base year for the inventory required by CAA section 182(a)(1). EI Guidance, p. 8.

Emissions inventories for ozone should include emissions of VOC, NO_X, and carbon monoxide (CO) and represent an average summer week day during the ozone season. EI Guidance, pp. 14 and 17. States should include documentation in their submittals explaining how the emissions data were calculated. 70 FR at 71664 and EI Guidance, p. 40. In estimating mobile source emissions, states should use the latest emissions models and planning assumptions available at the time the SIP is developed. 68 FR at 32854 and 70 FR 71666.

2. Emissions Inventories in the SJV 2007 8-Hour Ozone SIP

The base year and future year baseline inventories for NO_X and VOC for the SJV ozone nonattainment area together with additional documentation for the inventories are found in Appendix B of the 2007 Ozone Plan and Appendices A and F of the 2007 State Strategy.[15, 16] These inventories represent average summer day (ozone season) emissions. An inventory is provided for the base year of 2002 and projected baseline inventories are provided for the RFP milestone years of 2008, 2011, 2014, 2017, and 2020; and the attainment year of 2023. The baseline inventories include reductions from federal, State, and District measures adopted prior to 2007. See 2007 State Strategy, Appendix A, p. 1. All inventories include emissions from point, area, on-road, and non-road sources. The 2002 inventory was projected to 2005 and future years using CARB's California Emissions Forecasting System (CEFSv 1.06). Both base year and projected baseline inventories use the most current version of California's mobile source emissions model, EMFAC2007, for estimating on-road motor vehicle emissions. EPA has approved this model for use in SIPs and transportation conformity analyses. 73 FR 3464 (January 18, 2008). See 2007 Ozone Plan, p. B–1.

As part of its 2011 Ozone SIP Revisions, CARB submitted revised base year and future year baseline inventories for the SJV. See Table 1 below. These revised inventories incorporate improved activity data and/or emissions factors for diesel trucks and buses and off-road equipment that were developed as part of CARB's December 2010 rulemakings amending its In-Use On-Road Truck and Bus Rule and In-Use Off-Road Equipment Rule. They also reflect revisions to the methodology for estimating NO_X emissions from natural-gas fueled industrial equipment as well as other improvements to the stationary source inventories made by the District in the period between adoption of the 2007 Ozone Plan and the initial draft of the 2008 $PM_{2.5}$ Plan. See Draft 2008 $PM_{2.5}$ Plan, Appendix B, December 2007. Collectively, these revisions reduce the total estimated 2002 base year NO_X and VOC inventories by approximately 12 percent and 2.3 percent, respectively. 2011 Ozone SIP Revisions, p. B–9. For a more detailed discussion of these inventory changes, see TSD, section II.A.

The future year baseline inventories were also revised to reflect the effects of the 2007–2009 economic recession, which has significantly reduced activity levels in and associated emissions from the State's construction and goods movement sectors. CARB estimates economic growth rates will return to normal levels by the 2017–2018 time period. 2011 Ozone SIP Revisions, Appendix B. As a result, projected emission levels from these categories in the years up to 2017–2018 are now lower than were originally projected in the 2007 Ozone Plan and 2007 State Strategy as submitted in November 2007. These recession-related decreases in emissions do not in themselves affect the Plan's emissions inventories for the modeling validation years (1999/2000), the base year (2002), or future years (2020 and 2023) and thus do not change the carrying capacity estimates in the Plan (*i.e.,* they do not in themselves affect the target level of overall emissions reductions needed to demonstrate attainment), nor do they alter the 2002 base year inventory which provides the starting point for the RFP demonstration. The principal effect of the recession-related decreases in projected emissions estimates is to reduce the amount of reductions needed from the SIP's control strategy to demonstrate RFP in the years prior to 2018.

TABLE 1—SAN JOAQUIN VALLEY REVISED BASE YEAR AND ATTAINMENT YEAR BASELINE EMISSIONS INVENTORY SUMMARY

[tons per summer day]

Emissions inventory category	NO_X		VOC	
	2002	2023	2002	2023
Stationary and Area Sources	101	53	276	244
On-road Mobile Sources	312	69	110	37

[15] By ''future year baseline inventories'' or ''projected baseline inventories,'' we mean projected emissions inventories for future years that account for, among other things, the ongoing effects of economic growth and adopted emissions control requirements.

[16] Inventories for CO and non-anthropogenic sources (that is, biogenic or natural sources) were developed for the air quality modeling and can be found at *http://www.arb.ca.gov/eos/SIP_Modeling/*.

TABLE 1—SAN JOAQUIN VALLEY REVISED BASE YEAR AND ATTAINMENT YEAR BASELINE EMISSIONS INVENTORY SUMMARY—Continued

[tons per summer day]

Emissions inventory category	NO_X		VOC	
	2002	2023	2002	2023
Off-road Mobile Sources	152	73	71	57
Total	565	195	457	339

Source: 2011 8-Hour Ozone SIP Revision, Appendix B, p. B–3.

Note: 2023 emissions levels reflect control adopted through 2011.

3. Proposed Action on the Emissions Inventories

We have reviewed the 2002 base year emissions inventory in the SJV 2007 8-Hour Ozone SIP and the inventory methodologies used by the District and CARB and have determined that the inventory was developed consistent with CAA requirements as reflected in the 8-hour ozone implementation rule and EPA's guidance. The revised 2002 base year inventory is comprehensive, accurate, and current inventory of actual emissions of 8-hour ozone precursors in the San Joaquin Valley nonattainment area. We therefore propose to approve the base year inventory as meeting the requirements of CAA section 182(a)(1) and EPA's 8-hour ozone implementation rule. We provide more detail on our review of the inventories in section II.A. of the TSD for this proposal.

B. Reasonably Available Control Measures Demonstration and Control Strategy

1. Requirements for RACM and Control Strategies

CAA section 172(c)(1) requires that each attainment plan ''provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology), and shall provide for attainment of the national primary ambient air quality standards.'' The 8-hour ozone implementation rule requires that for each nonattainment area that is required to submit an attainment demonstration, the state must also submit concurrently a SIP revision demonstrating that it has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements. 40 CFR 51.912(d).

EPA has previously provided guidance interpreting the RACM requirement in the General Preamble at 13560 [17] and in a memorandum entitled ''Guidance on the Reasonably Available Control Measure Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas,'' John Seitz, Director, OAQPS to Regional Air Directors, November 30, 1999 (Seitz memo). In summary, EPA guidance provides that, to address the requirement to adopt all RACM, states should consider all potentially reasonable control measures for source categories in the nonattainment area to determine whether they are reasonably available for implementation in that area and whether they would, if implemented individually or collectively, advance the area's attainment date by one year or more. See Seitz memo and General Preamble at 13560.[18] Any measures that are necessary to meet these requirements that are not already either federally promulgated, part of the state's SIP, or otherwise creditable in SIPs must be submitted in enforceable form as part of a state's attainment plan for the area.[19]

CAA section 172(c)(6) requires nonattainment plans to ''include enforceable emission limitations, and such other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date * * *.'' See also CAA section 110(a)(2)(A). The ozone implementation rule requires that all control measures needed for attainment be implemented no later than the beginning of the attainment year ozone season. 40 CFR 51.908(d). The attainment year ozone season is defined as the ozone season immediately preceding a nonattainment area's attainment date. 40 CFR 51.900(g).

2. RACM Demonstration and the Control Strategy in the SJV 2007 8-Hour Ozone SIP

For the 2007 Ozone Plan and the 2007 State Strategy, the District, CARB, and the local agencies (through the SJV's eight metropolitan planning organizations (MPO)) each undertook a process to identify and evaluate potential reasonably available control measures that could contribute to expeditious attainment of the 8-hour ozone standards in the SJV. We describe each agency's efforts below. We also discuss CARB's and the District's adopted control strategies including the provisions for the development of new

[17] The ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' published at 57 FR 13498 on April 16, 1992, describes EPA's preliminary view on how we would interpret various SIP planning provisions in title I of the CAA as amended in 1990, including those planning provisions applicable to the 1-hour ozone standard. EPA continues to rely on certain guidance in the General Preamble to implement the 8-hour ozone standard under title I.

[18] See also ''State Implementation Plans; General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas,'' 44 FR 20372 (April 4, 1979) and *Memorandum* dated December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, ''Additional Submission on RACM From States With Severe One-Hour Ozone Nonattainment Area SIPs.''

[19] For ozone nonattainment areas classified as moderate or above, CAA section 182(b)(2) also requires implementation of RACT for all major sources of VOC and for each VOC source category for which EPA has issued a Control Techniques Guideline (CTG). CAA section 182(f) requires that RACT under section 182(b)(2) also apply to major stationary sources of NO_X. In extreme areas, a major source is a stationary source that emits or has the potential to emit at least 10 tons of VOC or NO_X per year. CAA sections 182(e) and (f). Under the 8-hour ozone implementation rule, states were required to submit SIP revisions meeting the RACT requirements of CAA sections 182(b)(2) and 182(f) no later than 27 months after designation for the 8-hour ozone standard (September 15, 2006 for areas designated in April 2004) and to implement the required RACT measures no later than 30 months after that submittal deadline. See 40 CFR 51.912(a). California submitted the CAA section 182 RACT SIP for SJV in January 2007 and a revised RACT SIP in June 2009. EPA proposed to partially approve and partially disapprove that 2009 SJV RACT SIP on August 31, 2011. See Partial Approval and Partial Disapproval of Air Quality Implementation Plans; California; San Joaquin Valley; Reasonably Available Control Technology for Ozone; Proposed rule, signed August 31, 2011.

and improved technologies under CAA section 182(e)(5).

a. SJVUAPCD's RACM Analysis and Adopted Control Strategy

The District's RACM analysis, which focuses on stationary and area source controls, is described in Chapter 6 and Appendix I of the 2007 Ozone Plan. To identify potential RACM, the District reviewed measures from a number of sources including measures in other nonattainment areas' plans and measures suggested by the public during development of the Plan. 2007 Ozone Plan, pp. 6–2 to 6–3. The identified potential measures, as well as existing District measures, are described by emissions inventory category in Appendix I of the Plan. From the set of identified potential controls, the District selected measures for adoption and implementation based on the technological and economic feasibility of emissions controls, the potential magnitude and timing of emissions reductions, cost effectiveness, and other acceptable criteria for determining RACM. 2007 Ozone Plan, p. 6–3.

After completing its RACM analysis for stationary and area sources under its jurisdiction, the District developed its ''Stationary Source Regulatory Implementation Schedule'' (2007 Ozone Plan, Table 6–1), which gives the schedule for regulatory adoption and implementation of the measures determined to be feasible. The District also identified a number of source categories for which feasibility studies would be undertaken to refine the inventory and evaluate potential controls. These categories and the schedule for studying them are listed in Table 6–2 of the 2007 Ozone Plan.

In the five years prior to the adoption of the 2007 Ozone Plan, the District developed and implemented comprehensive plans to address attainment of the PM_{10} standards (2003 PM_{10} Plan, approved 69 FR 30005 (May 26, 2004)) and the 1-hour ozone standards (2004 Extreme Ozone Attainment Plan, approved 75 FR 10420 (March 8, 2010)). These plans have resulted in the adoption by the District of many new rules and revisions to existing rules for stationary and area sources. For the most part, the District's current rules are equivalent to or more stringent than those developed by other air districts. In addition to these stationary and area source measures, the District has also adopted an indirect source review rule, Rule 9510, to address increased indirect emissions from new industrial, commercial and residential developments. See SJVUAPCD Rule 9510 ''Indirect Source Review,'' adopted December 15, 2005, approved 76 FR 26609 (May 9, 2011). The District also operates incentive grant programs to accelerate turnover of existing stationary and mobile engines to cleaner units. See 2007 Ozone Plan, chapters 7 and 8 and SJV Ozone Mid-Course Review, Section 5 and 6.[20]

For the 2007 Ozone Plan, the District identified and committed to adopt and implement 19 new control measures for NO_X and VOC and to achieve certain aggregate emissions reductions of NO_X and VOC. See 2007 Ozone Plan, Table 6–1 (revised December 18, 2008). In Table 2 below, we list these measures, which mostly involve strengthening existing District rules, their adoption dates and current SIP approval status. As can be seen from Table 2, the District has completed action on all of its rule adoption commitments. Table 6–1 in the Plan shows estimated emissions reductions from each rule for milestone years from 2008 to 2020, 2012, and the attainment year of 2023. The District's commitment, however, is only to the aggregate emissions reductions of NO_X and VOC in each year. 2007 Ozone Plan, p. 6–5 and SJVUAPCD Governing Board Resolution 07–04–11a, p. 6. We show these commitments in Table 3 below. Table 4 gives the total estimate of SIP-creditable reductions achieved by the District to date.

TABLE 2—SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT 2007 OZONE PLAN SPECIFIC RULE COMMITMENTS

Measure No. & description	District rule No.	Adoption date		SIP status
		Anticipated	Actual	
S–GOV–1 Composting Biosolids	4565	1st Q—2007	March 2007	Proposed: August 31, 2011 (signature date).
S–AGR–1 Open Burning (Phase IV)	4103	2nd Q—2010	April 2010	Proposed:76 FR 40660 (July 11, 2011).
S–SOL–11 Solvents:				
Organic Solvents	4661	3rd Q—2007	September 2007	75 FR 24406 (May 5, 2010).
Organic Solvent Degreasing	4662		September 2007	74 FR 37948 (July 30, 2009).
Organic Solvent Cleaning	4663		September 2007	74 FR 37948 (July 30, 2009).
S–COM–5 Stationary Gas Turbines	4703	3rd Q—2007	September 2007	74 FR 53888 (October 21, 2009).
S–IND–24 Soil Decontamination	4651	3rd Q—2007	September 2007	74 FR 52894 (October 15, 2009).
S–IND–6 Polystyrene Foam	4682	3rd Q—2007	September 2007	76 FR 41745 (July 15, 2011).
S–PET–1&2 Gasoline Storage & Transfer.	4623 4624	4th Q—2007	December 2007	74 FR 56120 (October 30, 2009).
S–PET–3 Aviation Fuel Storage		3rd Q—2007	Found not feasible	Found infeasible.
S–COM–1 Large Boilers	4306 4320	3rd Q—2008	October 2008	75 FR 1715 (January 13, 2010) 76 FR 16696 (March 25, 2011).
S–COM–2 Boilers, Steam Generators and Process Heaters (2 to 5 MMBtu/hr).	4307	3rd Q—2008	October 2008	75 FR 1715 (January 13, 2010).
S–COM–7 Glass Melting Furnaces[1]	4354	3rd Q—2008	October 2008	76 FR 53640 (August 29, 2011).
S–SOL–20 Graphic Arts	4607	4th Q—2008	December 2008	74 FR 52894 (October 15, 2009).
S–COM–9 Residential Water Heaters	4902	1st Q—2009	March 2009	75 FR 24408 (May 5, 2010).
S–GOV–5 Composting Green Waste	4566	4th Q 0 2010	August 2011	Rule adopted.
S–IND–21 Flares	4311	2nd Q—2009	June 2009	Proposed: 76 FR 52623 (August 8, 2011).
S–IND–14 Brandy and Wine Aging	4695	3rd Q—2009	September 2009	76 FR 47076 (August 4, 2011).

[20] SJVAPCD, 2010 Ozone Mid-Course Review, May 2011.

TABLE 2—SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT 2007 OZONE PLAN SPECIFIC RULE COMMITMENTS—Continued

Measure No. & description	District rule No.	Adoption date		SIP status
		Anticipated	Actual	
S–SOL–1 Architectural Coatings	4601	4th Q—2009	December 2009	Proposed: 76 FR 35167 (June 16, 2011).
S–AGR–2 Confined Animal Facilities ...	4570	2nd Q—2010	October 2010	Proposed: August 31, 2011 (signature date).
S–SOL–6 Adhesives	4653	3rd Q—2010	September 2010	Rule submitted.

Source: List of measures and anticipated adoption dates: 2007 Ozone Plan, Table 6–1, revised December 18, 2009.

TABLE 3—SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT 2007 OZONE PLAN AGGREGATE EMISSIONS REDUCTIONS COMMITMENTS

[Tons per summer day]

	2011	2012	2014	2017	2020	2023
NO_X	4.4	6.0	6.3	7.8	8.0	8.2
VOC	15.3	26.5	40.5	42.2	44.5	46.3

Source: 2007 Ozone Plan, Table 6–1, revised December 18, 2008.

TABLE 4—SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT 2007 OZONE PLAN AGGREGATE CREDITABLE EMISSIONS REDUCTIONS FROM ADOPTED RULES

(Tons per summer day)

	2011	2012	2014	2017	2020	2023
NO_X	3.6	6.2	10.3	11.1	12.0	12.6
VOC	34.3	37.7	39.8	41.3	43.1	44.5

Source: TSD, Table D–5.

The District also included in its Plan programs for incentive grants and to develop innovative strategies such as green contracting and energy conservation. These are discussed below in section II.B.2.d.

b. The Local Jurisdictions' RACM Analysis

The local jurisdictions' RACM analysis was conducted by the SJV's eight MPOs.[21] This analysis focused on potential NO_X emissions reductions from transportation control measures (TCM). TCMs are, in general, measures designed to reduce emissions from on-road motor vehicles through reductions in vehicle miles traveled or traffic congestion. The analysis is summarized in Chapter 9 of the 2007 Ozone Plan and described in detail in Appendix C.

For the 2007 Ozone Plan, the SJV MPOs evaluated RACM using a three-step process of developing a list of potential reasonably available local controls, estimating the maximum potential emissions reductions from the identified measures, and then comparing these reductions against the level of reductions needed to advance attainment of the 8-hour ozone standard in the SJV. Through this process, the MPOs determined that there were no additional local RACM for NO_X, beyond those measures already adopted, that could advance attainment of the 8-hour ozone standard in the SJV. 2007 Ozone Plan, p. 9–7.

c. CARB's RACM Analysis and Adopted Control Strategy

Source categories for which CARB has primary responsibility for reducing emissions in California include most new and existing on- and off-road engines and vehicles, motor vehicle fuels, and consumer products.

Given the need for significant emissions reductions from mobile and area sources to meet the NAAQS in California nonattainment areas, the State of California has been a leader in the development of stringent control measures for on-road and off-road mobile sources and the fuels that power them. California has unique authority under CAA section 209 (subject to a waiver by EPA) to adopt and implement new emission standards for many categories of on-road vehicles and engines and new and in-use off-road vehicles and engines.

According to the 2007 State Strategy, California's new vehicle emissions standards have reduced new car emissions by 99 percent and new truck emissions by 90 percent from uncontrolled levels, and new lawn and garden equipment, recreational vehicles and boats, and other off-road sources are 80–98 percent cleaner than their uncontrolled counterparts. 2007 State Strategy, p. 37. In addition to its new vehicle and engine standards, the State has adopted many measures that focus on achieving reductions from in-use mobile sources that include more stringent inspection and maintenance requirements in California's Smog Check program, truck and bus idling restrictions, and various incentive programs. Appendix A of the TSD includes a list of all measures adopted by CARB between 1990 and the beginning of 2007. These measures, reductions from which are reflected in the Plan's baseline inventories, fall into two categories: Measures that are subject to a waiver of Federal pre-emption under CAA section 209 (section 209

[21] These eight MPOs represent the eight counties in the San Joaquin Valley nonattainment area: The San Joaquin Council of Governments, the Stanislaus Council of Governments, the Merced County Association of Governments, the Madera County Transportation Commission, the Council of Fresno County Governments, Kings County Association of Governments, the Tulare County Association of Governments and the Kern Council of Governments.

waiver measures or waiver measures) and those for which the State is not required to obtain a waiver (non-waiver measures). Emissions reductions from waiver measures are fully creditable in attainment and RFP demonstrations and may be used to meet other CAA requirements, such as contingency measures. See TSD, section II.D.3.a.i. and EPA's proposed and final approval of the SJV 1–Hour Ozone Plan at 74 FR 33933, 33938 (July 14, 2009) and 75 FR 10420 (March 8, 2010). Generally, the State's baseline non-waiver measures have been approved by EPA into the SIP and are fully creditable for meeting CAA requirements. See TSD, Appendix A.

CARB developed its proposed 2007 State Strategy after an extensive public consultation process to identify potential measures.[22] Through this process, CARB identified and has committed to develop 15 new defined measures. These measures focus on cleaning up the in-use fleet as well as increasing the stringency of emissions standards for a number of engine categories, fuels, and consumer products. They build on CARB's already extensive existing program described above, which addresses emissions from all types of mobile sources through both regulations and incentive programs. See TSD, Appendix A. Table 5 below lists the defined measures in the 2007 State Strategy that are applicable to the SJV and their current adoption and approval status. Table 6 provides the CARB's current estimates of the emissions reductions in the SJV from these measures, which are part of the State's commitment to achieve the tonnage of reductions needed for attainment. Table 7 provides the estimates of the emissions reductions that are currently SIP creditable.

TABLE 5—2007 STATE STRATEGY DEFINED MEASURES APPLICABLE TO THE SJV, SCHEDULE FOR CONSIDERATION AND CURRENT STATUS

State measures	Expected action year	Current status
Smog Check Improvements	2007–2009	Elements approved 75 FR 38023 (July 1, 2010).[23]
Expanded Vehicle Retirement (AB 118)	2007	Adopted by CARB, June 2009; by BAR, September 2010.
Modification to Reformulated Gasoline Program.	2007	Approved, 75 FR 26653 (May 12, 2010).
Cleaner In-Use Heavy Duty Trucks	2007, 2008, 2010	Proposed for approval: 76 FR 40652 (July 11, 2011).
Accelerated Introduction of Cleaner Locomotives.	2008	Prop 1B bond funds awarded to upgrade line-haul locomotive engines not already accounted for by enforceable agreements with the railroads. Those cleaner line-hauls will begin operation by 2012.
Cleaner In-Use Off-Road Engines	2007, 2010	Waiver decision pending.
Cleaner In-Use Agricultural Equipment	2013	Incentive program in progress. Additional action expected 2013.
New Emissions Standards for Recreational Boats.	2013	Action expected 2013.
Expanded Off-Road Recreational Vehicle Emissions Standards.	2013	Action expected 2013.
Enhanced Vapor Recovery for Above Ground Storage Tanks.	2008	Adopted June 2007. Requirements implemented through District Rule 4621.
Additional Evaporative Emissions Standards.	2013	Action expected 2013.
Consumer Products Program (I & II)	2008, 2009, 2011	Approved, 74 FR 57074 (November 4, 2009) and 76 FR 27613 (May 12, 2011).
Pesticide Regulation (DPR)	2008, 2009	Submitted October 2009, revisions submitted August 2011.

Source: 2009 State Strategy Status Report, p.4, 2011 Progress Report, Table 1, and 2011 Ozone SIP Revisions, Appendix A–3. Additional information from *http://www.ca.arb.gov.*

TABLE 6—EXPECTED EMISSIONS REDUCTIONS FROM DEFINED MEASURES IN THE SAN JOAQUIN VALLEY

[Tons per summer day 2023]

State measure	NO_X	VOC
Smog Check Improvements (BAR)	1.0	3.0
Cleaner In-Use Heavy-Duty Trucks	16.9	0.9
Cleaner In-Use Off-Road Equipment	1.9	0.2
Consumer Products Program	—	5.0
Pesticides: DPR Regulation	—	1.2

TABLE 6—EXPECTED EMISSIONS REDUCTIONS FROM DEFINED MEASURES IN THE SAN JOAQUIN VALLEY—Continued

[Tons per summer day 2023]

State measure	NO_X	VOC
Totals	19.8	10.3

Source: 2011 Ozone SIP Revisions Supplement, Attachment 1.

TABLE 7—CURRENTLY CREDITABLE EMISSIONS REDUCTIONS FROM DEFINED MEASURES IN THE SAN JOAQUIN VALLEY

[Tons per summer day 2023]

State measure	NO_X	VOC
Smog Check Improvements (BAR)	1.0	3.0
Cleaner In-Use Heavy-Duty Trucks	16.9	0.9
Cleaner In-Use Off-Road Equipment	1.9	0.2
Consumer Products Program	—	5.0

[22] This process is described in the 2007 Ozone Plan at p. 9–10. More information on this public process including presentations from the workshops and symposium that proceeded adoption of the 2007 State Strategy can be found at *http://www.arb.ca.gov/planning/sip/2007sip/2007sip.htm.*

[23] California Assembly Bill 2289, passed in 2010, requires the Bureau of Automotive Repair to direct older vehicles to high performing auto technicians and test stations for inspection and certification effective 2013. Reductions shown for the SmogCheck program in the 2011 Ozone SIP Revisions do not include reductions from AB 2289 improvements. 2011 Ozone SIP Revisions, Appendix C.

TABLE 7—CURRENTLY CREDITABLE EMISSIONS REDUCTIONS FROM DEFINED MEASURES IN THE SAN JOAQUIN VALLEY—Continued

[Tons per summer day 2023]

State measure	NO_X	VOC
Totals	19.8	9.1

Source: 2011 Ozone SIP Revisions Supplement, p. attachment 1.

The 2007 State Strategy also includes an enforceable commitment to achieve aggregate emissions reductions of 46 tpd NO_X and 25 tpd VOC in the SJV by the attainment year of 2023 that are sufficient, in combination with existing SIP-creditable measures, the District's commitments, and commitments for reductions under the CAA section 182(e)(5) new technologies provision, to attain the 1997 8-hour ozone standard in the San Joaquin Valley by the applicable attainment date of June 15, 2024. CARB also made enforceable commitments to achieve aggregate emissions reductions in the SJV in the RFP milestone years of 2014, 2017, and 2020. See 2007 State Strategy, p. 63; CARB Resolution 07–28, Attachment B, p. 6; and 2009 State Strategy Status Report, p. 21. See Table 8 below. The nature of these commitments is described in the State Strategy as follows:

> The total emission reductions from the new measures necessary to attain the federal standards are an enforceable State commitment in the SIP. While the proposed State Strategy includes estimates of the emission reductions from each of the individual new measures, it is important to note that the commitment of the State Strategy is to achieve the total emission reductions necessary to attain the federal standards, which would be the aggregate of all existing and proposed new measures combined. Therefore, if a particular measure does not get its expected emission reductions, the State still commits to achieving the total aggregate emission reductions, whether this is realized through additional reductions from the new measures or from alternative control measures or incentive programs. If actual emission decreases occur in any air basin for which emission reduction commitments have been made that are greater than the projected emissions reductions from the adopted measures in the State Strategy, the actual emission decreases may be counted toward meeting ARB's total emission reduction commitments.

CARB Resolution 07–28 (September 27, 2007), Appendix B, p. 3.

TABLE 8—CARB COMMITMENTS TO SPECIFIC AGGREGATE EMISSIONS REDUCTIONS

[Tons per summer day]

	2014	2017	2020	2023	2023 CAA 182(e)(5)
VOC	23	–[1]	24	25	–[1]
NO_X	76	88–93	56	46	81

Source: 2009 State Strategy Status Report, p. 23.
[1] No commitment to VOC reductions in 2017 or to VOC reductions pursuant to CAA 182(e)(5) advanced technologies provision.

d. Section 182(e)(5) New or Improved Technologies Provisions

For ozone nonattainment areas classified as extreme, the CAA recognizes that an attainment demonstration may need to rely to a certain extent on new or evolving technologies, given the relatively long time between developing the initial plan and attaining the standard and the degree of emissions reductions needed to attain. To address these needs, CAA section 182(e)(5) authorizes EPA to approve provisions in an extreme area plan which ''anticipate development of new control techniques or improvement of existing control technologies,'' and to approve an attainment demonstration based on such provisions, if the State demonstrates that: (1) Such provisions are not necessary to achieve the incremental emission reductions required during the first 10 years after November 15, 1990; [24] and (2) the State has submitted enforceable commitments to develop and adopt contingency measures to be implemented if the anticipated technologies do not achieve the planned reductions. CAA 182(e)(5). The State must submit these contingency measures to EPA no later than 3 years before proposed implementation of these long-term measures, and the contingency measures must be ''adequate to produce emissions reductions sufficient, in conjunction with other approved plan provisions, to achieve the periodic emissions reductions required by [CAA sections 182(b)(1) or (c)(2)] and attainment by the applicable dates.'' *Id.*

The General Preamble further provides that the new technology measures contemplated by section 182(e)(5) may include those that anticipate future technological developments as well as those that require complex analyses, decision making and coordination among a number of government agencies. See General Preamble at 13524. An attainment demonstration that relies on long-term new technology measures under section 182(e)(5) must identify any such measures and contain a schedule outlining the steps leading to final development and adoption of the measures. *Id.* The General Preamble also provides that EPA will set a schedule for implementing contingency measures upon making a finding of failure to meet a milestone, *i.e.,* to achieve the periodic emissions reductions required by CAA sections 182(b)(1) or (c)(2) or to attain by the applicable dates. *Id.*

CARB and the District have demonstrated a clear need for emissions reduction from new control technologies or improvement of existing technologies to reduce air pollution in the SJV. Adopted control measures and enforceable commitments discussed above provide the majority, but not all, of the emissions reductions needed to attain the 1997 8-hour ozone standards in the SJV. See 2007 State Strategy, p. 54. For the balance of the reductions needed to attain by June 15, 2024, the 2007 State Strategy and 2007 Ozone Plan rely on CARB's commitments to achieve additional reductions of 81 tpd NO_X by 2023 from new and improved technologies. See 2009 State Strategy Status Report, p. 20. The new technology provisions (also called ''long-term measures'') described in the 2007 State Strategy and 2007 Ozone Plan are not relied on to demonstrate RFP in any year and are accompanied by an enforceable commitment by the State to adopt and submit contingency measures no later than 3 years before implementation, as required by CAA section 182(e)(5).

CARB and the California districts have a longstanding history of successfully adopting and implementing

[24] Consistent with provisions in the 8-hour ozone implementation rule at 40 CFR part 51, subpart X, we interpret this 10-year timeframe to run from the effective date of designation for the 1997 8-hour ozone standard, that is, June 15, 2004.

technology-advancing regulations and innovative control measures. They have worked closely with research scientists and the regulated industry to develop regulations that are stringent enough to compel technology development yet flexible enough to encourage industry innovations. CARB has provided a list of potential long-term control measures which include reduced deterioration of emission control equipment in passenger vehicles, tighter engine emission standards, cleaner ground support equipment at airports, and prioritizing federal transportation funding to support air quality goals. See pp. 56–57 of the 2007 State Strategy. The District has also provided a list of potential advanced control technologies and innovative approaches that could achieve the long-term reductions. See 2007 Ozone Plan, pp. 11–5 to 11–10, and Chapters 7 and 8. CARB updated its list of potential long-term measures in both the 2009 State Strategy Status Report and the 2011 Ozone SIP Revisions. See 2009 State Strategy Status Report, pp. 25–27 and 2011 Ozone SIP Revisions, Appendix A, pp. A–8 to A–12.

To implement the long-term strategy, CARB has committed to a process that will ensure that the long-term measures and reductions are achieved by the attainment year. CARB is coordinating a government, private and public effort to establish emissions reductions goals for critical mobile and stationary source categories. The effort includes periodic assessment of technology advancement opportunities and updates to the Board and the public regarding new emission control opportunities and progress in achieving the long-term measure reductions. CARB's commitment for implementing the long-term strategy also includes (a) Sharing results through periodic briefings to the Board, workshops, conferences, symposia, Web site postings and other means, (b) working to secure resources for continuing research and development of new technologies, and (c) developing schedules for moving from research to implementation. *Id.*

An initial step in the long-term strategy was the signing of a Memorandum of Agreement (MOA) between the U.S. EPA, CARB and the South Coast and San Joaquin Valley Air Districts to commit to developing and testing new sustainable technologies to accelerate progress in meeting air quality goals. The goal of the MOA is to help align agency research resources to evaluate innovative technologies and assess new monitoring equipment to better measure mobile and stationary source emissions. The MOA agencies have also established a Clean Air Technology Initiative to help bring together the necessary participants (*e.g.,* scientists, engineers, analysts and agency specialists) to achieve the goals of the MOA. 2009 State Strategy Status Report, pp. 25–27. For the SJV, the focus is on the area that straddles Kern and Tulare counties. This area, which frequently exceeds health-based air standards, has high levels of mobile source emissions from the goods movement corridors of Highway 99 and Interstate 5 as well as stationary source emissions from a variety of energy production facilities, farms, and agricultural processing operations. See 2011 Ozone SIP Revisions, p. A–9. For a summary of San Joaquin Valley funded projects, see *http://epa.gov/region9/cleantech/projects.html.*

Other State programs that may achieve emissions reductions to help meet CARB's 182(e)(5) commitment include: potential co-benefits from California's climate change programs where State legislation (Assembly Bill 32—Global Warming Solutions Act of 2006 (AB 32)) aims to reduce Greenhouse Gas (GHG) in 2020 to 1990 levels or by about 30 percent; California's Air Quality Improvement Program (AQIP), an incentive program that supports the deployment of hybrid and zero-emission vehicles and other advanced technologies; and California's annual research program, which identifies projects and provides funding to help provide timely scientific and technical information needed for air quality control programs.

In addition, the District is pursuing innovative strategies. Its ''Fast Track'' strategy includes opportunities to reduce emissions from heavy-duty trucks by shifting goods movement to lower-emission alternatives, such as short-sea shipping. In 2010, the U.S. Department of Transportation awarded the Ports of Stockton, West Sacramento, and Oakland with a $30 million grant to move goods between Oakland and the two inland ports over the San Joaquin-Sacramento Delta. The District has also adopted a Technology Advancement Program (TAP) which is its strategic approach to encouraging innovation and development of new emission reduction technologies. The TAP will consist of an ongoing review of new technology concepts, interagency partnerships, funding for technology advancement programs, and collaborations to build and expand local capacity for research and development in the SJV. For more information about the SJV TAP, see *http://www.valleyair.org/Grant_Programs/TAP/tap_idx.htm.* In addition to the TAP, The District has established a Regional Energy Efficiency Strategy to support technology development and deployment in the Valley. The Regional Energy Efficiency Program lays out goals and measures that will guide the District's actions to reduce emissions caused by electricity and natural gas consumption in residential, industrial, and institutional settings. See 2011 Ozone SIP Revisions, pp. A–11 to A–12.

Along with its commitment to the process discussed above, CARB has committed to submit an 8-hour ozone SIP revision by 2020 that will: (1) Reflect modifications to the 2023 emission reduction target based on updated science and (2) identify additional strategies and implementing agencies needed to achieve the needed reductions by 2023. See 2011 Ozone SIP Revisions, p. A–8. The District has also committed to submit by late 2019 SIP revisions containing the control measures that are necessary to achieve the long-term measure reductions by the attainment year and to make any other needed revisions to the SIP. See SJVUAPCD Governing Board Resolution No. 07–04–11a p. 6.

CARB's 2011 Ozone SIP Revisions update and reaffirm both the ''long-term strategy commitment to identify and implement advanced technologies to reduce ozone-forming emissions in the State Strategy'' and the State's enforceable commitment ''to develop, adopt, and submit contingency measures by 2020 if advanced technology measures do not achieve planned reductions.'' See CARB Resolution 11–22, July 21, 2011. Finally, CARB has committed to meet annually with EPA to discuss strategies to maximize the clean air benefits of emerging advanced technologies and to provide annual summaries of strategies and activities. See letter, James Goldstene, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region 9, August 29, 2011.

3. Proposed Actions on the RACM Demonstration and Control Strategy

As described above, the District evaluated a range of potentially available measures for inclusion in its 2007 Ozone Plan and committed to adopt those it found to be reasonably available for implementation in the SJV. The process and the criteria the District used to select certain measures and reject others are consistent with EPA's RACM guidance. We also describe above the measure evaluation processes undertaken by the SJV MPOs and the State. Their processes are also consistent with EPA's RACM guidance.

See, *e.g.,* General Preamble at 13560 and Seitz memo.

Based on our review of these RACM analyses and the District's and California's adopted rules, as well as their commitments to adopt and implement additional controls, we propose to find that there are, at this time, no additional reasonably available control measures that would advance attainment of the 1997 8-hour ozone standard in the SJV. Therefore, we propose to find that the SJV 2007 Ozone Plan, together with the 2007 State Strategy, provides for the implementation of all RACM as required by CAA section 172(c)(1).

Because the SJV is designated and classified as extreme nonattainment for the 1997 8-hour ozone NAAQS, CAA sections 182(b)(2) and 182(f) require the implementation of RACT for all major sources of VOC or NO_X and all VOC sources covered by an EPA-issued CTG in this area. California submitted the District's revised 8-hour ozone RACT SIP (adopted April 16, 2009) on June 18, 2009. We have recently proposed to partially approve and partially disapprove this RACT SIP, based on our proposal to determine that the RACT SIP does not adequately demonstrate compliance with section 182 RACT requirements for ten source categories. See Partial Approval and Partial Disapproval of Air Quality Implementation Plans; California; San Joaquin Valley; Reasonably Available Control Technology for Ozone; Proposed rule, signed August 31, 2011.

Under EPA's longstanding policy, a SIP meets the RACM requirement in CAA section 172(c)(1) if it includes all reasonably available measures that individually or in combination with other such reasonably available measures can advance attainment of the relevant standard by one year or more. Based on our evaluation of the potential emission reductions from the missing section 182 RACT controls, we propose to determine that the additional reductions from these rules in combination with other potential RACM would not result in earlier attainment of the 1997 8-hour ozone standard in the SJV. See TSD, section II.C.3.

We propose to approve the SJVUAPCD's commitments to achieve specific aggregate emissions reductions of NO_X and VOC by specific years as given in Table 6–2 of the 2007 Ozone Plan and shown in Table 3 above. We are not proposing to act on SJVAPCD's commitments to adopt and implement specific control measures on the schedule identified in Table 6–1 (as amended December 18, 2008) in the 2007 Ozone Plan because, as of August 18, 2011 with the adoption of the Rule 4655, these commitments have all been fulfilled.

We are proposing to approve CARB's commitments to propose certain defined measures, as given in Table B–1 in 2011 Progress Report, Appendix B and Appendix A–7 of the 2011 Ozone SIP Revisions. We are also proposing to approve CARB's commitment to achieve the total aggregate emissions reductions necessary to demonstrate RFP and to attain the 1997 8-hour ozone standard in the SJV as given in the 2009 State Strategy Status Report, p. 20 and shown in Table 8 above. See CARB Resolution 07–28 (September 27, 2007), Appendix B, p. 3.

Finally, we are proposing to approve the CARB's and District's long-term strategy provisions and related commitments in the SJV 2007 8-Hour Ozone SIP under the new technology provisions of CAA section 182(e)(5). This proposal is based on our proposed findings that they satisfy the two criteria in CAA section 182(e)(5)(A) and (B). First, the SJV 2007 8-Hour Ozone SIP does not rely on any of the new technology reductions to demonstrate RFP in any milestone year between 2008 and 2020. CARB has committed to achieve 81 tpd of NO_X reductions through new technology measures approved under section 182(e)(5) only in the attainment year (2023). We note that the amount and relative proportion of reductions from measures scheduled for long-term adoption under section 182(e)(5), as compared to measures already adopted in regulatory form or scheduled for near-term adoption, should clearly decrease in any future SIP update, and that EPA will not approve a SIP revision that contains an increase in the amount or relative proportion of section 182(e)(5) new technology measures without a convincing showing in a SIP revision that the technologies relied upon in the near-term rules have been found to be technologically infeasible or ineffective in achieving the expected emissions reductions.

Second, CARB has submitted an enforceable commitment to submit adopted contingency measures to EPA by 2020 as required by CAA section 182(e)(5). See CARB Resolution 11–22, July 21, 2011. These contingency measures must be adequate to produce emissions reductions sufficient, in conjunction with other approved plan provisions, to achieve the periodic emissions reductions required by CAA sections 182(b)(1) or (c)(2) and to attain by the applicable dates. See CAA 182(e)(5). Following the State's submittal of these contingency measures, EPA will approve or disapprove the provisions in accordance with CAA section 110.

C. Attainment Demonstration

1. Requirements for Attainment Demonstrations

CAA section 182(c)(2)(A) requires states with ozone nonattainment areas classified as serious or above to submit plans that demonstrate attainment of the applicable standard as expeditiously as practicable but no later than the outside date established in the CAA.[25] The attainment demonstration is due within three years of the area's designation as nonattainment (40 CFR 51.908) and should include:

(1) Technical analyses to locate and identify sources of emissions that are causing violations of the 8-hour ozone NAAQS within the nonattainment area;

(2) Adopted measures with schedules for implementation and other means and techniques necessary and appropriate for attainment; and

(3) Contingency measures required under section 172(c)(9) of the CAA.

See 70 FR 71612 at 71615.

The requirements for the first two items are described in the sections on emissions inventories and RACM/RACT above (sections IV.A. and IV.C.) and in the sections on the air quality modeling and attainment demonstration that follow immediately below. Requirements for the third item are described in the section on contingency measures (IV.F.).

2. Air Quality Modeling in the SJV 2007 Ozone Plan

CAA section 182(c)(2)(A) requires SIPs for ozone nonattainment areas to include a ''demonstration that the plan, as revised, will provide for attainment of the ozone [NAAQS] by the applicable attainment date. This attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.'' Air quality modeling is used to establish emissions attainment targets, that is, the combination of emissions of ozone precursors that the area can accommodate without exceeding the relevant standard, and to assess whether the proposed control strategy will result in attainment of that standard. Air quality modeling is

[25] EPA's regulation at 40 CFR 51.903(a) translates the maximum attainment periods in Table 1 of section 181, which are specifically linked to enactment of the 1990 CAA Amendments, for purposes of attaining the 1997 8-hour ozone NAAQS.

performed for a base year and compared to air quality monitoring data from that year in order to evaluate model performance. Once the performance is determined to be acceptable, future year changes to the emissions inventory are simulated to determine the relationship between emissions reductions and changes in ambient air quality throughout the air basin. The procedures for modeling ozone as part of an attainment demonstration are contained in EPA's ''Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for the 8-Hour Ozone and $PM_{2.5}$ NAAQS and Regional Haze'' [26] (Guidance).

The air quality modeling that underpins the SJV 2007 Ozone Plan is described in Chapter 3 and documented in Appendix F. We provide a brief description of the modeling and a summary of our evaluation of it below. More detailed information about the modeling and our evaluation are available in section II.B. of the TSD.

CARB performed the air quality modeling for the 2007 Ozone Plan. Significant time, money, and effort by CARB, the District, and many others have gone into preparing the air quality modeling to support the attainment demonstration in the 2007 Ozone Plan for the San Joaquin Valley, including support for the multi-million dollar Central California Ozone Study (CCOS). CCOS is a cooperative effort involving California cities, State and local and air pollution control agencies, federal agencies, industry groups, academics, and contractors. Field data for CCOS were collected during the 4 months from June through October 2000 and included five several-day intensive monitoring periods. Data and modeling results based on the CCOS study provided a solid foundation for the 2007 Ozone Plan.

The Plan includes an attainment demonstration using photochemical modeling with the Comprehensive Air Quality Model with Extensions (CAMx) model, incorporating the [California] Statewide Air Pollution Research Center (SAPRC) chemical mechanism, and meteorological fields from the Mesoscale Model version 5 (MM5). In addition to the July 29–August 2, 2000 episode using CCOS data, CARB modeled ambient ozone levels during July 9–13, 1999 using routinely available meteorological and air quality data.

EPA recommends that States prepare modeling protocols as part of their modeled attainment demonstrations. Guidance, p. 133. The Guidance at pp. 133–134 describes the topics to be addressed in this modeling protocol. A modeling protocol should detail and formalize the procedures for conducting all phases of the modeling analysis, such as describing the background and objectives, creating a schedule and organizational structure, developing the input data, conducting model performance evaluations, interpreting modeling results, describing procedures for using the model to demonstrate whether proposed strategies are sufficient to attain the NAAQS, and producing documentation to be submitted for EPA Regional Office review and approval prior to actual modeling.

The 2007 Ozone Plan's modeling protocol is contained in Appendix C of the CARB Staff Report [27] in the Plan. The protocol covers all of the topics recommended in the Guidance, including model and episode selection, meteorological and emission data preparation, and performance testing.

The 2007 Ozone Plan's air quality model performance is discussed in Appendix F, including extensive statistical and graphical analysis demonstrating adequate overall model performance. The attainment demonstration for a given monitoring location used only those days that satisfied a number of performance criteria. The sensitivity testing described by CARB provides assurance that the model is adequately simulating the physical and chemical processes leading to ozone in the atmosphere and that the model responds in a scientifically reasonable way to emissions changes.

The Plan's Appendix F also provides extensive documentation on the Relative Reduction Factors, which are the key results from the model for use in the attainment test, and the details of their calculation. The documentation also includes the results of modeling runs with various combinations of VOC and NO_X reductions, to illustrate alternative control strategies and establish a ''carrying capacity'', a combination of VOC and NO_X emissions consistent with attainment of the ozone standard. EPA proposes to conclude that the attainment tests are adequate and consistent with EPA guidance.

In addition to a modeled attainment demonstration, which focuses on locations with an air quality monitor, EPA generally requires an unmonitored area analysis. The unmonitored area analysis uses a combination of model output and ambient data to identify areas that might exceed the NAAQS if monitors were located there. It ensures that a control strategy leads to reductions in ozone in unmonitored locations that might have baseline (and future) ambient ozone levels exceeding the NAAQS. In order to examine unmonitored areas in all portions of the modeling domain, EPA recommends use of interpolated spatial fields of ambient data combined with gridded modeled outputs. Guidance, p. 29. CARB's unmonitored area analysis [28] uses EPA's MATS software. Based on this analysis CARB concluded that there are no unmonitored ozone peaks in the modeling domain that would violate the 1997 8-hour ozone standards.

Finally, the Plan's Appendix F concludes with ''Corroborative Analyses/Weight Of Evidence Elements'', containing a supplemental analyses in support of the attainment demonstration. These analyses include ozone air quality trends, meteorologically adjusted ozone trends, and precursor emission trends, all of which show continued progress and support the conclusion that the attainment demonstration is sound.

Base on our review, EPA proposes to find that the air quality modeling provides an adequate basis for the RACM/RACT, RFP, and attainment demonstrations in the SJV 2007 8-Hour Ozone SIP.

3. Enforceable Commitments in the Attainment Demonstration

Section 11.2 of the 2007 Ozone Plan includes the initial attainment demonstration for the 1997 8-hour ozone standards in the SJV. The 2011 Ozone SIP Revisions update this demonstration to reflect changes to future year inventories and adopted controls.

The air quality modeling described above demonstrates that a 75 percent reduction in NO_X emissions from the 2002 base year level is necessary to attain the 1997 8-hour ozone standard.

[26] ''Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for the 8-Hour Ozone and $PM_{2.5}$ NAAQS and Regional Haze'', EPA–454/B–07–002, April 2007. Additional EPA modeling guidance can be found in ''Guideline on Air Quality Models'' in 40 CFR part 51, Appendix W.

[27] ''Photochemical Modeling Protocol for Developing Strategies to Attain the Federal 8-hour Ozone Air Quality Standard in Central California'', California Air Resources Board, 5/22/2007, included as Appendix C to the ''Final Draft, Staff Report: Analysis of the San Joaquin Valley 2007 Ozone Plan'', State of California Air Resources Board, 5/30/2007. (''Staff Report'' at *http://www.arb.ca.gov/planning/sip/2007sip/sjv8hr/sjvozone.htm*).

[28] ''Unmonitored Area Analysis for Ozone in the San Joaquin Valley'', California Air Resources Board, August 12, 2011. *SJV_unmonitored_ozone.pdf*.

A 75 percent reduction from the 2002 base year level equates to an attainment target level of 160 tpd NO_X. See 2007 State Strategy, p. 70. In the 2011 Ozone SIP Revisions, CARB revised the 2002 base year NO_X emissions downward by 12 percent based on improved inventory methodologies and data. See Section IV.A. above.

Both CARB and EPA recognize that the ideal approach for evaluating the impact of the base year inventory changes on the attainment target would be to perform new air quality modeling. Both Agencies also recognize the time and effort involved in such modeling for an area that is as large and diverse as the San Joaquin Valley. To address the need for remodeling, CARB has committed to update the SJV 2007 Ozone Plan modeling to reflect the emissions inventory improvements and any other new information by December 31, 2014 or by the date the SIPs are due for the revised 8-hour ozone standard whichever comes first. See CARB Resolution 11–22, p. 3 and 2011 Ozone SIP Revisions, p. B–8.

As part of the technical support for the 2011 Ozone SIP Revisions, CARB qualitatively evaluated the impact on the attainment target of the revision to this base year inventory and concluded that the 160 tpd target remains viable. See 2011 Ozone SIP Revisions, p. B–9. The 160 tpd target represents a 72 percent reduction from the revised 2002 base year level. CARB also recognized, however, that a reduction of up to 75 percent from the revised baseline (an attainment target level of 141 tpd) may be necessary to attain the 1997 8-hour ozone standard in the SJV and reaffirmed its 2007 State Strategy commitment to achieve all emissions reductions that are necessary to provide for attainment. See CARB Resolution 11–22, p. 3.

As EPA stated in its comment letter on the proposed 2011 Ozone SIP Revisions,[29] we believe that a 75 percent reduction from the base year NO_X emissions level, based on the modeling provided in the Plan as submitted in 2007, provides the best available estimate of the NO_X reductions needed to reach attainment. The predicted ozone concentrations from the existing modeling matched the monitored ozone concentration from the summer 2000 episode fairly well, despite having what we now know to be overly high emissions inputs. The model, therefore, may be underpredicting ozone concentrations and the original 160 tpd NO_X target may result in higher ozone levels than the existing modeling predicted. Applying the 75 percent reduction from the existing modeling against the revised base year inventory compensates for this underprediction. This equates to a target level of 141 tpd compared to the original target level of 160 tpd.

In our comment letter, we recommended that CARB commit to revising the modeling by a specific date and to commit, in the interim, to achieving a 75 percent reduction in NO_X from the revised 2002 base year levels by 2023. We noted that these recommendations are consistent with CARB's continuing strong commitment and efforts to achieve the emission reductions needed for attainment of the air quality standards in the San Joaquin Valley and the rest of California.

In response, CARB included a commitment to update the 2007 SIP modeling for the SJV to reflect emissions inventory improvements and reaffirmed its commitment to achieve the emissions reduction necessary to provide for attainment. CARB has stated that these commitments are sufficient to address the concerns we raised in our comment letter. See 2011 Ozone SIP Revisions Supplement, p. 1.

EPA notes that NO_X reductions needed to reach a target level of 141 tpd relative to the reductions needed to meet a target level of 160 tpd are part of CARB's long-term commitment discussed above in section IV.B.2.d. The current estimate of the NO_X reductions needed from new technologies, based on adopted measures and CARB's remaining commitments for reductions from defined measures, is approximately 50 tpd. See Table 10 below. This level of reductions is well within CARB's existing commitment to achieve 81 tpd of NO_X emissions reductions from new or improved technologies. See 2009 State Strategy Status Report, p. 21.

Table 9 below summarizes our evaluation of the attainment demonstration taking into account emission reductions achieved to date and other updates.

TABLE 9—SUMMARY OF REDUCTIONS NEEDED FOR SJV'S 8-HOUR OZONE ATTAINMENT DEMONSTRATION

[Tons per summer day, 2023]

	NO_X	VOC
A Revised 2002 baseline emissions level	565.2	457.5
B Attainment target level	141	342
C Total reductions needed from 2002 baseline levels to demonstrate attainment (A–B)	424.2	115.5
D Attainment year baseline emissions level	226.6	403.3
E Reductions from baseline measures and improvements to the emissions inventories (A–D)	338.6	54.2
F Reductions needed from control strategy measures including, for NO_X, reductions from new technologies (B–D)	85.6	61.3

Source: TSD, Table D–11.

As shown in this table, the majority of the emissions reductions that the State projects are needed for attaining the 1997 8-hour ozone standard in the SJV by 2024 come from baseline reductions. These baseline reductions are from existing control measures including numerous adopted District and State measures, which generally have been approved by EPA either through the SIP process or the CAA section 209 waiver process. See Appendices A and B of the TSD. Also included in the baseline are improvements to the emissions inventories, discussed above in section IV.A. The remaining reductions needed for attainment are to be achieved through the District's and CARB's enforceable commitments to reduce emissions in the SJV or through their commitments to develop and deploy new technologies pursuant to CAA section 182(e)(5). Since the submittal of the 2007 Ozone Plan and 2007 State Strategy, the District and CARB have adopted measures that have

[29] Letter, Deborah Jordan, Director, Air Division, EPA Region 9, to James Goldstene, Executive Officer, CARB, July 20, 2011.

significantly reduced the amount of emission reductions needed for attainment that remain as commitments. See Table 10.

TABLE 10—REDUCTIONS NEEDED FOR ATTAINMENT REMAINING AS COMMITMENTS BASED ON SIP–CREDITABLE MEASURES

[Tons per summer day in 2023]

	NO_X	VOC
A Total reductions needed from baseline and control strategy measures to attain (A–B)	423.9	115.5
B Reductions from baseline measures and adjustments due to emissions inventory improvements	338.6	54.2
C Total reductions from approved measures (Tables 4 and 7)	32.4	53.6
D Total reductions remaining as commitments and, for NO_X, reductions from new technologies (A–B–C)	53.2	7.7
E Reductions remaining as CARB enforceable commitments[1]	4.7	5.9
F Reductions remaining as SJVAPCD enforceable commitments	0	1.8
G Total reductions remaining as reductions from new technologies (CAA section 182(e)(5))	48.6	
H Percent of total reductions needed remaining as commitments not including NO_X reductions from new technologies	1.1%	6.7%

[1] Calculated by subtracting from CARB's 2023 46 tpd NO_X commitments (Table 8) the adjustment to baseline from State and federal sources from 2011 Ozone SIP Revisions Supplement, Attachment 1 (21.5 tpd) and emissions reductions from currently SIP-creditable State measures on Table 7 (19.8 tpd).

As shown in Table 9, reductions in the projected baseline inventory from measures already adopted by the District and State (both prior to and as part of the 2007 Ozone Plan and 2007 State Strategy) that EPA has approved or proposed for approval provide the great majority of the emissions reductions needed to demonstrate attainment of the 1997 8-hour ozone standard in the SJV. The balance is in the form of either enforceable commitments to specific aggregate emissions reductions by the District and CARB (lines E and F in Table 10 above) or reductions from new or improved technologies under CAA section 182(e)(5) (line G in Table 10). In this section we discuss the enforceable commitments that are part of the attainment demonstration in the SJV 2007 8-hour ozone SIP.

We believe that, with respect to the 2007 SJV 8-hour Ozone SIP, circumstances warrant the consideration of enforceable commitments as part of the attainment demonstration.[30] As shown in Table 9 above, the majority of NO_X emissions reductions and a substantial fraction of the VOC reductions needed to demonstrate RFP and attainment in the SJV come from rules and regulations that were adopted prior to 2007, *i.e.,* from the baseline measures. As a result of these State and District efforts, most sources in the San Joaquin Valley nonattainment area are currently subject to stringent rules adopted prior to the State Strategy's and the Plan's development, leaving few opportunities (and generally more technologically and economically challenging ones) to further reduce emissions. In the 2007 Ozone Plan and the 2007 State Strategy, the District and CARB identified potential control measures that could contribute many of the additional emissions reductions needed for attainment. See 2007 Ozone Plan, Appendix I and 2007 State Strategy, Chapter 5. However, the timeline needed to develop, adopt, and implement these measures went beyond the November 2007 submittal date of the SJV 8-hour Ozone SIP. These circumstances warrant the District's and CARB's reliance on enforceable commitments as part of the attainment demonstration in the 2007 Ozone Plan and 2007 State.

Given the State's demonstrated need for reliance on enforceable commitments, we now consider the three factors EPA uses to determine whether the use of enforceable commitments in lieu of adopted measures to meet a CAA planning requirements is approvable: (a) Do the commitments address a limited portion of the statutorily-required program; (b) is the state capable of fulfilling its commitments; and (c) are the commitments for a reasonable and appropriate period of time.

a. The Commitments Are a Limited Portion of Required Reductions

For the first factor, we look to see if the commitment addresses a limited portion of a statutory requirement, such as the amount of emissions reductions needed to demonstrate RFP and attainment in a nonattainment area. For this calculation, reductions assigned to the new technologies provision (CAA section 182(e)(5)) are not counted as commitments.[31]

As shown Table 9, the remaining portion of the enforceable commitments, after accounting for approved measures and advanced technology measures, needed to demonstrate attainment of the 8-hour ozone standard in the San Joaquin Valley are 7.7 tpd of VOC and, approximately 4.6 tpd of NO_X. When compared to the total reductions needed to demonstrate attainment (not including the CAA section 182(e)(5) reductions in the attainment demonstration), the remaining portion of the enforceable commitments represents at most 6.7 percent of the needed VOC and 1.1 percent of the needed NO_X. Historically, EPA has approved SIPs with enforceable commitments in the range of 10 percent or less. See our approval of the SJV PM_{10} Plan at 69 FR 30005 (May 26, 2004), the SJV 1-hour ozone plan at 75 FR 10420 (March 8, 2010), the Houston-Galveston 1-hour ozone plan at 66 FR 57160 (November 14, 2001), proposed approval of the SJV 2007 $PM_{2.5}$ SIP at 76 FR 41338 (July 13, 2011), and proposed approval of the South Coast $PM_{2.5}$ SIP at 76 FR 41562 (July 14, 2011). Thus, the State's commitment addresses a limited proportion of the required emissions reductions.

[30] Based on SIP-creditable measures adopted to date, the SJV 2007 8-hour ozone SIP does not rely on enforceable commitments to aggregate emissions reductions to demonstrate RFP or to meet any other applicable requirement of the CAA. Therefore, we discuss here only those enforceable commitments relied on to demonstrate attainment.

[31] CAA section 182(e)(5) specifically allows EPA to approve an attainment demonstration that relies on reductions from new technologies. This provision is separate from the requirement in CAA section 172(c)(6) for enforceable emissions limitations under which enforceable commitments are considered. As a result, reductions attributed in the attainment demonstration to new technologies are not considered part of the State's enforceable commitments for the purposes of determining the percent of the reductions needed for attainment that remain as commitments.

b. The State Is Capable of Fulfilling Its Commitments

For the second factor, we consider whether the State and District are capable of fulfilling their commitments.

As discussed above, CARB has adopted and submitted the 2009 State Strategy Status Report and the 2011 Ozone SIP Revisions, which update and revise the 2007 State Strategy. These submittals show that CARB has made significant progress in meeting its enforceable commitments for the San Joaquin Valley. The District has already exceeded its commitments for reducing NO_X emissions for the attainment year of 2023. See Tables 3 and 4 above and Table D–4 in the TSD. It also has adopted additional rules (Rules 9510 and 4320) that are projected to achieve NO_X reductions in the attainment year. These reductions, however, are not currently creditable to the attainment and RFP demonstrations. In addition, the District has adopted revisions to District Rule 4702 (Reciprocating Internal Combustion Engines) that are likely to achieve substantial NO_X reductions. See SJVAPCD, Final Draft Staff Report Proposed Amendments To Rule 4702 (Internal Combustion Engines), August 18, 2011. It has also adopted Rule 4566 (Organic Materials Composting Operations) that will achieve an estimated 19 tpd reductions in VOC (in SIP currency) by 2017. Finally, the District is continuing to work to identify and adopt additional measures to reduce emissions. Beyond the rules discussed above, both CARB and the District have well-funded incentive grant programs to reduce emissions from the on- and off-road engine fleets. Reductions from several of these programs have yet to be quantified and/or credited in the attainment demonstration. See, for example, SJVAPCD, 2008 $PM_{2.5}$ Progress Report (May 2011), section 2.3.

Given the State's and District's efforts to date to reduce emissions, we believe that the State and District are capable of meeting their enforceable commitments to adopt measures to reduce emissions of NO_X and VOC to the levels needed in combination with reductions from the new technologies provision to attain the 1997 8-hour ozone standard in the San Joaquin Valley by CAA deadline of June 15, 2024.

c. The Commitments Are for a Reasonable and Appropriate Timeframe

For the third and last factor, we consider whether the commitment is for a reasonable and appropriate period of time.

In order to meet the commitments to reduce emissions to the levels needed to attain the 1997 8-hour ozone standard in the San Joaquin Valley, the 2007 Ozone Plan and 2007 State Strategy included ambitious rule development, adoption, and implementation schedules, which both the District and CARB have substantially met. Given that almost all the emissions reductions committed to by District and CARB have already been achieved and the rules that are likely to achieve the few remaining ones are scheduled for adoption by 2013, these schedules provide sufficient time to achieve the few remaining reductions needed to attain (when considered with the emissions reductions provided by the advanced technology provision) by the applicable attainment date of June 15, 2024. See Tables 2 and 5 above. Thus, we find that the commitments are for a reasonable and appropriate timeframe.

4. Proposed Action on the Attainment Demonstration

In order to approve a SIP's attainment demonstration, EPA must make several findings:

First, we must find that the demonstration's technical bases—emissions inventories and air quality modeling—are adequate. As discussed above in sections IV.A. and IV.C.2., we are proposing to approve the revised base year emissions inventory and to find the air quality modeling adequate to support the attainment demonstration.

Second, we must find that the SIP provides for expeditious attainment through the implementation of all RACM. As discussed above in section II.C., we are proposing to approve the RACM demonstration in the SJV 2007 8-hour Ozone SIP as meeting the requirements of CAA section 172(c)(1).

Third, we must find that the emissions reductions that are relied on for attainment are creditable and are sufficient to provide for attainment. As shown on Table 9, the 2007 8-hour Ozone SIP relies primarily on adopted and approved/waived rules to achieve the emissions reductions needed to attain the 1997 8-hour ozone standards in the SJV by June 15, 2024. The balance of the reductions projected to be needed for attainment is currently in the form of enforceable commitments to adopt measures to achieve aggregate tonnage reductions of VOC or NO_X in the near term from available technologies and an enforceable commitment to adopt and submit in the longer term measures relying on the development and deployment of new technologies that will achieve specific aggregate tonnage reductions of NO_X.

EPA has previously accepted enforceable commitments in lieu of adopted control measures in attainment demonstrations when circumstances warrant them and the commitments meet three criteria. As discussed above in section IV.C.3., we propose to find that circumstances here warrant the consideration of enforceable commitments and that the three criteria are met: (1) The commitments constitute a limited portion of the required emissions reductions, (2) both the State and the District have demonstrated their capability to meet their commitments, and (3) the commitments are for an appropriate timeframe. Based on these evaluations, we are proposing to approve the enforceable commitments as part of the attainment demonstration in the 2007 8-Hour Ozone SIP.

CAA section 182(e)(5) allows extreme ozone nonattainment area plans under certain conditions to include provisions for the development of new technologies and allows EPA to approve attainment demonstrations based, in part, on those provisions. For the reasons discussed above in section IV.B., we propose to find that California has met the conditions for relying on the CAA's new technologies provisions in its attainment demonstration for the SJV.

As discussed above in section IV.C.2. above, the SJV Ozone Plan and State Strategy, as adopted in 2007, demonstrates that a 75 percent reduction in NO_X emissions from the 2002 base year level is necessary to attain the 1997 8-hour ozone standard. Since the adoption of the SJV ozone SIP in 2007, the base year NO_X emissions level has to be revised downward by 12 percent due to new inventory methodologies and data. Both CARB and EPA recognize that the ideal approach for evaluating the impact of these base year inventory changes on the attainment target in the SJV 2007 Ozone Plan would be to perform new air quality modeling, but both also recognize the time and effort involved in such modeling. CARB has committed to update the SJV 2007 Ozone Plan modeling to reflect the emissions inventory improvements and any other new information by December 31, 2014 or by the date the SIPs are due for the revised 8-hour ozone standard whichever comes first. See CARB Resolution 11–22, p. 3 and 2011 Ozone SIP Revisions, p. B–8. EPA is proposing to approve this commitment.

EPA believes that a 75 percent reduction from the base year NO_X emissions level from the existing

modeling provides the best currently available estimate of the NO_X reductions needed to reach attainment. CARB has committed to, and has reaffirmed its commitment to achieve the reductions needed for attainment in the SJV. See CARB Resolution 07–28 (September 27, 2007), Appendix B, p. 3, 2009 State Strategy Status Report, p. 13, and CARB Resolution 11–22, p. 3. It has also stated that these commitments are sufficient to address the attainment needs of the SJV. See 2011 Ozone SIP Revisions Supplement, p. 1. As discussed above, CARB's commitment to achieving 81 tpd of NO_X emissions reductions from new technologies is sufficient to cover any reductions that may be needed for attainment due to the changes to the base year inventory.

For the foregoing reasons, we propose to approve the attainment demonstration in the SJV 2007 8-Hour Ozone SIP.

D. Reasonable Further Progress Demonstration

1. Requirements for RFP Demonstrations

CAA section 172(c)(2) requires that plans for nonattainment areas provide for reasonable further progress (RFP). RFP is defined in section 171(1) as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by [title 1, part D] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable [standard] by the applicable date.'' CAA Section 182(b)(1) specifically requires that SIPs for ozone nonattainment areas that are classified as moderate or above demonstrate a 15 percent reduction in VOC emissions between the years of 1990 and 1996. For ozone nonattainment areas classified as serious or higher, CAA Section 182(c)(2)(B) also requires, in addition to the 15 percent reduction required under CAA 182(b)(1), a three percent per year reduction (averaged over three-year periods) of ozone precursor emissions until attainment.

The ozone implementation rule interprets the RFP requirements for the purposes of the 1997 ozone standards, establishing requirements for RFP that depend on the area's classification as well as whether the area has an approved 15 percent rate of progress plan for VOC under CAA section 182(b)(1) for the 1-hour ozone standard that covers the entire 8-hour ozone nonattainment area. See 40 CFR 51.910(d) and 70 FR 71612. In 1997 EPA approved a 15 percent rate of progress plan for the SJV which covers the current 1997 8-hour ozone standard nonattainment area. See 62 FR 1150, 1172 (January 8, 1997). As a result, the area does not need to demonstrate another 15 percent reduction in VOC. Instead, under the ozone implementation rule, the 8-hour ozone SIP for SJV must provide for an average of three percent per year of VOC and/or NO_X emissions reductions for (1) the six-year period beginning January 1 of the year following the year used for the baseline and (2) all remaining three-year periods after the first six-year period out to the area's attainment date. 40 CFR 51.910(a)(1)(ii)(B). Except as specifically provided in CAA section 182(b)(1)(C), emissions reductions from all SIP approved, federally promulgated, or otherwise SIP creditable measures that occur after the baseline are creditable for purposes of demonstrating RFP targets are met. The implementation rule also sets the baseline for RFP calculations as 2002.

The RFP demonstration must calculate and exclude the non-creditable reductions described in CAA 182(b)(1)(D). These non-creditable reductions include emissions reductions from pre-1990 federal motor vehicle programs. The method for calculating the target emissions levels is found in Appendix A to the preamble of the ozone implementation rule. See 70 FR 71612 at 71696.

2. RFP Demonstration in the SJV 2007 8-Hour Ozone SIP

California has made several submittals to address the RFP requirement for the 1997 8-hour ozone standard in the SJV. The last of these is found in Appendix A of the 2011 Ozone SIP Revisions. This revised demonstration incorporates the inventory revisions described in section IV.A. above as well as reductions from measures that have been adopted since the 2007 Ozone Plan's submittal except for those that EPA has determined by rule are not currently creditable. See 2011 Ozone SIP Revisions, p. 2.

3. Proposed Action on the RFP Demonstration

CARB calculated the RFP target levels following the method provided in the ozone implementation rule and preamble. See 40 CFR 51.910 and 70 FR 71612 at 71631–71650. EPA has made minor adjustments to the State's calculations to remove reductions from currently unapproved measures (*e.g.,* pesticides). A summary of our evaluation of the State's RFP demonstration, taking into account these minor adjustments, is shown in Table 11 below. The detailed analysis can be found in section II.G. of the TSD. As shown in the Table 11, the SJV 2007 8-Hour Ozone SIP provides for RFP in each milestone years. We propose, therefore, to approve the SIP's RFP demonstration.

TABLE 11—SAN JOAQUIN RATE OF PROGRESS DEMONSTRATIONS

[Summer planning tons per day]

	2008	2011	2014	2017	2020	2023
VOC Calculation						
Target level of VOC needed to meet ROP requirement.	365.0	327.2	293.6	264.4	239.7	218.1
Baseline VOC in milestone year (with uncreditable reductions removed).	408.8	355.9	333.5	331.0	333.0	341.5
Apparent shortfall	43.8	28.7	39.9	66.6	93.3	123.4
Percent apparent shortfall in VOC	9.8%	6.5%	9.2%	15.4%	21.6%	28.6%
Shortfall previous provided by NO_X substitution	0.0%	9.8%	9.6%	9.2%	15.4%	21.6%
Percent actual shortfall in VOC	9.8%	−3.3%	−0.4%	6.2%	6.2%	7.0%
NO_X Calculations						
Adjusted NO_X baseline (MVCP and uncreditable reductions removed).	425.5	359.6	309.0	260.3	226.5	196.5
Change in NO_X since 2002 adopted controls only	122.9	184.4	213.4	278.0	310.8	537.0
Percent change in NO_X since 2002	22.4%	33.9%	42.8%	51.5%	57.8%	63.4%

TABLE 11—SAN JOAQUIN RATE OF PROGRESS DEMONSTRATIONS—Continued

[Summer planning tons per day]

	2008	2011	2014	2017	2020	2023
Percent change in NO_X used for VOC substitution through previous milestone.	0%	9.6%	9.6%	9.6%	15.8%	22.0%
Percent reductions since 2002 available for RFP substitution and contingency in the milestone year.	22.4%	24.1%	33.0%	41.8%	41.8%	41.1%
Percent change since 2002 used for VOC substitution in the milestone year, percent.	9.8%	0.0%	0.0%	6.2%	6.2%	7.0%
Percent change since 2002 surplus after meeting substitution in the milestone year.	12.6%	24.1%	33.0%	35.6%	35.5%	34.1%
RFP met?	Yes	Yes	Yes	Yes	Yes	Yes.

E. Transportation Control Strategies and Transportation Control Measures To Offset Emissions Increases From VMT Increases, To Provide for RFP and Attainment

1. Requirements for Transportation Control Strategies and Transportation Control Measures To Offset Emissions Growth, To Provide for RFP and Attainment

CAA section 182(d)(1)(A) requires that areas classified as severe or extreme submit transportation control strategies and transportation control measures (TCM) sufficient to offset any growth in VOC emissions from growth in VMT or the number of vehicle trips, and to provide (along with other measures) the reductions needed to meet the applicable RFP requirement. CAA section 182(d)(1)(A) also requires that states choose and implement such measures as are specified in section 108(f), to the extent needed to demonstrate attainment. In selecting the measures, Congress directed that States ''should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them.'' CAA 182(d)(1)(A).

EPA believes that it is appropriate to treat the three required elements of section 182(d)(1)(A) (*i.e.,* offsetting emissions growth, attainment of the RFP reduction, and attainment of the ozone standard) as separable. As to the first element of CAA section 182(d)(1)(A) (*i.e.,* offsetting emissions growth), EPA has historically interpreted this CAA provision to allow areas to meet the requirement by demonstrating that emissions from motor vehicles decline each year through the attainment year. General Preamble at 13521–13522.[32]

2. Transportation Control Strategies and Transportation Control Measures To Offset Emissions Growth, To Provide for RFP and Attainment in the SJV 2007 8-Hour Ozone SIP

Information in 2011 Ozone SIP Revisions reproduced in Table 12 below shows that on-road mobile source emissions of VOC and NO_X decline steadily from 2008 to 2023. This decline in emissions is due to EPA's and California's on-road mobile source programs, California's clean fuels and SmogCheck programs, and CARB's in-use truck and bus rule. As discussed above in section IV.B., these programs are fully creditable for SIP planning purposes in attainment and RFP demonstrations, including demonstrating compliance with CAA section 182(d)(1). The on-road emissions in Table 12 are calculated using EMFAC2007 (the most recent EPA-approved mobile source emissions model) and the same planning assumptions used to develop the RFP and attainment demonstrations and transportation conformity motor vehicle emissions budget in the 2011 Ozone SIP Revisions. 2011 Ozone SIP Revisions, p. C–1. As described above in section IV.B., the SJV MPOs evaluated a wide variety of transportation control strategies and measures, including those measures listed in CAA section 108(f), and determined that there were no combinations of reasonable measures that would expedite attainment of the 8-hour ozone standard in the SJV. See 2007 Ozone Plan, Appendix C.

TABLE 12—ON-ROAD MOTOR VEHICLE EMISSIONS IN THE SAN JOAQUIN VALLEY 2008–2023

[Tons per summer day]

Year	2008	2011	2014	2017	2020	2023
VOC	78	66	50	43	39	37
NO_X	229	183	153	115	91	69

Source: 2011 8-Hour Ozone SIP Revision, Appendix B, page B–3.

[32] See also 60 FR 48896 (September 21, 1995) approval of Illinois' vehicle miles traveled plan for the Chicago area; 62 FR 23410 (April 30, 1997) and 62 FR 35100 (June 30, 1997), proposed and final approval of New Jersey's 15 percent ROP plan and other provisions for the New York-New Jersey-Connecticut ozone nonattainment area; 66 FR 23849 (May 10, 2001), approval of the New York's attainment demonstration and related provisions for the New York-New Jersey-Connecticut ozone nonattainment area; 66 FR 57247 (November 14, 2001), approval of the VMT offset plan for the Houston-Galveston ozone nonattainment area; 70 FR 25688 (May 13, 2005), approval of the Washington, DC area's 1-hour attainment demonstration and related provisions; and 70 FR 34358 (June 14, 2005), approval of Atlanta's VMT plan.

3. Proposed Action Transportation Control Strategies and Transportation Control Measures To Offset Emissions Growth, To Provide for RFP and Attainment in the SJV 2007 8-Hour Ozone SIP

Because both VOC and NO_X emissions from on-road mobile sources decline steadily over the entire time period covered by the 2007 8-hour Ozone SIP,[33] the SIP need not include additional transportation control strategies and TCM to offset growth in emissions from growth in VMT. Therefore, we propose to find that the SJV 2007 8-Hour Ozone SIP meets the requirement in CAA section 182(d)(1)(A) to include transportation control strategies and TCM sufficient to offset any growth in emissions from growth in VMT or the number of vehicle trips.

In *Association of Irritated Residents* v. *EPA,* 632 F.3d 584 (9th Cir. 2011), the U.S. Court of Appeals for the Ninth Circuit held that, with respect to the first element, section 182(d)(1)(A) of the CAA requires States to adopt transportation control measures and strategies whenever vehicle emissions are projected to be higher than they would have been had vehicle miles traveled not increased, even when aggregate vehicle emissions are actually decreasing. EPA has filed a petition for rehearing on this issue. Docket Nos. 09–71383 and 09–71404 (consolidated), Docket Entry 41–1, *Petition for Panel Rehearing.*

The Ninth Circuit has yet to issue its mandate in the *Association of Irritated Residents* case, and EPA has not adopted the court's interpretation for the reasons set forth in the Agency's petition for rehearing, pending a final decision by the court. If the court denies the Agency's petition for rehearing and issues its mandate before EPA issues a final rule on the SJV 2007 8-Hour Ozone SIP, then we anticipate that we would not be able to finalize approval of the SJV 2007 8-Hour Ozone SIP with respect to the first element (*i.e.,* offsetting emissions growth) of section 182(d)(1)(A). Therefore, in today's action, and in the alternative to the proposed approval, we are simultaneously proposing to disapprove the SJV 2007 8-Hour Ozone SIP with respect to the first element (*i.e.,* offsetting emissions growth) of section 182(d)(1)(A) based on the plan's failure to include sufficient transportation control strategies and TCM to offset the emissions from growth in VMT. If EPA were to finalize the proposed disapproval, the area would be eligible for a protective finding under the transportation conformity rule because the submitted SIP contains adopted control measures and enforceable commitments that fully satisfy the emissions reductions requirements for reasonable further progress and attainment. 40 CFR 93.120(a)(3).[34]

As discussed above in section IV.D., we are proposing to find that the SJV 2007 8-Hour Ozone SIP provides for RFP consistent with all applicable CAA and EPA regulatory requirements. Therefore, we also propose to find that the SIP meets the requirement in CAA section 182(d)(1)(A) to include transportation control strategies and TCM as necessary to provide (along with other measures) the reductions needed to meet the applicable RFP requirement.

Finally, as discussed in sections IV.B. and IV.C. above, we are proposing to find that the SJV 2007 8-Hour Ozone SIP provides expeditious attainment of the 1997 8-hour ozone standard. Therefore, we propose to find that the SIP meets the requirement in CAA section 182(d)(1)(A) to include measures to the extent needed to demonstrate attainment.

F. Contingency Measures

1. Requirements for Contingency Measures

Under the CAA, 8-hour ozone nonattainment areas classified under subpart 2 as moderate or above must include in their SIPs contingency measures consistent with sections 172(c)(9) and 182(c)(9). Contingency measures are additional controls to be implemented in the event the area fails to meet a RFP milestone or fails to attain by its attainment date. These contingency measures must be fully adopted rules or measures which are ready for implementation quickly upon failure to meet milestones or attainment. The SIP should contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measures will be implemented without significant further action by the State or EPA. See 68 FR 32802, 32837 and 70 FR 71612, 71650.

Additional guidance on the CAA contingency measure provisions is found in the General Preamble at 13510–13512 and 13520. The guidance indicates that states should adopt and submit contingency measures sufficient to provide a 3 percent emissions reduction from the adjusted RFP base year. EPA concludes this level of reductions is generally acceptable to offset emission increases while States are correcting their SIPs. These reductions should be beyond what is needed to meet the attainment and/or RFP requirement. States may use reductions of either VOC or NO_X or a combination of both to meet the contingency measure requirements. General Preamble at 13520, footnote 6. EPA guidance also provides that contingency measures could be implemented early, *i.e.,* prior to the milestone or attainment date.[35] Consistent with this policy, states are allowed to use excess reductions from already adopted measures to meet the CAA sections 172(c)(9) and 182(c)(9) contingency measures requirement. This is because the purpose of contingency measures is to provide extra reductions that are not relied on for RFP or attainment that will provide continued progress while the plan is being revised to fully address the failure to meet the required milestone. Nothing in the CAA precludes a State from implementing such measures before they are triggered. This approach has been approved by EPA in numerous SIPs. See 62 FR 15844 (April 3, 1997) (approval of the Indiana portion of the Chicago area 15 percent ROP plan); 62 FR 66279 (December 18, 1997) (approval of the Illinois portion of the Chicago area 15 percent ROP plan); 66 FR 30811 (June 8, 2001) (proposed approval of the Rhode Island post-1996 ROP plan); and 66 FR 586 and 66 FR 634 (January 3, 2001) (approval of the Massachusetts and Connecticut 1-hour ozone attainment demonstrations). In the only adjudicated challenge to this approach, the court upheld it. *See LEAN* v. *EPA,* 382 F.3d 575 (5th Cir. 2004). 70 FR 71611, 71651.

In addition, CAA section 182(e)(5) authorizes EPA to ''approve provisions of an implementation plan for an Extreme Area which anticipate

[33] CARB only presented mobile source emissions estimates for the RFP milestone years rather than for each year between 2011 and 2023. We believe this adequately meets the CAA section 182(d)(3) requirement. There is nothing in the record to indicate that mobile sources emissions in the SJV are likely to increase between milestone years before returning to their historic downward trend in the milestone years.

[34] An area would not be eligible for a protective finding under the transportation conformity regulation if EPA finalizes a disapproval of a control strategy implementation plan revision (*i.e.,* a plan that demonstrates reasonable further progress or attainment) because the plan revision does not contain adopted control measures or written commitments to enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted. 40 CFR 93.120(a)(3).

[35] *Memorandum,* G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch to Air Directors, ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' June 1, 1992.

development of new control techniques or improvement of existing control techniques, and an attainment demonstration based on such provisions,'' if the State meets certain criteria. See CAA 182(e)(5). Such plan provisions may include enforceable commitments to submit, at a later date, contingency measures for failure to attain under CAA section 172(c)(9), in addition to the contingency measures to be implemented if the anticipated technologies approved under section 182(e)(5) do not achieve planned reductions. These contingency measures must be submitted no later than three years before proposed implementation of the plan provisions and approved or disapproved by EPA in accordance with CAA section 110. *Id.*

2. Contingency Measures in the SJV 2007 8-Hour Ozone SIP

Contingency measure provisions are described in Section 11.6. of the 2007 Ozone Plan and Appendix D of the 2007 State Strategy as updated on February 1, 2008. The provisions were again updated in the 2011 Ozone SIP Revisions, Appendix A. To provide for contingency measures for failure to make RFP, the SIP relies on surplus NO_X reductions in the RFP demonstration. See 2011 Ozone SIP Revision, Attachment A, p. A–3. See also Table 11 above. To provide for contingency measures for failure to attain, the SIP relies in part on the additional incremental emissions reductions resulting from fleet turnover in the 2024. Fleet turnover in 2024 is expected to reduce NO_X emissions by 2 tpd and VOC emissions by less than 0.5 tpd. See 2011 Ozone SIP Revisions Supplement, Attachment 2.

Additionally, as discussed above in section IV.B.2.d., we are proposing to determine that CARB and the SJVUAPCD have satisfied the criteria in section 182(e)(5) for reliance on the new technology provision as part of the attainment demonstration in the 2007 8-Hour Ozone SIP. Based on the State's anticipated development of these new technologies, CARB has submitted an enforceable commitment to submit, no later than 2020, additional contingency measures under CAA section 182(e)(5) that meet the requirements for attainment contingency measures in CAA section 172(c)(9), in addition to contingency measures to be implemented if the anticipated long-term measures approved pursuant to section 182(e)(5) do not achieve planned reductions. See CARB Resolution No. 11–22 (July 21, 2011).

3. Proposed Action on the Contingency Measures

As discussed above in section IV.D., we are proposing to approve the 2007 8-Hour Ozone SIP's RFP demonstration. As seen in the second to last line on Table 11 above (the RFP demonstration), there are sufficient excess reductions of NO_X in each milestone year beyond those needed to meet the next RFP percent reduction requirement to provide the 3 percent of adjusted baseline emissions reductions needed to meet the RFP contingency measure requirement for 2011, 2014, 2017, and 2020.

No RFP contingency measures are needed for 2008, since the 2011 Ozone SIP Revisions demonstrate that SJV has already met its 2008 milestone. See Table 11 above. As a result, contingency measures for failure to meet the 2008 RFP benchmark will never be triggered and thus are not needed.

Contingency measures for failure to attain—The incremental additional emissions reductions that will occur in 2024 (the year after the attainment year) from the continuing implementation of both on- and off-road motor vehicle controls may be used to meet the contingency measure requirement for failure to attain. For the SJV, these reductions are 2 tpd of NO_X and less than 0.5 tpd of VOC.

In addition, based on our proposal to determine that the State has satisfied the criteria in section 182(e)(5) for reliance on long-term measures as part of the attainment demonstration in the 2007 8-Hour Ozone SIP, we propose to approve CARB's enforceable commitment to submit, no later than 2020, additional contingency measures under CAA section 182(e)(5) that meet the requirements for attainment contingency measures in CAA section 172(c)(9), in addition to contingency measures to be implemented if the anticipated long-term measures approved pursuant to section 182(e)(5) do not achieve planned reductions.[36] CARB Resolution No. 11–22 (July 21, 2011).

Accordingly, we propose to approve the RFP and attainment contingency measures in the SJV 2007 Ozone SIP under CAA sections 172(c)(9) and 182(c)(9), based in part on CARB's commitment to submit by 2020 additional contingency measures meeting the requirements of CAA sections 172(c)(9) and 182(e)(5). Following the State's submittal of these additional contingency measures, EPA will approve or disapprove the provisions in accordance with CAA section 110.

G. Advanced Control Technology and Clean Fuels for Boilers

1. Requirements for Advanced Technology and Clean Fuels for Boilers

CAA section 182(e)(3) provides that SIPs for extreme areas must require each new, modified, and existing electric utility and industrial and commercial boiler that emits more than 25 tpy of NO_X to either burn as its primary fuel natural gas, methanol, or ethanol (or a comparably low polluting fuel), or use advanced control technology (such as catalytic control technology or other comparably effective control methods). These provisions are due three years after designation and the control requirements must be in place eight years after designation. Further guidance on this requirement is provided in the General Preamble at 13523. According to the General Preamble, a boiler should generally be considered as any combustion equipment used to produce steam and generally does not include a process heater that transfers heat from combustion gases to process streams. General Preamble at 13523. In addition, boilers with rated heat inputs less than 15 million Btu (MMBtu) per hour which are oil or gas fired may generally be considered de minimis and exempt from these requirements since it is unlikely that they will exceed the 25 tpy NO_X emission limit. General Preamble at 13524.

2. Provisions for Controls on Boilers in the SJV District Rules

The 2007 Ozone Plan, which addresses the CAA section 182(e)(3) requirements on page 2–9, states that District Rules 4305, 4306, and 4352 address NO_X from affected boilers and that these rules meet the requirements of the CAA. Since submittal of the 2007 Ozone Plan, Rule 4305 has been superseded by Rule 4306.

Rule 4306 ''Boilers, Steam Generators, and Process Heaters—Phase 3'' as revised on September 18, 2003, applies to any gaseous fuel or liquid fuel fired boiler, steam generator, or process heater with a total rated heat input greater than 5 million Btu per hour. The emission limits in the rule (5 ppm to 30 ppm for gaseous fuels and 40 ppm for liquid fuels) cannot be achieved without the use of advanced control technologies. See ''Alternative Control

[36] These contingency measures should, at a minimum, ensure that an appropriate level of emissions reduction progress continues to be made if attainment is not achieved and additional planning by the State is needed. See General Preamble at 13524.

Techniques Document—NO_X Emissions from Industrial/Commercial/Institutional (ICI) Boilers,'' Emissions Standards Division, EPA, March 1994; see also 74 FR 33933 at 33945 (July 14, 2009) and 75 FR 10420 at 10434 (March 8, 2010) (proposed and final rules approving 1-hour ozone plan for SJV). All units subject to Rule 4306 were required to comply with the limits in the rule no later than December 1, 2008. See Rule 4306, section 7.0. We approved Rule 4306 as a SIP revision on May 18, 2004 at 69 FR 28061.

Rule 4352 ''Solid Fuel-Fired Boilers, Steam Generators And Process Heaters'' as revised May 18, 2006, applies to any boiler, steam generator or process heater fired on solid fuel at a source that has a potential to emit more than 10 tons per year of NO_X or VOC. All units subject to Rule 4352 were required to comply with the Rule's limits no later than January 1, 2007. Rule 4352, section 7.0. We approved Rule 4352 into the California SIP on October 1, 2010. In that action, we determined that all of the NO_X emission limits in Rule 4352 effectively require operation of Selective Noncatalytic Reduction (SNCR) control systems, which are comparably effective to SCR for the affected sources. SNCR also appears to achieve NO_X emission reductions comparable to combustion of clean fuels at these types of boilers. We therefore concluded that Rule 4352 satisfies the requirements of section 182(e)(3) for solid fuel-fired boilers in the SJV. See TSD, section II.I.; see also 74 FR 33933 at 33945 and 75 FR 10420 at 10434.

New and modified boilers that will emit or have the potential to emit 25 tpy or more of NO_X are subject to the District's new source permitting rule, Rule 2201 ''New and Modified Stationary Source Review.'' This rule requires new and modified source to install and operate best available control technology/lowest achievable emissions reductions technology. EPA approved Rule 2201 into the SIP at 75 FR 26102 (May 11, 2010).

3. Proposed Finding on the Advanced Technology and Clean Fuels for Boilers

Based on our review of the emission limitations in SJVAPCD's rules, we propose to find that the SJV area meets the clean fuel/clean technology for boilers requirement in CAA section 182(e)(3).

H. Motor Vehicle Emissions Budgets for Transportation Conformity

1. Requirements for Motor Vehicle Emissions Budgets

CAA section 176(c) requires Federal actions in nonattainment and maintenance areas to conform to the SIP's goals of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of the standards. Conformity to the SIP's goals means that such actions will not: (1) Cause or contribute to violations of a NAAQS, (2) worsen the severity of an existing violation, or (3) delay timely attainment of any NAAQS or any interim milestone.

Actions that involve Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA's transportation conformity rule, codified at 40 CFR part 93, subpart A. Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state and local air quality and transportation agencies, EPA, FHWA, and FTA to demonstrate that an area's regional transportation plans (RTP) and transportation improvement programs (TIP) conform to the applicable SIP. This demonstration is typically done by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (budgets) contained in the SIP. An attainment, maintenance, or RFP SIP should establish budgets for the attainment year, each required RFP year or last year of the maintenance plan, as appropriate. Budgets are generally established for specific years and specific pollutants or precursors. Ozone attainment and RFP plans should establish budgets for NO_X and VOC. See 40 CFR 93.102(b)(2)(i).

Before an MPO may use budgets in a submitted SIP, EPA must first determine that the budgets are adequate or approve the budgets. In order for us to find the budgets adequate and approvable, the submittal must meet the conformity adequacy requirements of 40 CFR 93.118(e)(4) and be approvable under all pertinent SIP requirements. To meet these requirements, the budgets must reflect all of the motor vehicle control measures contained in the attainment and RFP demonstrations. See 40 CFR 93.118(e)(4)(v).

2. Motor Vehicle Emissions Budgets in the SJV 2007 8-Hour Ozone SIP

The SJV Ozone SIP as submitted in 2007 included budgets for VOC and NO_X for the attainment year of 2023 and the RFP years of 2008, 2011, 2014, 2017, and 2020. See 2007 Ozone Plan, Section 9.2.3 and Appendix C and CARB Staff Report, Appendix D (updating MVEB for Madera and San Joaquin Counties). On January 8, 2009, we notified CARB that we found the budgets in the 2007 Ozone Plan for the RFP milestone years 2011, 2014, and 2017 adequate and the MVEB for the RFP milestone years 2008 and 2020 and the attainment year of 2023 inadequate for transportation conformity purposes. See letter Deborah Jordan, EPA Region 9, to James Goldstene, CARB, ''RE: Adequacy Status of San Joaquin Valley 8-Hour Ozone Reasonable Further Progress and Attainment Plan Motor Vehicle Emissions Budgets,'' January 8, 2009. We published a notice of our findings at 74 FR 4032 (January 22, 2009).

CARB submitted updated MVEB for the San Joaquin Valley and their documentation in Appendices A and C, respectively, of the 2011 Ozone SIP Revisions. The updated MVEB are for NO_X and VOC for the RFP years of 2011, 2014, 2017 and 2020 the attainment year of 2023 and are intended to replace the budgets for these years that were submitted in 2007. No budgets were included for the RFP year of 2008 because it is no longer applicable as a conformity analysis year. Additional information associated with the motor vehicle emission budget calculations were provided in an e-mail from Douglas Ito, CARB to Elizabeth Adams, EPA Region 9, ''Additional Clarifying Information,'' August 11, 2011.

3. Proposed Action on the Motor Vehicle Emissions Budgets

As part of its review of the budgets' approvability, EPA has evaluated the revised budgets using our adequacy criteria in 40 CFR 93.318(e)(4). As documented in Table K–3 in the TSD, we found that they meet each adequacy criterion. We have completed our detailed review of the 2007 SJV 8-Hour Ozone SIP and supplemental submittals including the 2011 Ozone SIP Revisions and are proposing to approve the SIP's attainment and RFP demonstrations. We have also reviewed the proposed MVEB submitted with the 2011 Ozone SIP Revision and have found that they are consistent with the attainment and RFP demonstrations and were based on control measures that have already been adopted and implemented. Therefore, we are proposing to approve the 2011, 2014, 2017, 2020, and 2023 MVEB as shown in Table 13.

EPA is not required under its Transportation Conformity rules to find budgets adequate prior to proposing approval of them. However, we will

complete the adequacy review of these budgets either prior to or concurrently with our final action on SJV 2007 8-Hour Ozone SIP. We will also post the revised budgets on EPA's adequacy review web page.

As stated in section IV.E., if we were to finalize a disapproval with respect to the plan's section 182(d)(1)(A) element, then the area would be eligible for a protective finding under the transportation conformity rule because the submitted SIP contains adopted control measures and enforceable commitments that fully satisfy the emissions reductions requirements for reasonable further progress and attainment. 40 CFR 93.120(a)(3).

TABLE 13—MOTOR VEHICLE EMISSIONS BUDGET IN THE SJV 2007 OZONE SIP AS REVISED ON JULY 21, 2011

[Tons per summer day]

Year	2011		2014		2017		2020		2023	
	ROG	NO_X	ROG	NO_X	ROG	NO_X	ROG	NO_X	ROG	NO_X
County										
Fresno	14.3	36.2	10.7	30.0	9.3	22.6	8.3	17.7	8.0	13.5
Kern (SJV)	12.7	50.3	9.7	42.7	8.7	31.7	8.2	25.1	7.9	18.6
Kings	2.8	10.7	2.1	8.9	1.8	6.7	1.7	5.3	1.6	4.0
Madera	3.4	9.3	2.5	7.7	2.2	5.8	2.0	4.7	1.9	3.6
Merced	5.1	19.9	3.7	16.7	3.2	12.4	2.9	9.9	2.8	7.4
San Joaquin	11.1	24.6	8.4	20.5	7.2	15.6	6.4	12.4	6.3	10.0
Stanislaus	8.5	16.9	6.4	13.9	5.6	10.6	5.0	8.4	4.7	6.4
Tulare	8.8	16.0	6.7	13.2	5.8	10.1	5.3	8.1	4.9	6.2

I. Other Clean Air Act Requirements Applicable to Extreme Ozone Nonattainment Areas

In addition to the requirements discussed above, title 1, subpart D of the CAA includes other provisions applicable to extreme ozone nonattainment areas, such as the San Joaquin Valley. We describe these provisions and their current status below for information purposes only.

1. Enhanced Vehicle Inspection and Maintenance Programs

CAA section 182(c)(3) requires states with ozone nonattainment areas classified under subpart 2 as serious or above to implement an enhanced motor vehicle inspection and maintenance (I/M) program in those areas. The requirements for those programs are provided in section 182(c)(3) and 40 CFR part 51, subpart S.

On July 1, 2010 (75 FR 38023), EPA approved California's inspection and maintenance program in the San Joaquin Valley as meeting the requirements of the CAA and applicable EPA regulations for enhanced I/M programs.

2. Reformulated Gasoline Program

As an extreme ozone nonattainment area for the 1-hour ozone standard, the San Joaquin Valley was covered under the federal reformulated gasoline (RFG) program. See CAA section 211(k)(10)(D). As an 8-hour ozone nonattainment area, SJV continues to be covered under the federal RFG program. See 40 CFR 80.70(m)(1)(i) and 70 FR 71685. California has its own RFG program (California Phase III RFG (CaRFG3)), which also applies in the SJV. EPA approved CaRFG3 program into the California SIP on May 12, 2010. See 75 FR 26633.

3. New Source Review Rules

CAA section 182(a)(2)(C) requires states to develop SIP revisions containing permit programs for each of its ozone nonattainment areas. The SIP revisions are to include requirements for permits in accordance with CAA 172(c)(5) and 173 for the construction and operation of each new or modified major stationary source (with respect to ozone) anywhere in the nonattainment area. See also CAA sections 182(e). EPA's implementation regulations for nonattainment new source review (NSR) programs are in 40 CFR 51.165, and guidance specific to ozone nonattainment areas is provided in the preamble to the 8-hour ozone implementation rule, 70 FR 71612 at 71671–71684. EPA approved the SJV District's new source review rules, Rules 2201 ''New and Modified Stationary Source Review'' and Rule 2020 ''Exemptions,'' into the SJV portion of the California SIP based in part on a conclusion that they adequately addressed the NSR requirements specific to extreme areas. See 75 FR 26102 (May 11, 2010).

4. Clean-Fuel Vehicle Program

CAA sections 182(c)(4)(A) and 246 require California to submit for EPA approval a SIP revision that includes measures to implement the Clean Fuel Fleet Program. Section 182(c)(4)(B) of the Act allows states to opt-out of the clean-fuel vehicle fleet program by submitting a SIP revision consisting of a program or programs that will result in at least equivalent long term reductions in ozone-producing and toxic air emissions.

In 1994, CARB submitted a SIP revision to opt-out of the federal clean fuel fleet program and demonstrating that is low-emissions vehicle program achieved emission reductions at least as large as the federal program would. EPA approved the State's opt-out on August 27, 1999. See 64 FR 46849.

5. Gasoline Vapor Recovery

CAA section 182(b)(3) mandates that States submit a revised SIP by November 15, 1992 that requires owners or operators of gasoline dispensing systems to install and operate gasoline vehicle refueling vapor recovery (''Stage II'') systems in ozone nonattainment areas classified as moderate and above. California's ozone nonattainment areas had implemented Stage II vapor recovery well before the passage of the CAA Amendments of 1990. See General Preamble at 13514.

Under California State law (Health and Safety Code Sections 41954), CARB is required to adopt procedures and performance standards for controlling gasoline emissions from gasoline marketing operations, including transfer and storage operations. State law also authorizes CARB, in cooperation with districts, to certify vapor recovery systems, to identify defective equipment, and to develop test methods. CARB has adopted numerous revisions to its vapor recovery program regulations. See Table A–7 in Appendix A to this TSD. See also CARB's Web site, *http://www.evrhome.org.*

In the San Joaquin Valley, the installation and operation of CARB-certified vapor recovery equipment is required and enforced by SJVUAPCD

Rules 4621 and 4622, the latest versions of which were approved by into the SIP on October 30, 2009. See 74 FR 56120.

6. Enhanced Ambient Air Quality Monitoring

CAA Section 182(c)(1) requires that all ozone nonattainment areas classified as serious or above implement measures to enhance and improve monitoring for ambient concentrations of ozone, NO_X, and VOC, and to improve monitoring of emissions of NO_X and VOC.

The SJVAPCD's Annual Air Quality Monitoring Network Plan (June 30, 2010) describes the steps the state has taken to address the requirements of CAA section 182(c)(1). The SJV's Photochemical Assessment Monitoring Station (PAMS) network consists of six sites operated by SJVAPCD centered around Fresno and Bakersfield, as described on pages 13 and 17 of the monitoring network plan.[37] EPA has approved the SJVAPCD PAMS network. See letter, Matthew Lakin, EPA Region 9 to Scott Nester, SJVAPCD, November 1, 2010.

7. CAA Section 185 Fee Program

CAA section 185 requires that the SIP for each severe and extreme ozone nonattainment area provide that, if the area fails to attain by its applicable attainment date, each major stationary source of VOC and NO_X located in the area shall pay a fee to the State as a penalty for such failure for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone. States are not yet required to implement CAA section 185 fee programs for the 1997 8-hour ozone standard.[38]

V. EPA's Proposed Actions

For the reasons discussed above, EPA is proposing to approve California's submitted SIP for attaining the 1997 8-Hour Ozone standard in the SJV extreme ozone nonattainment area. In the alternative, EPA is proposing to disapprove the submitted SIP with respect to certain requirements for transportation control strategies and measures pending resolution of petitions before the 9th Circuit U.S. Court of Appeals in *Association of Irritated Residents* v. *EPA,* 632 F.3d 584 (9th Cir. 2011). The submitted SIP consists of the SJV 2007 Ozone Plan (as revised 2008 and 2011) and the SJV-specific portions of CARB's 2007 State Strategy (as revised in 2009 and 2011) that address CAA and EPA regulations for attainment of the 1997 8-hour ozone NAAQS for the SJV.

Specifically, EPA proposes to approve under CAA section 110(k)(3) the following elements of the SJV 2007 8-Hour Ozone SIP:

1. The revised 2002 base year emissions inventories as meeting the requirements of CAA sections 182(a)(1) and 40 CFR 51.915;

2. The reasonably available control measures demonstration as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.912(d);

3. The reasonable further progress demonstration as meeting the requirements of CAA section 172(c)(2) and 182(c)(2)(B) and 40 CFR 51.910;

4. The attainment demonstration as meeting the requirements of CAA sections 182(c)(2)(A) and 40 CFR 51.908;

5. The provisions for the development of new technologies pursuant to CAA section 182(e)(5) and CARB's commitment to adopt and submit by 2020 contingency measures to be implemented if the new technologies do not achieve the planned emissions reductions, in addition to additional attainment contingency measures meeting the requirements of CAA 172(c)(9), pursuant to CAA section 182(e)(5) and CARB's commitment to develop and submit by 2020 revisions to the SIP that will: (1) Reflect modifications to the 2023 emission reduction target based on updated science and (2) identify additional strategies and implementing agencies needed to achieve the needed reductions by 2023.

6. The contingency measure provisions for failure to make RFP and to attain as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9);

7. The demonstration that the SIP provides for transportation control strategies and measures sufficient to offset any growth in emissions from growth in VMT or the number of vehicle trips and to provide for RFP and attainment as meeting the requirements CAA section 182(d)(1)(A);

8. The revised motor vehicle emissions budgets for the RFP years of 2011, 2014, 2017, and 2020 and the attainment year of 2023 because they are derived from approvable RFP and attainment demonstrations and meet the requirements of CAA section 176(c) and 40 CFR part 93, subpart A;

9. SJVUAPCD's commitments to achieve specific aggregate emissions reductions of direct VOC and NO_X, as listed in Table 6–1 of the 2007 Ozone Plan (as revised December 18, 2008); and

10. CARB's commitments to propose certain defined measures, as listed in Table B–1 on page 1 of Appendix B of the 2011 Progress Report and in Appendix A–3 of the 2011 Ozone SIP Revisions, to achieve specific aggregate emissions reductions of VOC and NO_X by 2023 as provided in CARB Resolution 07–28, Attachment B and the 2009 State Strategy Status Report; p. 20; and to achieve the emissions reductions needed to attain the 8-hour ozone standard in the SJV as provided in CARB Resolution 07–28 (September 27, 2007), Appendix B, p. 3, 2009 State Strategy Status Report, p. 13.

Finally, we propose to find that SJVUAPCD has satisfied the clean fuel/advanced technology requirement for boilers in CAA section 182(e)(3) for the SJV.

In the alternative, if the U.S. Court of Appeals for the 9th Circuit denies the Agency's petition for rehearing in AIR v. EPA and issues its mandate before EPA issues a final rule on the SJV 2007 8-Hour Ozone SIP, we propose to disapprove the SIP under CAA section 110(k)(3) with respect to the first element (*i.e.,* offsetting emissions growth) of CAA section 182(d)(1)(A) based on the plan's failure to include sufficient transportation control strategies and measures to offset the emissions from growth in VMT.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

[37] Starting in 2007, EPA's monitoring rules (see 71 FR 61236, October 17, 2006) required the submittal and EPA action on annual monitoring network plans.

[38] SJVUAPCD submitted Rule 3170, ''Federally Mandated Ozone Nonattainment Fee,'' and a fee-equivalent program to address the requirements of CAA section 185 for the 1-hour ozone standard. EPA recently proposed to approve these programs as a revision to the SJVUAPCD portion of the California SIP. See 76 FR 45212 (July 28, 2011).

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 proposed SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply propose to approve requirements that the State is already imposing. Therefore, because this proposed 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 Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This 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 proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to approve a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

EO 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 EO 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, EO 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045, because it proposes to approve a State rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to EO 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 proposed action. Today's proposed action does not require the public to perform activities conducive to the use of VCS.

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

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

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submittals, EPA's role is to approve or disapprove State choices, based on the criteria of the CAA. Accordingly, this action merely proposes to approve certain State requirements for inclusion into the SIP under CAA section 110 and subchapter I, part D will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under EO 12898.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 7, 2011.

Jared Blumenfeld,

Regional Administrator, EPA Region 9.

[FR Doc. 2011–23656 Filed 9–15–11; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 52
Approval of Air Quality Implementation Plans; California; South Coast; Attainment Plan for 1997 8-Hour Ozone Standard; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0622; FRL–9464–8]

Approval of Air Quality Implementation Plans; California; South Coast; Attainment Plan for 1997 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve state implementation plan (SIP) revisions submitted by California to provide for attainment of the 1997 8-hour ozone national ambient air quality standards in the Los Angeles-South Coast Area (South Coast). These SIP revisions are the South Coast 2007 Air Quality Management Plan (South Coast 2007 AQMP) (revised 2011) and South Coast-related portions of the 2007 State Strategy (revised 2009 and 2011). EPA is proposing to approve the emissions inventories, reasonably available control measures, provisions for transportation control strategies and measures, reasonable further progress (RFP) and attainment demonstrations, transportation conformity motor vehicle emissions budgets for all RFP milestone years and the attainment year, contingency measures for failure to make RFP or attain, and Clean Air Act section 182(e)(5) new technologies provisions and associated commitment to adopt contingency measures. EPA is also proposing to approve commitments to measures and reductions by the South Coast Air Quality Management District and the California Air Resources Board. Simultaneously and in the alternative, EPA is proposing to disapprove the SIP with respect to certain provisions for transportation control strategies and measures pending resolution of petitions filed before the 9th Circuit U.S. Court of Appeals in *Association of Irritated Residents* v. *EPA,* 632 F.3d 584 (9th Cir. 2011).

DATES: Any comments must be submitted by October 17, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0622, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
- *E-mail: tax.wienke@epa.gov.*
- *Mail or deliver:* Marty Robin, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically on the *http://www.regulations.gov* Web site and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. 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 at 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 below.

Copies of the SIP materials are also available for inspection at the following locations:

- California Air Resources Board, 1001 I Street, Sacramento, California 95812, and
- South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California 91765.

The SIP materials are also electronically available at: *http://aqmd.gov/aqmp/07aqmp/index.html* and *http://www.arb.ca.gov/planning/sip/sip.htm.*

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 947–4192, *tax.wienke@epa.gov.*

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

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I. The 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) and the South Coast Nonattainment Area

A. Background on the 8-Hour Ozone NAAQS

Ground-level ozone is formed when oxides of nitrogen (NO_X) and volatile organic compounds (VOC) react in the presence of sunlight.[1] These two pollutants, referred to as ozone precursors, are emitted by many types of pollution sources, including on- and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints.

Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases. Ozone

[1] California plans sometimes use the term Reactive Organic Gases (ROG) for VOC. These terms are essentially synonymous. For simplicity, we use the term VOC herein to mean either VOC or ROG.

exposure also has been associated with increased susceptibility to respiratory infections, medication use, doctor visits, and emergency department visits and hospital admissions for individuals with lung disease. Ozone exposure also increases the risk of premature death from heart or lung disease. Children are at increased risk from exposure to ozone because their lungs are still developing and they are more likely to be active outdoors, which increases their exposure. See ''Fact Sheet, Proposal To Revise the National Ambient Air Quality Standards for Ozone,'' January 6, 2010 and 75 FR 2938 (January 19, 2010).

In 1979, under section 109 of the CAA, EPA established primary and secondary national ambient air quality standards (NAAQS or standard) for ozone at 0.12 parts per million (ppm) averaged over a 1-hour period. See 44 FR 8202 (February 8, 1979).

On July 18, 1997, EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. See 62 FR 38856 (July 18, 1997).[2] EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

B. The South Coast 8-Hour Ozone Nonattainment Area

Following promulgation of a new or revised NAAQS, EPA is required by the Clean Air Act (CAA) to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 15, 2004, EPA designated the South Coast as nonattainment for the 1997 8-hour ozone standard and classified it as ''severe-17'' under CAA section 181(a)(1) and 40 CFR 51.903(a), Table 1. See 69 FR 23858 at 23888–89 (April 30, 2004) and 40 CFR 81.305. The designations and classifications became effective on June 15, 2004.

In 2007, California requested that EPA reclassify the South Coast from ''severe-17'' to ''extreme'' nonattainment for the 1997 8-hour ozone standard under CAA section 181(b)(3).[3] We granted California's request on May 5, 2010 and reclassified the South Coast to extreme nonattainment for the 1997 8-hour ozone standard effective June 4, 2010. See 75 FR 24409. The South Coast 2007 AQMP was developed to address the extreme area planning requirements for the 1997 8-hour ozone standard in the CAA and EPA's implementing regulations and thus California did not need to make additional submittals in response to this reclassification.

The South Coast 8-hour ozone nonattainment area is home to about 17 million people, has a diverse economic base, and contains one of the highest-volume port areas in the world. For a precise description of the geographic boundaries of the South Coast 8-hour ozone nonattainment area, see 40 CFR 81.305. The local air district with primary responsibility for developing a plan to attain the 1997 8-hour ozone NAAQS in this area is the South Coast Air Quality Management District (District or SCAQMD).

Ambient 8-hour ozone levels in the South Coast are well above the 1997 8-hour ozone NAAQS. The maximum design value for the area, based on monitored readings at the Crestline monitor, is 0.112 ppm for the 2008–2010 period.[4]

II. CAA and Regulatory Requirements for Ozone Nonattainment SIPs

States must implement the 1997 8-hour ozone standard under Title 1, Part D of the CAA, which includes section 172, ''Nonattainment plan provisions,'' and subpart 2, ''Additional Provisions for Ozone Nonattainment Areas'' (sections 181–185).

In order to assist states in developing effective plans to address their ozone nonattainment problem, EPA issued the 8-hour ozone implementation rule. This rule was finalized in two phases. The first phase of the rule addresses classifications for the 1997 8-hour ozone standard, applicable attainment dates for the various classifications, and the timing of emissions reductions needed for attainment. See 69 FR 23951 (April 30, 2004). The second phase addresses SIP submittal dates and the requirements for reasonably available control technology and measures (RACT and RACM), reasonable further progress (RFP), modeling and attainment demonstrations, contingency measures, and new source review. See 70 FR 71612 (November 29, 2005). The rule is codified at 40 CFR part 51, subpart X.[5] We discuss each of these CAA and regulatory requirements for 8-hour ozone nonattainment plans in more detail below.

III. California's State Implementation Plan Submittals To Address 8-Hour Ozone Nonattainment in the South Coast Nonattainment Area

A. California's SIP Submittals

Designation of an area as nonattainment starts the process for a state to develop and submit to EPA a State implementation plan (SIP) providing for attainment of the NAAQS under title 1, part D of the CAA. For 8-hour ozone areas designated as nonattainment effective June 15, 2004, this attainment SIP was due by June 15, 2007. See CAA 172(b) and 40 CFR 51.908(a) and 51.910.

California has made five SIP submittals to address the CAA's planning requirements for attaining the 1997 8-hour ozone standard in the South Coast nonattainment area. We refer to these submittals collectively as ''the South Coast 2007 8-Hour Ozone SIP'' or ''the South Coast 2007 Ozone SIP.'' The two principal ones are the District's 2007 8-Hour Ozone Plan (South Coast 2007 AQMP) and the California Air Resources Board's (CARB's) State Strategy for California's 2007 State Implementation Plan (2007 State Strategy).

1. 2007 South Coast AQMP

The ''Final 2007 Air Quality Management Plan, June 2007'' (South Coast 2007 AQMP) was adopted by the District on June 1, 2007 and submitted to CARB on October 24, 2007.[6] [7] On

[2] In March 2008, EPA completed another review of the primary and secondary ozone standards and tightened them further by lowering the level for both to 0.075 ppm. 73 FR 16436 (March 27, 2008).

[3] See SCAQMD Governing Board Resolution No. 07–9 (June 1, 2007), p. 12; CARB Resolution No. 07–41 (September 27, 2007), p. 8; and letter, James Goldstene, Executive Officer, CARB to Wayne Nastri, Regional Administrator, EPA Region 9, November 28, 2007.

[4] See EPA, Air Quality System Quick Look Report dated April 14, 2011 in the docket for today's action. A design value is an ambient concentration calculated using a specific methodology to evaluate monitored air quality data and is used to determine whether an area's air quality is meeting a NAAQS. The methodology for calculating design values for the 8-hour ozone NAAQS is found in 40 CFR part 50, Appendix I. This value is preliminary because while 2008 and 2009 data are complete, validated, and certified, 2010 data have not yet been certified by the District.

[5] EPA has revised or proposed to revise several elements of the 8-hour ozone implementation rule since its initial promulgation in 2004. See, *e.g.,* 74 FR 2936 (January 16, 2009); 75 FR 51960 (August 24, 2010); and 75 FR 80420 (December 22, 2010). None of these revisions affect any provision of the rule that is applicable to EPA's proposed actions on the South Coast 2007 8-Hour Ozone Plan.

[6] See November 28, 2007 letter to Wayne Nastri, Regional Administrator, EPA Region 9, from James N. Goldstene, Executive Officer, CARB, with enclosures.

[7] The South Coast 2007 AQMP is the first South Coast Plan to address the 8-hour ozone NAAQS. We

Continued

November 28, 2007, CARB submitted the South Coast 2007 AQMP to EPA. The South Coast 2007 AQMP includes an 8-hour ozone attainment demonstration for the South Coast nonattainment area, commitments by the SCAQMD to adopt control measures to achieve emissions reductions from sources under its jurisdiction (primarily stationary sources), and motor vehicle emissions budgets (budgets) used for transportation conformity purposes. The attainment demonstration includes air quality modeling, an analysis of CAA section 172 reasonably available control measures (RACM), base year and projected year emissions inventories, and contingency measures.

In today's proposal, we are evaluating only those portions of the South Coast 2007 AQMP and its revisions that are relevant to attainment of the 1997 8-hour ozone standard in the South Coast.

2. CARB 2007 State Strategy

To demonstrate attainment, the South Coast 2007 AQMP relies to a large extent on measures and commitments in CARB's 2007 State Strategy. The 2007 State Strategy was adopted by CARB on September 27, 2007 and submitted to EPA on November 16, 2007.[8] It describes CARB's overall approach to addressing, in conjunction with local plans, attainment of both the 1997 8-hour ozone and fine particulate ($PM_{2.5}$) NAAQS not only in the South Coast nonattainment area but also in the San Joaquin Valley and the Sacramento area. It also includes CARB's commitments to propose 15 defined State measures[9] and to obtain specific amounts of aggregate emissions reductions of NO_X and VOC emissions in the South Coast from sources under the State's jurisdiction, primarily on- and off-road motor vehicles and engines. In addition, it contains an RFP demonstration and contingency measures for the South Coast 8-hour ozone nonattainment area.

On August 12, 2009, CARB submitted the ''Status Report on the State Strategy for California's 2007 State Implementation Plan (SIP) and Proposed Revision to the SIP Reflecting Implementation of the 2007 State Strategy,'' dated March 24, 2009 and adopted April 24, 2009 (''2009 State Strategy Status Report'').[10] This submittal updated the 2007 State Strategy to reflect its implementation during 2007 and 2008.

In today's proposal, we are evaluating only those portions of the 2007 State Strategy and its revisions that are relevant to attainment of the 1997 8-hour ozone standard in the South Coast.

3. CARB's 2011 SIP Revisions

On May 18, 2011, CARB submitted a SIP revision entitled *Progress Report on Implementation of $PM_{2.5}$ State Implementation Plans (SIP) for the South Coast and San Joaquin Valley Air Basins and Proposed SIP Revisions,* dated March 29, 2011 and adopted April 28, 2011, together with the adopting resolution and other supporting documentation[11] [12] (2011 Progress Report). Appendix F of this 2011 Progress Report provides revised control measure commitments and a revised rule implementation schedule for the South Coast 2007 AQMP.[13] We refer to this SIP revision as the ''2011 Progress Report, Appendix F.''

On July 29, 2011, CARB submitted the ''8-Hour Ozone State Implementation Plan Revisions and Technical Revisions to the $PM_{2.5}$ State Implementation Plan Transportation Conformity Budgets for the South Coast and San Joaquin Valley Air Basins,'' dated June 20, 2011 and adopted July 21, 2011 (2011 Ozone SIP Revision).[14] This SIP revision updates the 2007 State Strategy and 2009 State Strategy Status Report. Specifically, it updates the emissions inventories, RFP demonstration, contingency measures, and transportation conformity budgets for the South Coast to reflect rule adoptions and improvements to emissions estimates. CARB provided supplemental documentation for the 2011 Ozone SIP Revision on August 10, 2011 (2011 Ozone SIP Supplement).[15]

Future references in this proposal to the 2007 State Strategy and to the South Coast 2007 AQMP will be to the State Strategy as revised in 2009 and 2011, and the AQMP as revised in 2011, respectively, unless otherwise noted.

B. CAA Procedural and Administrative Requirements for SIP Submissions

CAA sections 110(a)(1) and (2) and 110(l) require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submission of a SIP or SIP revision. To meet this requirement, every SIP submittal should include evidence that adequate public notice was given and an opportunity for a public hearing was provided consistent with EPA's implementing regulations in 40 CFR 51.102.

Both the District and CARB have satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption and submission of the South Coast 2007 Ozone Plan. The District conducted public workshops, provided public comment periods, and held public hearings prior to the adoption of the South Coast 2007 AQMP on June 1, 2007 (See SCAQMD Governing Board Resolution No. 07–9). CARB provided the required public notice and opportunity for public comment prior to its September 27, 2007 public hearing on the plan. See CARB Resolution No. 07–41. The District also provided the

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have previously acted on numerous South Coast air quality plans for ozone, PM-10, carbon monoxide, and NO_2, such as the 1997/1999 AQMP. We approved the ozone portion of the 1997 South Coast AQMP, as amended in 1999, on April 10, 2000 (see 65 FR 18903). Our most recent action on a SIP addressing the CAA requirements for the South Coast ozone nonattainment area was our partial approval and partial disapproval of the 2003 AQMP, which addressed 1-hour ozone (see 74 FR 10176, March 10, 2009). Our 2009 final action was challenged in the Ninth Circuit Court of Appeals, which published an opinion remanding certain aspects of EPA's action for further action consistent with the opinion. See *Association of Irritated Residents* v. *EPA,* 632 F.3d 584 (9th Cir. 2011). The issues in dispute relate to the consequences of an EPA disapproval of a SIP submittal, the adequacy of EPA's evaluation of a particular control measure from the 2003 State Strategy, and the rationale for EPA's approval of the State's submittal as meeting the requirements of CAA section 182(d)(1)(A) (TCMs to offset growth in emissions from growth in VMT) in the South Coast. EPA has sought rehearing on some of the issues, and the mandate in this case has not yet been issued pending action by the court on the petition for rehearing.

[8] See CARB Resolution No. 07–28, September 27, 2007 with attachments and letter from James N. Goldstene, Executive Officer, CARB, to Wayne Nastri, Regional Administrator, EPA Region 9, November 16, 2007 with enclosures.

[9] The 2007 State Strategy also includes measures to be implemented by the California Bureau of Automotive Repair (Smog Check improvements) and the California Department of Pesticide Regulation (VOC reductions from pesticide use). See 2007 State Strategy, pp. 64–65 and CARB Resolution 7–28, Attachment B, p. 8.

[10] See CARB Resolution No. 09–34, April 24, 2009 and letter, James N. Goldstene, Executive Officer, CARB, to Wayne Nastri, Regional Administrator, EPA Region 9, August 12, 2009 with enclosures. Only pages 11–27 of the 2009 State Strategy Status Report are submitted as a SIP revision. The balance of the report is for informational purposes only. See Attachment A to CARB Resolution No. 09–34.

[11] See CARB Board Resolution 11–24, April 28, 2011 and letter, James N. Goldstene, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region 9, May 18, 2011 with enclosures.

[12] Only Appendices B, C, and D of the 2011 Progress Report are submitted as a SIP revision. The balance of the report is for informational purposes only. See letter, James Goldstene, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region 9, May 18, 2011.

[13] See letter, Lynn Terry, Deputy Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region 9, dated May 19, 2011, and enclosed ARB Board Resolution 11–24.

[14] See CARB Resolution 11–22, July 21, 2011 and letter, James N. Goldstene, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region 9, July 29, 2011 with enclosures. Only Appendix A of the 2011 Ozone SIP Revision is submitted as a SIP revision. The balance of the report is for informational purposes only.

[15] See letter, Lynn Terry, Executive Officer, CARB, to Deborah Jordan, Director, Region 9 Air Division, dated August 10, 2011 with attachments.

required public notice and hearing on its 2011 revision to the 2007 AQMP. See SCAQMD Governing Board Resolution 11–9.

CARB conducted public workshops, provided public comment periods, and held a public hearing prior to the adoption of the 2007 State Strategy on September 27, 2007 (See CARB Resolution No. 07–28). CARB also provided the required public notice, opportunity for public comment, and a public hearing prior to its April 24, 2009 adoption of the 2009 State Strategy Status Report. See CARB Resolution 09–34, April 24, 2009. Finally, CARB provided the required public notice, opportunity for public comment, and a public hearing prior to its April 28, 2011 and July 21, 2011 adoption of the 2011 Progress Report and the 2011 Ozone SIP Revision, respectively. See CARB Resolution 11–11, April 28, 2011, and CARB Resolution 11–22, July 21, 2011.

The SIP submittals include proof of publication for notices of the District and CARB public hearings, as evidence that all hearings were properly noticed. We find, therefore, that each of the five submittals meet the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l).

CAA section 110(k)(1)(B) requires EPA to determine whether a SIP submittal is complete within 60 days of receipt. This section also provides that any plan that EPA has not affirmatively determined to be complete or incomplete will be deemed complete 6 months after the date of submission by operation of law. EPA's SIP completeness criteria are found in 40 CFR part 51, Appendix V.

The November 28, 2007 submittal of the South Coast 2007 AQMP became complete by operation of law on May 28, 2008. The November 16, 2007 submission of the 2007 State Strategy and the August 12, 2009 revisions to the Strategy became complete by operation of law on May 16, 2008 and February 12, 2010, respectively.

We determined that CARB's 2011 Progress Report submittal of May 18, 2011 was complete on June 13, 2011. See Letter, Deborah Jordan, Air Division Director, US EPA Region 9, to James Goldstene, Executive Officer, CARB, dated June 13, 2011. We determined that CARB's 2011 Ozone SIP Update submittal of July 29, 2011 was complete on August 23, 2011.[16]

[16] See Letter, Deborah Jordan, Air Division Director, US EPA Region 9, to James Goldstene, Executive Officer, CARB, dated August 23, 2011.

IV. Review of the South Coast 2007 AQMP and the South Coast Portion of the Revised 2007 State Strategy

We provide our evaluation of the South Coast 2007 8-Hour Ozone SIP's compliance with applicable CAA and EPA regulatory requirements below. A more detailed evaluation can be found in the technical support document (TSD) for this proposal, which is available online at *http://www.regulations.gov* under docket number EPA–R09–OAR–2011–0622, or from the EPA contact listed at the beginning of this notice.

A. Emissions Inventories

1. Requirements for Emissions Inventories

CAA section 182(a)(1) requires each state with an ozone nonattainment area classified under subpart 2 to submit, within two years of the area's designation as nonattainment, a ''comprehensive, accurate, current inventory of actual emissions from all sources'' of the relevant pollutant or pollutants in accordance with guidance provided by EPA. CAA 182(a)(1), 40 CFR 51.915. EPA has issued ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations,'' (EPA–454/R–05–001), November 2005 (''EI Guidance'') which provides guidance on how to develop base year and baseline emissions inventories for 8-hour ozone, $PM_{2.5}$, and regional haze SIPs.

For areas that were initially designated nonattainment for the 8-hour ozone standard in 2004, EPA recommends using calendar year 2002 as the base year for the inventory required by CAA section 182(a)(1). EI Guidance, p. 8.

Emissions inventories for ozone should include emissions of VOC, NO_X, and carbon monoxide (CO) and represent an average summer week day during the ozone season. EI Guidance, pp. 14 and 17. States should include documentation in their submittals explaining how emissions data were calculated. 70 FR 71612 at 71664 and EI Guidance, p. 40. In estimating mobile source emissions, states should use the latest emission models and planning assumptions available at the time the SIP is developed. 66 FR at 32854 and 70 FR 61612, at 71666. For California, the latest available mobile source emissions model is EMFAC2007, which EPA approved in 2008 for use in SIPs and transportation conformity analyses. See 73 FR 3464 (January 18, 2008).

2. Emissions Inventories in the South Coast 2007 AQMP

The base year and future year baseline inventories for ozone precursors for the South Coast ozone nonattainment area together with additional documentation for the inventories are found in Chapter 3 and Appendix III of the South Coast 2007 AQMP.[17] These inventories represent average summer day (ozone season) emissions. Inventories are provided for the base year of 2002; the RFP milestone years of 2008, 2011, 2014, 2017, 2020; and the attainment year of 2023. The projected baseline inventories include reductions from Federal, State, and District measures adopted prior to 2007. See South Coast 2007 AQMP, page 3–1 and 2007 State Strategy, Appendix A, p. 1. All inventories include emissions from point, area, on-road and non-road sources.

As a starting point for the South Coast 2007 AQMP's inventories, the District used CARB's inventory for the year 2002. This inventory and CARB's documentation for its inventories can be found in Appendices A and F, respectively, of the 2007 State Strategy. The 2002 inventory for the South Coast nonattainment area was projected to 2005 and future years using CARB's California Emission Forecasting System (CEFS). Both base year and projected baseline inventories use the most current version of California's mobile source emissions model, EMFAC2007, for estimating on-road motor vehicle emissions. EPA has approved this model for use in SIPs and transportation conformity analyses. 73 FR 3464 (January 18, 2008). Off-road inventories were developed using the CARB off-road model.

As part of its 2011 Ozone SIP Revision, CARB submitted revised base year and future year baseline inventories for the South Coast nonattainment area. See Table 1 below. These revised inventories incorporate improved activity data and/or emission factors for diesel trucks and buses and off-road equipment that were developed as part of CARB's December 2010 rulemakings amending its In-Use On-Road Truck and Bus Rule and In-Use Off-Road Engine rule. The State estimates that these changes collectively reduce the 2002 base year total inventory in the South Coast by 5 percent for NO_X and less than 2 percent

[17] By ''future year baseline inventories'' or ''projected baseline inventories,'' we mean projected emissions inventories for future years that account for, among other things, the effects of economic growth and adopted emissions control requirements.

for VOC.[18] The projected baseline inventories for subsequent years were also revised to reflect the ongoing effects of the 2007–2009 economic recession, which has significantly reduced activity levels and associated emissions from the State's construction and goods movement sectors. CARB estimates that emissions levels and growth rates will return to normal levels by the 2017–2018 timeframe. 2011 Ozone SIP Revision, Appendix B. As a result, projected emission levels from these categories in the years up to 2017–2018 are now substantially lower than were originally projected in the South Coast 2007 AQMP and 2007 State Strategy as submitted in November 2007. These recession-related decreases in emissions do not in themselves affect the Plan's emissions inventories for the modeling validation years (1997, 2004, and 2005), the base year (2002), or future years (2020 and 2023), and thus do not change the carrying capacity estimates in the plan (*i.e.,* they do not in themselves affect the target level of overall emissions reductions needed to demonstrate attainment), nor do they alter the 2002 adjusted baseline emissions, which provide the starting point for the reasonable further progress demonstration. The principal effect of the recession-related decreases in projected emissions estimates is to reduce the amount of reductions needed from the SIP's control strategy to demonstrate RFP in the years prior to 2018.

TABLE 1—SOUTH COAST BASE YEAR AND ATTAINMENT YEAR EMISSIONS INVENTORY SUMMARY

[Summer planning inventory emissions in tons per day] [a]

Emissions inventory category	NO_x		VOC	
Year	2002	2023	2002	2023
Stationary/Areawide Sources	89	68	318	273
On-road Mobile Sources	652	140	361	98
Off-road Mobile Sources	283	170	202	142
TOTAL	1024	378	881	513

[a] Numbers may not add up to precise totals due to rounding. Source: 2011 Ozone SIP Revision, Appendix B, p. B–2.

3. Proposed Action on the Base Year Emissions Inventory

We have reviewed the 2002 base year emissions inventory in the South Coast 2007 AQMP and the inventory methodologies used by the District and CARB in developing that inventory and have determined that the inventory was developed consistent with CAA requirements as reflected in the 8-hour ozone implementation rule, and EPA's guidance. The revised 2002 base year inventory is a comprehensive, accurate, and current inventory of actual emissions of 8-hour ozone precursors in the South Coast nonattainment area. We therefore propose to approve the base year inventory as meeting the requirements of CAA section 182(a)(1) and EPA's 8-hour ozone implementation rule. 40 CFR 51.915. We provide detail on our review of the base year inventory in section II.A. of the TSD for this proposal.

B. Reasonably Available Control Measures (RACM) Demonstration and Control Strategy

1. Requirements for RACM and Control Strategy

CAA section 172(c)(1) requires that each attainment plan ''provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology), and shall provide for attainment of the national primary ambient air quality standards.'' The 8-hour ozone implementation rule requires that for each nonattainment area that is required to submit an attainment demonstration, the state must also submit concurrently a SIP revision demonstrating that it has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements. 40 CFR 51.912(d).

EPA has previously provided guidance interpreting the RACM requirement in the General Preamble at 13560 [19] and in a memorandum entitled ''Guidance on Reasonably Available Control Measures (RACM) Requirements and Attainment Demonstration Submissions for the Ozone NAAQS,'' John Seitz, November 30, 1999. (Seitz memo). In summary, EPA guidance provides that to address the requirement to adopt all RACM, states should consider all potentially reasonable control measures for source categories in the nonattainment area to determine whether they are reasonably available for implementation in that area and whether they would, if implemented individually or collectively, advance the area's attainment date by one year or more. *See* Seitz memo and General Preamble at 13560; *see also* ''State Implementation Plans; General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas,'' 44 FR 20372 (April 4, 1979) and Memorandum dated December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, ''Additional Submission on RACM from States with Severe One-Hour Ozone Nonattainment Area SIPs.''

Any measures that are necessary to meet these requirements that are not already either federally promulgated, part of the state's SIP, or otherwise creditable in SIPs must be submitted in enforceable form as part of a state's attainment plan for the area. 72 FR 20586, at 20614.[20]

[18] See Appendix A of 2011 Ozone SIP Revision.

[19] The ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' published at 57 FR 13498 on April 16, 1992, describes EPA's preliminary view on how we would interpret various SIP planning provisions in title I of the CAA as amended in 1990, including those planning provisions applicable to the 1-hour ozone standard. EPA continues to rely on certain guidance in the General Preamble to implement the 8-hour ozone standard under title I.

[20] For ozone nonattainment areas classified as moderate or above, CAA section 182(b)(2) also requires implementation of RACT for all major sources of VOC and for each VOC source category for which EPA has issued a Control Techniques Guideline (CTG). CAA section 182(f) requires that RACT under section 182(b)(2) also apply to major stationary sources of NO_X. In extreme areas, a major source is a stationary source that emits or has the potential to emit at least 10 tons of VOC or NO_X per year. CAA section 182(e) and (f). Under the 8-hour ozone implementation rule, states were required to submit SIP revisions meeting the RACT

CAA section 172(c)(6) requires nonattainment plans to ''include enforceable emission limitations, and such other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date * * *.'' *See also* CAA section 110(a)(2)(A). The ozone implementation rule requires that all control measures needed for attainment be implemented no later than the beginning of the attainment year ozone season. 40 CFR 51.908(d). The attainment year ozone season is defined as the ozone season immediately preceding a nonattainment area's attainment date. 40 CFR 51.900(g).

2. RACM Demonstration and Control Strategy

For the 2007 Ozone Plan and the 2007 State Strategy, CARB, the District, and the local agency (through the South Coast's metropolitan planning organization (MPO), the Southern California Association of Governments (SCAG)) each undertook a process to identify and evaluate potential reasonably available control measures that could contribute to expeditious attainment of the 1997 8-hour ozone standards in the South Coast nonattainment area. We describe each agency's efforts below.

a. District's RACM Demonstration and Control Strategy

The District's RACM demonstration, which focuses on stationary and area source controls, is described in Chapter 6 and Appendix VI of the South Coast 2007 AQMP. In developing the South Coast 2007 AQMP, the District conducted a process to identify RACM for the South Coast that involved public meetings to solicit input, evaluation of EPA's suggested RACM, and evaluation of other air agencies' regulations. See South Coast 2007 AQMP, Appendix VI.

To identify potential reasonably available measures for the South Coast, the District evaluated measures implemented in other nonattainment areas (including the San Joaquin Valley, the San Francisco Bay Area, Sacramento, Ventura, Dallas-Fort Worth, and the Houston-Galveston area) and measures identified by the Lake Michigan Air Directors Consortium (LADCO), and held meetings with CARB, technical experts, local government representatives, and the public during development of the South Coast 2007 AQMP. The District sponsored an AQMP summit, which generated 200 potential control measures. The District also reevaluated all 82 of the existing SIP-approved District rules and regulations.

From the set of identified potential controls, the District then screened the identified measures and rejected those that would not individually or collectively advance attainment in the area, had already been adopted as rules, or were in the process of being adopted. The remaining measures were evaluated taking into account baseline inventories, available control technologies, and potential emission reductions as well as whether the measure could be implemented on a schedule that would advance attainment of the 1997 8-hour ozone standard by at least a year, assuming a 2024 deadline. South Coast 2007 AQMP, Appendix VI.

In general, EPA believes that the District's current rules and regulations are equivalent to or more stringent with respect to emissions of ozone precursors than those developed by other air districts.

Based on its RACM analysis for stationary and area sources under its jurisdiction, the District scheduled 15 new or revised stationary source control measures for development and adoption, including measures at least as stringent as those identified in other California districts' AQMPs and several innovative measures. Since submission of the AQMP in 2007, the District has adopted 13 of these rules and submitted them to EPA for approval into the SIP. These rules are part of the District's enforceable commitment to achieve emissions reductions of 9 tons per day (tpd) of NO_X and 19 tpd of VOC by 2023. As to the few remaining measures that the District rejected from its RACM analysis, the District determined that these measures would not advance the attainment date or contribute to RFP due to the insignificant or unquantifiable emissions reductions they would potentially generate. See South Coast 2007 AQMP, Appendix VI.

The District has made new commitments in its South Coast 2007 AQMP to achieve specific reductions from VOC and NO_X sources in the South Coast area. The District committed to adopt and submit measures that will achieve the following additional emissions reductions by 2023: 9 tpd NO_X and 19 tpd VOC. See South Coast 2007 AQMP, Table 4–2A, page 4–10 and CARB Staff Report on the South Coast 2007 AQMP, page 13.[21] The District expects to meet its emissions reductions commitments for VOC and NO_X (see Table 2 below) by adopting new control measures and programs and strengthening existing control measures, such as those identified in Table 4–2A of the South Coast 2007 AQMP (see South Coast 2007 AQMP, page 4–10 and CARB Staff Report on South Coast 2007 AQMP, p. 13), and through the additional actions summarized in the CARB Staff Report on the South Coast 2007 AQMP (See CARB Staff Report on South Coast 2007 AQMP, p. 18). These new or revised control measures include rules to regulate lubricants, consumer products, non-RECLAIM ovens, dryers and furnaces, space heaters, facility modernizations, livestock waste, and residential wood burning. The South Coast 2007 AQMP also identifies 22 measures (beyond the new control measures and additional actions just discussed) for further review, which may yield additional emission reductions.

SCAQMD has committed to adopt and implement control measures that will achieve the total tonnage of emission reductions identified in Tables 2 and 3 of Appendix F of the 2011 Progress report. As discussed above, the District's commitment is to achieve the total tonnage of reductions of each pollutant by the specified dates. If SCAQMD determines that a particular measure is infeasible, in whole or in part, SCAQMD commits to achieve equivalent reductions on the same schedule through substitute controls. South Coast 2007 AQMP, p. 4–73.

requirements of CAA sections 182(b)(2) and 182(f) no later than 27 months after designation for the 8-hour ozone standard (September 15, 2006 for areas designated in April 2004) and to implement the required RACT measures no later than 30 months after that submittal deadline. See 40 CFR 51.912(a). California submitted the CAA section 182 RACT SIP for the South Coast 8-hour ozone nonattainment area on January 31, 2007, which EPA fully approved on December 18, 2008. See 73 FR 76947.

[21] The CARB Staff Report on the South Coast 2007 AQMP, page ES–4, incorrectly states the SCAQMD commitments as 19 tpd NO_X and 9 tpd VOC.

TABLE 2—DISTRICT SHORT AND INTERMEDIATE TERM CONTROL MEASURES CREDITED IN SOUTH COAST 2007 AQMP ATTAINMENT DEMONSTRATION, AS REVISED IN 2011

Control measure	Rule No.	Title	Emissions reduction commitment in South Coast 2007 AQMP, as revised in 2011		Emissions reductions achieved [a]	
			NO_X	VOC	NO_X	VOC
BCM–03	445	Woodburning fireplaces and woodstoves.	n/a	n/a	0.1 tpd	0.7 tpd.
CTS–01	1144	Metalworking fluids and direct-contact lubricants.	n/a	2.0 tpd	n/a	4.2 tpd.
CTS–03 [b]	.....	Consumer Products Certification and Emissions Reductions from the Use of Consumer Products at Inst. and Comm'l Facilities.	n/a	n/a	n/a	n/a.
CTS–04	1143	Consumer Paint Thinners and Multi-Purpose Solvents.	n/a	n/a	n/a	10.1 tpd.
CMB–01	1147	NO_X reductions from miscellaneous sources.	4.1 tpd	.....	4.1 tpd	
FUG–02	461	Gasoline transfer and dispensing	n/a	4.0 tpd	n/a	Met via excess from Rule 1143.
FUG–04	1149	Storage Tank and Pipeline Cleaning and Degassing.	n/a	n/a	n/a	0.04 tpd.
CMB–03	1111	Further NO_X reductions from space heaters.	1.1 tpd	n/a	3.0 tpd	n/a.
MCS–01	1110.2	Liquid and gaseous fuels—stationary ICEs.	2.2 tpd	9.2 tpd	0.54 tpd	0.3 tpd.
Measures not yet adopted or not fully approved by EPA [c]						
		.....	NO_X ..	VOC ..		
MCS–01	1146	NO_X from industrial, institutional, & commercial boilers, steam generators, and process heaters.	.....	.....	Emissions reductions not currently creditable; EPA proposed limited approval/limited disapproval published July 8, 2011, see 76 FR 40303.	
	1146.1	NO_X from small ind, inst, & comm'l boilers, steam gens, and proc. htrs.	.....	.....	Emissions reductions not currently creditable; EPA proposed limited approval/limited disapproval published July 8, 2011, see 76 FR 40303.	
EGM–01	2301	Emissions reductions from new or redevelopment projects.	0.8 tpd	0.5 tpd	Scheduled for adoption in 2012.	
MCS–05	1127	Livestock waste	n/a	0.6 tpd	EPA has not yet acted on this rule.	
FLX–02	.....	Refinery pilot program	n/a	1.6 tpd	Not yet adopted.	
MOB–05	.....	AB923 LDV high emitter program	0.4 tpd	0.7 tpd	No rule associated with this measure.	
MOB–06	.....	AB923 MDV high emitter program	0.6 tpd	0.6 tpd	No rule associated with this measure.	

SIP Commitments and Currently Creditable Reductions

2023 SIP commitment—NO_X	9.2 tpd NO_X	SIP-creditable reductions—NO_X ..	7.7 tpd.
2023 SIP commitment—VOC	19.3 tpd VOC	SIP-creditable reductions—VOC ..	15.3 tpd.

[a] From SCAQMD's 2011 "Revisions to $PM_{2.5}$ and Ozone State Implementation Plan for South Coast Air Basin and Coachella Valley," which was included as Appendix F in CARB's 2011 Progress Report, Tables 2 and 3, and District rule evaluation forms. Some emissions reduction commitments were revised from the information originally provided in the South Coast 2007 AQMP.

[b] Adopted by CARB in November 2010.
[c] EPA can only credit District rules that have been adopted, submitted to EPA, and approved for credit in the SIP.
n/a = not applicable.

TABLE 3—STATUS OF DISTRICT RULES IN THE SOUTH COAST 2007 AQMP FOR 8-HOUR OZONE

Rule	Adoption date	Implementation date	SIP status	Federal Register cite
Rule 445—Woodburning fireplaces and woodstoves.	2008	2008–2014	SIP-approved	74 FR 27716, 06/11/09.
Rule 461—Gasoline transfer and dispensing.	2009	2010–2012	SIP-approved	71 FR 18216, 04/11/06.
Rule 1149—storage tank and pipeline cleaning and degreasing.	2008	2008	SIP-approved	74 FR 67821, 12/21/09.
Rule 1144—Vanishing oils and rust inhibitors.	2009	2011	Proposed for SIP-approval	75 FR 41744, 07/15/11.
Rule 1143—Consumer Paint Thinners and Multi-Purpose Solvents.	2009	2011	Proposed for SIP-approval	76 FR 41744, 07/15/11.
Rule 1147—NO_X reductions from miscellaneous sources.	2008	2010	SIP-approved	75 FR 46845, 08/04/10.
Rule 1111—Further NO_X reductions from space heaters.	2009	2012–2043	SIP-approved	75 FR 46845, 08/04/10.
Rule 1110.2—Liquid and gaseous fuels—stationary ICEs.	2008	2011	SIP-approved	74 FR 18995, 4/27/09.
Rule 1146—NO_X from industrial, institutional, commercial boilers, steam generators, and process heaters.	2008	2011	Submitted	Proposed limited approval/limited disapproval 7/8/11, 76 FR 40303.
Rule 1146.1—NO_X from small industrial, institutional, commercial boilers, steam generators, and process heaters.	2008	2011	Submitted	Proposed limited approval/limited disapproval 7/8/11, 76 FR 40303.
Rule 1127—Livestock Waste	2006	2011	Submitted to EPA on 10/05/06	Found complete on 10/25/06.
Refinery Pilot Program	2008	2010	Not yet adopted	N/A.
Rule 2301—Indirect Source Review.	2012	2014	Not yet adopted	N/A.
AB923—Light duty vehicle high emitter program.	[a]	[a]	No rule associated with this measure.	N/A.
AB923—Light duty vehicle high emitter program.	[a]	[a]	No rule associated with this measure.	N/A.

[a] Ongoing.

b. The Local Jurisdiction's RACM Analysis

The local jurisdiction's RACM analysis was conducted by the metropolitan planning organization (MPO) for the South Coast region, the Southern California Association of Governments (SCAG). This analysis focused on transportation control measures (TCMs). TCMs are, in general, measures designed to reduce emissions from on-road motor vehicles through reductions in vehicle miles traveled or traffic congestion. SCAG's analysis is described in Appendix IV–C of the South Coast 2007 AQMP. The TCMs in the South Coast 2007 AQMP are derived from TCM projects in the 2006 SCAG Regional Transportation Improvement Program (RTIP). This evaluation, described beginning on page 49 of Appendix IV–C of the South Coast 2007 AQMP, resulted in extensive local government commitments to implement programs to reduce auto travel and improve traffic flow. South Coast 2007 AQMP page 6–6 and Appendix IV–C. Attachment A to Appendix IV–C contains an extensive list of TCMs under development and newly scheduled TCMs. See South Cost 2007 AQMP, Appendix IV–C, p. 39.

SCAG evaluated a wide variety of transportation control measures, including those measures listed in CAA section 108(f), and determined that there were no combinations of reasonable measures that would advance attainment of the 8-hour ozone standard in the South Coast. See South Coast 2007 AQMP, Appendix IV–C.

c. CARB's RACM Demonstration and Control Strategy

Source categories for which CARB has primary responsibility for reducing emissions in California include most new and existing on- and off-road engines and vehicles, motor vehicle fuels, and consumer products.

Given the need for significant emissions reductions from mobile and area sources to meet the NAAQS in California nonattainment areas, the State of California has been a leader in the development of stringent control measures nationwide for on-road and off-road mobile sources and the fuels that power them. *See, e.g.,* 2007 State Strategy, p. 37; *see also* TSD at Appendix A. California has unique authority under CAA section 209 (subject to a waiver by EPA) to adopt and implement new emission standards for many categories of on-road vehicles and engines and new and in-use off-road vehicles and engines.

The State is working with EPA on goods movement activities and is implementing programs to reduce emissions from ship auxiliary engines, locomotives, harbor craft and new cargo handling equipment. In addition, the State has standards for lawn and garden equipment, recreational vehicles and boats, and other off-road sources that require newly manufactured equipment to be 80–98 percent cleaner than their uncontrolled counterparts. *Id.* Finally, the State has adopted many measures that focus on achieving reductions from in-use mobile sources that include more stringent inspection and maintenance requirements in California's Smog

Check program, truck and bus idling restrictions, and various incentive programs. Appendix A of the TSD includes a list of all measures adopted by CARB between 1990 and the beginning of 2007. These measures, reductions from which are reflected in the Plan's baseline inventories, fall into two categories: measures that are subject to a waiver of Federal pre-emption under CAA section 209 (section 209 waiver measures or waiver measures) and those for which the State is not required to obtain a waiver (non-waiver measures). Emissions reductions from waiver measures are fully creditable in attainment and RFP demonstrations and may be used to meet other CAA requirements, such as contingency measures. See TSD, section II.C. and EPA's proposed and final approval of the SJV 1-Hour Ozone Plan at 74 FR 33933, 33938 (July 14, 2009) and 75 FR 10420 (March 8, 2010). Generally, the State's baseline non-waiver measures have been approved by EPA into the SIP and are fully creditable for meeting CAA requirements. See TSD, Appendix A.

CARB developed its proposed 2007 State Strategy after an extensive public consultation process to identify potential SIP measures.[22] Through this process, CARB identified and has committed to develop 15 new or revised control measures. See also the discussion on enforceable commitments below. These measures focus on cleaning up the in-use fleet as well as increasing the stringency of emissions standards for a number of engine categories, fuels, and consumer products. They build on CARB's existing program, which addresses emissions from all types of mobile sources through both regulations and incentive programs. See Appendix A of the TSD. Table 4 lists the defined measures in the 2007 State Strategy and their current adoption and approval status. Table 5 provides the State's current estimate of the expected emissions reductions from these measures in the attainment year (2023), which would contribute to achieving the State's aggregate emission reduction commitment for that year.

TABLE 4—2007 STATE STRATEGY DEFINED MEASURES SCHEDULED FOR CONSIDERATION AND CURRENT STATUS

[Updated July 2011]

State measure	Expected action year	Current status
Smog Check Improvements	2007–2009	Elements approved 75 FR 38023 (July 1, 2010).[23]
Expanded Vehicle Retirement	2007	Adopted by CARB June 2009; by BAR, September 2010.
Modifications to Reformulated Gasoline Program	2007	Approved, see 75 FR 26653 (May 2, 2010).
Cleaner In-use Heavy Duty Trucks	2007, 2008, 2010	Proposed approval 76 FR 40652 (July 11, 2011).
Auxiliary Ship Cold Ironing and Other Clean Technologies	2007–2008	Adopted December 2007.
Cleaner Main Ship Engines and Fuels	Fuel: 2008–2011 Engines: 2008	Proposed approval 76 FR 40652 (July 11, 2011).
Port Truck Modernization	2007, 2008, 2010	Adopted December 2007 and December 2008.
Accelerated Introduction of Cleaner Locomotives	2008	Prop 1B funds awarded to upgrade line-haul locomotive engines not already accounted for by enforceable agreements with the railroads. Those cleaner line-hauls will begin operation by 2012.
Clean Up Existing Harbor Craft	2007, 2010	Adopted November 2007, revised June 2010.
Cleaner In-Use Off-Road Equipment	2007, 2010	Waiver decision pending.
New Emissions Standards for Recreational Boats	2013	Action expected in 2013.
Expanded Off-Road Recreational Vehicle Emissions Standards.	2013	Action expected in 2013.
Enhanced Vapor Recovery for Above Ground Storage Tanks.	2008	Adopted June 2007, effective June 2008.
Additional Evaporative Emissions Standards	2009, 2013	Action expected 2013.
Consumer Products Program (I & II)	2008, 2009, & 2011	Approved 74 FR 57074 (November 4, 2009) and 76 FR 27613 (May 12, 2011).

Source: 2009 State Strategy Status Report, p. 23, 2011 Progress Report, Table 1, and 2011 Ozone SIP Revision, Appendix A–3. Additional information from *http://www.arb.ca.gov*.

TABLE 5—EXPECTED EMISSIONS REDUCTIONS FROM DEFINED MEASURES IN THE 2007 STATE STRATEGY FOR THE SOUTH COAST

[2023 planning inventory, tpd]

Measure	2023 NO_X	2023 VOC
Smog Check Improvements (BAR) [partial]	1.2	5.3
Cleaner In-Use Heavy-Duty Trucks	27.4	1.3
Ship Auxiliary Engine Cold Ironing & Clean Technology	28.4	0.7
Cleaner Main Ship Engines and Fuel [engine portion]	44.5	0.8
Clean Up Existing Harbor Craft	10	0.4
Cleaner In-Use Off-Road Equipment (>25hp)	3.2	0.3

[22] More information on this public process including presentations from the workshops and symposium that preceded the adoption of the 2007 State Strategy can be found at *http://www.arb.ca.gov/planning/sip/2007sip/2007sip.htm*.

[23] California Assembly Bill 2289, passed in 2010, requires the Bureau of Automotive Repair (BAR) to direct older vehicles to high performing auto technicians and test stations for inspection and certification effective 2013. Reductions shown for the SmogCheck program in the 2011 Progress Report do not include reductions from AB 2289 improvements. See CARB Progress Report Supplement, Attachment 5.

TABLE 5—EXPECTED EMISSIONS REDUCTIONS FROM DEFINED MEASURES IN THE 2007 STATE STRATEGY FOR THE SOUTH COAST—Continued

[2023 planning inventory, tpd]

Measure	2023 NO_X	2023 VOC
Consumer Products Program [partial]	—	7.1
Totals	114.7	15.9

Source: CARB 2011 Ozone SIP Revision Supplement, Attachment 1.

The 2007 State Strategy includes an enforceable commitment to achieve aggregate emissions reductions of 141 tpd of NO_X and 54 tpd of VOC by the attainment year (2023). See Table 6. The 2007 State Strategy demonstrates that these CARB commitments, in combination with existing SIP-creditable measures, the District's commitments, and reduction commitments from the CAA section 182(e)(5) new technologies provision, will be sufficient to attain the 1997 8-hour NAAQS in the South Coast nonattainment area by the applicable attainment date of June 15, 2024. CARB also made enforceable commitments to achieve aggregate emissions reductions in the RFP milestone years of 2014 and 2020. See 2009 State Strategy Status Report, p. 20 and CARB Resolution 07–28, Attachment B, p. 4. See Table 6 below. The nature of these commitments is described in the State Strategy as follows:

> The total emission reductions from the new measures necessary to attain the federal standards are an enforceable State commitment in the SIP. While the proposed State Strategy includes estimates of the emission reductions from each of the individual new measures, it is important to note that the commitment of the State Strategy is to achieve the total emission reductions necessary to attain the federal standards, which would be the aggregate of all existing and proposed new measures combined. Therefore, if a particular measure does not get its expected emission reductions, the State still commits to achieving the total aggregate emission reductions, whether this is realized through additional reductions from the new measures or from alternative control measures or incentive programs. If actual emission decreases occur in any air basin for which emission reduction commitments have been made that are greater than the projected emissions reductions from the adopted measures in the State Strategy, the actual emission decreases may be counted toward meeting ARB's total emission reduction commitments.

CARB Resolution 07–28 (September 27, 2007), Appendix B, p. 3.

TABLE 6—CARB COMMITMENTS TO SPECIFIC AGGREGATE EMISSIONS REDUCTIONS

[Tons per summer day]

	2014	2020 [1]	2023	2023 CAA section 182(e)(5) [2]
VOC	46	52	54	40
NO_X	152	144	141	241

Source: 2009 State Strategy Update, p. 20.

[1] No commitments to VOC or NO_X reductions in 2017; 2020 commitment in the South Coast is necessary to provide for attainment in the downwind nonattainment areas.

[2] The anticipated reductions of VOC and NO_X from 182(e)(5) measures will be reassessed as new SIPs are developed and revised. 2009 State Strategy Update, p. 20.

d. CAA Section 182(e)(5) New or Improved Technologies Provisions

For ozone nonattainment areas classified as extreme, the CAA recognizes that an attainment demonstration may need to rely to a certain extent on new or evolving technologies, given the relatively long time between developing the initial plan and attaining the standard and the degree of emissions reductions needed to attain. To address these needs, CAA section 182(e)(5) authorizes EPA to approve provisions in an extreme area plan which ''anticipate development of new control techniques or improvement of existing control technologies,'' and to approve an attainment demonstration based on such provisions, if the State demonstrates that: (1) Such provisions are not necessary to achieve the incremental emission reductions required during the first 10 years after November 15, 1990;[24] and (2) the State has submitted enforceable commitments to develop and adopt contingency measures to be implemented if the anticipated technologies do not achieve the planned reductions. CAA 182(e)(5). The State must submit these contingency measures to EPA no later than 3 years before proposed implementation of these long-term measures, and the contingency measures must be ''adequate to produce emissions reductions sufficient, in conjunction with other approved plan provisions, to achieve the periodic emissions reductions required by [CAA sections 182(b)(1) or (c)(2)] and attainment by the applicable dates.'' *Id.*

The General Preamble further provides that the new technology measures contemplated by section 182(e)(5) may include those that anticipate future technological developments as well as those that require complex analyses, decision making and coordination among a number of government agencies. See General Preamble at 13524. An attainment demonstration that relies on long-term new technology measures under section 182(e)(5) must identify any such measures and contain a schedule outlining the steps leading to final development and adoption of the measures. *Id.*

CARB and the SCAQMD have demonstrated a clear need for emissions reductions from new and improved control technologies to reduce air

[24] Consistent with provisions in our implementation regulations for the 1997 ozone NAAQS at 40 CFR part 51, subpart X, we interpret this 10 year timeframe to run from the effective date of designation for the 1997 ozone NAAQS.

pollution in the South Coast. The adopted control measures and enforceable commitments, discussed above, provide the majority, but not all, of the balance of the emissions reductions needed to attain by June 15, 2024. See 2007 State Strategy, p. 54. The State Strategy and South Coast AQMP rely on commitments to achieve additional reductions of 241 tpd NO_X and 40 tpd VOC by 2023 from new and improved technologies consistent with the requirements of section 182(e)(5). See 2009 State Strategy Status Report, p. 20. The new technology provisions (also called ''long-term measures'') described in the revised 2007 State Strategy and South Coast 8-Hour Ozone SIP are not relied on to demonstrate RFP; they are relied on solely for attainment by June 15, 2024. They are accompanied by an enforceable commitment by the State to adopt and submit contingency measures no later than 3 years before implementation, as required by CAA section 182(e)(5). We provide our analysis of these new technology provisions below.

CARB and the California districts have a longstanding history of successfully adopting and implementing technology-advancing regulations and innovative control measures. They have worked closely with research scientists and the regulated industry to develop regulations that are stringent enough to compel technology development, yet flexible enough to encourage industry innovations. CARB has provided a list of potential long-term control measures which include increased durability of emission control equipment in passenger vehicles, tighter engine emission standards, cleaner ground support equipment at airports, and prioritizing Federal transportation funding to support air quality goals. See pp. 56–57 of the 2007 State Strategy. The SCAQMD has also provided a list of potential advanced control technologies and innovative approaches that could achieve the long-term reductions (See South Coast 2007 AQMP, pp. 4–54 to 4–71). SCAQMD also has an active Technology Advancement Office. The South Coast technology advancement efforts include, though are not limited to: Heavy-Duty Class 8 Electric Trucks, Vehicle Maintenance, Commercial Green Cleaners, Fireplace Gas Log Buy-down, Residential Yard Equipment and Commercial Leaf Blower Exchange, Boiler and Process Heater Efficiency Upgrades, Architectural Coating Rebates, and zero-emission electric delivery trucks.

CARB has also provided updates to its list of potential long-term measures in both the 2009 State Strategy update and the 2011 ozone SIP revision. The SCAQMD has also provided a more specific list of potential technologies, which may be used to fulfill the new technology commitments. SCAQMD's list of potential projects includes (but is not limited to) extensive retirement of high-emitting light duty vehicles, accelerated penetration of zero-emitting vehicles, retrofit and I/M for heavy duty vehicles, more stringent fuel specifications and use of diesel alternatives, more stringent marine vessel standards and programs, advanced and zero-emitting technologies for locomotives/cargo transportation, accelerated replacement of pleasure craft, more stringent aircraft standards, and ultra-low VOC formulations for consumer products. See South Coast AQMP, Table 4–9, p. 4–56. See 2009 State Strategy Status Report, pp. 25–27 and 2011 Ozone SIP Revision, Appendix A, pp. A–8 to A–12.

To implement the long-term strategy, CARB has committed to a process that will help ensure that the long-term measures are adopted and that reductions are achieved by the beginning of the last full ozone season before the attainment date. CARB is coordinating a government, private and public effort to establish emission goals for critical mobile and stationary emission source categories. The effort includes periodic assessment of technology advancement opportunities and updates to the Board and the public regarding new emission control opportunities and progress in achieving the long-term measure reductions. CARB's commitment for implementing the long-term strategy also includes (a) sharing results through periodic briefings to the Board, workshops, conferences, symposia, Web site postings and other means, (b) working to secure resources for continuing research and development of new technologies, and (c) developing schedules for moving from research to implementation. *Id.*

An initial step in the long-term strategy was the signing of a Memorandum of Agreement (MOA) between the U.S. EPA, CARB and the South Coast and San Joaquin Valley Air Districts to commit to developing and testing new sustainable technologies to accelerate progress in meeting air quality goals. The goal of the MOA is to help align agency research resources to evaluate innovative technologies and assess new monitoring equipment to better measure mobile and stationary source emissions. The MOA agencies have also established a Clean Air Technology Working Group to help bring together the necessary participants (*e.g.,* scientists, engineers, analysts and agency specialists) to achieve the goals of the MOA. 2009 State Strategy Status Report, pp. 25–27. For the South Coast, the focus has been on demonstrating new technologies for goods movement activities at a large intermodal rail yard in the City of San Bernardino, and on the more than 1,000 stationary and area emission sources in the South Coast (*e.g.,* auto repair shops, transportation facilities, concrete and aggregate operations, military installations, printing and coating operations, and manufacturing facilities). See 2011 Ozone SIP Revision, p. A–9.

Other State programs that may achieve emissions reductions to help meet CARB's 182(e)(5) commitment include: potential co-benefits from California's climate change programs where State legislation (Assembly Bill 32—Global Warming Solutions Act of 2006 (AB 32)) aims to reduce Greenhouse Gas (GHG) in 2020 to 1990 levels or by about 30%; California's Air Quality Improvement Program (AQIP), an incentive program that supports the deployment of hybrid and zero-emission vehicles and other advanced technologies today in order to achieve the large-scale reductions needed in the future; and California's annual research program, which identifies projects and provides funding to help provide timely scientific and technical information needed for air quality control programs. In addition, the South Coast AQMD has identified a clean energy strategy that focuses agencies and business leaders on using the cleanest technologies, making efficient land-use decisions, cleaner energy generation (solar and fuel cells), modernizing old inefficient power plants and improving building energy use. See 2011 Ozone SIP Revision, pp. A–10 to A–12.

In addition to its commitment to the process discussed above, CARB has committed to submit an 8-hour ozone SIP revision by 2020 that will: (1) Reflect modifications to the 2023 emission reduction target based on updated science and (2) identify additional strategies and implementing agencies needed to achieve the needed reductions by the beginning of the 2023 ozone season. See 2011 Ozone SIP Revision, p. A–8.

CARB's 2011 Ozone SIP Revision updates and reaffirms both the ''long-term strategy commitment to identify and implement advanced technologies to reduce ozone-forming emissions in the State Strategy'' and the State's enforceable commitment ''to develop, adopt, and submit contingency measures by 2020 if advanced

technology measures do not achieve planned reductions.'' See CARB Resolution 11–22, July 21, 2011. Finally, CARB has committed to meet annually with EPA to discuss strategies to maximize the clean air benefits of emerging advanced technologies and to provide annual summaries of strategies and activities.[25]

The long-term strategy commitment for the South Coast 8-Hour Ozone SIP satisfies the two criteria in CAA section 182(e)(5)(A) and (B) as follows. First, as mentioned above, the South Coast 8-Hour Ozone SIP does not rely on any of these new technology reductions to demonstrate RFP in any milestone year between 2008 and 2020. CARB has committed to achieve 241 tpd of NO_X and 40 tpd of VOC reductions through new technology measures approved under section 182(e)(5) only in the attainment year (2023). We note that the amount and relative proportion of reductions from measures scheduled for long-term adoption under section 182(e)(5), as compared to measures already adopted in regulatory form or scheduled for near-term adoption, should clearly decrease in any future SIP update, and that EPA will not approve a SIP revision that contains an increase in the amount or relative proportion of section 182(e)(5) new technology measures without a convincing showing in a SIP revision that the technologies relied upon in the near-term rules have been found to be technologically infeasible or ineffective in achieving emissions reductions in the near term.

Second, CARB has submitted an enforceable commitment to submit adopted contingency measures to EPA by 2020 as required by CAA section 182(e)(5). See CARB Resolution 11–22, July 21, 2011. These contingency measures must be adequate to produce emissions reductions sufficient, in conjunction with other approved plan provisions, to achieve the periodic emissions reductions required by CAA sections 182(b)(1) or (c)(2) and attainment by the applicable dates. See CAA 182(e)(5). EPA will approve or disapprove these contingency measures in accordance with CAA section 110.

Based on the above discussion and evaluations, we propose to determine that the long-term strategy for the South Coast 8-Hour Ozone SIP satisfies the requirements of CAA 182(e)(5).

[25] See letter, James Goldstene, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region 9, dated August 29, 2011.

3. Proposed Actions on RACM Demonstration and Control Strategy

As described above, the District evaluated a range of potentially available measures for inclusion in its 2007 Ozone Plan and committed to adopt those it found to be reasonably available for implementation in the South Coast nonattainment area. The process and the criteria the District used to select certain measures and reject others were consistent with EPA's RACM guidance. The evaluation processes undertaken by SCAG and the State were also consistent with EPA's RACM guidance. See *e.g.,* General Preamble at 13560 and Seitz memo.

Based on our review of these RACM analyses and the District's and California's adopted rules, as well as their commitments to adopt and implement additional control measures, we propose to find that there are, at this time, no additional reasonably available control measures (including reasonably available control technology) that would advance attainment of the 1997 8-hour ozone standard in the South Coast. Therefore, we propose to find that the South Coast 2007 AQMP, together with the 2007 State Strategy, provide for the implementation of all RACM as required by CAA section 172(c)(1).

We propose to approve the SCAQMD's commitments to achieve specific aggregate reductions of NO_X and VOC emissions by specific years as given in Table 4–2A of the 2007 AQMP, as revised by Tables 2 and 3 of the 2007 Progress Report, Appendix F, and as shown in Table 2 above.

We propose to approve CARB's commitments to propose certain defined measures, as given in Table B–1 in Appendix B of the 2011 Progress Report, and Appendix B, Table B–1 in the 2011 Ozone SIP Revision. We also propose to approve CARB's commitment to achieve the total aggregate emissions reductions necessary to demonstrate RFP and to attain the 1997 8-hour ozone standard in the South Coast nonattainment area, as given in 2009 State Strategy Status Report, p. 20 and CARB Resolution 07–28, Attachment B, p. 4, and shown in Table 6 above. See CARB Resolution 07–28 (September 27, 2007), Appendix B, p. 4.

Finally, we are proposing to approve CARB's and the District's long-term strategy commitments in the South Coast 2007 8-Hour Ozone Plan under the new technology provisions of CAA section 182(e)(5). This proposal is based on our proposed findings that these commitments satisfy the two criteria in CAA section 182(e)(5)(A) and (B). First, the South Coast 2007 8-Hour Ozone Plan does not rely on any of these new technology reductions to demonstrate RFP in any milestone year between 2008 and 2020. CARB has committed to achieve 241 tpd of NO_X and 40 tpd of VOC reductions through new technology measures approved under section 182(e)(5) only in the attainment year (2023). We note that the amount and relative proportion of reductions from measures scheduled for long-term adoption under 182(e)(5), as compared to measures already adopted in regulatory form or scheduled for near-term adoption, should clearly decrease in any future SIP update, and that EPA will not approve a SIP revision that contains an increase in the amount or relative proportion of 182(e)(5) new technology measures without a convincing showing in a SIP revision that the technologies relied upon in the near-term rules have been found to be technologically infeasible or ineffective in achieving emissions reductions in the near-term.

Second, CARB has submitted an enforceable commitment to submit adopted contingency measures to EPA by 2020 as required by CAA 182(e)(5). See CARB Resolution 11–22, July 21, 2011. These contingency measures must be adequate to produce emissions reductions sufficient, in conjunction with other approved plan provisions, to achieve the periodic emissions reductions required by CAA section 182(b)(1) or (c)(2) and attainment by the applicable attainment date. See CAA 182(e)(5). Following the State's submittal of these contingency measures, EPA will approve or disapprove the provisions in accordance with CAA section 110.

C. Attainment Demonstration

1. Requirements for Attainment Demonstrations

CAA section 182(c)(2)(A) requires states with ozone nonattainment areas classified as serious or above to submit plans that demonstrate attainment of the applicable ambient air quality standard as expeditiously as practicable but no later than the outside date established in the CAA.[26] The attainment demonstration is due within three years of the area's designation as nonattainment (40 CFR 51.908), and should include:

(1) Technical analyses that locate and identify sources of emissions that are

[26] EPA's regulation at 40 CFR 51.903(a) translates the maximum attainment periods in Table 1 of section 181, which are specifically linked to enactment of the 1990 CAA Amendments, for purposes of attaining the 1997 8-hour ozone NAAQS.

contributing to violations of the 8-hour ozone NAAQS within the nonattainment area;

(2) adopted measures with schedules for implementation and other means and techniques necessary and appropriate for attainment; and

(3) contingency measures required under section 172(c)(9) of the CAA.

See 70 FR 71612 at 71624.

The requirements for the first two items are described in the sections on emissions inventories and RACM above (sections IV.A. and IV.C.) and in the sections on air quality modeling and attainment demonstration that follow immediately below. Requirements for the third item are described in the sections on the control strategy and the contingency measures (sections V.B. and V.F.), respectively.

2. Air Quality Modeling in the South Coast 2007 AQMP

Below, we discuss the applicable statutory and regulatory requirements for modeled attainment demonstrations and EPA guidance on air quality modeling for the 1997 8-hour ozone standard, the air quality modeling analysis supporting the attainment demonstration in the State's submittal, and our evaluation of these modeling analyses as part of the attainment demonstration SIP.

a. CAA and Regulatory Requirements for 8-Hour Ozone Air Quality Modeling and EPA Guidance

For any ozone nonattainment area classified as serious or above, section 182(c)(2)(A) of the CAA specifically requires the State to submit a modeled attainment demonstration based on a photochemical grid modeling evaluation or any other analytical method determined by the Administrator to be at least as effective as photochemical modeling. EPA's ozone implementation rule in 40 CFR section 51.908 also specifies this requirement and in addition requires that each attainment demonstration meet the requirements of section 51.112, including Appendix W to 40 CFR part 51, as interpreted in EPA guidance. *See, e.g.,* ''Guidance on the Use of Models and Other Analyses for Air Quality Goals in Attainment Demonstrations for Ozone, $PM_{2.5,}$ and Regional Haze,'' April 2007 (hereafter referred to as ''EPA's 2007 attainment demonstration guidance documents''). These guidance documents describe the criteria that an air quality model and its application should meet to qualify for use in an 8-hour ozone attainment demonstration. For more detail on EPA's evaluation of the modeling in the South Coast 8-hour ozone attainment demonstration, see the ''Modeling and Other Analyses Attainment Demonstration'' (section II.B.) of the TSD for today's proposal. The modeling section of the TSD also includes a complete list of applicable modeling guidance documents. These documents describe the components of the attainment demonstration, explain how the modeling and other analyses should be conducted, and provide overall guidance on the technical analyses for attainment demonstrations.

As with any predictive tool, inherent uncertainties are associated with photochemical grid modeling. EPA's guidance recognizes these limitations and provides recommended approaches for considering other analytical evidence to help assess whether attainment of the NAAQS is likely. This process is called a weight of evidence (WOE) analysis.

EPA's modeling guidance (updated in 1996, 1999, and 2002) discusses various WOE analyses. EPA's modeling guidance was updated in 2005 and 2007 for the 1997 8-hour attainment demonstration procedures to include a WOE analysis as an integral part of any attainment demonstration. This guidance strongly recommends that all attainment demonstrations include supplemental analyses beyond the recommended modeling. These supplemental analyses would provide additional information such as data analyses, and emissions and air quality trends, which would help strengthen the conclusion based on the photochemical grid modeling. A WOE analysis is specifically recommended for inclusion in any attainment demonstration SIP where the modeling results predict Future Design Values (FDVs) ranging from 82 to less than 88 ppb (see EPA's 2007 attainment demonstration guidance documents).

b. 8-Hour Attainment Demonstration Modeling and Weight of Evidence in the South Coast 2007 AQMP

i. Photochemical Grid Modeling Attainment Demonstration Results

a. Photochemical Grid Model. The model selected for the Final 2007 AQMP attainment demonstrations is the Comprehensive Air Quality Model with Extensions (CAMx), version 4.4 (Environ, 2006), using Statewide Air Pollution Research Center-99 (SAPRC–99) gas phase mechanisms (Carter, 2000).[27] The modeling system (including the photochemical model, meteorological inputs, and chemical mechanism) is consistent with the previous advice of outside peer reviewers. CAMx is a state-of-the-art air quality model that can simulate ozone and $PM_{2.5}$ concentrations together in a ''one-atmosphere'' approach for attainment demonstrations. CAMx is designed to integrate the output from both prognostic and diagnostic meteorological models.

b. Episode Selection. Six meteorological episodes from three years are used as the basis for the plan. The 2003 AQMP benefited from the intensive monitoring conducted under the 1997 Southern California Ozone Study (SCOS 1997) where the August 4–7, 1997 episode was the cornerstone of the modeling analysis. One of the primary modeling episodes that was used in the 2003 AQMP, August 5–6, 1997, was also selected for this plan. In addition, five episodes that occurred during the Multiple Air Toxics Exposure Study III (MATES–III) sampling program in 2004 (August 7–8) and 2005 (May 21–22, July 15–19, August 4–6, and August 27–28) were selected.

c. Model Performance. Model performance was evaluated in three zones in the South Coast Basin: the San Fernando Valley; the eastern San Gabriel, Riverside and San Bernardino Valleys; and Los Angeles and Orange County. Normalized Gross Bias, Normalized Gross Error, and Peak Prediction Accuracy were determined for each area. Although not a requirement for determining acceptable model performance, the performance statistics were compared to the EPA performance goals presented in guidance documents. The performance goals for Normalized Gross Error and Peak Prediction Accuracy were met in the eastern San Gabriel, Riverside and San Bernardino Valleys. In general, the statistic for bias (Normalized Gross Bias) tends to be negative, indicating that the model tends to slightly under-predict ozone. Based on their analysis, South Coast concludes and EPA agrees that model performance is acceptable for this application.

ii. Modeling Approaches for the SCAQMD Attainment Demonstration

CAMx simulations were conducted for the base year 2002, and future-year 2023 baseline and controlled emissions.[28]

[27] Carter, W.P.L., May 8, 2000a. Documentation of the SAPRC–99 chemical mechanism for VOC reactivity assessment. Report to the California Air Resources Board, Contracts 92–329 and 95–308.

[28] Future year controlled emissions were estimated from the baseline emissions using the CEPA control factors for the simulations, are given in Table V–4–4 of the 2007 South Coast AQMP, Appendix V.

The ozone attainment demonstration relies on the use of site-specific relative response factors (RRFs) being applied to the 2002 weighted design values. The RRFs are determined from the future year controlled and the 2002 base year simulations. The initial screening for station days to be included in the attainment demonstration included the following criteria: (1) Having an observed concentration equaling or exceeding 85 ppb, and (2) a simulation predicted base year (1997, 2004 or 2005) concentration over 60 ppb. Additional criteria were added to the selection process as the simulations were evaluated. A minimum of five episode days are recommended to determine the site specific RRF. The selection criteria for the episode days and the process of applying the RRFs to the CAMx modeling are discussed in more detail in the TSD for today's action.

iii. Results of SCAQMD Modeling

The results of the attainment demonstration for 2023 indicate that the Federal 1997 8-hour ozone standard would be attained by June 15, 2024 at all monitors with the 2023 controlled emissions inventory. The attainment targets (420 tpd VOC and 114 tpd NO_X) are based on both short-term and long-term control measures. With controls in place, it is expected that all stations in the South Coast ozone nonattainment area will meet the Federal 1997 8-hour ozone standard in calendar year 2023 (*i.e.,* by June 15, 2024). The east Basin stations of Crestline and Fontana are projected to have the highest 8-hour ozone design values of 83 ppb and 81 ppb respectively. Both sites are downwind receptors along the primary wind transport route that moves precursor emissions and developing ozone eastward by the daily sea breeze. Future year projections of ozone along the northerly transport route through the San Fernando Valley indicate that the ozone design value in the Santa Clarita Valley will be 74 ppb, which is approximately 13 percent below the standard, in 2023.

In addition to the monitor-based attainment test, the AQMP includes an unmonitored area analysis. This review is intended to ensure that a control strategy leads to reductions in ozone at other locations which could have baseline (and future) design values exceeding the NAAQS were a monitor deployed there. The unmonitored area analysis indicates projected 2024 controlled 8-hour ozone design concentrations at or below 84 ppb for all grid cells in the South Coast Air Basin.

c. EPA's Evaluation and Proposed Conclusion on the Modeling Demonstration

Our evaluation of the air quality modeling analyses and supporting information provided in the South Coast 2007 Ozone SIP indicate that the South Coast area will attain the 1997 8-hour ozone standard by its attainment date of June 15, 2024. In addition to the attainment demonstration provided in the South Coast 2007 Ozone SIP, we have considered supplemental technical information, including ambient air quality monitoring data, which was not available at the time the attainment modeling was performed by SCAQMD. This information is discussed in more detail in the TSD. The modeling shows significant reductions in ozone from the base period. The modeling predicts values of 83 ppb or below at all of the twenty ozone monitoring stations. The most recent ambient air quality data that we have reviewed indicate that the area is on track to attain the 1997 8-hour ozone standard by 2024. The peak ozone design values have dropped from 128 ppb in 2000–2002 to 112 ppb in 2008–2010.

Based on the analysis above and in the TSD, EPA proposes to find that the air quality modeling provides an adequate basis for the RACM, RFP and attainment demonstrations in the South Coast 2007 8-Hour Ozone Plan.

3. Enforceable Commitments in the Attainment Demonstration

Table 8 below summarizes the measures that are relied upon in the South Coast 2007 AQMP's 8-hour ozone attainment demonstration to achieve the carrying capacities shown in Table 7. This attainment demonstration was updated by the 2011 Ozone SIP revision to reflect adjustments to future year baseline inventories and adopted controls.

TABLE 7—EMISSIONS CARRYING CAPACITY ESTIMATES FOR THE SOUTH COAST NONATTAINMENT AREA FOR 8-HOUR OZONE ATTAINMENT

[Tons/day, based on summer planning inventory]

NO_X	VOC
114	420

Source: South Coast 2007 AQMP, Table 5–6, page 5–21.

As shown in Table 8, the majority of emissions reductions the State projects are needed for attaining the 8-hour ozone standard in the South Coast nonattainment area by 2024 come from baseline measures. These baseline measures include numerous adopted District and State measures that generally have been approved by EPA either through the SIP process or the CAA section 209 waiver process. See Appendices A and B of the TSD for a list of these measures. We have also accounted for ARB's improvements to the emissions inventories, discussed above in section IV.A, in the attainment year baseline emissions level (see Table 8, row D). The remaining reductions needed for attainment are to be achieved through the District's and CARB's enforceable commitments to achieve aggregate emission reductions in the South Coast either through defined control measures or through their commitments to develop new or improved technologies under CAA section 182(e)(5). Since the submittal of the South Coast 2007 AQMP and 2007 State Strategy, the District and CARB have adopted numerous control measures that have significantly reduced the amount of emissions reductions that still need to be achieved through these commitments. See Table 9.

TABLE 8—SUMMARY OF SOUTH COAST'S 8-HOUR OZONE ATTAINMENT DEMONSTRATION

[Tons per summer planning day]

		NO_X	VOC
A	Revised 2002 baseline emissions level	1024	881
B	Attainment target level	114	420
C	Total reductions needed from 2002 baseline levels to demonstrate attainment (A–B)	910	461
D	Attainment year baseline emissions level (from 2011 Ozone SIP Revision Supplement, "new 2023 baseline").	493	529
E	Reductions from baseline measures and improvements to the emissions inventory (A–D).	531	352

TABLE 8—SUMMARY OF SOUTH COAST'S 8-HOUR OZONE ATTAINMENT DEMONSTRATION—Continued

[Tons per summer planning day]

		NO_X	VOC
F	Reductions needed from control strategy measures including reductions from new technologies (D–B).	379	109

Source: 2011 Ozone SIP Revision, Appendix B, and 2011 Ozone SIP Revision Supplement.

TABLE 9—REDUCTIONS NEEDED FOR ATTAINMENT REMAINING AS COMMITMENTS BASED ON SIP–CREDITABLE MEASURES

[Tons per summer planning day in 2023]

		NO_X	VOC
A	Total reductions needed from baseline and control strategy measures to attain	910	461
B	Reductions from baseline measures and emissions inventory improvements	531	352
C	Total reductions from approved measures (District—Table 2 above, and CARB—Table 5 above).	7.7 + 114.7 = 122.4	15.3 + 15.9 = 31.2
D	Total reductions remaining as commitments and reductions from new technology measures (A–B–C).	256.6	77.8
E	Reductions remaining as CARB enforceable commitments [1]	14.3	33.1
F	Reductions remaining as District enforceable commitments [2]	1.5	3.9
G	Total reductions remaining as reductions from new technologies (CAA section 182(e)(5)	241	40
H	Percent of reductions needed for attainment from new control measures, not including reductions from new technologies [(E + F)/A].	2%	8%

[1] Calculated by subtracting from CARB's 2023 NO_X commitment of 141 tpd and VOC commitment of 54 tpd (Table 8) the adjustments to baseline from State and Federal sources from 2011 Ozone SIP Revision Supplement, Attachment 1 (12 tpd NO_X, 5 tpd VOC) and emissions reductions from currently SIP-creditable State measures from Table 5 (114.7 tpd NO_X, 15.9 tpd VOC).

[2] From Table 2 above in section IV.B., difference between District commitments and SIP-creditable measures.

As shown in Table 9, reductions in the projected baseline inventory from measures already adopted by the District and State (both prior to and as part of the South Coast 2007 AQMP and 2007 State Strategy), which EPA has approved/waived or proposed to approve, provide the great majority of the emissions reductions needed to demonstrate attainment of the 1997 8-hour ozone standard in the South Coast. The balance is in the form of either enforceable commitments to specific aggregate emissions reductions by the District and CARB, or emissions reductions from new or improved technologies under CAA section 182(e)(5). In this section, we discuss the enforceable commitments that are a part of the attainment demonstration in the South Coast 2007 Ozone Plan.[29]

We believe that, with respect to the 2007 South Coast 8-hour Ozone SIP, circumstances warrant the consideration of enforceable commitments as part of the attainment demonstration for the South Coast. As shown in Table 9 above, a substantial portion of NO_X emissions reductions and the majority of the VOC reductions needed to demonstrate attainment in the South Coast come from rules and regulations that were adopted prior to 2007, *i.e.,* from baseline measures. As a result of these State and District efforts, most sources in the South Coast nonattainment area are currently subject to stringent rules adopted and approved by EPA prior to the development of the 2007 State Strategy and the South Coast 2007 AQMP, leaving few opportunities (and generally more technologically and economically challenging ones) to further reduce emissions. In the South Coast 2007 AQMP and the 2007 State Strategy, the District and CARB identified potential control measures that could provide many of the additional emissions reductions needed for attainment. See 2007 Ozone Plan, Chapter 5 and 2007 State Strategy, Chapter 5. However, the timeline needed to develop, adopt, and implement these measures went beyond the November 2007 submittal date of the South Coast 8-hour Ozone SIP. These circumstances warrant the District's and CARB's reliance on enforceable commitments as part of the attainment demonstration in the South Coast 2007 AQMP and 2007 State Strategy.

Given the State's demonstrated need for reliance on enforceable commitments, we now consider the three factors EPA uses to determine whether the use of enforceable commitments in lieu of adopted measures to meet a CAA planning requirements is approvable: (a) Does the commitment address a limited portion of the statutorily-required program; (b) is the state capable of fulfilling its commitment; and (c) is the commitment for a reasonable and appropriate period of time.

a. Commitments are a Limited Portion of Required Reductions

For the first factor, we look to see if the commitment addresses a limited portion of a statutory requirement, such as the amount of emissions reductions needed to demonstrate attainment in a nonattainment area. For this calculation, reductions assigned to the new technologies provision (CAA section 182(e)(5) are not counted as commitments.[30]

As shown in Table 9 above, the remaining portions of the emission

[29] Based on SIP-creditable measures adopted to date, the South Coast 2007 Ozone Plan does not rely on enforceable commitments to aggregate emissions reductions to demonstrate RFP or to meet any other applicable requirement of the CAA. Therefore, we discuss here only those enforceable commitments relied on to demonstrate attainment.

[30] CAA section 182(e)(5) specifically allows EPA to approve an attainment demonstration that relies on reductions from new technologies. This provision is separate from the requirement in CAA section 172(c)(6) for enforceable emissions limitations under which enforceable commitments are considered. As a result, reductions attributed in the attainment demonstration to new technologies are not considered part of the State's enforceable commitments for purposes of determining the percentage of reductions needed for attainment that remain as commitments.

reductions needed to demonstrate attainment of the 1997 8-hour ozone standard in the South Coast nonattainment area (*i.e.*, of the State's total enforceable commitments), after accounting for State and District measures approved/waived by EPA since 2007 and emissions reduction commitments assigned to CAA section 182(e)(5) measures, are 15.8 tpd NO_X and 37 tpd VOC. When compared to the total reductions needed to demonstrate attainment (not including the CAA section 182(e)(5) reductions in the attainment demonstration), the remaining portion of the enforceable commitments represents approximately 2 percent of the needed NO_X reductions and 8 percent of the needed VOC reductions. Historically, EPA has approved SIPs with enforceable commitments in the range of 10 percent or less of the total needed reductions for attainment. See our approval of the SJV PM_{10} Plan at 69 FR 30005 (May 26, 2004), the SJV 1-hour ozone plan at 75 FR 10420 (March 8, 2010), the Houston-Galveston 1-hour ozone plan at 66 FR 57160 (November 14, 2001), proposed approval of the SJV 2007 $PM_{2.5}$ SIP at 76 FR 41338 (July 13, 2011), and proposed approval of the South Coast $PM_{2.5}$ SIP at 76 FR 41562 (July 14, 2011). Thus, the State's commitment addresses a limited proportion of the required emission reductions.

b. The State Is Capable of Fulfilling its Commitment

For the second factor, we consider whether the District and State are capable of fulfilling their commitments.

As discussed above, CARB has adopted and submitted the 2009 State Strategy Status Report and the 2011 Ozone SIP Revision which update and revise the 2007 State Strategy. These submittals show that CARB has made significant progress in meeting its enforceable commitments for the South Coast 8-hour ozone nonattainment area and several other nonattainment areas in California. The District has also made significant progress in meeting its enforceable commitments for the attainment year of 2023. It has adopted rules that are projected to achieve additional reductions of NO_X and VOC in future years as shown in Table 2 above. In addition to the rules discussed above, both CARB and the District have well-funded incentive grants programs to reduce emissions from the on- and off-road engine fleets. Reductions from several of these programs have yet to be quantified and/or credited in the attainment demonstration. See, for example, Tables 2 and 3 in Appendix F of the 2011 Progress Report.

Given the State's and District's efforts to date to reduce emissions, we believe that the State and District are capable of meeting their enforceable commitments to adopt measures that will reduce emissions of NO_X and VOC to the levels needed to attain the 1997 8-hour ozone standard in the South Coast 8-hour ozone nonattainment area by the attainment date, as shown in Table 9.

c. The Commitment Is for a Reasonable and Appropriate Timeframe

For the third and last factor, we consider whether the commitment is for a reasonable and appropriate period of time.

In order to meet the commitments to adopt measures to reduce emissions to the levels needed to attain the 1997 8-hour ozone standard in the South Coast nonattainment area by 2023, the South Coast 2007 AQMP and 2007 State Strategy include ambitious rule development, adoption, and implementation schedules. The State has committed to adopt the rules needed to achieve the few remaining reductions by 2023. We believe that this period is appropriate given the technological and economic challenges associated with the control measures that will be needed to achieve these reductions and the State's required procedures for development and adoption of these measures. In addition, these reductions are not needed to meet earlier RFP targets and the adoption and submission timeframe ensures adequate time for implementation by the beginning of the last full ozone season (2023) prior to the June 15, 2024 attainment date. See Tables 2 and 4 above. Thus, the commitment is for a reasonable and appropriate period of time.

4. Proposed Action on Attainment Demonstration

In order to approve a SIP's attainment demonstration, EPA must make several findings.

First, we must find that the demonstration's technical bases, including the emissions inventories and air quality modeling, are adequate. As discussed above in section IV.A and IV.C.2, we are proposing to approve the revised base year emissions inventory, and to find the air quality modeling adequate to support the attainment demonstration.

Second, we must find that the SIP provides for expeditious attainment through the implementation of all RACM. As discussed above in section IV.C., we are proposing to approve the RACM demonstration in the South Coast 2007 AQMP as meeting the requirements of CAA section 172(c)(1).

Third, we must find that the emissions reductions that are relied on for attainment are creditable and are sufficient to provide for attainment. As shown in Table 9, the South Coast 2007 AQMP relies primarily on adopted and approved/waived rules to achieve the emissions reductions needed to attain the 1997 8-hour ozone standards in the South Coast by June 15, 2024. The balance of the reductions projected to be needed for attainment is currently in the form of enforceable commitments to adopt measures to achieve aggregate tonnage reductions of VOC or NO_X in the near term from available technologies and measures, and an enforceable commitment to adopt and submit in the longer term measures relying on the development and deployment of new technologies that will achieve specific aggregate tonnage reductions of VOC and NO_X.

EPA has previously accepted enforceable commitments in lieu of adopted control measures in attainment demonstrations when the circumstances warrant them and the commitments meet three criteria. As discussed above in section IV.C.3., we believe that circumstances here warrant the consideration of enforceable commitments, and that the three criteria are met: (1) The commitments constitute a limited portion of the required emissions reductions; (2) both the State and District are capable of meeting their commitments; and (3) the commitments are for an appropriate timeframe. Based on these evaluations, we are proposing to approve the enforceable commitments as part of the attainment demonstration.

CAA section 182(e)(5) allows extreme ozone nonattainment area plans under certain conditions to include provisions for the development of new technologies in the SIP and allows EPA to approve attainment demonstrations based, in part, on those provisions. For the reasons discussed in section IV.B., we propose to find that California has met the conditions for relying on new technology provisions in its attainment demonstration for the South Coast nonattainment area.

For the foregoing reasons, we propose to approve the attainment demonstration in the South Coast 2007 Ozone Plan.

D. Reasonable Further Progress Demonstration

1. Requirements for Reasonable Further Progress

CAA Section 172(c)(2) requires that plans for nonattainment areas shall provide for reasonable further progress (RFP). RFP is defined in section 171(1) as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by [Part D—Plan Requirements for Nonattainment Areas] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date.'' CAA Section 182(b)(1) specifically requires that ozone nonattainment areas that are classified as moderate or above demonstrate a 15 percent reduction in ozone precursor emissions between the years of 1990 and 1996. For ozone nonattainment areas classified as serious or higher, section 182(c)(2)(B) also requires a 3 percent per year reduction of ozone precursor emissions until attainment, in addition to the 15 percent reduction required under CAA 182(b)(1).

CAA Section 182(b)(1)(D) prohibits the state from including emissions reductions from pre-1990 Federal motor vehicle programs when demonstrating RFP. In other words, the reductions from these programs are not creditable when demonstrating RFP.

The ozone implementation rule for the 1997 8-hour ozone NAAQS interprets the RFP requirements for the purposes of the 1997 8-hour ozone standards, establishing requirements for RFP that depend on the area's classification as well as whether the area has an approved 15 percent reduction plan for the 1-hour ozone standard that covers all of the 8-hour ozone nonattainment area. See 40 CFR 51.910(a) and 70 FR 71612. In 1997, EPA approved a 15 percent rate of progress (ROP) plan for the South Coast, which covers the entire nonattainment area for the 1997 8-hour ozone standard. See 62 FR 1150 (January 8, 1997). As a result, the State does not need to demonstrate another 15 percent reduction in VOC for this area. Instead, under the ozone implementation rule, the 8-hour ozone SIP for South Coast must provide for an average of 3 percent per year of VOC and/or NO_X emissions reductions for (1) the 6-year period beginning January 1 of the year following the year used for the baseline and (2) all remaining 3-year periods after the first 6-year period out to the area's attainment date. 40 CFR 51.910(a)(1)(ii)(B). Except as specifically provided in CAA section 182(b)(1)(C), emissions reductions from all SIP-approved, federally promulgated, or otherwise SIP-creditable measures that occur after the baseline are creditable for purposes of demonstrating that the RFP targets are met.

The RFP demonstration must calculate and exclude the non-creditable reductions described in CAA 182(b)(1)(D). These non-creditable reductions include emissions reductions from pre-1990 Federal motor vehicle programs. The method for calculating the target emissions levels is found in Appendix A to the preamble of the ozone implementation rule. See 70 FR 71612 at 71696.

2. RFP Demonstration in the South Coast 2007 AQMP

California has made several submittals to address the RFP requirement for the 1997 8-hour ozone standard in the South Coast 8-hour ozone nonattainment area. The original RFP demonstration is in Chapter 6 of the South Coast 2007 AQMP. The demonstration addresses NO_X and VOC emissions and uses the 2002 annual average inventory as the baseline emissions inventory and 2023 as the attainment year. See South Coast 2007 AQMP, Table 6–2A and 6–2B. CARB submitted a revised RFP demonstration for the South Coast 8-hour ozone nonattainment area on July 29, 2011 as part of the 2011 Ozone SIP Revision. The 2011 submission reflected revisions to several significant control measures since the submission of the SIP in 2007, as well as changes to the on-road diesel and off-road construction emissions estimates. Table 10 below summarizes the South Coast ozone RFP demonstration as revised by the 2011 Ozone SIP Revision.

TABLE 10—2011 REVISIONS TO THE 8-HOUR OZONE SIP REASONABLE FURTHER PROGRESS CALCULATIONS SOUTH COAST

[Summer season, tons per day]

	2002	2008	2011	2014	2017	2020	2023
Baseline ROG	880.5	632.0	579.9	535.2	519.8	513.9	513.4.
CA MVCP/RVP Adjustment	0.0	56.1	73.0	86.6	93.7	98.3	101.6.
RACT Corrections	0.0	0.0	0.0	0.0	0.0	0.0	0.0.
Adjusted 2002 Baseline ROG in milestone year	880.5	824.5	807.6	793.9	786.8	782.3	778.9.
RFP commitment for ROG reductions from new measures	0.0	0.0	0.0	0.0	0.0	0.0	0.0.
Future Year ROG with existing and proposed measures	.....	632.0	579.9	535.2	519.8	513.9	513.4.
Required % change since previous milestone year (ROG or NO_X) compared to 2002	.....	18%	9%	9%	9%	9%	9%.
Required % change since 2002 (ROG or NO_X)	.....	18%	27%	36%	45%	54%	63%.
Target ROG levels	.....	676.1	599.8	533.4	479.0	431.7	389.8.
Apparent shortfall in ROG	.....	−44.1	−19.9	1.7	40.8	82.2	123.6.
Apparent shortfall in ROG, %	.....	−5.3%	−2.5%	0.2%	5.2%	10.5%	15.9%.
ROG shortfall previously provided by NO_X substitution, %	.....	0%	0.0%	0.0%	0.2%	5.2%	10.5%.
Actual ROG shortfall, %	.....	−5.3%	−2.5%	0.2%	5.0%	5.3%	5.4%.
Baseline NO_X	1024.1	728.3	591.2	532.1	478.8	428.2	378.4.
CA MVCP Adjustment	0.0	64.7	80.6	93.0	98.3	102.4	105.9.
Adjusted 2002 Baseline NO_X in milestone year	1024.1	959.4	943.4	931.1	925.8	921.7	918.2.
RFP commitment for NO_X reductions from new measures	0.0	0.0	0.0	0.0	0.0	0.0	0.0.
Change in NO_X since 2002	.....	231.1	352.3	398.9	447.0	493.5	539.7.
Change in NO_X since 2002, %	.....	24.1%	37.3%	42.8%	48.3%	53.5%	58.8%.
NO_X reductions since 2002 already used for RFP substitution and contingency through last milestone year, %	.....	0.0%	3.0%	3.0%	3.2%	8.2%	13.5%.
NO_X reductions since 2002 available for RFP substitution and contingency in this milestone year, %	.....	24.1%	34.3%	39.8%	45.1%	45.4%	45.3%.
Change in NO_X since 2002 used for ROG substitution in this milestone year, %	.....	0.0%	0.0%	0.2%	5.0%	5.3%	5.4%.

TABLE 10—2011 REVISIONS TO THE 8-HOUR OZONE SIP REASONABLE FURTHER PROGRESS CALCULATIONS SOUTH COAST—Continued

[Summer season, tons per day]

	2002	2008	2011	2014	2017	2020	2023
Change in NO_X since 2002 available for contingency in this milestone year, %	.....	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%.
Change in NO_X since 2002 surplus after meeting substitution and contingency needs in this milestone year, %	.....	21.1%	34.3%	39.6%	40.1%	40.0%	39.9%.
RFP Met?	.....	YES	YES	YES	YES	YES	YES

Source: CARB 2011 Ozone SIP Revision, Appendix A, Table A–1.

3. Proposed Action on the RFP Demonstration

CARB has correctly calculated the RFP target levels for the appropriate years following the method provided in the ozone implementation rule and preamble. See 40 CFR 51.910 and 70 FR 71612 at 71631–71650. As shown in Table 10, the South Coast 2007 8-hour Ozone SIP provides for RFP in each milestone year, consistent with applicable CAA requirements and EPA guidance. We propose, therefore, to approve the RFP demonstration under sections 182(b)(1) and 182(c)(2) of the CAA.

E. Transportation Control Strategies and Transportation Control Measures and Vehicle Miles Travelled Offset Emissions Increases From VMT Increases, To Provide for RFP and Attainment

1. Requirements for Transportation Control Strategies and Transportation Control Measures To Offset Emissions Growth, To Provide for RFP and Attainment

CAA section 182(d)(1)(A) requires that areas classified as severe or extreme submit transportation control strategies (TCSs) and transportation control measures (TCMs) sufficient to offset any growth in emissions from growth in VMT or the number of vehicle trips, and to provide (along with other measures) the reductions needed to meet the applicable RFP requirement. CAA section 182(d)(1)(A) also requires that states choose and implement such measures as are specified in section 108(f), to the extent needed to demonstrate attainment. In selecting the measures, Congress directed that States ''should ensure adequate access to downtown, other commercial and residential areas, and should avoid measures that increase or relocate emissions and congestion rather than reduce them.'' CAA 182(d)(1)(A).

EPA believes that it is appropriate to treat the three required elements of section 182(d)(1)(A) (*i.e.,* offsetting emissions growth, attainment of the RFP reduction, and attainment of the ozone NAAQS) as separable. As to the first element of CAA section 182(d)(1)(A) (*i.e.,* offsetting emissions growth), EPA has historically interpreted this CAA provision to allow areas to meet the requirement by demonstrating that emissions from motor vehicles decline each year through the attainment year. General Preamble at 13521, 13522.[31]

2. Transportation Control Strategies and Transportation Control Measures To Offset Emissions Growth, To Provide for RFP and Attainment in the South Coast 2007 Ozone SIP

Information in Table 6–12 on page 6–27 of the South Coast AQMP reproduced in Table 11 shows that on-road motor vehicle emissions of VOC and NO_X decline steadily in the South Coast from 2002 to 2023. This decline in emissions is due to EPA's and California's on-road mobile source programs, California's clean fuels and SmogCheck programs, and CARB's in-use truck and bus rule. As discussed above in section IV.B, these programs are fully creditable for SIP planning purposes in attainment and RFP demonstrations, including demonstrating compliance with section 182(d)(1). The on-road emissions in Table 11 are calculated using EMFAC2007 (the most recent EPA-approved mobile source emissions model in California) and the same transportation activity projections used to develop the RFP and attainment demonstrations and transportation conformity motor vehicle emissions budgets in the South Coast 2007 Ozone Plan. South Coast 2007 AQMP, p. 6–23 and 6–27.

TABLE 11—ON-ROAD MOTOR VEHICLE EMISSIONS IN THE SOUTH COAST 2002–2023

[Summer planning inventory, tons per day] [1 2]

Year	Baseline		Remaining	
	VOC	NO_X	VOC	NO_X
2002	360	611	360	611
2003	341	595	341	595
2004	321	579	321	579
2005	302	563	302	563
2006	273	518	273	518
2007	243	472	243	472
2008	214	441	210	438
2009	199	419	195	413

[31] See also 60 FR 48896 (September 21, 1995), approval of Illinois' vehicle miles traveled plan for the Chicago area; 62 FR 23410 (April 30, 1997) and 62 FR 35100 (June 30, 1997), proposed and final approval of New Jersey's 15 percent ROP plan and other provisions for the New York-New Jersey-Connecticut ozone nonattainment area; 66 FR 23849 (May 10, 2001), approval of New York's attainment demonstration and related provisions for the New York-New Jersey-Connecticut ozone nonattainment area; 66 FR 57247 (November 14, 2001), approval of the VMT offset plan for the Houston-Galveston ozone nonattainment area; 70 FR 25688 (May 13, 2005), approval of the Washington, DC area's 1-hour attainment demonstration and related provisions; and 70 FR 34358 (June 14, 2005), approval of Atlanta's VMT plan.

TABLE 11—ON-ROAD MOTOR VEHICLE EMISSIONS IN THE SOUTH COAST 2002–2023—Continued

[Summer planning inventory, tons per day] [1] [2]

Year	Baseline		Remaining	
	VOC	NO_X	VOC	NO_X
2010	186	379	164	330
2011	176	355	154	291
2012	166	331	144	252
2013	157	309	135	219
2014	148	287	126	191
2015	142	269	119	174
2016	135	250	113	162
2017	129	232	109	160
2018	124	216	101	135
2019	119	200	96	120
2020	114	184	93	112
2021	110	176	91*	78
2022	107	169	88*	52
2023	103	161	86	27
2024	95	146	76	24

Source: South Coast 2007 AQMP, Chapter 6, Table 6–12.

[1] These values were incorrectly listed as 88 for 2021 and 85 for 2022 in the 2007 South Coast AQMP. See Letter, Elaine Chang, DrPH, Deputy Executive Officer, SCAQMD, to Wienke Tax, EPA Region 9, Air Division, dated August 12, 2011 in the docket for today's action.

[2] ''Baseline'' emissions account for controls adopted prior to the 2007 AQMP. ''Remaining'' emissions include the impacts of economic growth and implementation of the plan's control strategy.

As described above in section IV.B., SCAG evaluated a wide variety of transportation control strategies and measures, including those measures listed in CAA section 108(f), and determined that there were no combinations of reasonable measures that would expedite attainment of the 8-hour ozone standard in the South Coast. See South Coast 2007 AQMP, Appendix IV–C.

3. Evaluation and Conclusions

Because both VOC and NO_X emissions from on-road mobile sources decline steadily over the entire time period covered by the South Coast 2007 Ozone Plan, the SIP need not include additional TCSs and TCMs to offset growth in motor vehicle emissions from growth in VMT. We propose, therefore, to find that the South Coast 2007 8-hour ozone SIP, as corrected on August 12, 2011, meets the requirement in CAA section 182(d)(1)(A) to include TCSs and TCMs sufficient to offset any growth in emissions from growth in VMT or the number of vehicle trips.

In *Association of Irritated Residents* v. *EPA,* 632 F.3d 584 (9th Cir. 2011), the U.S. Court of Appeals for the Ninth Circuit held that, with respect to the first element, section 182(d)(1)(A) of the CAA requires States to adopt transportation control measures and strategies whenever vehicle emissions are projected to be higher than they would have been had vehicle miles traveled not increased, even when aggregate vehicle emissions are actually decreasing. EPA has filed a petition for rehearing on this issue. Docket Nos. 09–71383 and 09–71404 (consolidated), Docket Entry 41–1, *Petition for Panel Rehearing.*

The Ninth Circuit has yet to issue its mandate in the *Association of Irritated Residents* case, and EPA has not adopted the court's interpretation for the reasons set forth in the Agency's petition for rehearing, pending a final decision by the court. If the court denies the Agency's petition for rehearing and issues its mandate before EPA issues a final rule on the South Coast 2007 Ozone SIP, then we anticipate that we would not be able to finalize approval of the South Coast 2007 Ozone SIP with respect to the first element (*i.e.,* offsetting emissions growth) of section 182(d)(1)(A). Therefore, in today's action, and in the alternative to the proposed approval, we are simultaneously proposing to disapprove the South Coast 2007 Ozone SIP with respect to the first element (*i.e.,* offsetting emissions growth) of section 182(d)(1)(A) based on the plan's failure to include sufficient transportation control strategies and TCMs to offset the emissions from growth in VMT. If EPA were to finalize the proposed disapproval, the area would be eligible for a protective finding under the transportation conformity rule because the submitted SIP contains adopted control measures and enforceable commitments that fully satisfy the emissions reductions requirements for reasonable further progress and attainment.[32] 40 CFR 93.120(a)(3)

As discussed above in section IV.D., we are proposing to find that the South Coast 2007 8-Hour Ozone SIP provides for RFP consistent with all applicable CAA and EPA regulatory requirements. Therefore, we also propose to find that the SIP meets requirement in CAA section 182(d)(1)(A) to include TCSs and TCMs as necessary to provide (along with other measures) the reductions needed to meet the applicable RFP requirement.

Finally, as discussed in section IV.B. and IV.C. above, we are proposing to find that the South Coast 2007 8-Hour Ozone SIP provides for expeditious attainment of the 1997 8-hour ozone standard. Therefore, we propose to find that the SIP meets the requirement in CAA section 182(d)(1)(A) to include strategies and measures to the extent needed to demonstrate attainment.

F. Contingency Measures

1. Requirements for Contingency Measures

Under the CAA, ozone nonattainment areas classified under subpart 2 as moderate or above must include in their SIPs contingency measures consistent with sections 172(c)(9) and 182(c)(9). Contingency measures are additional

[32] An area would not be eligible for a protective finding under the transportation conformity regulation if EPA finalizes a disapproval of a control strategy implementation plan revision (*i.e.,* a plan that demonstrates reasonable further progress or attainment) because the plan revision does not contain adopted control measures or written commitments to enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted. 40 CFR 93.120(a)(3)

measures to be implemented in the event the area fails to meet an RFP milestone or fails to attain by the applicable attainment date. These contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly upon failure to meet the milestones or attainment. The SIP should contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measure will be implemented without significant further action by the State or by EPA. See 68 FR 32802 at 32837 and 70 FR 71612 at 71650.

Additional guidance on the CAA contingency measure provisions is found in the General Preamble, 57 FR at 13510–13512 and 13520. The guidance indicates that states should adopt and submit contingency measures sufficient to provide a 3 percent emissions reduction from the adjusted RFP baseline. EPA concludes this level of reductions is generally acceptable to offset emission increases while States are correcting their SIPs. These reductions should be beyond what is needed to meet the attainment and/or RFP requirement. States may use reductions of either VOC or NO_X or a combination of both to meet the contingency measure requirements. 57 FR at 13520, footnote 6.

EPA guidance provides that contingency measures may be implemented early, *i.e.,* prior to the milestone or attainment date.[33] Consistent with this policy, States are allowed to use excess reductions from already adopted measures to meet the CAA sections 172(c)(9) and 182(c)(9) contingency measures requirement. This is because the purpose of contingency measures is to provide extra reductions that are not relied on for RFP or attainment, and that will provide a cushion while the plan is being revised to fully address the failure to meet the required milestone. Nothing in the CAA precludes a State from implementing such measures before they are triggered. This approach has been approved by EPA in numerous SIPs. See 62 FR 15844 (April 3, 1997) (approval of the Indiana portion of the Chicago area 15 percent ROP plan); 62 FR 66279 (December 18, 1997) (approval of the Illinois portion of the Chicago area 15 percent ROP plan); 66 FR 30811 (June 8, 2001) (proposed approval of the Rhode Island post-1996 ROP plan); 66 FR 586 and 66 FR 634 (January 3, 2001) (approval of the Massachusetts and Connecticut 1-hour ozone attainment demonstrations). In the only adjudicated challenge to this approach, the court upheld it. *See LEAN* v. *EPA,* 382 F.3d 575 (5th Cir. 2004). 70 FR 71612 at 71651.

In addition, CAA section 182(e)(5) authorizes EPA to ''approve provisions of an implementation plan for an Extreme Area which anticipate development of new control techniques or improvement of existing control techniques, and an attainment demonstration based on such provisions,'' if the State meets certain criteria. CAA 182(e)(5). Such plan provisions may include enforceable commitments to submit, at a later date, contingency measures for failure to attain under CAA section 172(c)(9), in addition to the contingency measures to be implemented if the anticipated technologies approved under section 182(e)(5) do not achieve planned reductions. These contingency measures must be submitted no later than three years before proposed implementation of the plan provisions and approved or disapproved by EPA in accordance with CAA section 110. *Id.*

2. Contingency Measures in the South Coast 2007 AQMP

The attainment plan for the South Coast nonattainment area includes contingency measures to be implemented if the area fails to attain by its attainment date or fails to meet RFP requirements. The contingency measures for the South Coast nonattainment area are described in Chapter 9 of the South Coast 2007 AQMP, discussed in more detail in Appendix IV–A, section 2 of the AQMP, and also discussed in Appendix D of the 2007 State Strategy as updated on February 1, 2008. The provisions were again updated in CARB's 2011 Ozone SIP Revision, Appendix A.

Contingency measures for failure to make RFP. To provide for contingency measures for failure to make RFP, the SIP relies on surplus NO_X reductions in the RFP demonstration. See 2011 Ozone SIP Revision, Attachment A, p. A–1. See also Table 10 above.

Contingency measures for failure to attain. To provide for contingency measures for failure to attain, the SIP relies on the additional incremental emissions reductions resulting from fleet turnover in calendar year 2024. This includes the incremental additional emissions reductions that will occur in 2024 (the year after the attainment year) from the continuing implementation of both on- and off-road motor vehicle controls. For the South Coast, these reductions are 2 tpd of NO_X and 1 tpd of VOC. See CARB 2011 Ozone SIP Supplement, Attachment 2.

Additionally, as discussed above in section IV.B., we are proposing to determine that CARB and the SCAQMD have satisfied the criteria in section 182(e)(5) for reliance on the new technology provision as part of the attainment demonstration in the South Coast 8-Hour Ozone SIP. Based on the State's anticipated development of these new technologies, CARB has submitted an enforceable commitment to submit, no later than 2020, additional contingency measures under CAA section 182(e)(5) that meet the requirements for attainment contingency measures in CAA section 172(c)(9), in addition to contingency measures to be implemented if the anticipated long-term measures approved pursuant to section 182(e)(5) do not achieve planned reductions. CARB Resolution 11–22, July 2011, p. 4.

3. Proposed Action on the Contingency Measures

Contingency measures for failure to make RFP. As discussed above in section IV.D., we are proposing to approve the South Coast 2007 8-Hour Ozone SIP's RFP demonstration. As seen from the RFP demonstration in Table 10, there are sufficient excess reductions of NO_X in each milestone year beyond those needed to meet the next RFP percent reduction requirement to provide the 3 percent of adjusted baseline emissions reductions needed to meet the RFP contingency measure requirement for 2011, 2014, 2017, and 2020.

No RFP contingency measures are needed for 2008, since the 2011 Ozone SIP Revision demonstrates that South Coast has already met its 2008 milestone. See Table 10 above. As a result, contingency measures for failure to meet the 2008 RFP benchmark would never be triggered and thus are not needed.

Contingency measures for failure to attain. The incremental additional emissions reductions that will occur in 2024 (the year after the attainment year) from the continuing implementation of both on- and off-road motor vehicle controls may be used to meet the contingency measure requirement for failure to attain. For the South Coast, these reductions are 2 tpd of NO_X and 1 tpd of VOC. See 2011 Ozone SIP Revision Supplement, Attachment 2.

In addition, based on our proposal to determine that the State has satisfied the criteria in section 182(e)(5) for reliance on long-term measures as part of the attainment demonstration in the South Coast 8-Hour Ozone SIP, we propose to

[33] Memorandum, G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch to Air Directors, ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' June 1, 1992.

approve CARB's enforceable commitment to submit no later than 2020, additional contingency measures under CAA section 182(e)(5) which meet the requirements for attainment contingency measures in CAA section 172(c)(9), in addition to contingency measures to be implemented if the anticipated long-term measures approved pursuant to section 182(e)(5) do not achieve planned reductions.[34]

Accordingly, we propose to approve the RFP and attainment contingency measures in the South Coast 2007 Ozone SIP under CAA sections 172(c)(9) and 182(c)(9), based in part on CARB's commitment to submit by 2020 additional contingency measures meeting the requirements of CAA sections 172(c)(9) and 182(e)(5). Following the State's submittal of these additional contingency measures, EPA will approve or disapprove the provisions in accordance with CAA section 110.

G. Motor Vehicle Emissions Budgets for Transportation Conformity

CAA Section 176(c) requires Federal actions in nonattainment and maintenance areas to conform to the SIP's goals of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of the standard. Conformity to the SIP's goals means that such actions will not (1) cause or contribute to violations of a NAAQS, (2) worsen the severity of an existing violation, or (3) delay timely attainment of any NAAQS or any interim milestone.

Actions that involve Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to EPA's transportation conformity rule, which is codified in 40 CFR part 93, subpart A. Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state and local air quality and transportation agencies, EPA, FHWA, and FTA to demonstrate that an area's regional transportation plans (RTP) and transportation improvement programs (TIP) conform to the applicable SIP. This demonstration is typically done by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (budgets) contained in the SIP. An attainment, maintenance, or RFP SIP establishes budgets for the attainment year, each required RFP year or last year of the maintenance plan, as appropriate. Budgets are generally established for specific years and specific pollutants or precursors.

Ozone attainment and RFP plans establish budgets for NO_X and VOC. See 40 CFR 93.102(b)(2)(i).

Before an MPO may use budgets in a submitted SIP, EPA must first either determine that the budgets are adequate or approve the budgets. In order for us to find the budgets adequate and approvable, the submittal must meet the conformity adequacy requirements of 40 CFR 93.118(e)(4) and (5) and be approvable under all pertinent SIP requirements. To meet these requirements, the budgets must be consistent with the approvable attainment and RFP demonstrations and reflect all of the motor vehicle control measures contained in the attainment and RFP demonstrations. See 40 CFR 93.118(e)(4)(iii), (iv) and (v).

2. Motor Vehicle Emissions Budgets in the South Coast 2007 8-Hour Ozone SIP

As submitted on November 28, 2007, the 2007 South Coast AQMP included a set of ozone precursor budgets for VOC and NO_X for RFP years 2008, 2011, 2014, 2017 and 2020 and an attainment year budget for 2023. On April 30, 2008, CARB submitted a SIP revision that replaced the original set of 8-hour ozone budgets with two sets of replacement budgets. CARB labeled these sets as ''baseline'' and ''SIP-based'' budgets with sets of 8-hour ozone budgets for RFP years 2008, 2011, 2014, 2017, 2020, the attainment year 2023, and analysis year 2030. See CARB Resolution 07–05, which revised the budgets in the 2007 South Coast AQMP as adopted by the District, and which was included in the November 28, 2007 submission.

EPA Region 9 sent a letter to the CARB on May 7, 2008 stating that the ''baseline'' motor vehicle emissions budgets in the amended 2007 South Coast SIP for the reasonable further progress (RFP) milestone years of 2008, 2011, 2014, 2017, and 2020 were adequate. We found the ''SIP-based'' motor vehicle emissions budgets in the amended 2007 South Coast SIP inadequate for transportation conformity purposes. The amended 2007 South Coast SIP included ''SIP-based'' budgets for 2008, 2011, 2014, 2017, 2020, and 2023. The State has included additional on-road mobile source emissions reductions in the ''SIP-based'' budgets from the 2007 State Strategy for the California SIP. The ''baseline'' budgets include no such reductions but rather reflect emissions reductions from CARB rules that were adopted as of October 2006. EPA has determined that the ''SIP-based'' budgets are inadequate because all of the ''SIP-based'' budgets after 2009 include new emission reductions that do not result from specific or enforceable control measures. Our notice of adequacy/inadequacy of the budgets was published on May 15, 2008 at 73 FR 28110 (corrected on June 18, 2008 at 73 FR 34837), and was effective on May 30, 2008. More information on this finding can be found in the TSD for today's action.

CARB submitted revised budgets for the South Coast nonattainment area and their documentation in Appendices A and C, respectively, of the 2011 Ozone SIP Revisions. The revised budgets are for NO_X and VOC for the RFP years of 2011, 2014, 2017 and 2020, and the attainment year of 2023. No budgets were included for the RFP year of 2008 because it is no longer applicable as a conformity analysis year. Additional information associated with the motor vehicle emission budget calculations were provided in Attachment 1 of the CARB Ozone SIP Revision supplement and an electronic mail from CARB.[35]

3. Proposed Action on the Revised Budgets

As part of its review of the budgets' approvability, EPA has evaluated the revised budgets using our adequacy criteria in 40 CFR 93.318(e)(4) and (5). As documented in Table H–3 in the TSD, we found that they meet each adequacy criterion. We have completed our detailed review of the 2007 South Coast 8-hour Ozone SIP and supplemental submittals including the 2011 Ozone SIP Revision and 2011 Ozone SIP Supplement, and are proposing to approve the SIP's attainment and RFP demonstrations. We have also reviewed the proposed budgets submitted with the 2011 Ozone SIP Revision and have found that they are consistent with the attainment and RFP demonstrations, were based on control measures that have already been adopted and implemented, and meet all other applicable statutory and regulatory requirements including the adequacy criteria in 40 CFR 93.118(e)(4) and (5). Therefore, we are proposing to

[34] These contingency measures should, at a minimum, ensure that an appropriate level of emissions reduction progress continues to be made if attainment is not achieved and additional planning by the State is needed. See General Preamble at 13524.

[35] See electronic mail from Douglas Ito, Chief, Air Quality and Transportation Planning Branch, CARB, to Elizabeth Adams, Deputy Director, Air Division, EPA Region 9, dated August 11, 2011.

approve the 2011, 2014, 2017, 2020, and 2023 budgets as shown in Table 12.

TABLE 12—MOTOR VEHICLE EMISSIONS BUDGETS IN THE SOUTH COAST 2007 8-HOUR OZONE SIP AS REVISED ON JULY 21, 2011

[Tons per summer day]

	2011		2014		2017		2020		2023	
	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X
South Coast Air Basin	172	328	136	277	119	224	108	185	99	140

Source: "8-Hour Ozone State Implementation Plan Revisions and Technical Revisions to the $PM_{2.5}$ State Implementation Plan Transportation Conformity Budgets for the South Coast and San Joaquin Valley Air Basins," Appendix C, submitted July 29, 2011.

EPA is not required under its transportation conformity rule to find budgets adequate prior to proposing approval of them. However, we will complete the adequacy review of these budgets either prior to or concurrently with our final action on South Coast 2007 8-Hour Ozone SIP. We will also post the revised budgets on EPA's adequacy review Web page.

If the budgets are found adequate and/or the proposed approval of the budgets is finalized, then these budgets will replace the budgets previously found adequate and SCAG and the U.S. Department of Transportation will be required to use the new budgets in transportation conformity determinations after the effective date of the approval or adequacy finding, whichever is earlier. For conformity determinations, the plan emissions should be used at the same level of accuracy as in the revised updated budgets from the plan (see Section H of the TSD for more conformity implementation details).

As stated in section IV.E., if we were to finalize a disapproval with respect to the plan's section 182(d)(1)(A) element, then the area would be eligible for a protective finding under the transportation conformity rule because the submitted SIP contains adopted control measures and enforceable commitments that fully satisfy the emissions reductions requirements for reasonable further progress and attainment. 40 CFR 93.120(a)(3).

H. Other Clean Air Act Requirements Applicable to Extreme Ozone Nonattainment Areas

In addition to the requirements discussed above, Title I, subpart D of the CAA includes other provisions applicable to extreme ozone nonattainment areas such as the South Coast nonattainment area. Below, we discuss the current status of each of these requirements for informational purposes only.

1. Enhanced Vehicle Inspection and Maintenance (I/M) Requirement

CAA section 182(c)(3) requires states with ozone nonattainment areas classified under subpart 2 as serious or above to implement an enhanced motor vehicle inspection and maintenance (I/M) program in those areas. The requirements for those programs are provided in section 182(c)(3) and 40 CFR part 51, subpart S.

On July 1, 2010 (75 FR 38023), EPA approved California's inspection and maintenance program in the South Coast as meeting the requirements of the CAA and applicable EPA regulations for enhanced I/M programs.

2. Reformulated Gasoline Program

As an extreme ozone nonattainment area for the 1-hour ozone standard, the South Coast was covered under the Federal reformulated gasoline (RFG) program. See CAA section 211(k)(10)(D). As an 8-hour ozone nonattainment area, the South Coast continues to be covered under the Federal RFG program. See 40 CFR 80.70(m)(1)(i) and 70 FR 71685. California has its own RFG program (California Phase III RFG (CaRFG3)), which also applies in the South Coast nonattainment area. EPA approved CaRFG3 program into the California SIP on May 12, 2010. See 75 FR 26633.

3. New Source Review

CAA section 182(a)(2)(C) requires states to develop SIP revisions containing permit programs for each of its ozone nonattainment areas. The SIP revisions are to include requirements for permits in accordance with CAA 172(c)(5) and 173 for the construction and operation of each new or modified major stationary source (with respect to ozone) anywhere in the nonattainment area. See also CAA section 182(e). EPA's implementing regulations for nonattainment new source review (NSR) programs are in 40 CFR 51.165, and guidance specific to ozone nonattainment areas was provided in the preamble to the 8-hour ozone implementation rule, 70 FR 71612 at 71671–71684.

On December 4, 1996 (61 FR 64291), EPA approved SCAQMD's NSR rules (the District's Regulation XIII) for the South Coast air basin as satisfying the NSR requirements in title I, part D of the CAA for "extreme" ozone nonattainment areas. See also 64 FR 13514 (March 19, 1999) and 71 FR 35157 (June 19, 2006).

4. Clean-fuel Vehicle Program

CAA sections 182(c)(4)(A) and 246 require states to submit a SIP revision for EPA approval that includes measures to implement the Clean-Fuel Vehicle Program in serious and above ozone nonattainment areas. Section 182(c)(4)(B) of the Act allows states to "opt-out" of the clean-fuel vehicle fleet program by submitting for EPA approval a SIP revision consisting of a program or programs that will result in at least equivalent long term reductions in ozone-producing and toxic air emissions.

In 1994, CARB submitted a SIP revision to opt-out of the Federal clean fuel fleet program demonstrating that its low-emission vehicle (LEV) program achieved emission reductions at least as large as the Federal program would. We approved the substitution of the LEV program for a Clean Fuel Fleet program into the California SIP on August 27, 1999. See 64 FR 46849.

5. Gasoline Vapor Recovery

CAA section 182(b)(3) mandates that States submit a revised SIP by November 15, 1992 that requires owners or operators of gasoline dispensing systems to install and operate gasoline vehicle refueling vapor recovery ("Stage II") systems in ozone nonattainment areas classified as moderate and above. See General Preamble at 13514. California's ozone nonattainment areas had implemented Stage II vapor recovery well before the passage of the CAA Amendments of 1990.

Under California State law (Health and Safety Code Section 41954), CARB is required to adopt procedures and performance standards for controlling gasoline emissions from gasoline marketing operations, including transfer and storage operations. State law also authorizes CARB, in cooperation with districts, to certify vapor recovery systems, to identify defective equipment, and to develop test methods. CARB has adopted numerous revisions to its vapor recovery program regulations. See Table A–7 in Appendix A to the TSD for today's action. See also CARB's Web site, *http://www.evrhome.org.*

In the South Coast, the installation and operation of ARB-certified vapor recovery equipment is required and enforced by SCAQMD Rules 461 and 462, the latest versions of which were approved into the SIP on April 11, 2006 and July 21, 1999, respectively. See 71 FR 18216 (April 11, 2006) and 64 FR 39037 (July 21, 2006).

6. Enhanced [Ambient Air Quality] Monitoring

CAA Section 182(c)(1) requires that all ozone nonattainment areas classified as serious or above implement measures to enhance and improve monitoring for ambient concentrations of ozone, NO_X, and VOCs, and to improve monitoring of emissions of NO_X and VOCs.

The South Coast Photochemical Assessment Monitoring Station (PAMS) network was initiated in 1994 at two monitoring sites in the Basin and subsequently expanded through 2001. The SCAQMD's Annual Air Quality Monitoring Network Plan (July 2010) describes the steps the state has taken to address the requirements of CAA section 182(c)(1). Pages 4 through 6 and 17 of the monitoring network plan describe the South Coast Air Basin's PAMS network.[36] [37] We have determined that the SCAQMD's PAMS network meets EPA requirements for enhanced monitoring programs.[38] More detail is provided in the TSD for today's action.

[36] Starting in 2007, EPA's monitoring rules (see 71 FR 61236), October 17, 2006) required the submittal and EPA action on annual monitoring network plans.

[37] SCAQMD's 2010 monitoring network plan can be found in the docket for today's action.

[38] See SCAMQD's 2010 monitoring network plan and letter, Matthew Lakin, Chief, Air Quality Analysis Office, EPA Region 9, to Dr. Chung Liu, Deputy Executive Officer, SCAQMD, dated November 1, 2010, approving the 2009 South Coast Air Quality Monitoring Network Plan.

7. Clean Fuels or Advanced Control Technology for Boilers

CAA section 182(e)(3) provides that SIPs for extreme areas must require each new, modified, and existing electric utility and industrial and commercial boiler that emits more than 25 tons per year (tpy) of NO_X to either burn as its primary fuel natural gas, methanol, or ethanol (or a comparably low polluting fuel), or use advanced control technology (such as catalytic control technology or other comparably effective control methods). Further guidance on this requirement is provided in the General Preamble at 13523. According to the General Preamble, a boiler should generally be considered as any combustion equipment used to produce steam and generally does not include a process heater that transfers heat from combustion gases to process streams. General Preamble at 13523, 13524. In addition, boilers with rated heat inputs less that 15 million Btu (MMBtu) per hour which are oil- or gas-fired may generally be considered de minimis and exempt from these requirements since it is unlikely that they will exceed the 25 tpy NO_X emission limit. General Preamble at 13524.

The South Coast 2007 AQMP does not directly address CAA section 182(e)(3) requirements for 8-hour ozone. CARB has previously submitted SIP revisions for the South Coast Air Basin addressing the clean fuels for boilers requirement under section 182(e)(3) for the 1-hour ozone standard. See 61 FR 57775 (November 8, 1996) for EPA's approval of the rule submitted to satisfy the CAA section 182(e)(3) requirement in the South Coast.

South Coast Rule 1146 ''Emissions of Oxides of Nitrogen from Industrial, Institutional and Commercial Boilers, Steam Generators and Process Heaters,'' as revised on November 17, 2000 and approved by EPA on April 8, 2002 (67 FR 16640), regulates emissions from boilers larger than 5 MMBtu/hour burning gaseous or non-gaseous fuels. The limits in the rule range between 0.036 and 0.052 lb/MMBtu, depending on the size of the boiler and its capacity factor. This limit is lower than the level of emissions expected from uncontrolled natural gas-fired boilers. Thus, the rule essentially requires all subject boilers to burn fuels that are comparably low polluting (compared to natural gas combustion) or to use control technologies to achieve emissions levels that are similar to those obtained by burning natural gas, methanol, ethanol, or other comparably low polluting fuels.

South Coast Regulation XIII (New Source Review (NSR) Program). Regulation XIII (consisting of Rules 1301, 1302, 1303, 1304, 1306, 1309, 1309.1, 1310, and 1313), which EPA has approved into the South Coast portion of the California SIP (see 61 FR 64291, December 4, 1996), applies to any new or modified boiler proposing to locate in the South Coast that emits or has the potential to emit at least 10 tons per year (tpy) of NO_X or VOC, among other sources. See Rules 1301 and 1302. Under Rule 1303, any such boiler is required to employ Best Available Control Technology, which must be at least as stringent as the Lowest Achievable Emissions Rate (LAER) as defined in CAA section 171(3). See Rule 1302(f) and 1303(a). The LAER standard essentially requires, at a minimum, combustion of low-polluting fuels and/or use of advanced control technologies consistent with the requirements of CAA section 182(e)(3). See CAA 171(3).[39] Accordingly, the SCAQMD's SIP-approved NSR program in Regulation XIII, which establishes LAER-level control requirements for any new or modified boiler that emits more than 10 tpy of NO_X, satisfies the requirements of CAA section 182(e)(3) for each new or modified electric utility and industrial and commercial boiler that emits more than 25 tpy of NO_X. As to existing boilers that emit more than 25 tpy of NO_X, the District has demonstrated that each such boiler currently operating in the South Coast either burns as its primary fuel natural gas or a comparably low polluting fuel, or uses advanced control technology such as SCR or another comparably effective control method (*e.g.,* SNCR), in accordance with SIP-approved requirements such as Rule 1146. See letter, Elaine Chang, DrPH, Deputy Executive Officer, SCAQMD, to Elizabeth Adams, Deputy Director, Air Division, EPA Region 9, dated August 23, 2011.

8. CAA Section 185 Fee Program

CAA Section 185 requires that the SIP for each severe and extreme ozone nonattainment area provide that, if the area fails to attain by its applicable attainment date, each major stationary source of VOCs and NO_X located in the

[39] Section 171(3) of the CAA defines LAER, in relevant part, as ''that rate of emissions which reflects—(A) the most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or (B) the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.''

nonattainment area shall pay a fee to the State as a penalty for such failure for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone. States are not yet required to implement CAA section 185 fee programs for the 1997 8-hour ozone standard.[40]

V. EPA's Proposed Actions

For the reasons discussed above, EPA is proposing to fully approve California's attainment SIP for the South Coast nonattainment area for the 1997 8-hour ozone standard. Simultaneously and in the alternative, EPA is proposing to disapprove the submitted SIP with respect to certain requirements for transportation control strategies and TCMs pending resolution of petitions before the 9th Circuit U.S. Court of Appeals in *Association of Irritated Residents* v. *EPA,* 632 F.3d 584 (9th Cir. 2011). This SIP submittal consists of the South Coast 2007 AQMP (as revised March 4, 2011) and those portions of CARB's revised 2007 State Strategy as revised in 2009 and 2011 that address the CAA's requirements for attainment of the 1997 8-hour ozone NAAQS in the South Coast nonattainment area.

Specifically, EPA is proposing to approve under CAA section 110(k)(3) the following elements of the South Coast 2007 8-Hour Ozone Plan:

1. The revised 2002 base year emissions inventory as meeting the requirements of CAA section 182(a)(1) and 40 CFR 51.915;

2. The reasonably available control measure demonstration as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.912(d);

3. The reasonable further progress demonstration as meeting the requirements of CAA sections 172(c)(2) and 182(c)(2)(B) and 40 CFR 51.910;

4. The attainment demonstration as meeting the requirements of CAA section 182(c)(2)(A) and 40 CFR 51.908;

5. The provisions for the development of new technologies pursuant to CAA section 182(e)(5) and CARB's commitment to adopt and submit by 2020 contingency measures to be implemented if the new technologies do not achieve the planned emissions reductions, as well as additional attainment contingency measures meeting the requirements of CAA section 172(c)(9), pursuant to CAA section 182(e)(5); and to develop and submit by 2020, revisions to the SIP that will (1) reflect modifications to the 2023 emission reduction target based on updated science and (2) identify additional strategies and implementing agencies needed to achieve the needed reductions by the beginning of the 2023 ozone season.

6. The contingency measure provisions for failure to make RFP and to attain as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9);

7. The demonstration that the SIP provides for transportation control strategies and measures sufficient to offset any growth in emissions from growth in VMT or the number of vehicle trips, and to provide for RFP and attainment, as meeting the requirements of CAA section 182(d)(1)(A);

8. The revised motor vehicle emissions budgets for the RFP milestone years of 2011, 2014, 2017 and 2020, and for the attainment year of 2023, because they are derived from approvable RFP and attainment demonstrations and meet the requirements of CAA sections 176(c) and 40 CFR part 93, subpart A;

9. The SCAQMD's commitments to achieve specific aggregate emission reductions of NO_X and VOC as listed in Table 4–2A of the South Coast 2007 AQMP (as revised March 4, 2011); and

10. CARB's commitments to propose certain defined measures, as listed in Table B–1 on page 1 of Appendix B of the 2011 Progress Report and in Appendix B, Table B–1 of the 2011 Ozone SIP Revision, to achieve specific aggregate emission reductions of VOC and NO_X in the South Coast nonattainment area by 2023 as provided in CARB Resolution 07–28, Attachment B, and the 2009 State Strategy update, p. 20; and to achieve the emissions reductions needed to attain the 8-hour ozone standard in the South Coast nonattainment area as provided in CARB Resolution 07–28, Attachment B, p. 4, 2009 State Strategy Status Report, p. 20.

Simultaneously and in the alternative, if the U.S. Court of Appeals for the 9th Circuit denies the Agency's petition for rehearing in *AIR* v. *EPA* and issues its mandate before EPA issues a final rule on the South Coast 2007 Ozone SIP, we propose to disapprove the SIP under CAA section 110(k)(3) with respect to the first element (*i.e.*, offsetting emissions growth) of CAA section 182(d)(1)(A) based on the plan's failure to include sufficient transportation control strategies and TCMs to offset the emissions from growth in VMT.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because proposed SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply propose to approve requirements that the State is already imposing. Therefore, because this proposed 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 Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-

[40] SCAQMD submitted Rule 317, ''Clean Air Act Non-attainment Fees,'' a fee-equivalent program to address the requirements of section 185 for the 1-hour ozone standard, on April 22, 2011.

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 proposed approval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This 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 proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to approve a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045, because it proposes to approve a State rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

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 (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA lacks the discretionary authority to address environmental justice in this rulemaking. In reviewing SIP submittals, EPA's role is to approve or disapprove State choices, based on the criteria of the CAA. Accordingly, this action merely proposes to approve certain State requirements for inclusion into the SIP under CAA section 110 and subchapter I, part D will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 7, 2011.

Jared Blumenfeld,

Regional Administrator, EPA Region 9.

[FR Doc. 2011–23659 Filed 9–15–11; 8:45 am]

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H.R. 2553/P.L. 112–27
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